

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Nov 30

PENNSYLVANIA HUMAN RELATIONS COMMISSION, :
Complainant :
v. : DOCKET NO. S - 10
CHESTER SCHOOL DISTRICT, :
Respondent :

OPINION, INCLUDING FINDINGS OF
FACT, CONCLUSIONS OF LAW, COMMISSION'S
DECISION AND FINAL ORDER

For many months beginning with the fall of 1963 and ending only when public hearings were instituted in the instant case on May 4, 1964, the city of Chester was the scene of repeated and uninterrupted civil rights rallies and demonstrations because of alleged de facto segregation in Chester's public schools.

Efforts to resolve differences between the Chester School Board and the civil rights groups were futile on the part of the local Chester Commission on Human Relations. Similar efforts were attempted by the Pennsylvania Human Relations Commission on April 20, 1964, but without success.

By the end of April, 1964, it became apparent that a crisis existed in the city of Chester when street battles between demonstrators and police resulted in mass arrests and imprisonment of hundreds of individuals, white and Negro. Elected officials, businessmen's associations, civic leaders, clergymen and educators in Chester and elsewhere appealed to Governor William W. Scranton for help

in bringing to an end a rapidly approaching emergency situation.

Thus, on April 26, 1964, the Governor and Attorney General requested this Commission to institute proceedings immediately in Chester, to hold public hearings determine all facts concerning alleged de facto segregation in Chester's public schools, attempt in every way possible to resolve amicably differences among all parties, but failing in this, to issue an appropriate order.

The first day of public hearings was set by the Commission for Monday morning, May 4, 1964. At that time, attorneys for the National Office and the Chester Branch of the National Association for the Advancement of Colored People (NAACP) and for the Chester Committee for Freedom Now (CCFN), the two civil rights groups which led the protests and demonstrations, refused to act as complainants, claiming that the Commission might not have the legal authority to issue a binding order, and that it might preclude them from instituting a future court proceeding. The Commission, after discussion, unanimously agreed to act as complainant and filed a complaint against the Chester School District, setting forth therein verbatim the same nine averments of alleged discrimination as had theretofore been charged by the civil rights groups:

1. Respondent maintains all-one-color schools within its school system.
2. Textbooks authorized for use in the public schools by the respondent do not treat adequately or ignore entirely the contributions of the Negro in American life.
3. Negro teachers are assigned to all-Negro schools only.
4. Negro secretaries, clerks and telephone operators engaged by the respondent are assigned to all-Negro schools or substantially all-Negro schools only, and none is assigned to Administration offices.
5. The physical condition of all-Negro schools and substantially all-Negro schools is noticeably inferior to that of the substantially all-white schools.

6. The educational standards in all-Negro schools are inferior to those in substantially all-white schools; especially in that the Chester School Board has failed to provide for the highest possible educational standards in all-Negro schools, as, for example, by smaller classes, better counseling services and a program of motivation.

7. Respondent has failed to appoint qualified Negroes to supervisory and administrative positions or to encourage Negro personnel to apply for such positions.

8. Boundary lines defining school zones have been maintained and gerrymandered by school authorities in order to perpetuate all-Negro schools and in order to permit white pupils to attend substantially all-white schools.

9. Respondent has failed to adopt and make public an affirmative program and acceptable plan to desegregate the public schools and provide a timetable for implementation.

The respondent School District, by its attorney, Guy G. deFuria, Esq., waived all technicalities dealing with ten days' notice of public hearing provided by the Commission's Regulations, secured ^{an} extension of time within which to file an Answer to the Complaint, and expressed its willingness to have the controversy aired publicly and expeditiously.

An Answer to the Complaint was filed by respondent on May 5, 1964, denying all of the averments of the Complaint.

Eight days of public hearings were conducted before the whole Commission on May 4, 5, 6, 14 and 15, June 11, and September 17 and 29, 1964. In addition, a full evening was devoted by the Commission on July 15, 1964, in a final unsuccessful effort with the respondent to conciliate all issues raised by the Complaint, so that a Final Order might be entered by the Commission with the approval of all interested groups. The July 15th meeting and all hearings were held at the Pennsylvania Military College, 15th and Chestnut Streets, Chester, Pennsylvania.

The case in support of the Complaint was presented by Nathan Agran, Esq., General Counsel for the Commission and Arthur C. Thomas, Esq., Deputy Attorney

General, and the respondent was represented by Guy G. deFuria, Esq. Harold J. Hughes, Esq., attorney for Chester Parents Association, although not a party to the proceedings, was allowed to participate.

At the conclusion of the sixth day of hearings, on June 11, 1964, a Motion to Dismiss was filed by counsel for the Chester School District, alleging essentially that

(1) the Commission does not have jurisdiction of the matters set forth in the Complaint;

(2) the Commission may act only to redress grievances of specific individuals who claim violation of individual civil rights;

(3) the Commission may not supersede a school board in the performance of its duties (referring to matters raised by the Complaint); and

(4) the Commission may not act as complainant, prosecutor and judge.

Counsel for the respondent and General Counsel for the Commission filed briefs of law relating to evidence produced at the hearings and to allegations of respondent's Motion to Dismiss, but waived oral arguments at the conclusion of all testimony.

The Commission has carefully considered the legal briefs and all of the testimony given at the public hearings, has made findings of fact and conclusions of law which are set forth later in this Opinion, and has entered a Final Order against the Chester School District consistent with its said findings of fact and conclusions of law.

The Motion to Dismiss filed by respondent in this proceeding is hereby denied for the following reasons:

1. The Commission has jurisdiction under the fair employment practices provisions and under the public accommodations provisions of

the Pennsylvania Human Relations Act.

2. Aggrieved individuals are not the only parties who may file complaints with the Commission alleging unlawful discriminatory practices. The Act, in Section 9, specifically provides that, "The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint." In accordance with this power, the Commission has initiated hundreds of complaints in its own name.

3. The Commission is not attempting to supersede the Chester School Board in its duties, as alleged in the Motion to Dismiss. The same legislative body which granted certain duties and powers to respondent as a school district, likewise granted certain duties and powers to this Commission by more recent legislation. The Commission is acting in accordance with its duties to determine whether respondent has violated the provisions of the Pennsylvania Human Relations Act. The Commission will not, for example, prescribe the method by which respondent shall desegregate its all-Negro schools because the Chester School Board alone must decide that important matter. But the Commission may order respondent to desegregate the all-Negro schools in an expeditious and satisfactory manner according to a definite timetable and retain jurisdiction until such affirmative actions are taken.

4. The Commission likewise is not acting as "complainant, prosecutor and judge" in this case. It is following its duties by procedures set forth in the Act itself, similar to the methods adopted by hundreds of other commissions in this Commonwealth, in other states and in the Federal Government. So long as an appeal may be taken from any decision of this Commission to the courts, the respondent should not be heard to complain that the proceeding is unconstitutional.

In another case in which this Commission issued an order against a public school district, we said:

"The practice of racial or religious discrimination is ugly in any of its forms. It is particularly reprehensible and inexcusable when practiced in the public schools of this Commonwealth. These schools are supported by public funds derived from taxpayers, regardless of their race, religion or national origin."

The public school is the very backbone of American democracy and has been referred to as "the great equalizer of the conditions of men the balance wheel of the social machinery." The wheel is definitely out of balance when a public school district permits one of its four junior high schools to be all-Negro as to pupils, principal, teachers and other personnel, and permits four of its eleven elementary schools to be all-Negro and one other of its elementary schools to be almost all-Negro.

In 1954, the United States Supreme Court ruled that racial segregation in public schools, when required by state laws, was unconstitutional. This brought to an end the pernicious doctrine of "separate but equal" facilities.

This historic decision in 1954 stimulated many attacks against public school systems in Northern states where segregation existed in fact, though not by law. Courts have generally required the elimination of segregation where the facts indicated that the school boards were in any way responsible for the creation or the continued maintenance of the segregated schools.

In the instant case, the Chester School District has taken the position that residential patterns are responsible for Chester's segregated public schools; and that therefore there is no legal duty on its part to attempt to desegregate the all-Negro schools.

The Pennsylvania Human Relations Commission does not agree with this position. If, as stated by the Supreme Court, "Separate educational facilities are

inherently unequal", then it would not matter whether the Chester School District created this condition intentionally or not. The harmful effects of the all-Negro schools would be felt by Chester pupils in either event.

The Commission is of the opinion that segregation in fact (de facto segregation) must be dealt with by the Chester School District as an educational problem because the education offered in all-Negro schools is inherently unequal to that offered in desegregated schools.

The Commission is also of the opinion that the segregation of public schools in Chester is not entirely accidental. There is much evidence that Chester's segregated schools are at least partly the result of racial motivation on the part of the respondent:

1. For many years, until about 1954, Negro pupils were required to pass nearby schools and attended all-Negro schools farther away;
2. Several of the all-Negro elementary schools, notably Washington and Watts, and one of the junior high schools, Douglass Junior High School, have been racially segregated as to pupils, principal, staff and teachers for many decades;
3. Respondent has not in any way attempted to change boundary lines from year to year so as to prevent the perpetuation of three 100% all-Negro elementary schools and one 100% all-Negro junior high school, one elementary school in which 99% of the pupils are Negroes, and one elementary school in which 90% of the pupils are Negroes;
4. After the William Penn School was built, Negro pupils were permitted to cross the William Penn school zone boundary lines in order to attend the all-Negro Dewey-Mann School;
5. At least one white pupil living within the all-Negro Dewey-Mann school zone has been crossing the Dewey-Mann boundary lines and attending the William Penn School;

6. On May 4, 1964, respondent changed the school zone boundary lines of the ~~all-Negro~~ Dewey-Mann School by eliminating therefrom an all-white populated section of Chester and adding it to the William Penn boundary lines;

7. Only Negro teachers and only Negro clerks have been assigned to all-Negro schools;

8. There has never been a policy of open enrollment in Chester;

9. The 13 members of respondent's supervisory and administrative staff are all white;

10. Only Negro orthogenic backward pupils are assigned to the all-Negro Dewey-Mann School;

11. The all-Negro school buildings have been noticeably inferior to other school buildings in toilet facilities, bad lighting, lack of paint, broken plastering and generally poor maintenance;

12. Of all tuition paying pupils who attend Chester public schools from outlying school districts, only Negroes are assigned to the all-Negro Douglass Junior High School;

13. Of the five kindergartens in existence, only one is conducted at an all-Negro school, four being conducted at substantially all-white schools; and

14. Respondent has failed to adopt or approve any effective plan, with a timetable, to desegregate the all-Negro and substantially all-Negro public schools in Chester.

Throughout the hearings, respondent constantly referred to its inability to provide the funds necessary to replace obsolete school buildings, to pay the same teachers' salaries as are paid by surrounding school districts or to adopt an effective plan to desegregate its school system. It is clearly the duty and

obligation of the Chester School Board to find the means of producing sufficient funds with which to provide each and every child attending public school with a good education. The Commission is not at all convinced that respondent is unable to raise the required funds or that it has exhausted all possible sources of revenue:

1. The school tax rate in the City of Chester is lower in relation to market value of real estate than that of nearby school districts;
2. The School Laws of Pennsylvania permit respondent to seek financial assistance from Delaware County and from the State to provide adequate attention for all of the orthogenic backward and other exceptional children in Chester's public schools;
3. Funds are available for school purposes under the provisions of the National Defense Education Act;
4. New and modern school buildings should be able to be located within the several new urban renewal projects now planned in Chester; and
5. The use of other State and Federal funds could and should be explored by the respondent. Particular attention is directed to the Federal Economic Opportunities Act.

During the hearings, the respondent announced it had requested from the Pennsylvania Department of Public Instruction a professional examination of its entire school system. It was agreed that any reports issued in connection with that survey should be made part of the record in this case. One of the two written reports submitted by the Department of Public Instruction sets forth recommendations for improving the quality of education in the Chester School District. Although these recommendations are silent on the crucial issue of racially segregated public schools, they generally agree with the findings of this Commission in other matters involved in this case, as follows:

1. Intergroup relations material should be included as part of the curriculum;
2. The physical condition and educational facilities at Douglass Junior High School, the only all-Negro junior high school, must be improved;
3. Old and inadequate elementary school buildings, nearly all of which are all-Negro or substantially all-Negro, should be eliminated;
4. Overcrowded conditions exist in six elementary schools, five of which are the all-Negro schools;
5. Educational facilities and programs should be provided for all of the orthogenic backward and other exceptional school children; and
6. Kindergartens and special services are urgently needed for the economically deprived school children.

In the famous school desegregation decision of May 17, 1954, the United States Supreme Court was partly influenced by the strong testimony of social scientists, sociologists and psychologists to the effect that segregation in public schools is harmful. There was abundant testimony in the instant case, too, to convince the Commission that the racially segregated public schools within the respondent School District, although using the same textbooks as other schools, and although staffed by Negro teachers certified by the State, nevertheless provide an inherently unequal education for Negro pupils:

1. Three experts testified in behalf of the complainant to the effect that the segregated public education in Chester is unequal and inferior, and that desegregated education will improve the quality of education in

Chester. They were Dr. Seymour Leventman, sociologist at the University of Pennsylvania, Dr. Kenneth Smith of the Crozier Theological Seminary in Chester, and Dr. Max Wolff, noted community consultant in educational matters, prominent educator and expert in the field of public school desegregation problems.

2. The parents of three Negro pupils whose children once attended all-Negro elementary schools in Chester and elsewhere in Delaware County explained how there was a noticeable change for the better in attitude, motivation and desire to learn when their children transferred to desegregated schools.

3. James Long, a teacher at Pulaski Junior High School, experimented with Negro pupils of the same I.Q. in his school, one from the desegregated William Penn School and the other from the segregated Dewey-Mann School. He testified that there was a noted difference in the achievement ability of the two pupils, the one from Dewey-Mann being at a disadvantage most of the time.

4. Two principals of all-Negro schools in Chester and two teachers in Chester's school system testified that two Negro children of average intelligence and similar socio-economic backgrounds, one attending an all-Negro school and the other a desegregated school in Chester, do not have equal chances to receive a full education, the child attending the desegregated school receiving a fuller education. Mrs. Bernice F. Powell, teacher at the all-Negro Watts School for more than two decades, thus explained that teaching children in an all-Negro school is "like teaching chemistry where you teach all theory without a laboratory."

5. Most of the respondent's witnesses, too, agreed with the basic proposition that education in Chester's segregated schools is inherently

unequal to that in its desegregated schools. Mrs. Emma B. Brinckley, principal of Douglass Junior High School, thus said:

".....Students are a product of the learning experiences which are provided for them, their experiences of interacting with people of various backgrounds socially, economically and culturally. Just as you don't learn to swim by just looking at a swimming pool and without ever getting into it, you don't learn to understand people unless you associate with them. Learning is not confined to just the direction which is given in the four walls of a classroom. Children learn through their association with each other in the cafeteria, eating lunch together. They learn through going on class trips together, journeys and educational excursions. They learn in the way in which they appreciate programs. They learn in the way in which they work together on committees in preparing class projects. And there is no way that a teacher, no matter how excellent she is, there is no way that he or she can give a child this experience."

Aside from this strong testimony, the Commission is convinced that sound educational policy, events which have shaken this nation during the past decade, the provisions of the Pennsylvania Human Relations Act and the provisions, intent and meaning of the Governor's Code of Fair Practices in Pennsylvania, demand that school boards throughout Pennsylvania take affirmative action to desegregate all-Negro and substantially all-Negro public schools within their school districts. The close cooperation between this Commission and the Department of Public Instruction of the Commonwealth of Pennsylvania, in accordance with the provisions of Section 8 of the Pennsylvania Human Relations Act; the preparation and distribution in large quantities of Curriculum Development Series No. 6, Guide to Intergroup Education in Schools, entitled, "Our Greatest Challenge -- Human Relations" by the Department of Public Instruction in cooperation with this Commission; and the issuance by this Commission in June, 1964, of an Affirmative Action Policy on Education, all bear witness to the fact that this Commission considers as a major goal in the field of public education the desegregation of schools.

The Commission, charged with the duty by law "....to prepare a comprehensive educational program, designed for the students of the schools in this

Commonwealth and for all other residents thereof, in order to eliminate prejudice....and to further good will" sincerely believes that desegregation is as vital for the white pupil as for the Negro pupil. Children in a segregated school are not likely to become committed to the brotherhood of man or to acquire strong convictions concerning racial equality.

The Commission sat as a body during all hearings in this case and has the distinct impression that the respondent, while showing a willingness to eliminate all-Negro and all-white faculties, to bus Negro children in order to alleviate overcrowding, to supply remedial teachers for Negro pupils and to spend money to repair outmoded and old all-Negro school buildings, has consistently been unwilling and still appears to be unwilling to meet the main and crucial issue involved in this controversy, that of desegregating the all-Negro schools in Chester at the earliest possible and practicable time.

On March 9, 1964, the president of the Chester School Board issued a strong statement that the Board will continue to maintain its strict policy of neighborhood schools, announcing to all that it will refuse to budge from its then existing boundary lines and school zones.

Respondent announced at the conclusion of the fifth day of testimony on May 15, 1964, that it would engage educational experts to study the entire situation in Chester and to "tell us what we can do to relieve the problem of de facto segregation in Chester." On June 11, 1964, when Dr. William M. Polishook, the expert engaged by respondent testified that it was impossible to desegregate Chester's public schools because Chester was rapidly becoming an all-Negro city, he also testified that he did not even attempt to seek a workable plan of desegregation, saying, at page 1052 of the notes of testimony:

"...By the way, I'd like to make clear one point --- that I was not brought into this picture in order to help the Chester schools desegregate itself. This was not my mission..."

Community tradition and indifference to racial problems have influenced the respondent to assume its attitude about the sanctity of neighborhood schools, about the alleged impropriety of taking the matter of race into account in making assignments of students to public schools, and about the inability of the school board to find the necessary funds with which to effect desegregation. It should be pointed out, however, that a school district should not try to shift its responsibility to the community in which it is located --- it is the school district's responsibility to do what needs to be done to eliminate a condition of segregation, illegal under the provisions of the Pennsylvania Human Relations Act.

Desegregation proposals were submitted as a matter of record by the eminent Dr. Max Wolff, expert witness for the complainant, a community consultant and educator who has helped many communities, school districts and civic groups throughout the country to effect workable plans of desegregation of public schools. Dr. Wolff's proposals were divided into two parts, short range and long range. Under the short range proposals, Dr. Wolff explained that it would be possible to desegregate Chester's schools in all grades past the 4th grade by the beginning of the new school term in September, 1964. He spent nine days in Chester working out his plan, part of which required every principal of the 16 schools in the Chester School District to answer a lengthy questionnaire, supplying Dr. Wolff with all necessary data. He also personally visited school authorities and school principals and examined school buildings.

Under his short range proposals, the School District would be required to reorganize its schools on a 4-2-3-3 basis whereby the senior high school would continue to function for pupils between grades 10 and 12 inclusive and the junior high schools would likewise continue to function for pupils between grades 7 and 9 inclusive; but instead of elementary schools serving pupils between grades 1 and 6 inclusive, as presently constituted, Dr. Wolff proposed the creation of intermediate schools, two in number, to serve all pupils of grades 5 and 6 in the City of Chester. The remaining schools would continue to function for pupils of kindergarten grade through the 4th grade, inclusive, and would be known as primary schools. Part of Dr. Wolff's proposals also permitted desegregation of the all-Negro Douglass Junior High School on a short term basis, by making a single junior high school complex in the center of Chester to which all junior high school students would go in the same manner as all senior high school students now attend one single senior high school composed of three buildings in different parts of the city.

The long range proposals offered by Dr. Wolff would have permitted desegregation of the remaining grades, kindergarten through the 4th grade, on a gradual basis over a period of years, by gradually adding one grade at a time to the said intermediate schools.

In this simple manner, at a minimum of cost and without disrupting affairs unduly, the respondent, if it desired to do so, could have desegregated all grades above the 4th grade in Chester by September of 1964. The Commission is convinced that Dr. Wolff's proposals, either in their entirety or in part, could have provided respondent with a sound, workable plan of desegregation

had it earnestly desired to find a means of desegregating its all-Negro schools by September, 1964.

On July 13, 1964, the respondent, for the first time, submitted to the Commission an eleven-point proposal of its own. While it is to the credit of the respondent that it finally agreed to submit a formal plan of its intentions, it is unfortunate that the plan again evades and does not squarely meet and resolve the principal and crucial issue involved in these proceedings --- the desegregation of Douglass Junior High School, Dewey-Mann, Franklin, Washington and Watts, the five all-Negro schools within the respondent School District. The School Board proposals do not attempt, other than by vague and indefinite language unsupported by any important details, to propose an effective method whereunder this Commission can be reasonably certain that the all-Negro schools in Chester will be entirely desegregated according to a definite timetable.

It is likewise significant that the respondent has not attempted to determine whether it may be possible to desegregate its schools or some of them by the simple expediency of adopting new boundary lines defining new school zones.

While it is commendable that respondent has already taken steps to assign some Negro teachers to all-white faculties and vice versa, the faculties of several of the schools within the Chester School District still remain either all-white or all-Negro. Of more importance, the testimony of Superintendent Charles B. Long that the community's feelings for tradition prevents the assignment of white teachers to all-Negro faculties except where such white teachers request or agree to such assignment, indicates a violation of the fair employment practices provisions of the Pennsylvania Human Relations Act. This practice should be discontinued.

The Commission finds that the respondent is in violation of Section 5(i) of the Act in failing to provide kindergartens for most of the Negro children in Chester. Four of the five kindergartens are conducted at desegregated schools with school populations predominantly white and only one is conducted at the all-Negro Washington School. The respondent owes a duty to find the means of providing kindergartens for the accommodation and use of larger numbers of Negro children who have special need for this kind of pre-school training.

In August of 1964, the Greater Chester Movement was created, a united effort which promises to develop a modern, progressive and vibrant community, and which bodes well for the future of Chester. The Final Order of the Commission in this case is consistent with the aims and goals of the Greater Chester Movement. The desegregation of the public school system in Chester will inure to the benefit of all by raising the educational quality and standards of the Chester School District. It will create a holding power in Chester's public schools in which all its citizens will take pride.

Dr. John Fischer, president of Teachers College, Columbia University, in New York City, once said that a Negro child entering school "carries a burden no white child can ever know, no matter what handicaps or disabilities he may suffer." The Commission sincerely believes it is the duty of the Chester School District to lighten that burden by making an honest attempt to desegregate the all-Negro schools in Chester. It should not be said that this is too difficult a task --- the Chester School District has never really tried.

FINDINGS OF FACT

1. The respondent, Chester School District, administers 17 public schools in the city of Chester, Delaware County, Pennsylvania, one of which, the Martin School, is a special school for orthogenic backward and exceptional children. The other 16 schools are composed of 11 elementary schools, grades 1 through 6 inclusive (five of which have kindergartens and one of which provides classes for orthogenic backward children); four junior high schools, grades 7 through 9 inclusive; and one senior high school, grades 10 through 12 inclusive.

2. The senior high school is composed of three separate buildings operated as a single high school. It is the only public senior high school in Chester and is therefore desegregated racially. As of May, 1964, 1958 pupils attended this high school, of whom 51% (1003) were white and 49% (955) were Negro.

3. The four junior high schools in the Chester School District are Douglass, Pulaski, Showalter and Smedley. The number and race of pupils attending therein as of May, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Douglass	1	527	528
Pulaski	311	208	519
Showalter	114	672	786
Smedley	570	164	734

4. The names of the 11 elementary schools administered by respondent and the number and race of pupils attending each in May, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Dewey-Mann	None	823	823
Franklin	10	1,018	1,028
Jefferis	385	105	490
Larkin	224	207	431
Lincoln	69	490	559
Morton	77	122	199
Stetser	252	152	404
Washington	None	782	782
Watts	None	344	344
Wetherill	399	37	436
William Penn	732	89	821

5. The pupils at the elementary schools of Dewey-Mann, Washington and Watts are 100% Negro; Franklin Elementary School is 99% Negro; Lincoln Elementary School is 87% Negro; and Douglass Junior High School, with only one white student, is practically 100% Negro. The said public schools are racially segregated.

6. The population of the City of Chester changed racially between 1950 and 1960. In that time, it decreased from 66,069 to 63,658 by losing approximately 10,000 whites and gaining approximately 7,000 Negroes.

7. The total number of pupils in the Chester School District as of May, 1964, was 10,842, of whom 38% (4,117) were white and 62% (6,695) were Negro. In the senior high school 51% were white and 49% Negro; in the four junior high schools 39% were white and 61% Negro; and in the 11 elementary schools 34% were white and 66% Negro.

8. The capacities of the junior high schools are as follows: Douglass - 550 ; Pulaski - 700 ; Showalter - 700 ; and Smedley - 750.

9. The capacities of the 11 elementary schools are as follows:

Dewey-Mann	758
Franklin	980
Jefferis	490
Larkin	479
Lincoln	525
Morton	210
Stetser	360
Washington	770
Watts	385
Wetherill	420
William Penn	690

10. The orthogenic backward children in elementary schools situated in the western part of Chester are placed in six classes situated within the Dewey-Mann School, accommodating 108 pupils; orthogenic backward children in elementary schools situated in the eastern part of Chester are placed in six classes at the

Martin School, accommodating 87 pupils. Only two white orthogenic backward pupils have been assigned over the years to the all-Negro Dewey-Mann School. In the school year 1963-1964, there were 498 orthogenic backward pupils in the western part of Chester, white and Negro but predominantly Negro, 390 of whom were absorbed into the regular school classes because there was no room to accommodate them at Dewey-Mann. In the same school year, there were 108 such students in the eastern part of Chester, white and Negro but predominantly white, 21 of whom were absorbed into the regular school classes because they could not be accommodated at Martin School.

11. The average size of classes at the 11 elementary schools on December 11, 1963, indicated that the all-Negro or nearly all-Negro schools were most overcrowded, as follows:

Dewey-Mann	37
Franklin	35
Jefferis	31
Larkin	31
Morton	33
Stetser	30
Washington	34
Watts	32
Wetherill	31
William Penn	33

12. Most of the Negro children in Chester do not receive any kindergarten training, there being only five kindergartens at Jefferis, Stetser, Washington, Wetherill and William Penn schools. Only one of these kindergartens is conducted at an all-Negro school, Washington Elementary School.

13. High school and junior high school pupils are accepted by respondent on a tuition basis from surrounding school districts, particularly Chester Township and Upland Township. Junior high school tuition students are both white and Negro and are assigned to Douglass and Showalter in Chester. Only Negro tuition pupils are being assigned to the all-Negro Douglass Junior High School.

14. As early as 1934, Negro parents protested to the Chester School Board concerning the poor physical condition of the all-Negro schools. As of February, 1964, the physical condition of the all-Negro school buildings, particularly of Dewey-Mann, Washington, Watts and Douglass, was poor, especially in toilet facilities, painting, lighting, plastering, cleanliness and general upkeep. Generally speaking, the physical condition of the all-Negro schools has been inferior to that of other schools in the Chester School District, with the exception of Morton and Larkin schools, both of which were built prior to 1900.

15. The respondent School District had at no time prior to September, 1964, employed special teachers to assist handicapped pupils in remedial reading or other subjects; nor have there been tutorial programs or cultural enrichment programs in Chester's schools for the culturally or motivationally deprived pupils.

16. The social studies, history and civics textbooks used in Chester's public schools do not adequately treat the contributions of the Negro to the American scene. There are no other textbooks yet available which do give adequate treatment to this subject. The Chester School District has made plans to purchase such books when they become available.

17. The respondent School District has at no time engaged a specially qualified human relations expert to assist principals and teachers to prepare supplementary material in intergroup and intercultural relations for the pupils of Chester's public schools. The Curriculum Development Series No. 6, Guide to Intergroup Education in Schools, entitled, "Our Greatest Challenge -- Human Relations" has been made available by the Pennsylvania Department of Public Instruction to the Chester School District, but its use had not been implemented as of May, 1964.

18. The City of Chester is approximately three miles wide. Within the

concept of the requirement of the Public School Code that elementary school children must be bused if they are assigned to schools more than one and one-half ($1\frac{1}{2}$) miles distant from their homes, there are two and no more than three neighborhood school areas in the City of Chester.

19. The Chester School Board has the sole authority to establish or change school boundary lines for the assignment of pupils to particular public schools in accordance with law. Such boundary lines have been established for both junior high schools and for elementary schools in Chester. The minutes of the Chester School Board meetings do not indicate when the elementary school boundary lines were first established; nor do they reflect all of the changes effected in such boundary lines during the past ten years. Only boundary lines of August, 1954 and September, 1959 are referred to in the minutes of the School Board meetings.

20. Prior to 1954, Negro pupils were required by the Chester School District to pass all-white schools near their homes to attend more distant schools which were all-Negro.

21. During the past ten years, when boundary lines for the William Penn School were established, Negro pupils were permitted by respondent to cross such lines in order to attend the all-Negro Dewey-Mann School. As of May, 1964, such practice was not permitted.

22. Boundary lines for elementary schools are known to have been established by respondent in August, 1954 and are known to have been changed by respondent in September, 1959, on May 4, 1964 and on August 24, 1964. During the past ten years, however, other changes in boundary lines, not recorded in the Chester School Board's minutes, were made changing the western vertical boundary line defining the school zone for the all-Negro Dewey-Mann School.

23. The boundary lines established by respondent for Dewey-Mann,

Washington and Watts Elementary Schools and for Douglass Junior High School define Negro residential areas in Chester and therefore have the effect of perpetuating racially segregated schools in Chester.

24. Prior to May 4, 1964, at least one white pupil, Jacqueline Kelly, 905 Palmer Street, Chester, Pennsylvania, had been crossing the boundary lines defining the all-Negro Dewey-Mann school zone and attending the substantially all-white William Penn School.

25. On May 4, 1964, the Chester School Board changed elementary school boundary lines and, among other changes, eliminated from the pre-existing boundary lines defining the school zone for the all-Negro Dewey-Mann School, an area located in the northwest portion of such zone, said area being composed of white residents only.

26. On August 24, 1964, the Chester School Board again changed boundary lines for elementary schools, eliminating all changes but one in boundary lines put into effect on May 4, 1964. The change not disturbed by the Board's action of August 24, 1964, was the elimination of the all-white residential area from the Dewey-Mann school zone.

27. The Chester School District has established the Chester Creek as the boundary line governing the assignment of orthogenic backward pupils. There are 3,990 pupils, predominantly Negro, in the elementary schools west of that boundary line and 1,923 pupils, predominantly white, in the elementary schools east of that boundary line. There are 108 seats reserved at Dewey-Mann School for orthogenic backward pupils west of said boundary line, and 87 seats reserved at Martin School for orthogenic backward pupils east of said boundary line. The white orthogenic backward pupil consequently has approximately five times as many chances of receiving the special treatment he requires than the Negro orthogenic backward pupil in Chester.

28. The Chester School Board engages teachers for the Chester School District and the Superintendent of the said District assigns teachers to particular schools. Promotions to supervisory and administrative positions within the Chester School District are likewise made by the Board on the basis of recommendations from the Superintendent.

29. The Superintendent of the Chester School District engages and assigns all employes other than teachers, including clerks, stenographers and bookkeepers.

30. There were a total of 438 teachers in the Chester School District as of May 14, 1964, of whom 67% (293) were white and 33% (145) were Negro. As of that date, there were 95% (94) white and 5% (5) Negro teachers in the senior high school; there were 66% (91) white and 34% (46) Negro teachers in the four junior high schools; and there were 53% (108) white and 47% (94) Negro teachers in the eleven elementary schools.

31. A white teacher is not assigned or transferred by respondent to any Chester public school having an all-Negro faculty unless said teacher is willing to be so assigned or transferred.

32. As of May 14, 1964, with the exception of one white music teacher at Douglass Junior High School, only Negro teachers were assigned to the all-Negro schools of Douglass Junior High School, Dewey-Mann, Washington and Watts. Only white teachers were assigned to Jefferis, Morton, Stetser, Wetherill and William Penn schools.

33. The number and race of teachers assigned to junior high schools and

elementary schools as of May 14, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Douglass	1	32	33
Pulaski	23	5	28
Showalter	31	7	38
Smadley	36	2	38
Dewey-Mann	None	25	25
Franklin	8	20	28
Jefferis	16	None	16
Larkin	14	2	16
Lincoln	8	9	17
Morton	6	None	6
Stetser	15	None	15
Washington	None	25	25
Watts	None	13	13
Wetherill	15	None	15
William Penn	26	None	26

34. There are no Negro employes in the Chester School District holding any of the 13 supervisory or administrative positions above that of principal. However, with the exception of one known applicant, Negroes have not applied for promotions to such supervisory or administrative positions.

35. Among the 29 bookkeepers, stenographers and other clerks in the Chester School District, five are Negroes, one of whom is assigned to Chester Senior High School. The other four Negro employes are assigned to the all-Negro Dewey-Mann, Franklin, Washington and Watts schools. Just as no Negro clerk has been assigned to predominantly white schools, no white clerk has been assigned to any all-Negro school. No Negro clerk has been assigned to work in the Administration Building.

36. The faculties and student bodies of Douglass Junior High School, Washington and Watts have at all times relevant hereto been all-Negro, with the exception of the music teacher and one white student at Douglass; and the student body, principal, faculty and other employes of Watts Elementary School have been all-Negro since its origin 75 years ago.

37. The same textbooks, courses and curriculum are used in all schools within the Chester School District. All teachers employed by the respondent have the necessary State requirements for teacher certification.

38. Despite use of the same textbooks and curriculum, the education offered to pupils attending the all-Negro schools of Dewey-Mann, Douglass, Franklin, Washington and Watts in the Chester School District, is inherently unequal and inferior to that offered to pupils attending desegregated schools in the District.

39 Two Negro children in Chester of average intelligence and similar socio-economic background, one attending an all-Negro school and the other a desegregated school, would not have an equal chance of receiving a full education. The child who attends the desegregated school receives a fuller education.

40. There is a noted difference in the achievement ability of two Negro pupils of the same I.Q., one entering Pulaski Junior High School from the desegregated William Penn School, the other from the segregated Dewey-Mann School, the pupil from Dewey-Mann being at a disadvantage most of the time.

41. The separation of pupils by race in Chester's public schools prevents experiences which would promote understanding and serves to reinforce divisive prejudices among such pupils.

42. Desegregation of schools and faculties in Chester will improve the quality of education in the Chester School District.

43. In order to relieve overcrowding, the respondent, in November, 1963, began to transport two bus loads of Negro pupils out of Franklin Elementary School to Wetherill School and continued this practice to the end of the 1963-1964 school term at a cost of approximately \$7,800.00. Negro pupils thus transported from the overcrowded, all-Negro Franklin School to the Wetherill School became better motivated in attitude, desire to learn and demeanor.

44. As of May 6, 1964, the respondent, acting through the Chester School Board, had not proposed any effective plan under which the all-Negro schools in Chester might be desegregated; nor discussed at any Board meeting the advisability or inadvisability of eliminating Chester's all-Negro schools.

45. The 1964-1965 Chester School District budget is based upon a $46\frac{1}{2}$ mills tax on real estate having an assessed valuation of about \$71,000,000.00. The tax rate was 44 mills in 1963-1964; 40 mills in 1962-1963; $37\frac{1}{2}$ mills in 1961-1962; and 32 mills in 1960-1961. The tax rate by mills is 75 in adjoining Chester Township, and 80 in adjoining Upland Township. However, the ratio of the assessed real estate valuation to market value thereof is 22.7 in Chester Township, 24.9 in Upland Township and 31.3 in the City of Chester. The school tax rate in the City of Chester is lower in relation to market value of real estate than that of nearby school districts.

46. Proposals for desegregating Chester's public schools were submitted by a duly qualified educator and community consultant, Dr. Max Wolff, whereunder, with a minimum of busing, overcrowding in all of Chester's public schools would be eliminated immediately, space would become available for the establishment of kindergartens at all primary schools, all segregated classes past the 4th grade in all schools would be eliminated immediately, and grades below the 5th grade would be desegregated on a long range basis. Dr. Wolff proposed that the Chester School District:

- (a) Combine Douglass, Showalter, Lincoln and Washington schools into one single junior high school complex for all junior high school pupils in Chester;
- (b) Convert Pulaski and Smedley into intermediate schools to serve all 5th and 6th grade pupils of Chester, making Stetser an annex to Smedley;
- (c) Retain all remaining elementary schools as primary schools for children of kindergarten through the 4th grade; and

- (d) Re-assign pupils below the 5th grade now at Lincoln, Washington and Stetser to nearby primary schools.

47. On July 13, 1964, the respondent rejected the Wolff proposals and offered its own eleven-point proposal as follows:

- (a) Emphasis on quality education in all schools with special emphasis in schools with special problems with expenditures of special funds for this purpose;
- (b) Overcrowdedness to be alleviated by transferring pupils to less crowded facilities by busing if necessary;
- (c) No radical change is to be made in present 6-3-3 school organization plan and the policy of neighborhood schools;
- (d) A long-range plan to alleviate overcrowdedness and eliminate old schools by relocating them in more desirable locations is to be undertaken;
- (e) Provision of more facilities for special education students is an item of high priority in planning;
- (f) Enlargement and conversion of the Showalter Junior High School into a new high school complex and use of the old high school as a junior high will permit the use of the Douglass facility for special education programs;
- (g) Maintenance of a close relationship with community groups to encourage understanding and cooperation;
- (h) Development of plans for a new elementary school in order to relieve overcrowding and provide space for kindergartens and special education classes;
- (i) Provision of kindergarten classes in culturally deprived areas as soon as possible;
- (j) Integrate the non-white staffs by filling vacancies as they develop and by encouraging voluntary transfers; and
- (k) Continuation and expansion of the pre-school program financed by the Chester School District and the Ford Foundation.

48. Beginning with September, 1964, the respondent School District began to implement its said eleven-point proposal, as follows:

- (a) Overcrowding at the all-Negro Dewey-Mann and Franklin schools is being

relieved by busing 240 Negro pupils from Franklin to Wetherill and 69 Negro pupils from Dewey-Mann to William Penn; also 41 additional Negro pupils at Franklin have been re-assigned to walk daily to nearby desegregated schools less crowded. Such busing will cost the respondent between \$26,000.00 and \$27,000.00 for the 1964-1965 school year;

(b) Respondent has made plans and expended money to repair and alter the all-Negro Dewey-Mann, Douglass, Franklin, Washington and Watts schools. In the summer months immediately preceding September, 1964, respondent expended the sum of \$69,000.00 on such repairs and alterations;

(c) Respondent has assigned one Negro teacher to each of the previously all-white faculties of Jefferis, Morton and William Penn, leaving all-white faculties only at Stetser and Wetherill; respondent also assigned 4 white teachers to the previously all-Negro faculty of Dewey-Mann and one white teacher to the previously all-Negro faculty at Washington; and

(d) Respondent engaged three reading specialists to teach slow readers at the all-Negro elementary schools.

49. As of September, 1964, the total public school population had decreased by 36, there now being a total of 10,806 pupils in the Chester School District, of whom 36% (3,909) are white and 64% (6,897) are Negro.

50. The eleven-point proposal of the Chester School District does not adequately or satisfactorily provide with sufficient particularity or a reasonable timetable, for the desegregation of Chester's all-Negro and substantially all-Negro schools.

51. The Chester School District has at no time desired or attempted to desegregate Chester's public schools by the adoption of new school zones through

the medium of new boundary lines for all schools.

52. Although the respondent was aware or should have been aware of the existence of segregated schools within its system, it did not at any time prior to July 13, 1964, attempt to correct this condition.

53. Chester's segregated public school system has not arisen by accident but, in large part, by the following actions and failures to act on the part of the respondent:

(a) Failure to adjust boundary lines from time to time so as to prevent six of the 16 schools in Chester from becoming racially segregated;

(b) Failure to take affirmative action over the years to eliminate its segregated school system which was originally created by the Chester School District's requirement that Negro pupils pass nearby schools to attend all-Negro schools much farther away from their homes;

(c) Failure to permit a policy of open enrollment;

(d) Manipulating boundary lines

(i) by eliminating a white residential area from the all-Negro Dewey-Mann school zone and making it part of the substantially all-white William Penn school zone; and

(ii) by permitting crossing of boundary lines by Negroes from the William Penn school zone to the Dewey-Mann school zone, and by at least one white pupil out of the Dewey-Mann zone into the William Penn zone;

(e) Permitting the physical condition of the all-Negro school buildings to be inferior to that of other schools;

(f) Assigning only Negro teachers and only Negro clerks to all-Negro schools;

(g) Assigning only Negro orthogenic backward pupils to the all-Negro Dewey-Mann School;

(h) Assigning only Negro tuition pupils from nearby school districts

to the all-Negro Douglass Junior High School; and

(1) Failure to approve or adopt any effective plan of desegregation, with a timetable, refusing to give consideration to such possible plan through its School Board.

CONCLUSIONS OF LAW

Upon all the evidence at the public hearings and the foregoing findings of fact, the Pennsylvania Human Relations Commission makes the following conclusions of law:

1. The Pennsylvania Human Relations Commission may properly act as the complainant in this proceeding.

2. At all times herein mentioned, respondent was and still is a place of public accommodations within the meaning of Section 4(1) of the Pennsylvania Human Relations Act.

3. At all times herein mentioned, respondent was and still is an employer within the meaning of Section 4(b) of the Pennsylvania Human Relations Act.

4. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the respondent, Chester School District.

5. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the subject matter of this proceeding and over the instant complaint.

6. The unlawful discriminatory practices involved herein have occurred and still occur within the Commonwealth of Pennsylvania and have deprived Negroes, residents of the City of Chester, Delaware County, Pennsylvania, of their civil rights.

7. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(a) of the Pennsylvania Human Relations Act, in that the respondent assigns only Negro teachers to all-Negro schools and only Negro clerks to all-Negro schools.

8. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(i) of the Pennsylvania Human Relations Act, in that (1) respondent maintains segregated all-Negro and substantially all-Negro public schools within its school system, (2) respondent has established school zones which confine the Negro to all-Negro schools, (3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester, (4) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (5) respondent has failed to accept or adopt any affirmative program or plan whereunder the schools it administers will be effectively desegregated within a reasonable time.

COMMISSION'S DECISION

Upon all of the evidence at the public hearings of this case, and in consideration of the findings of fact and conclusions of law above set forth, the Pennsylvania Human Relations Commission finds and determines:

1. The Commission has jurisdiction over the respondent School District, the subject matter of this proceeding and the complaint, and the Motion to Dismiss is denied.

2. The respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g), 5(a), and 5(i) of the

Pennsylvania Human Relations Act, in that (1) respondent maintains segregated, all-Negro and substantially all-Negro public schools within its school system, (2) respondent has established public school zones which confine the Negro pupils to all-Negro schools, (3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester, (4) respondent assigns only Negro teachers and only Negro clerks to all-Negro public schools, (5) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (6) respondent has failed to accept or adopt any affirmative plan whereby the public schools it administers will be effectively desegregated within a reasonable time.

3. The charge in the Complaint which avers unlawful discriminatory practices by the respondent for using textbooks which do not treat adequately or ignore entirely the contributions of the Negro to the American scene is dismissed.

4. The charge in the Complaint which avers that the respondent has committed unlawful discriminatory practices by failing to appoint Negroes to supervisory and administrative positions is hereby dismissed.

5. The Pennsylvania Human Relations Commission will retain jurisdiction in the subject matter of this proceeding until such time as the respondent fully complies with the Commission's Final Order.

FINAL ORDER

AND NOW, November 20th, 1964, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Commission's Decision, and pursuant to Section 9 of the Pennsylvania Human Relations Act and Sections 105.23 and 105.24 of the Regulations of the Commission, it is hereby

ORDERED, by the Pennsylvania Human Relations Commission

1. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from assigning only Negro teachers to those public schools, the faculties of which are entirely Negro.

2. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from refusing to assign or transfer a white teacher to a public school, the faculty of which is entirely Negro or almost entirely Negro, unless said white teacher gives prior consent to be so assigned or transferred.

3. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes shall cease and desist from assigning only white teachers to Stetser Elementary School and to Wetherill Elementary School.

4. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from assigning only Negro bookkeepers, stenographers and clerks to the all-Negro Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Washington Elementary School and Watts Elementary School.

5. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to establish kindergartens at the following all-Negro elementary schools: Dewey-Mann, Franklin and Watts.

6. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to desegregate effectively the all-Negro Douglass Junior High School, and the following all-Negro or substantially all-Negro elementary schools: Dewey-Mann, Franklin, Lincoln, Washington and Watts.

7. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take the following affirmative action which, in the judgment of the Commission, will effectuate the purpose of the Pennsylvania Human Relations Act:

a. Advise and direct in writing all individual members of the Chester School Board, all of its agents, employes and interviewers having any duty or function with respect to the solicitation, recruitment, referral, selection, hiring, assignment or transfer of teachers and of bookkeepers, clerks and stenographers, that it is the policy and intent of the respondent to comply fully with the Pennsylvania Human Relations Act, and that in the assignment of teachers, bookkeepers, clerks and stenographers, respondent will assign solely on the basis of individual merit and that

- (1) respondent will not assign only Negro teachers, bookkeepers, clerks and stenographers to the all-Negro Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Washington Elementary School and Watts Elementary School,
- (2) respondent will not assign only white teachers to Stetser Elementary School and Wetherill Elementary School, and
- (3) respondent will not require the consent of any white teacher, bookkeeper, clerk or stenographer before assigning or transferring said employe to any public school which it administers;

b. Furnish the Commission with copies of said directive signed by each recipient to indicate its receipt by each of them;

c. Formulate a Plan consistent with the principles and findings of this decision, to establish kindergartens at the following three all-Negro elementary schools: Dewey-Mann, Franklin and Watts, and submit such plan or plans for approval of this Commission on or before December 31, 1964, so that said plan or plans may be implemented beginning no later than February, 1965;

d. Formulate a Plan consistent with the principles and findings of this decision, to desegregate effectively the following schools:

Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Lincoln Elementary School, Washington Elementary School and Watts Elementary School. In the formulation of such plan of desegregation, the Commission urges the respondent carefully and seriously to consider the following guidelines:

- (1) The plan must state all details as to the school or schools to be replaced, converted or paired, including but not limited to costs, proposed methods of obtaining the required funds, and actual dates when the proposed construction or alterations will be commenced and completed;
- (2) If the plan proposes conversion of a present school facility, it must also state with particularity the boundary lines which will define the school zone for such converted school, the number of children required to be bused to such school, and the cost of such busing;
- (3) If the plan proposes construction of new school buildings, it must state specifically all details concerning the exact sites at which such buildings will be erected, the boundary lines which will define the school zones for each such new school, the number of children required to be bused to each such school, and the cost of such busing;
- (4) For short range and immediate action, the plan could embody any or all of the following:
 - (a) The adoption of new boundary lines creating new zones which would desegregate some of the segregated schools;

- (b) The creation of middle or intermediary schools for all 5th and 6th grade pupils, to desegregate such grades;
- (c) The establishment of a single junior high school complex in the central part of Chester, similar to the present senior high school arrangement, which would desegregate the all-Negro Douglass Junior High School;
- (d) The conversion of Chester High School into a junior high school to accommodate pupils now attending Douglass and Showalter Junior High Schools, and the conversion of Showalter Junior High School into a senior high school, to desegregate the all-Negro Douglass Junior High School;

e. Submit said Plan of Desegregation, with detailed information and stating a definite timetable, to this Commission for its approval, on or before January 31, 1965, so that said Plan or Plans, if approved by this Commission, may be implemented no later than the beginning of the 1965 - 1966 school year; and

f. Notify the Pennsylvania Human Relations Commission at its office at 1401 Labor and Industry Building, Harrisburg, Pennsylvania, 17120, in writing, within fifteen (15) days of the date of service of this Final Order, as to the steps the respondent has taken to comply with each ordered provision of this Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By _____
HARRY BOYER
Chairman

Attest:

By _____
EDWARD M. GREEN
Secretary

Attachment #1-4
March 9, 1966

SUBJECT: Chester School District, Case No. S-10

TO: Harry Boyer, Rev. James B. Cayce, Samuel H. Daroff, Edward M. Green,
Rev. Arnold D. Nearn, Mrs. Florence S. Reizenstein, Paul A. Simmons, Esq.,
Dr. Robert Johnson Smith, Joseph X. Yaffe, Esq., Nathan Agran, General
Counsel, Herman Steerman, Assistant Counsel, Arthur C. Thomas, Esq.FROM: Elliott M. Shirk, Executive Director
Pennsylvania Human Relations Commission

There are several points in the Order of the Commission covering the Chester School District case, which were sustained by the Opinion of Dauphin County Court of Appeals, rendered on February 7, 1966, while other points were set aside.

I am summarizing a special report prepared by Mr. Francis Bonner, Supervisor of the Philadelphia Regional Office, which describes what the Chester School Board has done, thus far, to implement those particular points which were sustained by the Opinion of the Commonwealth Court. It is believed that cooperation can and should be expected from the School Board in this respect, even though litigation on the case still is in process.

The Commission is asked to examine this summary to determine whether or not the Chester School Board is fulfilling adequately the responsibilities which the Commission set forth in its official Order in relation to these specific considerations:

1. The Court sustained the position of the Commission that the Chester School District engaged in a discriminatory practice by permitting the physical condition of all Negro school buildings to be inferior to that of other school buildings in the system.

Mr. Charles D. Long, Superintendent of the Chester School District, advised the regional supervisor that at present, because of over-crowded conditions at the Franklin School, 300 students are being bussed from this building to Wetherill, Stetser and Morton. Also, two rooms are being leased from the William Penn Public Housing Project to accommodate students from the Franklin School. Also, two rooms are being leased from the McCafferty Village Housing Project to accommodate students from the William Penn School. Two rooms have also been leased from the Franklin Fire Company to accommodate pupils from the Lincoln School.

Mr. Long stated that the solution to the over-crowded conditions and to the problem of inadequate building facilities is to be found in the proposed new building program which has been adopted by the Board. The first building to be constructed under this program will be an elementary school at 10th and Fulton Streets in Chester.

According to Mr. Long, this building would draw from students in both the white and Negro segments of the community. (See attachment #1)

In preparing this building program, the School Board is adhering to the concept of neighborhood schools. (See attachment #2, dated February 28, 1966, page 3)

2. The Court sustained the position of the Commission to the effect that the Chester School District shall cease and desist from assigning only Negro teachers to those public schools, the faculty of which are entirely Negro and shall cease and desist from assigning only white teachers to certain public schools, the faculty of which are entirely white. It sustained also the Commission Order to cease and desist from refusing to assign or transfer a white teacher to a public school, the faculty of which is entirely Negro or almost entirely Negro unless said white teacher gives prior consent to be assigned or transferred.

Mr. Long advised the regional supervisor that a survey had been made of the teachers in the Chester system where they were requested to express their willingness to teach in a predominantly Negro or predominantly white school. The white teachers who indicated that they would be willing to teach in a predominantly Negro school were the individuals who were transferred to such schools. Likewise, the Negro teachers who indicated that they would be willing to teach in predominantly all-white schools were transferred to such schools. He stated that all new teachers coming into the system are advised that the District reserves the right to assign them to any school in the District. If the candidate then indicates an unwillingness to teach in a predominantly non-white school, this candidate is not offered employment. He stated that both he and the Board could not go along with the demands of the civil rights groups that they immediately force a large percentage of their white teachers to teach in non-white schools, thus bringing complete integration of the system. The reason that Mr. Long did not feel that this would be feasible was that, from all indications, if this were done, there would be mass resignations of white teachers.

With further reference to teacher placement, Mr. Long advised the regional supervisor that in September of 1963, eight schools in the Chester system had faculties of all one color -- five schools had all-white faculties and three had all-Negro.

At the beginning of the Fall term of 1964, only three schools had faculties of all one color, two of these being all-white and one all-Negro.

As of September term, 1965, all school faculties in the system were integrated.

The chart below will indicate both the speed and direction of the Chester School system's attempt to integrate its faculty -

<u>SCHOOLS</u>	<u>AS OF SEPT., 1963</u>	<u>AS OF SEPT., 1965</u>		
		Negro	White	Total
Morton	All-White	1	8	9
Wetherill	All-White	2	14	16
Watts	All-Negro	12	2	14
Washington	All-Negro	25	2	27
Stetser	All-White	1	15	16
Jefferis	All-White	2	15	17
Dewey-Mann	All-Negro	25	4	29
William Penn	All-White	2	26	28
Martin	-----	3	3	6
Lincoln	-----	10	8	18
Larkin	-----	3	15	18
Franklin	-----	29	3	32
Smedley	-----	2	38	40
Showalter	-----	15	25	40
Douglas	-----	30	7	37
Pulaski	-----	8	29	37
Chester High	-----	8	100	108

3. The Court agreed with the Commission that the Chester School District shall cease and desist from assigning only Negro bookkeepers, stenographers and clerks to all-Negro schools.

Mr. Long stated that since the Commission's hearings, two Negro girls have been employed in the Administration Building of the District. One of these girls, Sondra B. Pulley, is the secretary to the Assistant Superintendent.

Mr. Long provided the regional supervisor with a complete list of the clerical, custodial and cafeteria staffs of the Chester School District. These lists indicate the assignment and the race of all non-professional employees. (See attachments #3, #4 and #5)

4. The Court agreed with the Commission that the Chester School District should take immediate steps to establish kindergartens at the following all-Negro elementary schools - Dewey-Mann, Franklin and Watts.

The regional supervisor was advised that in September of 1963, the Chester School System operated five kindergartens - four in all-white schools (Wetherill, Stetser, William Penn and Jefferis), and one in an all-Negro school (Washington).

In September of 1964, the school system received permission from the Department of Public Instruction to use portable classrooms, thus enabling them to add, in October of 1965, six additional kindergartens providing accommodations for 360

3/9/66

additional children. Thus, there are presently kindergartens in operation at all the elementary schools in the City of Chester. Mr. Long further pointed out that these portable classrooms are used by fifth and sixth grade pupils so that classroom space in the school building itself, is being utilized by kindergarten students. As of today, there is a request made for \$250,000.00 under Title I, ESEA, and if approved, the system would be able to add seven additional kindergartens.

(See attachment #6 for Student Enrollment)

(See also attachments #7, #8 and #9 regarding textbooks)

Attachs.

9-A
#1

CHESTER SCHOOL DISTRICT
Chester, Pennsylvania

January 18, 1965

PHASE I

- A. Construct 20 rooms on Dewey-Mann plot. Retain 12 rooms in Mann Building. Add all-purpose room and cafeteria for 1000 children.
Approximate cost: 1½ million including equipment
Would eliminate Watts and Dewey Buildings
Would serve children south of Ninth Street and west to city line
Would eliminate Watts, and Dewey-Mann as totally negro schools
- B. Construct 35 room school in vicinity of Tenth and Fulton Streets. Include all-purpose room and cafeteria for 1000 children.
Approximate cost: 1 3/4 million including equipment
Would relieve Franklin and Lincoln population and eliminate most bussing from Franklin area
Would take some children from Larkin School, and would be an integrated school
Would permit elimination of Morton Building

PHASE II

- A. Add to Showalter to provide a senior high school for 2500, or 3000 if reorganization is effected.
Approximate cost: 4 million
- B. Alter present high school for a junior high for 1500.
Combine Showalter and Douglass into one junior high school and send Upland and Township seventh to ninth grade children to this school.
Approximate cost: \$50,000
- C. Alter Douglass for a special education school for all special education in the City.
Approximate cost: \$50,000

Notes: Recommended time for two phases is five years.

Recommended method: Municipal Authority

November 26, 1965

This plan was submitted to the Board by the Superintendent in January. The Board did not adopt the entire plan but preferred to move step-wise. At present there is action on the section "B" of the first phase. The land has been cleared for purchase and the preliminary forms presented at Harrisburg.

Superintendent of Schools
Chester, Pennsylvania

CHESTER SCHOOL DISTRICT POSITION PAPER

February 28, 1966

De Facto Segregation

We intend to continue our efforts to relieve the effects of the segregated housing pattern in our City as much as the public school system reasonably can. The school system did not create the housing pattern. The problem must be met by our churches, our government, and all our social agencies. All we can do is to mitigate some of the results, and whatever we do must not produce more harm than good.

We believe in the Standard Pennsylvania System of neighborhood schools. We do not intend to cross-bus children, and we will bus children only to relieve over-crowding. Cross-busing young children seems to us wrong and harmful to both the children and their families. Most responsible educators and government officials agree. This does not mean that we are in favor of de facto segregation. De facto segregation is a term that most people do not understand. It refers to the unintentional segregation which is a result of Negroes living, or being compelled to live, in certain areas of the city. We regret the results of these housing patterns; however, it should be emphasized that the Master Building Plan presently being prepared is taking into account as most significant the housing pattern that has led to de facto segregation, and is so planning new schools so as to relieve this situation to the maximum extent possible. It should be remembered at this point, that if the school district were to achieve optimum success in the immediate present, the average enrollment of non-white to white students would be seventy percent (70%) non-white and thirty percent (30%) white. It is likely from our present statistics that one or two years from now when a portion of the new building program is completed, that the percentage of non-white students to white students will

be even higher. For this specific reason, the plan advocated in 1964 by the Pennsylvania Human Relations Commission would have cost hundreds of thousands of dollars, created considerable havoc in our schools, and at best, would have resulted in a token and temporary decrease in racial imbalance. The new United States Commissioner of Education, Dr. Harold Howe, recently announced in the convention held in Atlantic City, that he would advocate the expenditure of hundreds of thousands of dollars to set up a K Triple Four Educational System, or to set up a so-called Princeton Plan, only in those districts where a substantial improvement in the ratio of non-white students to white students would directly result. Greater Chester Movement leaders have declared their opposition to the de facto segregation but to date have offered no constructive solution to the problems of racial imbalance. This is not stated in criticism, but in the hope that helpful discussion will result.

Integration of Faculties

The faculties of various schools in the Chester School District are now integrated and have been since September, 1965, with the degree of integration increasing at a regular pace. It is the standard policy of the Chester School District to remind any teacher applicants of the right of the school district to assign any teacher to any school within the district where needed. This includes the right of the school district to assign a white teacher to a predominantly ~~predominantly white~~ Negro faculty where needed and conversely a Negro teacher to a predominantly white faculty, if needed. Any teacher applicant who contests the right of the Board to exercise this prerogative, is not hired. This program is designed to lead to an orderly and progressive integration of all of the faculties in the district without a complete disruption of the morale of the teachers and/or without detriment to the welfare of the children within the system who may suddenly be left with a

tremendous shortage of teachers which may result from mass resignations, following compulsory assignments on a large scale.

Master Building Plans and Immediate Building Plans

The School Board, through its Solicitor, has been working for over one and a half years to clear the legal title to a tract of ground on Tenth and Fulton Streets in Chester for the erection of a new elementary school.

Approximately four weeks ago the Solicitor reported that we were now ready to build on this ground and that legal title had been cleared. A special building and planning committee was appointed by the Board approximately four weeks ago to prepare drawings and specifications for the new elementary school and other educational buildings ruled by the Board on the Tenth and Fulton Street site. In addition, this special committee is also authorized to engage a firm of experts to prepare a master building plan for the School District, keeping in mind the housing patterns and the necessity of avoiding to the greatest extent possible another de facto segregation situation within our system. Of course, the master building plan would be contingent upon the final implementation of the reorganization plan within the state, and the final decision to the appeal being taken by the Human Relations Commission, and other factors beyond the control of the school district at this time. In the preparation of a master building plan, the Chester Redevelopment Authority and Fels Planning Commission proposals are being closely studied. If the school district had available capital funds of the required many millions of dollars, we would be willing to consider a campus plan. We know of no such capital funds from any source at this time. If we were to attempt to build all immediately required new buildings and acquire the necessarily large acreage, by financing through our school authority, the tax burden would become intolerable

and drive business and families out of the city. One new elementary school requires an increase of about two mills of school taxes for 25 years. In view of the difficult financial problems involved, the Board questions the sincerity of some of the demands made upon it for "instant" action.

Quality Education

The school district has already presented to Harrisburg for approval a Music Program and Physical Education Program involving organ music instruction, and swimming lessons, which programs were heretofore not available to the children within the school system. The school district is also applying for learning renewal center funds for all of the children within the junior high schools and is planning to set up similar learning renewal centers in the elementary schools, which centers will emphasize remedial reading, and basic mathematics. In addition, we have ready for presentation a program of pupil services and an evaluation center for all culturally deprived children within the district which includes the psychological evaluation and testing of every child within the district. These are just some of the programs which are already initiated to step up the quality of education for all the children within our school district.

Textbooks

The Chester School District has had, and is now using, various books that show the contribution of Negroes to American life and history. As an example, all of the books listed on Addenda "A" attached to this statement are already in service in our school district. New books of this type are being put into service as soon as practical following their publication.

Standardized Curriculum and Textbooks and Educational Equipment

In every one of the schools within the district, the curriculum, books and educational supplies and equipment are uniform. This practice and procedure has been standard since 1958. There is no truth to the statement that older textbooks are being used in the predominantly non-white schools than are being used in predominantly white schools. It is true that there are certain types of supplementary books in the entire school district that are used as reference books, and which are not the main textbooks. They are over eight or nine years old in some instances.

However, these books are still legible, sturdy, and have many additional years of life left in them. It would be uneconomical and unwise to discard these books merely for the sake of discarding them. It has been said that a good book grows no worse through age.

Pre-Kindergarten and Kindergarten Education

The school district has helped initiate, and has cooperated in every phase of implementation Operation Goodstart. This is a program for the pre-kindergarten and/or pre-first grade students within the City of Chester. This program is already taking care of hundreds of children. Within the next few months, if no unforeseen difficulties arise, it will probably embrace all of the eligible pre-kindergarten and/or pre-first grade students within the school district. Although this program is presently under the nominal supervision and direction of GCM, general plans have already been made to merge within the school system at the earliest feasible date, the entire program.

It is now well known that the Chester School District has a kindergarten for every elementary school in the district. This is a statement that not all school districts can make, and of which our school district is proud. However, we are now proceeding to apply for seven additional kindergartens in order to provide a kindergarten education for every child within the city who is eligible for such education. The proposal has already been submitted and it is hoped that we may be able to implement this supplementary program within the very near future.

Shared Time Program

Various Civil Rights leaders have indicated that this is a method the School District of Chester has been overlooking for the purpose of furthering integration within the system.

As a matter of fact, the only specific permission granted to archdiocesan children within the boundaries of the School District of the City of Chester has been a general participation in vocational school work. This would involve the high school levels, and would not become a reality until at least September 1967, according to our present information.

The Archdiocese of Philadelphia through its Superintendent of Schools, Monsignor Edward Hughes, has consented to a very limited program of shared time for elementary schools in the areas of remedial reading, art, and music. One of the strict conditions for the archdiocesan students participating in this program has been, however, that the public school be immediately adjacent to the parochial school. This has been interpreted to date as not exceeding one to two blocks. There are no schools in the City of Chester that come within this scope at the present time. Under the Shared Time Program as presently

being implemented in the Philadelphia School District, no more than five or six youngsters from the parochial schools are visiting the public schools at any one given time. Because this program is being implemented under ESEA Title I, which applies primarily to the poor children, even those children which are sharing time in the Philadelphia School District are to a large extent non-white school children. At this stage this is hardly effectuating any substantial integration of the student body. The School District of the City of Chester, however, is ready, able, and willing to further study this particular program to further implement integration if at all possible.

Cooperation with Citizens Association and Community Action Groups

The Greater Chester Movement can be a real help to us in the fields of Vocational and Adult Basic Education through enrollment and placement programs and other aids which may be determined. Our school district has one of the finest systems of vocational - education, in the State and is to be regretted that many persons who could avail themselves of these facilities have not yet chosen to do so. The Chester School District hopes that helpful discussion between GCM and the district will greatly aid to help solve some of the problems presently before the school district.

1965-1966

Administration
Supt. Office

Antonette D. Iacono	Secretary to the Supt.	White
Sondra B. Pulley	Secretary to the Asst. Supt.	Negro
Helen H. Harkness	Clerk	White
Elsie D. Wilson	Clerk	White
Jacquelyn J. Cotter	Clerk	White
Betty Ann Guzzo	Clerk	Negro
Sarah E. Gullford	Clerk	White
Judith A. Reiter	Clerk	White
Josephine T. Mignogna	Clerk	White

Secy. Office

Eileen R. Book	Secretary to the Secy.	White
Elizabeth M. Derrickson	Asst. to the Secretary	White
Bernadette Carroll	I.B.M. Department	White
Louise T. Butcavage	I.B.M. Department	White
Virginia F. Wright	Bookkeeper, Orders & Vouchers	White
Carlene D. Herman	Orders & Vouchers	White
Cheryl Ryan	Orders & Vouchers	White

Chester High School

Dolores S. Perkins	Secretary to the Principal	White
Anne H. Buckley	Clerk	White
Shirley H. Franklin	Clerk	White
Margaret Robinson	Clerk	White
Elizabeth Newlin	Clerk	White
Shereen P. Glascoe	Clerk	Negro
Alice W. Jeffaris	Clerk	White

Douglass Jr. High

Lucille S. Downes	Clerk	Negro
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Pulaski Jr. High

Mary M. Wright	Clerk	White
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Showalter Jr. High

Helen K. McLean	Clerk	White
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Smedley Jr. High

Helene A. Beckley	Clerk	White
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CHESTER SCHOOL DISTRICT
Office of the Secretary
Administration Building
Melrose Avenue at 18th Street
CHESTER, PA.

1965-1966 - continued

CHESTER SCHOOL DISTRICT
Office of the Secretary
Administration Building
Melrose Avenue at 18th Street
CHESTER, PA.

Dewey School	Julia M. Ross	Clerk	Negro
Franklin School	Vacancy	Clerk	
Martin School	Jane A. Johnson Emily M. Yarnall	Child Care Helper Child Care Helper	White White
Vm. Penn School	Helen L. Stark	Clerk	White
Washington School	Ernestine P. Anthony	Clerk	Negro
Medical Department	Margaret M. Coulter	Clerk	White
Maintenance Dept.	Catherine Gill Klaine Phillips	Clerk Clerk	White White
Delinquent Tax Office	Mary Calhoun Sophie L. Stimmel	Clerk Clerk	White White
Ford Foundation	Thomasina Terry	Clerk	Negro

SCHOOL DISTRICT OF THE CITY OF CHESTER, PA.

CUSTODIAL STAFF 1965-1966

SCHOOL	NAME	POSITION	RACE
Anthony Vaul	Supervisor of Custodians		White
Administration Building	A. Przystrelski	Head Custodian	White
	Anna Saunders	Janitress	Negro
	M.J. Preston	Janitress	Negro
Dewey	J.C. Rochester	Head Custodian	Negro
	W. Conyers	Custodian	Negro
	Z.O. Greenhouse	Janitress	Negro
Franklin	H.J. Johnson	Head Custodian	White
	W.H. Black	Custodian	Negro
	L.C. Williams	Custodian	Negro
	V. Donaldson	Janitress	Negro
Jafferis	F. Maysky	Head Custodian	White
	J.C. News	Custodian	White
	I. Larison	Janitress	White
Larkin	C.D. Brown	Head Custodian	White
	L.G. Dziobczynski	Janitress	White
Lincoln	Charles A. Brown	Head Custodian	Negro
	H. Marrow	Custodian	Negro
	S.E. Hodges	Janitress	Negro
Morton	F. Girard	Head Custodian	White
William Penn	M.J. Walsh	Head Custodian	White
	W.P. Cumiskey	Custodian	White
	E.J. Pearson	Custodian	White
	H. Ferry	Custodian	White
	E.T. Hollis	Janitress	Negro
Stetsar	G. DeSanctis	Head Custodian	White
	B.S. Price	Custodian	White
	W. Lawing	Custodian	White
	D.M. Brown	Janitress	Negro
Washington	H.L. Williams	Head Custodian	Negro
	C.E. Carter	Custodian	Negro
	M.R. Bobo	Janitress	Negro
Watts	H.W. Saven	Head Custodian	Negro
	T. Swiggett	Custodian	Negro
	E.W. Johnson	Janitress	Negro

SCHOOL	NAME	POSITION	RACE
Wetherill	C.F. Costello	Head Custodian	White
	J. Guydos	Custodian	White
	B.G. McVey	Janitress	White
Mann	M. Blunt	Head Custodian	Negro
	F.K. Pollard	Janitress	Negro
Martin	W.A. Basner	Head Custodian	White
Chester High	W.J. Diehl	Head Custodian	White
	E.F. Vail	Custodian	White
	J.T. Lykens	Custodian	White
	J.J. Ceraso	Custodian	White
	C.M. Rhoads	Custodian	White
	J.E. Rhoads	Custodian	White
	F. Smith	Custodian	White
	J. Patterson	Custodian	Negro
	S.A. Petro	Custodian	White
	M. Romanoski	Janitress	White
	A.J. Marusco	Head Custodian	White
	L. King	Custodian	White
	J.J. Brennan	Custodian	White
S.S. Kokos	Custodian	White	
D.T. Pinkett	Custodian	White	
L.J. Mikulski	Custodian	White	
E. Tighe	Janitress	White	
R.C.A.	O.M. Lloyd	Head Custodian	White
Athletic Field	W.H. Crystle Jr.	Head Custodian	White
	R. Voshell	Custodian	White
Douglass	J.S. Shavers	Head Custodian	Negro
	J. Casper Loates	Custodian	Negro
	George E. Ballard	Custodian	Negro
	L.R. Jennings	Custodian	Negro
	O. Brown	Janitress	Negro
	R.E. Walley	Janitress	Negro
Pulaski	W.B. Gamble	Head Custodian	White
	C.B. Lee	Custodian	White
	J.S. Zakrewski	Custodian	White
	C. Zgleszewski	Custodian	White
	T.R. Ortlip	Custodian	White
	J. Wojcik	Custodian	White
	H. Skwirut	Janitress	White

SCHOOL	NAME	POSITION	RACE
Showalter	O. Ferrarelli	Head Custodian	White
	T.H. Sharples	Custodian	White
	H.A. Beard	Custodian	White
	A.A. McKeefrey	Custodian	White
	A.J. Green	Custodian	Negro
	T.A. Tucci	Custodian	White
	W.P. Fossette Jr.	Custodian	Negro
Smedley	A. Kowalek	Janitress	White
	D.C. Weaver	Head Custodian	White
	F.F. Pascal	Custodian	White
	W.T. Darden	Custodian	Negro
	J.C. Pierce	Custodian	White
	W.W. Moody	Custodian	White
	F.F. Campbell	Custodian	White
	P. DeJohn	Custodian	White
Maintenance Building	A. Denton	Janitress	White
	W. Bettner	Custodian	White
Temporary	J. Givens	Custodian	Negro
	C.B. Clark	Janitress	Negro

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SCHOOL DISTRICT OF THE CITY OF CHESTER, PENNSYLVANIA

CAFETERIA PERSONNEL

1965 - 1966

CHESTER HIGH SCHOOL

	<u>JOB CATEGORY</u>	<u>RACE</u>
M. R. Kilgore	Head Cashier	White
J. Constantini	Cooks' Manager	White
M. E. Askins	Assistant Cooks' Manager	Negro
R. F. Bowden	Cook	White
T. D. Agostinelli	Cook	White
A. M. Albertini	Cook	White
E. E. Grant	Cook	White
J. R. Johnson	Cook	Negro
D. B. Mikulski	Cook	White
K. E. Murphy	Cook	White
M. P. Olszewski	Cook	White
C. Pace	Cook	White
A. Zeigler	Cook	Negro

SMEDLEY JR. HIGH SCHOOL

E. G. Towson	Cooks' Manager & Cashier	White
P. Luttrell	Assistant Cooks' Manager	White
H. Cresta	Cook	White
F. M. Fisher	Cook	White
A. L. Sobieray	Cook	White
B. R. Wimmer	Cook	White

SHOWALTER JR. HIGH SCHOOL

B. Wolenski	Cooks' Manager & Cashier	White
G. F. Walsh	Assistant Cooks' Manager	White
A. R. Broadhurst	Cook	White
M. Davis	Cook	Negro
S. A. Gornik	Cook	White
C. C. Johnson	Cook	White

PULASKI JR. HIGH SCHOOL

C. C. Cook	Cooks' Manager	White
M. Pacholek	Assistant Cooks' Manager	White
M. E. Coyle	Cook	White
J. M. Dawson	Cook	White
M. V. Melnick	Cashier & Cook	White
Eunice Brodie	Cook	Negro
R. G. Polulaek	Cook	White

DOUGLASS JR. HIGH SCHOOL

M. E. Bobo	Cooks' Manager & Cashier	Negro
F. O. Brooks	Cook	Negro
B. J. Pitts	Cook	Negro
N. Wimbush	Cook	Negro
M. E. Young	Cook	Negro

CHESTER PUBLIC SCHOOLS
Chester, Pennsylvania

Summary of White and Non-White Enrollment

School	1964 - 1965			1965 - 1966		
	White	Non-White	Total	White	Non-White	Total
Chester High School	971	1120	2091	808	1147	1955
Douglass Jr. High School	4	430	434	2	490	492
Dalaski Jr. High School	294	437	731	331	342	673
Showalter Jr. High School	70	595	665	57	623	680
Smedley Jr. High School	535	174	709	463	256	719
Total Secondary Pupils	<u>1874</u>	<u>2756</u>	<u>4630</u>	<u>1661</u>	<u>2858</u>	<u>4519</u>
Dewey-Mann Elementary School	0	708	708	0	789	789
Franklin Elementary School	7	908	915	6	930	936
Jeffers Elementary School	400	123	523	363	138	501
Larkin Elementary School	197	185	382	166	305	471
Lincoln Elementary School	32	454	506	35	571	606
Martin School - Special Ed.	53	40	93	50	39	89
Morton Elementary School	66	205	271	84	197	281

#1

1964 - 1965

1965 - 1966

School	1964 - 1965			1965 - 1966		
	White	Non-White	Total	White	Non-White	Total
William Penn Elementary School	710	146	856	755	88	843
Stetser Elementary School	247	170	417	246	175	421
Washington Elementary School	0	794	794	0	790	790
Watts Elementary School	0	344	344	0	419	419
Wetherill Elementary School	360	88	448	335	90	425
<u>Total Elementary Pupils</u>	<u>2092</u>	<u>4165</u>	<u>6257</u>	<u>2040</u>	<u>4531</u>	<u>6571</u>
<u>Grand Total</u>	<u>3966</u>	<u>6921</u>	<u>10,887</u>	<u>3701</u>	<u>7389</u>	<u>11090</u>

CHESTER PUBLIC SCHOOLS
Chester, Pennsylvania

February 28, 1966

Reading

These materials have not been chosen primarily because of their multi-ethnic contributions. The only exceptions are the library books, where the intent was to directly provide the opportunity for students to read about an outstanding Negro or with pride, see themselves in print within interesting story situations.

With our basic instructional program, materials have been chosen for specific skill development or a low readability level for secondary students. When priority is given to skill development and low readability with high interest content, the field of textbooks or instructional material becomes greatly limited. It is fortunate that publishing companies have been recently including multi-ethnic content in the materials that meet our primary purposes in instruction.

As our present instructional materials need replacement or additions, we are constantly searching for improved materials. The multi-ethnic factor is becoming more important and more feasible, although skill development remains our priority for selection.

CHESTER PUBLIC SCHOOLS
Chester, Pennsylvania

February 28, 1966

Senior High Reading

Reader's Digest - Educational Edition - Senior High basic reading materials
Articles occasionally about Negroes

News For You - Laubach Literacy, Inc.
Box 131
Syracuse, New York 13210

Weekly newspaper frequently containing articles about Negroes, their problems, those presently in the news, and those contributing outstanding accomplishment in various fields.
Basic program -passed along to Special Education

Junior High Reading

Basic Instructional Material
Grades 7th & 8th - and some 9th

News For You - Same as above

Reader's Digest Adult Readers

Reader's Digest, Inc.
Pleasantville, New York

I Fell 18,000 Feet - Story

A Race To Remember - A story about Louis Armstrong

Send For Red - Story about Junius Kellogg

Santa Fe Traders - Story about Charles Dennis Jones

CHESTER PUBLIC SCHOOLS
Chester, Pennsylvania

February 28, 1966

Elementary Remedial Reading

Dewey School: Remedial Reading

Library Books

George Washington Carver - Girrard Library

Franklin School: Remedial Reading

Basic Reading Program

SRA Linguistics

Science Research Associates

Book Level D - Integrated summer camp story - including pictures of Negroes and white together

Book Level D - Picture of Negro teacher

Book Level D - Negro family story - Mother and children youth pictures

Library Books

The Snowy Day - Ezra Jack Keattes
Viking Press
625 Madison Avenue
New York, New York 10022

Whistle For Willie - Ezra Jack Keatts
Viking Press
625 Madison Avenue
New York, New York 10022

Supplementary Program

Merrill Linguistic Readers
Merrill Company

None of these readers contain any pictures. Only the workbooks have illustrations. These are black and white sketches and those sketches of people resemble Negroes.

Washington School: Remedial Reading

Basic Program - Initial Teaching Alphabet

i/t/a Early to Read - Series

I.T.A. Publications, Inc.

20 East 46th Street

New York, New York 10017

CHESTER PUBLIC SCHOOLS
Chester, Pennsylvania

February 28, 1966

Elementary Remedial Reading-Continued

Washington School:

Program:

Book 1 B Houses: Stories and pictures of Negro and white children playing together

Book 2: Contains a story of Negro and white boys playing baseball together

Book 3: Story and pictures

Book 7: Some Negroes included in a few pictures

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CHESTER PUBLIC SCHOOLS
Chester, Pennsylvania

February 23, 1966

TO: JOHN J. VAUL
ASSISTANT SUPERINTENDENT
OF SCHOOLS

FROM: J.M. JOSEPH
DIRECTOR, SECONDARY
CURRICULUM

TOPIC: TEXTBOOKS FOR U.S. HISTORY
SUPPLEMENTARY MATERIAL FOR U.S. HISTORY

<u>GRADE</u>	<u>TITLE</u>	<u>AUTHOR</u>	<u>COPYRIGHT</u>	<u>PUBLISHER</u>
7th	1. <u>The Story of America</u> used to teach the history of United States from the Discovery to the Civil War Period	Bibling et al	1965	Laidlaw Brothers
	2. <u>This is America's Story</u>	Wilder et al	1963	Houghton-Mifflin
8th	Same books as the ones used in 7th Grade are used to teach the History of the United States from the Civil War Period to the present day.			
7th & 8th	<u>Pictorial History of the Negro in America</u>	by Langston & Hughes	1963	Crown Publishers, Inc. New York
Supplementary Instructional Material				
7th & 8th	<u>Adventures in Negro History</u> A 12 inch L.P. Recording (Distributed free by the Pepsi-Cola Company)	Jerry Blocker et al	1963	Highlight Radio Productions Detroit, Michigan
7th & 8th	<u>Current Events News For You</u>	A weekly newspaper		Published in Syracuse, N.Y.
(Recent issue on the Headstart Program)				
11th	<u>Rise of The American Nation</u>	by Todd & Curti	1961	Harcourt Brace Co.
	<u>This is Our Nation</u>	by Baller & Tilford	1961	Webster Publishing Co.
Supplementary Instructional Materials				
	<u>Pictorial History of the Negro in America</u>	by Langston & Hughes	1963	Crown Publishers, Inc.

Supplementary Instructional Material (continued)

<u>GRADE</u>	<u>TITLE</u>	<u>AUTHOR</u>	<u>COPYRIGHT</u>	<u>PUBLISHER</u>
11th	<u>The American Negro</u> (included in the American All Series)	by Clemons et al	1965	Webster-McGraw Hill Book Co.
	<u>North Fighting Fox</u>	by McCarthy & Reddeck	1965	Doubleday & Co.
	<u>The Negro in America</u>	by Cuban	1964	Scott, Foresman Co.
	<u>The Social Setting of Intolerance</u>	by Mandelbaum	1964	Scott, Foresman Co.
	<u>Supreme Court Cases</u> 1. <u>Brown vs. Board of Education</u> 2. <u>Civil Rights Cases</u> (12 inch L. P. Recordings - Lexington Records)	by Rodell et al	1961	Educational Audio Visual Co.
	<u>Adventures in Negro History</u> (12 inch L.P. Recording) (Distributed free by the Pepsi-Cola Company)	Jerry Block et al	1963	Highlight Radio Production Detroit, Michigan

Plans for the future

Until about 1963, textbook publishing companies did not release their United States History (or other subject areas) textbooks with adequate treatment of the contribution of the Negro to American History or Culture.


In the fall of 1964, the D.P.I. at Harrisburg released its first guidelines for textbook selection on The Treatment of Minorities. This was issued about 6 months after the Human Relations Commission held its hearings in April 1964 at P.M.C.

We intend to have our Social Studies Curriculum Committees use this guideline when the integrated members of this Committee choose new history books.

We followed the guidelines selectivity factor in choosing the Story of America by Ebling et al - a 1965 publication of Laidlow Brothers. We purchased 760 copies of these integrated textbooks. These are now being used as basal textbooks by the pupils in the 7th and 8th grade who are reading at about a 5th Grade level.

The basal United States History Textbook for 7th and 8th Grade pupils reading at or above grade level is This is America's Story by Wilder et al, published by Houghton Mifflin Company. The 1963 edition has been seriously revised to bring the contents and its illustration closer to the letter and spirit of the Civil Rights Act.

The 1963 edition will be ordered when we require replacements for this reading level textbook.


Joseph M. Joseph, Director
Secondary School Curriculum

CHESTER PUBLIC SCHOOLS
Chester. Pennsylvania

February 23, 1966

TO: MR. CHARLES D. LONG
SUPERINTENDENT OF SCHOOLS
AND
MR. JOHN J. VAUL
ASSISTANT SUPERINTENDENT
OF SCHOOLS

FROM: SARA E. CALLAGHAN
DIR. ELEM. ED. & CURR.

RE: TEXTS, REFERENCE BOOKS & LIBRARY BOOKS CONTAINING
NEGRO CULTURE, HISTORY, ETC., WHICH ARE IN OUR
ELEMENTARY SCHOOLS

The following is a list of the Multi-Ethnic books in the Elementary Schools at the present time, and those to be ordered for 1966-1967:

I. Reading

A. Our Basal Reading Series, "Reading For Meaning", published by the Houghton-Mifflin Company, has a 1966 (Fourth Edition) Multi-Ethnic approach. We are ordering these to replace worn-out reading books of this series.

Ordered for September 1966

1. Basal Readers (Multi-Ethnic)
(See attached sheet)
2. Supplementary Readers (Multi-Ethnic)
(See attached sheets)

CHESTER PUBLIC SCHOOLS
 Chester, Pennsylvania
 February 23, 1966

-Multi - Ethnic Basal Readers
 To be Purchased for September 1967

TITLE	Conv	PUBLISHER
DEWEY-MANN		
FRANKLIN		
JEFFERIS		
LARKIN		
LINCOLN		
NORTON		
WM. PENN		
STETSER		
WASHINGTON		
WATTS		
WETHERILL		
TOTAL		
Getting Ready To Read - 4th Edition 1966		Houghton-Mifflin Company
Tip	"	"
Tip and Mitten	"	"
Big Show	"	"
Jack and Janet	"	"
Up and Away	"	"
Come Along	"	"
On We Go	"	"
Looking Ahead	"	"
Climbing Higher	"	"
High Roads	"	"
Sky Lines	"	"
Bright Peaks	"	"

Teachers' Editions & Workbooks for the above will be ordered for September, 1966 also

CHESWATER PUBLIC SCHOOLS
Chester, Pennsylvania

February 23, 1966

										<u>July - Estimate Supplementary Readers</u> <u>Purchased - Summer 1965</u>		PUBLISHER	
										TITLE			
15	15	15	15	15	15	15	15	15	15	165	SUNSHINE	Grandior Publishing Co.	
15	15	15	15	15	15	15	15	15	15	165	STORIES	124 Spear Street	
15	15	15	15	15	15	15	15	15	15	165	PIRATES AND GARS YO REDD	San Francisco, California 94105	
15	15	15	15	15	15	15	15	15	15	165	PIRATES	" "	
15	15	15	15	15	15	15	15	15	15	165	SUPERNATURAL	" "	
15	15	15	15	15	15	15	15	15	15	165	LET'S GO	" "	
15	15	15	15	15	15	15	15	15	15	165	LET'S SEE THE ANIMALS	" "	
15	15	15	15	15	15	15	15	15	15	165	LET'S TAKE A TRIP	" "	
15	15	15	15	15	15	15	15	15	15	165	PLAY WITH JIMMY	(Detroit City Schools Reading Program)	
15	15	15	15	15	15	15	15	15	15	165	FUN WITH DAVID		
15	15	15	15	15	15	15	15	15	15	165	LAUGH WITH LARRY	Follett Publishing Co.	
15	15	15	15	15	15	15	15	15	15	165	A DAY WITH DEBBIE	1010 East Washington Blvd.	
15	15	15	15	15	15	15	15	15	15	165	FOUR SEASONS WITH SUZY	Chicago, Illinois 60677	
15	15	15	15	15	15	15	15	15	15	165	IN THE BIG CITY	" "	

Teachers' Manuals purchased for above summer 1965.

	DEWEY-MANN	FRANKLIN	JEFFERIS	LARKIN	LINCOLN	MORTON	WILLIAM PETER	STEINER	WASHINGTON	WATTS	WETHERILL	TOTAL		
15	15	15	15	15	15	15	15	15	15	15	15	165	Title - Basic Supplementary Readers Purchased - Summer 1965 PUBLISHER The Macmillan Company School Department 60 Fifth Avenue New York, New York 10011	
15	15	15	15	15	15	15	15	15	15	15	15	165		People Read - Bank St. College of Education
15	15	15	15	15	15	15	15	15	15	15	15	165		Around the City - Bank St. College of Education
15	15	15	15	15	15	15	15	15	15	15	15	165		Uptown, Downtown - Bank St. College of Education
15	15	15	15	15	15	15	15	15	15	15	15	165		My City - Bank St. College of Education
15	15	15	15	15	15	15	15	15	15	15	15	165		Being a Friend
15	15	15	15	15	15	15	15	15	15	15	15	165		McCormick - Mathers Pub. Co., Inc. P.O. Box 2212 Wichita, Kansas 67201
15	15	15	15	15	15	15	15	15	15	15	15	165		Winning Friends
15	15	15	15	15	15	15	15	15	15	15	15	165		Keeping Your Friends
15	15	15	15	15	15	15	15	15	15	15	15	165		Aiming High
15	15	15	15	15	15	15	15	15	15	15	15	165		Gaining New Friends
15	15	15	15	15	15	15	15	15	15	15	15	165		Reaching Ahead

CHESTER PUBLIC SCHOOLS
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III. Reference Books Containing Negro History, Culture, etc.

A. Purchases Summer 1965

Dewey-Mann	Franklin	Jefferis	Larkin	Lincoln	Morton	Wm. Penn	Stetser	Washington	Watts	Wetherill	Total	Title	Publisher
6	10	4	4	4	2	6	4	8	2	4	54	South America	The Fideler Co. 31 Ottawa Ave. Grand Rapids, Michigan 49502
6	10	4	4	4	2	6	4	8	2	4	54	Caribbean Lands	" "

B. Each elementary school has the following:

1. Several sets of the World Book Encyclopedia.
2. Several Sets of the Compton's Encyclopedia.
3. Several Sets of the Brittanica Junior Encyclopedia.
4. Set or sets of Child Craft.
5. Old World Lands - Silver Burdett

IV. Library Books Containing Negro History, Culture, etc.
in the Elementary Schools

	<u>Title</u>	<u>Author</u>	<u>or</u>	<u>Publisher</u>
1.	American Dilemma (2 Vols.)	Myrdal		Harper
2.	Book of American Negro Spirituals Johnson			Viking
3.	Carver, Dr. George W.	Epstein		Garrard
4.	Carver, Dr. George W.	Graham		Messner
5.	Carver, Dr. George W.	Stevenson		Bobbs-Merrill
6.	Children of North Africa	Stinetorf		Hippin
7.	Children of South Africa	Stinetorf		MacMillan
8.	Child's Story of Negro	Shackelford		Associated
9.	Elementary History of America	Eppic		National Pub.
10.	For Freedom	Fauset		Franklin

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<u>Title</u>	<u>Author</u>	<u>or</u>	<u>Publisher</u>
11. Gifts	Akin		Harlow
12. Great American Negroes	Richardson		Crowell
13. Little Brown Baby	Dunbar		Dod-Mead
14. Negro Boys & Girls (set)	Akin		Harlow
15. Up Fron Slavery	B. J. Washington		
16. What the Negro Wants	Logan		University of North Carolina
17. Word Pictures of the Great (Set)	Derricotte		Associated
18. Bright Angel	de Angeli		Doubleday- Doran
19. Call Me Charley	Jackson		Harper
20. My Dog Rinty	Larry		Viking

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NO.	TITLE	Author or Publisher	
21.	Pépo and Fifina (Haiti)	Bontemps	MacMillan
22.	Tobe	Sharpe	
23.	Elementary American History and Government	Woodburn & Moran	
24.	Farnes' School History of the United States	Steele & Steele	
25.	Founders of Our Nation	Halesk & Frantz	
26.	American History		Iraquois
27.	The Rise of American Democracy	Casher & Gabriel	
28.	United States, Its Past and Present	Elson	
29.	Cawer's, George	Means	
30.	George Washington Carver	White	
31.	Booker T. Washington, Ambitious Boy	Stevenson	
32.	New Trails	Fay	
33.	Heroes of Our America	Van Dryn	
34.	A Little Old Man	Norton	
35.	Epaminondas and His Auntie	Bryant	
36.	The Flopeared Hound	Cradle	
37.	Honey Chile	Branne	
38.	Stories of Many		Spencer
39.	The Children's Hour a. The First Lamb - Africa b. Who is Who - West Indies c. The Curse of Kaing - Burma d. Leaders and Heroes		Spencer
40.	My Struggle For An Education	B.F. Washington	

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NO.	TITLE	Author or	Publisher
41.	George Washington Carver	Martin	
42.	Marian Anderson	Burnett	
43.	Czar and the Music Maker		Knopf
44.	Buffalo Boy		Benefic
45.	Chico		Westminister Press
46.	More Roads to Follow		Scott-Foresman
47.	Benilia		Harcourt, Brace, & World
48.	Ventures		Scott-Foresman
49.	Open Highways		Scott-Foresman
50.	Golden Book Encyclopedia		Golden Press
51.	Children of Our World		American Book Company
52.	Homelands of the World		Iroquois
53.	Black or White		Jr. Literary Guild
54.	The Jungle Book		Doubleday
55.	Pirates, Ships, and Sailors.		Schuster
56.	Days and Deeds		Scott, Foresman
57.	Down Story Roads		Ginn
58.	Amos Fortune - Free Men		E. P. Dutton and Company
59.	Runaway Slave		Scholastic Book Service
60.	Widening Trails		Eyons & Carnahan

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NO.	TITLE	Author	or	Publisher
61.	Let's Travel On			Macmillan
62.	Calvacades			Scott-Foresman
63.	Breakthrough In Science			E. M. Hale
64.	Beyond the Americas	Hanna		
65.	The South			Fidler Company
66.	History's 100 Greatest Events			Grossett
67.	George Washington Carver			Bontempo
68.	Heroes and History of America			Winston
69.	Africa			Fidler
70.	More Fun With Our Friends			Scott-Foresman
71.	New Guess Who			Scott-Foresman
72.	American Heritage-Vol. 2			Dell
73.	American Heritage-Vol. 8			Dell
74.	Four Pennsylvania			Penns Valley
75.	Abe Lincoln Gets His Chance			Rand McNally
76.	We Learn About Children			Encyclopedia Brittanica
77.	Distant Doorways			Silver Burdett
78.	History of Negro People			
79.	Life In Modern America			Ginn & Company
80.	Historical Reader for Schools	Erittain		
81.	The Child's Story of the Negro	Shackelford		
82.	Negro Makers of History	Woodson		
83.	Rich Heritage	Pittman		

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NO.	TITLE	Author	or	Publisher
84.	Famous American Negroes			Dodd, Mead
85.	Negro Musicians			Dodd, Mead
86.	Negro Art, Music, and Rhyme			Assoc Pub.
87.	A Summer Adventure	Lewis		

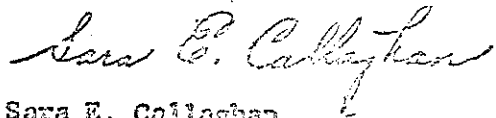
(This is only a partial list of our library books containing negro history, culture, etc.)

V. Future Plans

- a. It is our intent to purchase Mult-Ethnic texts, reference books, library books, etc., whenever possible, to improve our curriculum.

Committees will be working on various projects selecting these books.

Respectfully submitted,



Sara E. Callaghan
Director Elementary Education
and Curriculum

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS COMMISSION, :
Complainant :
v. : DOCKET NO. S - 10
CHESTER SCHOOL DISTRICT, :
Respondent :

OPINION, INCLUDING FINDINGS OF
FACT, CONCLUSIONS OF LAW, COMMISS-
SION'S DECISION AND FINAL ORDER

For many months beginning with the fall of 1963 and ending only when public hearings were instituted in the instant case on May 4, 1964, the city of Chester was the scene of repeated and uninterrupted civil rights rallies and demonstrations because of alleged de facto segregation in Chester's public schools.

Efforts to resolve differences between the Chester School Board and the civil rights groups were futile on the part of the local Chester Commission on Human Relations. Similar efforts were attempted by the Pennsylvania Human Relations Commission on April 20, 1964, but without success.

By the end of April, 1964, it became apparent that a crisis existed in the city of Chester when street battles between demonstrators and police resulted in mass arrests and imprisonment of hundreds of individuals, white and Negro. Elected officials, businessmen's associations, civic leaders, clergymen and educators in Chester and elsewhere appealed to Governor William W. Scranton for help

in bringing to an end a rapidly approaching emergency situation.

Thus, on April 26, 1964, the Governor and Attorney General requested this Commission to institute proceedings immediately in Chester, to hold public hearings determine all facts concerning alleged de facto segregation in Chester's public schools, attempt in every way possible to resolve amicably differences among all parties, but failing in this, to issue an appropriate order.

The first day of public hearings was set by the Commission for Monday morning, May 4, 1964. At that time, attorneys for the National Office and the Chester Branch of the National Association for the Advancement of Colored People (NAACP) and for the Chester Committee for Freedom Now (CCFN), the two civil rights groups which led the protests and demonstrations, refused to act as complainants, claiming that the Commission might not have the legal authority to issue a binding order, and that it might preclude them from instituting a future court proceeding. The Commission, after discussion, unanimously agreed to act as complainant and filed a complaint against the Chester School District, setting forth therein verbatim the same nine averments of alleged discrimination as had theretofore been charged by the civil rights groups:

1. Respondent maintains all-one-color schools within its school system.
2. Textbooks authorized for use in the public schools by the respondent do not treat adequately or ignore entirely the contributions of the Negro in American life.
3. Negro teachers are assigned to all-Negro schools only.
4. Negro secretaries, clerks and telephone operators engaged by the respondent are assigned to all-Negro schools or substantially all-Negro schools only, and none is assigned to Administration offices.
5. The physical condition of all-Negro schools and substantially all-Negro schools is noticeably inferior to that of the substantially all-white schools.

6. The educational standards in all-Negro schools are inferior to those in substantially all-white schools; especially in that the Chester School Board has failed to provide for the highest possible educational standards in all-Negro schools, as, for example, by smaller classes, better counseling services and a program of motivation.

7. Respondent has failed to appoint qualified Negroes to supervisory and administrative positions or to encourage Negro personnel to apply for such positions.

8. Boundary lines defining school zones have been maintained and gerrymandered by school authorities in order to perpetuate all-Negro schools and in order to permit white pupils to attend substantially all-white schools.

9. Respondent has failed to adopt and make public an affirmative program and acceptable plan to desegregate the public schools and provide a timetable for implementation.

The respondent School District, by its attorney, Guy G. deFuria, Esq.,

waived all technicalities dealing with ten days' notice of public hearing provided by the Commission's Regulations, secured ^{an} extension of time within which to file an Answer to the Complaint, and expressed its willingness to have the controversy aired publicly and expeditiously.

An Answer to the Complaint was filed by respondent on May 5, 1964, denying all of the averments of the Complaint.

Eight days of public hearings were conducted before the whole Commission on May 4, 5, 6, 14 and 15, June 11, and September 17 and 29, 1964. In addition, a full evening was devoted by the Commission on July 15, 1964, in a final unsuccessful effort with the respondent to conciliate all issues raised by the Complaint, so that a Final Order might be entered by the Commission with the approval of all interested groups. The July 15th meeting and all hearings were held at the Pennsylvania Military College, 15th and Chestnut Streets, Chester, Pennsylvania.

The case in support of the Complaint was presented by Nathan Agran, Esq., General Counsel for the Commission and Arthur C. Thomas, Esq., Deputy Attorney

General, and the respondent was represented by Guy G. deFuria, Esq. Harold J. Hughes, Esq., attorney for Chester Parents Association, although not a party to the proceedings, was allowed to participate.

At the conclusion of the sixth day of hearings, on June 11, 1964, a Motion to Dismiss was filed by counsel for the Chester School District, alleging essentially that

- (1) the Commission does not have jurisdiction of the matters set forth in the Complaint;
- (2) the Commission may act only to redress grievances of specific individuals who claim violation of individual civil rights;
- (3) the Commission may not supersede a school board in the performance of its duties (referring to matters raised by the Complaint); and
- (4) the Commission may not act as complainant, prosecutor and judge.

Counsel for the respondent and General Counsel for the Commission filed briefs of law relating to evidence produced at the hearings and to allegations of respondent's Motion to Dismiss, but waived oral arguments at the conclusion of all testimony.

The Commission has carefully considered the legal briefs and all of the testimony given at the public hearings, has made findings of fact and conclusions of law which are set forth later in this Opinion, and has entered a Final Order against the Chester School District consistent with its said findings of fact and conclusions of law.

The Motion to Dismiss filed by respondent in this proceeding is hereby denied for the following reasons:

1. The Commission has jurisdiction under the fair employment practices provisions and under the public accommodations provisions of

the Pennsylvania Human Relations Act.

2. Aggrieved individuals are not the only parties who may file complaints with the Commission alleging unlawful discriminatory practices. The Act, in Section 9, specifically provides that, "The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint." In accordance with this power, the Commission has initiated hundreds of complaints in its own name.

3. The Commission is not attempting to supersede the Chester School Board in its duties, as alleged in the Motion to Dismiss. The same legislative body which granted certain duties and powers to respondent as a school district, likewise granted certain duties and powers to this Commission by more recent legislation. The Commission is acting in accordance with its duties to determine whether respondent has violated the provisions of the Pennsylvania Human Relations Act. The Commission will not, for example, prescribe the method by which respondent shall desegregate its all-Negro schools because the Chester School Board alone must decide that important matter. But the Commission may order respondent to desegregate the all-Negro schools in an expeditious and satisfactory manner according to a definite timetable and retain jurisdiction until such affirmative actions are taken.

4. The Commission likewise is not acting as "complainant, prosecutor and judge" in this case. It is following its duties by procedures set forth in the Act itself, similar to the methods adopted by hundreds of other commissions in this Commonwealth, in other states and in the Federal Government. So long as an appeal may be taken from any decision of this Commission to the courts, the respondent should not be heard to complain that the proceeding is unconstitutional.

In another case in which this Commission issued an order against a public school district, we said:

"The practice of racial or religious discrimination is ugly in any of its forms. It is particularly reprehensible and inexcusable when practiced in the public schools of this Commonwealth. These schools are supported by public funds derived from taxpayers, regardless of their race, religion or national origin."

The public school is the very backbone of American democracy and has been referred to as "the great equalizer of the conditions of men the balance wheel of the social machinery." The wheel is definitely out of balance when a public school district permits one of its four junior high schools to be all-Negro as to pupils, principal, teachers and other personnel, and permits four of its eleven elementary schools to be all-Negro and one other of its elementary schools to be almost all-Negro.

In 1954, the United States Supreme Court ruled that racial segregation in public schools, when required by state laws, was unconstitutional. This brought to an end the pernicious doctrine of "separate but equal" facilities.

This historic decision in 1954 stimulated many attacks against public school systems in Northern states where segregation existed in fact, though not by law. Courts have generally required the elimination of segregation where the facts indicated that the school boards were in any way responsible for the creation or the continued maintenance of the segregated schools.

In the instant case, the Chester School District has taken the position that residential patterns are responsible for Chester's segregated public schools; and that therefore there is no legal duty on its part to attempt to desegregate the all-Negro schools.

The Pennsylvania Human Relations Commission does not agree with this position. If, as stated by the Supreme Court, "Separate educational facilities are

inherently unequal", then it would not matter whether the Chester School District created this condition intentionally or not. The harmful effects of the all-Negro schools would be felt by Chester pupils in either event.

The Commission is of the opinion that segregation in fact (de facto segregation) must be dealt with by the Chester School District as an educational problem because the education offered in all-Negro schools is inherently unequal to that offered in desegregated schools.

The Commission is also of the opinion that the segregation of public schools in Chester is not entirely accidental. There is much evidence that Chester's segregated schools are at least partly the result of racial motivation on the part of the respondent:

1. For many years, until about 1954, Negro pupils were required to pass nearby schools and attended all-Negro schools farther away;
2. Several of the all-Negro elementary schools, notably Washington and Watts, and one of the junior high schools, Douglass Junior High School, have been racially segregated as to pupils, principal, staff and teachers for many decades;
3. Respondent has not in any way attempted to change boundary lines from year to year so as to prevent the perpetuation of three 100% all-Negro elementary schools and one 100% all-Negro junior high school, one elementary school in which 99% of the pupils are Negroes, and one elementary school in which 90% of the pupils are Negroes;
4. After the William Penn School was built, Negro pupils were permitted to cross the William Penn school zone boundary lines in order to attend the all-Negro Dewey-Mann School;
5. At least one white pupil living within the all-Negro Dewey-Mann school zone has been crossing the Dewey-Mann boundary lines and attending the William Penn School;

6. On May 4, 1964, respondent changed the school zone boundary lines of the ~~all-Negro~~ Dewey-Mann School by eliminating therefrom an all-white populated section of Chester and adding it to the William Penn boundary lines;

7. Only Negro teachers and only Negro clerks have been assigned to all-Negro schools;

8. There has never been a policy of open enrollment in Chester;

9. The 13 members of respondent's supervisory and administrative staff are all white;

10. Only Negro orthogenic backward pupils are assigned to the all-Negro Dewey-Mann School;

11. The all-Negro school buildings have been noticeably inferior to other school buildings in toilet facilities, bad lighting, lack of paint, broken plastering and generally poor maintenance;

12. Of all tuition paying pupils who attend Chester public schools from outlying school districts, only Negroes are assigned to the all-Negro Douglass Junior High School;

13. Of the five kindergartens in existence, only one is conducted at an all-Negro school, four being conducted at substantially all-white schools; and

14. Respondent has failed to adopt or approve any effective plan, with a timetable, to desegregate the all-Negro and substantially all-Negro public schools in Chester.

Throughout the hearings, respondent constantly referred to its inability to provide the funds necessary to replace obsolete school buildings, to pay the same teachers' salaries as are paid by surrounding school districts or to adopt an effective plan to desegregate its school system. It is clearly the duty and

obligation of the Chester School Board to find the means of producing sufficient funds with which to provide each and every child attending public school with a good education. The Commission is not at all convinced that respondent is unable to raise the required funds or that it has exhausted all possible sources of revenue:

1. The school tax rate in the City of Chester is lower in relation to market value of real estate than that of nearby school districts;
2. The School Laws of Pennsylvania permit respondent to seek financial assistance from Delaware County and from the State to provide adequate attention for all of the orthogenic backward and other exceptional children in Chester's public schools;
3. Funds are available for school purposes under the provisions of the National Defense Education Act;
4. New and modern school buildings should be able to be located within the several new urban renewal projects now planned in Chester; and
5. The use of other State and Federal funds could and should be explored by the respondent. Particular attention is directed to the Federal Economic Opportunities Act.

During the hearings, the respondent announced it had requested from the Pennsylvania Department of Public Instruction a professional examination of its entire school system. It was agreed that any reports issued in connection with that survey should be made part of the record in this case. One of the two written reports submitted by the Department of Public Instruction sets forth recommendations for improving the quality of education in the Chester School District. Although these recommendations are silent on the crucial issue of racially segregated public schools, they generally agree with the findings of this Commission in other matters involved in this case, as follows:

1. Intergroup relations material should be included as part of the curriculum;

2. The physical condition and educational facilities at Douglass Junior High School, the only all-Negro junior high school, must be improved;

3. Old and inadequate elementary school buildings, nearly all of which are all-Negro or substantially all-Negro, should be eliminated;

4. Overcrowded conditions exist in six elementary schools, five of which are the all-Negro schools;

5. Educational facilities and programs should be provided for all of the orthogenic backward and other exceptional school children; and

6. Kindergartens and special services are urgently needed for the economically deprived school children.

In the famous school desegregation decision of May 17, 1954, the United States Supreme Court was partly influenced by the strong testimony of social scientists, sociologists and psychologists to the effect that segregation in public schools is harmful. There was abundant testimony in the instant case, too, to convince the Commission that the racially segregated public schools within the respondent School District, although using the same textbooks as other schools, and although staffed by Negro teachers certified by the State, nevertheless provide an inherently unequal education for Negro pupils:

1. Three experts testified in behalf of the complainant to the effect that the segregated public education in Chester is unequal and inferior, and that desegregated education will improve the quality of education in

Chester. They were Dr. Seymour Leventman, sociologist at the University of Pennsylvania, Dr. Kenneth Smith of the Crozier Theological Seminary in Chester, and Dr. Max Wolff, noted community consultant in educational matters, prominent educator and expert in the field of public school desegregation problems.

2. The parents of three Negro pupils whose children once attended all-Negro elementary schools in Chester and elsewhere in Delaware County explained how there was a noticeable change for the better in attitude, motivation and desire to learn when their children transferred to desegregated schools.

3. James Long, a teacher at Pulaski Junior High School, experimented with Negro pupils of the same I.Q. in his school, one from the desegregated William Penn School and the other from the segregated Dewey-Mann School. He testified that there was a noted difference in the achievement ability of the two pupils, the one from Dewey-Mann being at a disadvantage most of the time.

4. Two principals of all-Negro schools in Chester and two teachers in Chester's school system testified that two Negro children of average intelligence and similar socio-economic backgrounds, one attending an all-Negro school and the other a desegregated school in Chester, do not have equal chances to receive a full education, the child attending the desegregated school receiving a fuller education. Mrs. Bernice F. Powell, teacher at the all-Negro Watts School for more than two decades, thus explained that teaching children in an all-Negro school is "like teaching chemistry where you teach all theory without a laboratory."

5. Most of the respondent's witnesses, too, agreed with the basic proposition that education in Chester's segregated schools is inherently

unequal to that in its desegregated schools. Mrs. Emma B. Brinckley, principal of Douglass Junior High School, thus said:

".....Students are a product of the learning experiences which are provided for them, their experiences of interacting with people of various backgrounds socially, economically and culturally. Just as you don't learn to swim by just looking at a swimming pool and without ever getting into it, you don't learn to understand people unless you associate with them. Learning is not confined to just the direction which is given in the four walls of a classroom. Children learn through their association with each other in the cafeteria, eating lunch together. They learn through going on class trips together, journeys and educational excursions. They learn in the way in which they appreciate programs. They learn in the way in which they work together on committees in preparing class projects. And there is no way that a teacher, no matter how excellent she is, there is no way that he or she can give a child this experience."

Aside from this strong testimony, the Commission is convinced that sound educational policy, events which have shaken this nation during the past decade, the provisions of the Pennsylvania Human Relations Act and the provisions, intent and meaning of the Governor's Code of Fair Practices in Pennsylvania, demand that school boards throughout Pennsylvania take affirmative action to desegregate all-Negro and substantially all-Negro public schools within their school districts. The close cooperation between this Commission and the Department of Public Instruction of the Commonwealth of Pennsylvania, in accordance with the provisions of Section 8 of the Pennsylvania Human Relations Act; the preparation and distribution in large quantities of Curriculum Development Series No. 6, Guide to Intergroup Education in Schools, entitled, "Our Greatest Challenge -- Human Relations" by the Department of Public Instruction in cooperation with this Commission; and the issuance by this Commission in June, 1964, of an Affirmative Action Policy on Education, all bear witness to the fact that this Commission considers as a major goal in the field of public education the desegregation of schools.

The Commission, charged with the duty by law "...to prepare a comprehensive educational program, designed for the students of the schools in this

Commonwealth and for all other residents thereof, in order to eliminate prejudice.....and to further good will" sincerely believes that desegregation is as vital for the white pupil as for the Negro pupil. Children in a segregated school are not likely to become committed to the brotherhood of man or to acquire strong convictions concerning racial equality.

The Commission sat as a body during all hearings in this case and has the distinct impression that the respondent, while showing a willingness to eliminate all-Negro and all-white faculties, to bus Negro children in order to alleviate overcrowding, to supply remedial teachers for Negro pupils and to spend money to repair outmoded and old all-Negro school buildings, has consistently been unwilling and still appears to be unwilling to meet the main and crucial issue involved in this controversy, that of desegregating the all-Negro schools in Chester at the earliest possible and practicable time.

On March 9, 1964, the president of the Chester School Board issued a strong statement that the Board will continue to maintain its strict policy of neighborhood schools, announcing to all that it will refuse to budge from its then existing boundary lines and school zones.

Respondent announced at the conclusion of the fifth day of testimony on May 15, 1964, that it would engage educational experts to study the entire situation in Chester and to "tell us what we can do to relieve the problem of de facto segregation in Chester." On June 11, 1964, when Dr. William M. Polishook, the expert engaged by respondent testified that it was impossible to desegregate Chester's public schools because Chester was rapidly becoming an all-Negro city, he also testified that he did not even attempt to seek a workable plan of desegregation, saying, at page 1052 of the notes of testimony:

"....By the way, I'd like to make clear one point --- that I was not brought into this picture in order to help the Chester schools desegregate itself. This was not my mission..."

Community tradition and indifference to racial problems have influenced the respondent to assume its attitude about the sanctity of neighborhood schools, about the alleged impropriety of taking the matter of race into account in making assignments of students to public schools, and about the inability of the school board to find the necessary funds with which to effect desegregation. It should be pointed out, however, that a school district should not try to shift its responsibility to the community in which it is located --- it is the school district's responsibility to do what needs to be done to eliminate a condition of segregation, illegal under the provisions of the Pennsylvania Human Relations Act.

Desegregation proposals were submitted as a matter of record by the eminent Dr. Max Wolff, expert witness for the complainant, a community consultant and educator who has helped many communities, school districts and civic groups throughout the country to effect workable plans of desegregation of public schools. Dr. Wolff's proposals were divided into two parts, short range and long range. Under the short range proposals, Dr. Wolff explained that it would be possible to desegregate Chester's schools in all grades past the 4th grade by the beginning of the new school term in September, 1964. He spent nine days in Chester working out his plan, part of which required every principal of the 16 schools in the Chester School District to answer a lengthy questionnaire, supplying Dr. Wolff with all necessary data. He also personally visited school authorities and school principals and examined school buildings.

Under his short range proposals, the School District would be required to reorganize its schools on a 4-2-3-3 basis whereby the senior high school would continue to function for pupils between grades 10 and 12 inclusive and the junior high schools would likewise continue to function for pupils between grades 7 and 9 inclusive; but instead of elementary schools serving pupils between grades 1 and 6 inclusive, as presently constituted, Dr. Wolff proposed the creation of intermediate schools, two in number, to serve all pupils of grades 5 and 6 in the City of Chester. The remaining schools would continue to function for pupils of kindergarten grade through the 4th grade, inclusive, and would be known as primary schools. Part of Dr. Wolff's proposals also permitted desegregation of the all-Negro Douglass Junior High School on a short term basis, by making a single junior high school complex in the center of Chester to which all junior high school students would go in the same manner as all senior high school students now attend one single senior high school composed of three buildings in different parts of the city.

The long range proposals offered by Dr. Wolff would have permitted desegregation of the remaining grades, kindergarten through the 4th grade, on a gradual basis over a period of years, by gradually adding one grade at a time to the said intermediate schools.

In this simple manner, at a minimum of cost and without disrupting affairs unduly, the respondent, if it desired to do so, could have desegregated all grades above the 4th grade in Chester by September of 1964. The Commission is convinced that Dr. Wolff's proposals, either in their entirety or in part, could have provided respondent with a sound, workable plan of desegregation

had it earnestly desired to find a means of desegregating its all-Negro schools by September, 1964.

On July 13, 1964, the respondent, for the first time, submitted to the Commission an eleven-point proposal of its own. While it is to the credit of the respondent that it finally agreed to submit a formal plan of its intentions, it is unfortunate that the plan again evades and does not squarely meet and resolve the principal and crucial issue involved in these proceedings --- the desegregation of Douglass Junior High School, Dewey-Mann, Franklin, Washington and Watts, the five all-Negro schools within the respondent School District. The School Board proposals do not attempt, other than by vague and indefinite language unsupported by any important details, to propose an effective method whereunder this Commission can be reasonably certain that the all-Negro schools in Chester will be entirely desegregated according to a definite timetable.

It is likewise significant that the respondent has not attempted to determine whether it may be possible to desegregate its schools or some of them by the simple expediency of adopting new boundary lines defining new school zones.

While it is commendable that respondent has already taken steps to assign some Negro teachers to all-white faculties and vice versa, the faculties of several of the schools within the Chester School District still remain either all-white or all-Negro. Of more importance, the testimony of Superintendent Charles B. Long that the community's feelings for tradition prevents the assignment of white teachers to all-Negro faculties except where such white teachers request or agree to such assignment, indicates a violation of the fair employment practices provisions of the Pennsylvania Human Relations Act. This practice should be discontinued.

The Commission finds that the respondent is in violation of Section 5(i) of the Act in failing to provide kindergartens for most of the Negro children in Chester. Four of the five kindergartens are conducted at desegregated schools with school populations predominantly white and only one is conducted at the all-Negro Washington School. The respondent owes a duty to find the means of providing kindergartens for the accommodation and use of larger numbers of Negro children who have special need for this kind of pre-school training.

In August of 1964, the Greater Chester Movement was created, a united effort which promises to develop a modern, progressive and vibrant community, and which bodes well for the future of Chester. The Final Order of the Commission in this case is consistent with the aims and goals of the Greater Chester Movement. The desegregation of the public school system in Chester will inure to the benefit of all by raising the educational quality and standards of the Chester School District. It will create a holding power in Chester's public schools in which all its citizens will take pride.

Dr. John Fischer, president of Teachers College, Columbia University, in New York City, once said that a Negro child entering school "carries a burden no white child can ever know, no matter what handicaps or disabilities he may suffer." The Commission sincerely believes it is the duty of the Chester School District to lighten that burden by making an honest attempt to desegregate the all-Negro schools in Chester. It should not be said that this is too difficult a task --- the Chester School District has never really tried.

FINDINGS OF FACT

1. The respondent, Chester School District, administers 17 public schools in the city of Chester, Delaware County, Pennsylvania, one of which, the Martin School, is a special school for orthogenic backward and exceptional children. The other 16 schools are composed of 11 elementary schools, grades 1 through 6 inclusive (five of which have kindergartens and one of which provides classes for orthogenic backward children); four junior high schools, grades 7 through 9 inclusive; and one senior high school, grades 10 through 12 inclusive.

2. The senior high school is composed of three separate buildings operated as a single high school. It is the only public senior high school in Chester and is therefore desegregated racially. As of May, 1964, 1958 pupils attended this high school, of whom 51% (1003) were white and 49% (955) were Negro.

3. The four junior high schools in the Chester School District are Douglass, Pulaski, Showalter and Smedley. The number and race of pupils attending therein as of May, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Douglass	1	527	528
Pulaski	311	208	519
Showalter	114	672	786
Smedley	570	164	734

4. The names of the 11 elementary schools administered by respondent and the number and race of pupils attending each in May, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Dewey-Mann	None	823	823
Franklin	10	1,018	1,028
Jefferis	385	105	490
Larkin	224	207	431
Lincoln	69	490	559
Morton	77	122	199
Stetser	252	152	404
Washington	None	782	782
Watts	None	344	344
Wetherill	399	37	436
William Penn	732	89	821

5. The pupils at the elementary schools of Dewey-Mann, Washington and Watts are 100% Negro; Franklin Elementary School is 99% Negro; Lincoln Elementary School is 87% Negro; and Douglass Junior High School, with only one white student, is practically 100% Negro. The said public schools are racially segregated.

6. The population of the City of Chester changed racially between 1950 and 1960. In that time, it decreased from 66,069 to 63,658 by losing approximately 10,000 whites and gaining approximately 7,000 Negroes.

7. The total number of pupils in the Chester School District as of May, 1964, was 10,842, of whom 38% (4,117) were white and 62% (6,695) were Negro. In the senior high school 51% were white and 49% Negro; in the four junior high schools 39% were white and 61% Negro; and in the 11 elementary schools 34% were white and 66% Negro.

8. The capacities of the junior high schools are as follows: Douglass - 550 ; Pulaski - 700 ; Showalter -- 700 ; and Smedley - 750.

9. The capacities of the 11 elementary schools are as follows:

Dewey-Mann	758
Franklin	980
Jefferis	490
Larkin	479
Lincoln	525
Morton	210
Stetser	360
Washington	770
Watts	385
Wetherill	420
William Penn	690

10. The orthogenic backward children in elementary schools situated in the western part of Chester are placed in six classes situated within the Dewey-Mann School, accommodating 108 pupils; orthogenic backward children in elementary schools situated in the eastern part of Chester are placed in six classes at the

Martin School, accommodating 87 pupils. Only two white orthogenic backward pupils have been assigned over the years to the all-Negro Dewey-Mann School. In the school year 1963-1964, there were 498 orthogenic backward pupils in the western part of Chester, white and Negro but predominantly Negro, 390 of whom were absorbed into the regular school classes because there was no room to accommodate them at Dewey-Mann. In the same school year, there were 108 such students in the eastern part of Chester, white and Negro but predominantly white, 21 of whom were absorbed into the regular school classes because they could not be accommodated at Martin School.

11. The average size of classes at the 11 elementary schools on December 11, 1963, indicated that the all-Negro or nearly all-Negro schools were most overcrowded, as follows:

Dewey-Mann	37
Franklin	35
Jefferis	31
Larkin	31
Morton	33
Stetser	30
Washington	34
Watts	32
Wetherill	31
William Penn	33

12. Most of the Negro children in Chester do not receive any kindergarten training, there being only five kindergartens at Jefferis, Stetser, Washington, Wetherill and William Penn schools. Only one of these kindergartens is conducted at an all-Negro school, Washington Elementary School.

13. High school and junior high school pupils are accepted by respondent on a tuition basis from surrounding school districts, particularly Chester Township and Upland Township. Junior high school tuition students are both white and Negro and are assigned to Douglass and Showalter in Chester. Only Negro tuition pupils are being assigned to the all-Negro Douglass Junior High School.

14. As early as 1934, Negro parents protested to the Chester School Board concerning the poor physical condition of the all-Negro schools. As of February, 1964, the physical condition of the all-Negro school buildings, particularly of Dewey-Mann, Washington, Watts and Douglass, was poor, especially in toilet facilities, painting, lighting, plastering, cleanliness and general upkeep. Generally speaking, the physical condition of the all-Negro schools has been inferior to that of other schools in the Chester School District, with the exception of Morton and Larkin schools, both of which were built prior to 1900.

15. The respondent School District had at no time prior to September, 1964, employed special teachers to assist handicapped pupils in remedial reading or other subjects; nor have there been tutorial programs or cultural enrichment programs in Chester's schools for the culturally or motivationally deprived pupils.

16. The social studies, history and civics textbooks used in Chester's public schools do not adequately treat the contributions of the Negro to the American scene. There are no other textbooks yet available which do give adequate treatment to this subject. The Chester School District has made plans to purchase such books when they become available.

17. The respondent School District has at no time engaged a specially qualified human relations expert to assist principals and teachers to prepare supplementary material in intergroup and intercultural relations for the pupils of Chester's public schools. The Curriculum Development Series No. 6, Guide to Intergroup Education in Schools, entitled, "Our Greatest Challenge -- Human Relations" has been made available by the Pennsylvania Department of Public Instruction to the Chester School District, but its use had not been implemented as of May, 1964.

18. The City of Chester is approximately three miles wide. Within the

concept of the requirement of the Public School Code that elementary school children must be bused if they are assigned to schools more than one and one-half ($1\frac{1}{2}$) miles distant from their homes, there are two and no more than three neighborhood school areas in the City of Chester.

19. The Chester School Board has the sole authority to establish or change school boundary lines for the assignment of pupils to particular public schools in accordance with law. Such boundary lines have been established for both junior high schools and for elementary schools in Chester. The minutes of the Chester School Board meetings do not indicate when the elementary school boundary lines were first established; nor do they reflect all of the changes effected in such boundary lines during the past ten years. Only boundary lines of August, 1954 and September, 1959 are referred to in the minutes of the School Board meetings.

20. Prior to 1954, Negro pupils were required by the Chester School District to pass all-white schools near their homes to attend more distant schools which were all-Negro.

21. During the past ten years, when boundary lines for the William Penn School were established, Negro pupils were permitted by respondent to cross such lines in order to attend the all-Negro Dewey-Mann School. As of May, 1964, such practice was not permitted.

22. Boundary lines for elementary schools are known to have been established by respondent in August, 1954 and are known to have been changed by respondent in September, 1959, on May 4, 1964 and on August 24, 1964. During the past ten years, however, other changes in boundary lines, not recorded in the Chester School Board's minutes, were made changing the western vertical boundary line defining the school zone for the all-Negro Dewey-Mann School.

23. The boundary lines established by respondent for Dewey-Mann,

Washington and Watts Elementary Schools and for Douglass Junior High School define Negro residential areas in Chester and therefore have the effect of perpetuating racially segregated schools in Chester.

24. Prior to May 4, 1964, at least one white pupil, Jacqueline Kelly, 905 Palmer Street, Chester, Pennsylvania, had been crossing the boundary lines defining the all-Negro Dewey-Mann school zone and attending the substantially all-white William Penn School.

25. On May 4, 1964, the Chester School Board changed elementary school boundary lines and, among other changes, eliminated from the pre-existing boundary lines defining the school zone for the all-Negro Dewey-Mann School, an area located in the northwest portion of such zone, said area being composed of white residents only.

26. On August 24, 1964, the Chester School Board again changed boundary lines for elementary schools, eliminating all changes but one in boundary lines put into effect on May 4, 1964. The change not disturbed by the Board's action of August 24, 1964, was the elimination of the all-white residential area from the Dewey-Mann school zone.

27. The Chester School District has established the Chester Creek as the boundary line governing the assignment of orthogenic backward pupils. There are 3,990 pupils, predominantly Negro, in the elementary schools west of that boundary line and 1,923 pupils, predominantly white, in the elementary schools east of that boundary line. There are 108 seats reserved at Dewey-Mann School for orthogenic backward pupils west of said boundary line, and 87 seats reserved at Martin School for orthogenic backward pupils east of said boundary line. The white orthogenic backward pupil consequently has approximately five times as many chances of receiving the special treatment he requires than the Negro orthogenic backward pupil in Chester.

28. The Chester School Board engages teachers for the Chester School District and the Superintendent of the said District assigns teachers to particular schools. Promotions to supervisory and administrative positions within the Chester School District are likewise made by the Board on the basis of recommendations from the Superintendent.

29. The Superintendent of the Chester School District engages and assigns all employes other than teachers, including clerks, stenographers and bookkeepers.

30. There were a total of 438 teachers in the Chester School District as of May 14, 1964, of whom 67% (293) were white and 33% (145) were Negro. As of that date, there were 95% (94) white and 5% (5) Negro teachers in the senior high school; there were 66% (91) white and 34% (46) Negro teachers in the four junior high schools; and there were 53% (108) white and 47% (94) Negro teachers in the eleven elementary schools.

31. A white teacher is not assigned or transferred by respondent to any Chester public school having an all-Negro faculty unless said teacher is willing to be so assigned or transferred.

32. As of May 14, 1964, with the exception of one white music teacher at Douglass Junior High School, only Negro teachers were assigned to the all-Negro schools of Douglass Junior High School, Dewey-Mann, Washington and Watts. Only white teachers were assigned to Jefferis, Morton, Stetser, Wetherill and William Penn schools.

33. The number and race of teachers assigned to junior high schools and

elementary schools as of May 14, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Douglass	1	32	33
Pulaski	23	5	28
Showalter	31	7	38
Smedley	36	2	38
Dewey-Mann	None	25	25
Franklin	8	20	28
Jefferis	16	None	16
Larkin	14	2	16
Lincoln	8	9	17
Morton	6	None	6
Stetser	15	None	15
Washington	None	25	25
Watts	None	13	13
Wetherill	15	None	15
William Penn	26	None	26

34. There are no Negro employes in the Chester School District holding any of the 13 supervisory or administrative positions above that of principal. However, with the exception of one known applicant, Negroes have not applied for promotions to such supervisory or administrative positions.

35. Among the 29 bookkeepers, stenographers and other clerks in the Chester School District, five are Negroes, one of whom is assigned to Chester Senior High School. The other four Negro employes are assigned to the all-Negro Dewey-Mann, Franklin, Washington and Watts schools. Just as no Negro clerk has been assigned to predominantly white schools, no white clerk has been assigned to any all-Negro school. No Negro clerk has been assigned to work in the Administration Building.

36. The faculties and student bodies of Douglass Junior High School, Washington and Watts have at all times relevant hereto been all-Negro, with the exception of the music teacher and one white student at Douglass; and the student body, principal, faculty and other employes of Watts Elementary School have been all-Negro since its origin 75 years ago.

37. The same textbooks, courses and curriculum are used in all schools within the Chester School District. All teachers employed by the respondent have the necessary State requirements for teacher certification.

38. Despite use of the same textbooks and curriculum, the education offered to pupils attending the all-Negro schools of Dewey-Mann, Douglass, Franklin, Washington and Watts in the Chester School District, is inherently unequal and inferior to that offered to pupils attending desegregated schools in the District.

39 Two Negro children in Chester of average intelligence and similar socio-economic background, one attending an all-Negro school and the other a desegregated school, would not have an equal chance of receiving a full education. The child who attends the desegregated school receives a fuller education.

40. There is a noted difference in the achievement ability of two Negro pupils of the same I.Q., one entering Pulaski Junior High School from the desegregated William Penn School, the other from the segregated Dewey-Mann School, the pupil from Dewey-Mann being at a disadvantage most of the time.

41. The separation of pupils by race in Chester's public schools prevents experiences which would promote understanding and serves to reinforce divisive prejudices among such pupils.

42. Desegregation of schools and faculties in Chester will improve the quality of education in the Chester School District.

43. In order to relieve overcrowding, the respondent, in November, 1963, began to transport two bus loads of Negro pupils out of Franklin Elementary School to Wetherill School and continued this practice to the end of the 1963-1964 school term at a cost of approximately \$7,800.00. Negro pupils thus transported from the overcrowded, all-Negro Franklin School to the Wetherill School became better motivated in attitude, desire to learn and demeanor.

44. As of May 6, 1964, the respondent, acting through the Chester School Board, had not proposed any effective plan under which the all-Negro schools in Chester might be desegregated; nor discussed at any Board meeting the advisability or inadvisability of eliminating Chester's all-Negro schools.

45. The 1964-1965 Chester School District budget is based upon a $46\frac{1}{2}$ mills tax on real estate having an assessed valuation of about \$71,000,000.00. The tax rate was 44 mills in 1963-1964; 40 mills in 1962-1963; $37\frac{1}{2}$ mills in 1961-1962; and 32 mills in 1960-1961. The tax rate by mills is 75 in adjoining Chester Township, and 80 in adjoining Upland Township. However, the ratio of the assessed real estate valuation to market value thereof is 22.7 in Chester Township, 24.9 in Upland Township and 31.3 in the City of Chester. The school tax rate in the City of Chester is lower in relation to market value of real estate than that of nearby school districts.

46. Proposals for desegregating Chester's public schools were submitted by a duly qualified educator and community consultant, Dr. Max Wolff, whereunder, with a minimum of busing, overcrowding in all of Chester's public schools would be eliminated immediately, space would become available for the establishment of kindergartens at all primary schools, all segregated classes past the 4th grade in all schools would be eliminated immediately, and grades below the 5th grade would be desegregated on a long range basis. Dr. Wolff proposed that the Chester School District:

- (a) Combine Douglass, Showalter, Lincoln and Washington schools into one single junior high school complex for all junior high school pupils in Chester;
- (b) Convert Fulaski and Smedley into intermediate schools to serve all 5th and 6th grade pupils of Chester, making Stetser an annex to Smedley;
- (c) Retain all remaining elementary schools as primary schools for children of kindergarten through the 4th grade; and

- (d) Re-assign pupils below the 5th grade now at Lincoln, Washington and Stetser to nearby primary schools.

47. On July 13, 1964, the respondent rejected the Wolff proposals and offered its own eleven-point proposal as follows:

- (a) Emphasis on quality education in all schools with special emphasis in schools with special problems with expenditures of special funds for this purpose;
- (b) Overcrowdedness to be alleviated by transferring pupils to less crowded facilities by busing if necessary;
- (c) No radical change is to be made in present 6-3-3 school organization plan and the policy of neighborhood schools;
- (d) A long-range plan to alleviate overcrowdedness and eliminate old schools by relocating them in more desirable locations is to be undertaken;
- (e) Provision of more facilities for special education students is an item of high priority in planning;
- (f) Enlargement and conversion of the Showalter Junior High School into a new high school complex and use of the old high school as a junior high will permit the use of the Douglass facility for special education programs;
- (g) Maintenance of a close relationship with community groups to encourage understanding and cooperation;
- (h) Development of plans for a new elementary school in order to relieve overcrowding and provide space for kindergartens and special education classes;
- (i) Provision of kindergarten classes in culturally deprived areas as soon as possible;
- (j) Integrate the non-white staffs by filling vacancies as they develop and by encouraging voluntary transfers; and
- (k) Continuation and expansion of the pre-school program financed by the Chester School District and the Ford Foundation.

48. Beginning with September, 1964, the respondent School District began to implement its said eleven-point proposal, as follows:

- (a) Overcrowding at the all-Negro Dewey-Mann and Franklin schools is being

relieved by busing 240 Negro pupils from Franklin to Wetherill and 69 Negro pupils from Dewey-Mann to William Penn; also 41 additional Negro pupils at Franklin have been re-assigned to walk daily to nearby desegregated schools less crowded. Such busing will cost the respondent between \$26,000.00 and \$27,000.00 for the 1964-1965 school year;

(b) Respondent has made plans and expended money to repair and alter the all-Negro Dewey-Mann, Douglass, Franklin, Washington and Watts schools. In the summer months immediately preceding September, 1964, respondent expended the sum of \$69,000.00 on such repairs and alterations;

(c) Respondent has assigned one Negro teacher to each of the previously all-white faculties of Jefferis, Morton and William Penn, leaving all-white faculties only at Stetser and Wetherill; respondent also assigned 4 white teachers to the previously all-Negro faculty of Dewey-Mann and one white teacher to the previously all-Negro faculty at Washington; and

(d) Respondent engaged three reading specialists to teach slow readers at the all-Negro elementary schools.

49. As of September, 1964, the total public school population had decreased by 36, there now being a total of 10,806 pupils in the Chester School District, of whom 36% (3,909) are white and 64% (6,897) are Negro.

50. The eleven-point proposal of the Chester School District does not adequately or satisfactorily provide with sufficient particularity or a reasonable timetable, for the desegregation of Chester's all-Negro and substantially all-Negro schools.

51. The Chester School District has at no time desired or attempted to desegregate Chester's public schools by the adoption of new school zones through

the medium of new boundary lines for all schools.

52. Although the respondent was aware or should have been aware of the existence of segregated schools within its system, it did not at any time prior to July 13, 1964, attempt to correct this condition.

53. Chester's segregated public school system has not arisen by accident but, in large part, by the following actions and failures to act on the part of the respondent:

(a) Failure to adjust boundary lines from time to time so as to prevent six of the 16 schools in Chester from becoming racially segregated;

(b) Failure to take affirmative action over the years to eliminate its segregated school system which was originally created by the Chester School District's requirement that Negro pupils pass nearby schools to attend all-Negro schools much farther away from their homes;

(c) Failure to permit a policy of open enrollment;

(d) Manipulating boundary lines

(i) by eliminating a white residential area from the all-Negro Dewey-Mann school zone and making it part of the substantially all-white William Penn school zone; and

(ii) by permitting crossing of boundary lines by Negroes from the William Penn school zone to the Dewey-Mann school zone, and by at least one white pupil out of the Dewey-Mann zone into the William Penn zone;

(e) Permitting the physical condition of the all-Negro school buildings to be inferior to that of other schools;

(f) Assigning only Negro teachers and only Negro clerks to all-Negro schools;

(g) Assigning only Negro orthogenic backward pupils to the all-Negro Dewey-Mann School;

(h) Assigning only Negro tuition pupils from nearby school districts

to the all-Negro Douglass Junior High School; and

(i) Failure to approve or adopt any effective plan of desegregation, with a timetable, refusing to give consideration to such possible plan through its School Board.

CONCLUSIONS OF LAW

Upon all the evidence at the public hearings and the foregoing findings of fact, the Pennsylvania Human Relations Commission makes the following conclusions of law:

1. The Pennsylvania Human Relations Commission may properly act as the complainant in this proceeding.
2. At all times herein mentioned, respondent was and still is a place of public accommodations within the meaning of Section 4(1) of the Pennsylvania Human Relations Act.
3. At all times herein mentioned, respondent was and still is an employer within the meaning of Section 4(b) of the Pennsylvania Human Relations Act.
4. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the respondent, Chester School District.
5. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the subject matter of this proceeding and over the instant complaint.
6. The unlawful discriminatory practices involved herein have occurred and still occur within the Commonwealth of Pennsylvania and have deprived Negroes, residents of the City of Chester, Delaware County, Pennsylvania, of their civil rights.

7. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(a) of the Pennsylvania Human Relations Act, in that the respondent assigns only Negro teachers to all-Negro schools and only Negro clerks to all-Negro schools.

8. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(i) of the Pennsylvania Human Relations Act, in that (1) respondent maintains segregated all-Negro and substantially all-Negro public schools within its school system, (2) respondent has established school zones which confine the Negro to all-Negro schools, (3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester, (4) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (5) respondent has failed to accept or adopt any affirmative program or plan whereunder the schools it administers will be effectively desegregated within a reasonable time.

COMMISSION'S DECISION

Upon all of the evidence at the public hearings of this case, and in consideration of the findings of fact and conclusions of law above set forth, the Pennsylvania Human Relations Commission finds and determines:

1. The Commission has jurisdiction over the respondent School District, the subject matter of this proceeding and the complaint, and the Motion to Dismiss is denied.

2. The respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g), 5(a) and 5(i) of the

Pennsylvania Human Relations Act, in that (1) respondent maintains segregated, all-Negro and substantially all-Negro public schools within its school system, (2) respondent has established public school zones which confine the Negro pupils to all-Negro schools, (3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester, (4) respondent assigns only Negro teachers and only Negro clerks to all-Negro public schools, (5) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (6) respondent has failed to accept or adopt any affirmative plan whereby the public schools it administers will be effectively desegregated within a reasonable time.

3. The charge in the Complaint which avers unlawful discriminatory practices by the respondent for using textbooks which do not treat adequately or ignore entirely the contributions of the Negro to the American scene is dismissed.

4. The charge in the Complaint which avers that the respondent has committed unlawful discriminatory practices by failing to appoint Negroes to supervisory and administrative positions is hereby dismissed.

5. The Pennsylvania Human Relations Commission will retain jurisdiction in the subject matter of this proceeding until such time as the respondent fully complies with the Commission's Final Order.

FINAL ORDER

AND NOW, November 20th, 1964, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Commission's Decision, and pursuant to Section 9 of the Pennsylvania Human Relations Act and Sections 105.23 and 105.24 of the Regulations of the Commission, it is hereby

ORDERED, by the Pennsylvania Human Relations Commission

1. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from assigning only Negro teachers to those public schools, the faculties of which are entirely Negro.

2. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from refusing to assign or transfer a white teacher to a public school, the faculty of which is entirely Negro or almost entirely Negro, unless said white teacher gives prior consent to be so assigned or transferred.

3. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes shall cease and desist from assigning only white teachers to Stetser Elementary School and to Wetherill Elementary School.

4. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from assigning only Negro bookkeepers, stenographers and clerks to the all-Negro Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Washington Elementary School and Watts Elementary School.

5. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to establish kindergartens at the following all-Negro elementary schools: Dewey-Mann, Franklin and Watts.

6. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to desegregate effectively the all-Negro Douglass Junior High School, and the following all-Negro or substantially all-Negro elementary schools: Dewey-Mann, Franklin, Lincoln, Washington and Watts.

7. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take the following affirmative action which, in the judgment of the Commission, will effectuate the purpose of the Pennsylvania Human Relations Act:

a. Advise and direct in writing all individual members of the Chester School Board, all of its agents, employes and interviewers having any duty or function with respect to the solicitation, recruitment, referral, selection, hiring, assignment or transfer of teachers and of bookkeepers, clerks and stenographers, that it is the policy and intent of the respondent to comply fully with the Pennsylvania Human Relations Act, and that in the assignment of teachers, bookkeepers, clerks and stenographers, respondent will assign solely on the basis of individual merit and that

- (1) respondent will not assign only Negro teachers, bookkeepers, clerks and stenographers to the all-Negro Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Washington Elementary School and Watts Elementary School,
- (2) respondent will not assign only white teachers to Stetser Elementary School and Wetherill Elementary School, and
- (3) respondent will not require the consent of any white teacher, bookkeeper, clerk or stenographer before assigning or transferring said employe to any public school which it administers;

b. Furnish the Commission with copies of said directive signed by each recipient to indicate its receipt by each of them;

c. Formulate a Plan consistent with the principles and findings of this decision, to establish kindergartens at the following three all-Negro elementary schools: Dewey-Mann, Franklin and Watts, and submit such plan or plans for approval of this Commission on or before December 31, 1964, so that said plan or plans may be implemented beginning no later than February, 1965;

d. Formulate a Plan consistent with the principles and findings of this decision, to desegregate effectively the following schools: Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Lincoln Elementary School, Washington Elementary School and Watts Elementary School. In the formulation of such plan of desegregation, the Commission urges the respondent carefully and seriously to consider the following guidelines:

- (1) The plan must state all details as to the school or schools to be replaced, converted or paired, including but not limited to costs, proposed methods of obtaining the required funds, and actual dates when the proposed construction or alterations will be commenced and completed;
- (2) If the plan proposes conversion of a present school facility, it must also state with particularity the boundary lines which will define the school zone for such converted school, the number of children required to be bused to such school, and the cost of such busing;
- (3) If the plan proposes construction of new school buildings, it must state specifically all details concerning the exact sites at which such buildings will be erected, the boundary lines which will define the school zones for each such new school, the number of children required to be bused to each such school, and the cost of such busing;
- (4) For short range and immediate action, the plan could embody any or all of the following:
 - (a) The adoption of new boundary lines creating new zones which would desegregate some of the segregated schools;

- (b) The creation of middle or intermediary schools for all 5th and 6th grade pupils, to desegregate such grades;
- (c) The establishment of a single junior high school complex in the central part of Chester, similar to the present senior high school arrangement, which would desegregate the all-Negro Douglass Junior High School;
- (d) The conversion of Chester High School into a junior high school to accommodate pupils now attending Douglass and Showalter Junior High Schools, and the conversion of Showalter Junior High School into a senior high school, to desegregate the all-Negro Douglass Junior High School;

e. Submit said Plan of Desegregation, with detailed information and stating a definite timetable, to this Commission for its approval, on or before January 31, 1965, so that said Plan or Plans, if approved by this Commission, may be implemented no later than the beginning of the 1965 - 1966 school year; and

f. Notify the Pennsylvania Human Relations Commission at its office at 1401 Labor and Industry Building, Harrisburg, Pennsylvania, 17120, in writing, within fifteen (15) days of the date of service of this Final Order, as to the steps the respondent has taken to comply with each ordered provision of this Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By _____
HARRY BOYER
Chairman

Attest:

By _____
EDWARD M. GREEN
Secretary

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS COMMISSION, :
Complainant :

v. :

DOCKET NO. S - 10

CHESTER SCHOOL DISTRICT, :
Respondent :

OPINION, INCLUDING FINDINGS OF
FACT, CONCLUSIONS OF LAW, COMMISSION'S
DECISION AND FINAL ORDER

For many months beginning with the fall of 1963 and ending only when public hearings were instituted in the instant case on May 4, 1964, the city of Chester was the scene of repeated and uninterrupted civil rights rallies and demonstrations because of alleged de facto segregation in Chester's public schools.

Efforts to resolve differences between the Chester School Board and the civil rights groups were futile on the part of the local Chester Commission on Human Relations. Similar efforts were attempted by the Pennsylvania Human Relations Commission on April 20, 1964, but without success.

By the end of April, 1964, it became apparent that a crisis existed in the city of Chester when street battles between demonstrators and police resulted in mass arrests and imprisonment of hundreds of individuals, white and Negro. Elected officials, businessmen's associations, civic leaders, clergymen and educators in Chester and elsewhere appealed to Governor William W. Scranton for help

in bringing to an end a rapidly approaching emergency situation.

Thus, on April 26, 1964, the Governor and Attorney General requested this Commission to institute proceedings immediately in Chester, to hold public hearings determine all facts concerning alleged de facto segregation in Chester's public schools, attempt in every way possible to resolve amicably differences among all parties, but failing in this, to issue an appropriate order.

The first day of public hearings was set by the Commission for Monday morning, May 4, 1964. At that time, attorneys for the National Office and the Chester Branch of the National Association for the Advancement of Colored People (NAACP) and for the Chester Committee for Freedom Now (CCFN), the two civil rights groups which led the protests and demonstrations, refused to act as complainants, claiming that the Commission might not have the legal authority to issue a binding order, and that it might preclude them from instituting a future court proceeding. The Commission, after discussion, unanimously agreed to act as complainant and filed a complaint against the Chester School District, setting forth therein verbatim the same nine averments of alleged discrimination as had theretofore been charged by the civil rights groups:

1. Respondent maintains all-one-color schools within its school system.
2. Textbooks authorized for use in the public schools by the respondent do not treat adequately or ignore entirely the contributions of the Negro in American life.
3. Negro teachers are assigned to all-Negro schools only.
4. Negro secretaries, clerks and telephone operators engaged by the respondent are assigned to all-Negro schools or substantially all-Negro schools only, and none is assigned to Administration offices.
5. The physical condition of all-Negro schools and substantially all-Negro schools is noticeably inferior to that of the substantially all-white schools.

6. The educational standards in all-Negro schools are inferior to those in substantially all-white schools; especially in that the Chester School Board has failed to provide for the highest possible educational standards in all-Negro schools, as, for example, by smaller classes, better counseling services and a program of motivation.

7. Respondent has failed to appoint qualified Negroes to supervisory and administrative positions or to encourage Negro personnel to apply for such positions.

8. Boundary lines defining school zones have been maintained and gerrymandered by school authorities in order to perpetuate all-Negro schools and in order to permit white pupils to attend substantially all-white schools.

9. Respondent has failed to adopt and make public an affirmative program and acceptable plan to desegregate the public schools and provide a timetable for implementation.

The respondent School District, by its attorney, Guy G. deFuria, Esq., waived all technicalities dealing with ten days' notice of public hearing provided by the Commission's Regulations, secured ^{an} extension of time within which to file an Answer to the Complaint, and expressed its willingness to have the controversy aired publicly and expeditiously.

An Answer to the Complaint was filed by respondent on May 5, 1964, denying all of the averments of the Complaint.

Eight days of public hearings were conducted before the whole Commission on May 4, 5, 6, 14 and 15, June 11, and September 17 and 29, 1964. In addition, a full evening was devoted by the Commission on July 15, 1964, in a final unsuccessful effort with the respondent to conciliate all issues raised by the Complaint, so that a Final Order might be entered by the Commission with the approval of all interested groups. The July 15th meeting and all hearings were held at the Pennsylvania Military College, 15th and Chestnut Streets, Chester, Pennsylvania.

The case in support of the Complaint was presented by Nathan Agran, Esq., General Counsel for the Commission and Arthur C. Thomas, Esq., Deputy Attorney

General, and the respondent was represented by Guy G. deFuria, Esq. Harold J. Hughes, Esq., attorney for Chester Parents Association, although not a party to the proceedings, was allowed to participate.

At the conclusion of the sixth day of hearings, on June 11, 1964, a Motion to Dismiss was filed by counsel for the Chester School District, alleging essentially that

(1) the Commission does not have jurisdiction of the matters set forth in the Complaint;

(2) the Commission may act only to redress grievances of specific individuals who claim violation of individual civil rights;

(3) the Commission may not supersede a school board in the performance of its duties (referring to matters raised by the Complaint); and

(4) the Commission may not act as complainant, prosecutor and judge.

Counsel for the respondent and General Counsel for the Commission filed briefs of law relating to evidence produced at the hearings and to allegations of respondent's Motion to Dismiss, but waived oral arguments at the conclusion of all testimony.

The Commission has carefully considered the legal briefs and all of the testimony given at the public hearings, has made findings of fact and conclusions of law which are set forth later in this Opinion, and has entered a Final Order against the Chester School District consistent with its said findings of fact and conclusions of law.

The Motion to Dismiss filed by respondent in this proceeding is hereby denied for the following reasons:

1. The Commission has jurisdiction under the fair employment practices provisions and under the public accommodations provisions of

the Pennsylvania Human Relations Act.

2. Aggrieved individuals are not the only parties who may file complaints with the Commission alleging unlawful discriminatory practices. The Act, in Section 9, specifically provides that, "The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint." In accordance with this power, the Commission has initiated hundreds of complaints in its own name.

3. The Commission is not attempting to supersede the Chester School Board in its duties, as alleged in the Motion to Dismiss. The same legislative body which granted certain duties and powers to respondent as a school district, likewise granted certain duties and powers to this Commission by more recent legislation. The Commission is acting in accordance with its duties to determine whether respondent has violated the provisions of the Pennsylvania Human Relations Act. The Commission will not, for example, prescribe the method by which respondent shall desegregate its all-Negro schools because the Chester School Board alone must decide that important matter. But the Commission may order respondent to desegregate the all-Negro schools in an expeditious and satisfactory manner according to a definite timetable and retain jurisdiction until such affirmative actions are taken.

4. The Commission likewise is not acting as "complainant, prosecutor and judge" in this case. It is following its duties by procedures set forth in the Act itself, similar to the methods adopted by hundreds of other commissions in this Commonwealth, in other states and in the Federal Government. So long as an appeal may be taken from any decision of this Commission to the courts, the respondent should not be heard to complain that the proceeding is unconstitutional.

In another case in which this Commission issued an order against a public school district, we said:

"The practice of racial or religious discrimination is ugly in any of its forms. It is particularly reprehensible and inexcusable when practiced in the public schools of this Commonwealth. These schools are supported by public funds derived from taxpayers, regardless of their race, religion or national origin."

The public school is the very backbone of American democracy and has been referred to as "the great equalizer of the conditions of men the balance wheel of the social machinery." The wheel is definitely out of balance when a public school district permits one of its four junior high schools to be all-Negro as to pupils, principal, teachers and other personnel, and permits four of its eleven elementary schools to be all-Negro and one other of its elementary schools to be almost all-Negro.

In 1954, the United States Supreme Court ruled that racial segregation in public schools, when required by state laws, was unconstitutional. This brought to an end the pernicious doctrine of "separate but equal" facilities.

This historic decision in 1954 stimulated many attacks against public school systems in Northern states where segregation existed in fact, though not by law. Courts have generally required the elimination of segregation where the facts indicated that the school boards were in any way responsible for the creation or the continued maintenance of the segregated schools.

In the instant case, the Chester School District has taken the position that residential patterns are responsible for Chester's segregated public schools; and that therefore there is no legal duty on its part to attempt to desegregate the all-Negro schools.

The Pennsylvania Human Relations Commission does not agree with this position. If, as stated by the Supreme Court, "Separate educational facilities are

inherently unequal", then it would not matter whether the Chester School District created this condition intentionally or not. The harmful effects of the all-Negro schools would be felt by Chester pupils in either event.

The Commission is of the opinion that segregation in fact (de facto segregation) must be dealt with by the Chester School District as an educational problem because the education offered in all-Negro schools is inherently unequal to that offered in desegregated schools.

The Commission is also of the opinion that the segregation of public schools in Chester is not entirely accidental. There is much evidence that Chester's segregated schools are at least partly the result of racial motivation on the part of the respondent:

1. For many years, until about 1954, Negro pupils were required to pass nearby schools and attended all-Negro schools farther away;
2. Several of the all-Negro elementary schools, notably Washington and Watts, and one of the junior high schools, Douglass Junior High School, have been racially segregated as to pupils, principal, staff and teachers for many decades;
3. Respondent has not in any way attempted to change boundary lines from year to year so as to prevent the perpetuation of three 100% all-Negro elementary schools and one 100% all-Negro junior high school, one elementary school in which 99% of the pupils are Negroes, and one elementary school in which 90% of the pupils are Negroes;
4. After the William Penn School was built, Negro pupils were permitted to cross the William Penn school zone boundary lines in order to attend the all-Negro Dewey-Mann School;
5. At least one white pupil living within the all-Negro Dewey-Mann school zone has been crossing the Dewey-Mann boundary lines and attending the William Penn School;

6. On May 4, 1964, respondent changed the school zone boundary lines of the ~~all-Negro~~ Dewey-Mann School by eliminating therefrom an all-white populated section of Chester and adding it to the William Penn boundary lines;

7. Only Negro teachers and only Negro clerks have been assigned to all-Negro schools;

8. There has never been a policy of open enrollment in Chester;

9. The 13 members of respondent's supervisory and administrative staff are all white;

10. Only Negro orthogenic backward pupils are assigned to the all-Negro Dewey-Mann School;

11. The all-Negro school buildings have been noticeably inferior to other school buildings in toilet facilities, bad lighting, lack of paint, broken plastering and generally poor maintenance;

12. Of all tuition paying pupils who attend Chester public schools from outlying school districts, only Negroes are assigned to the all-Negro Douglass Junior High School;

13. Of the five kindergartens in existence, only one is conducted at an all-Negro school, four being conducted at substantially all-white schools; and

14. Respondent has failed to adopt or approve any effective plan, with a timetable, to desegregate the all-Negro and substantially all-Negro public schools in Chester.

Throughout the hearings, respondent constantly referred to its inability to provide the funds necessary to replace obsolete school buildings, to pay the same teachers' salaries as are paid by surrounding school districts or to adopt an effective plan to desegregate its school system. It is clearly the duty and

obligation of the Chester School Board to find the means of producing sufficient funds with which to provide each and every child attending public school with a good education. The Commission is not at all convinced that respondent is unable to raise the required funds or that it has exhausted all possible sources of revenue:

1. The school tax rate in the City of Chester is lower in relation to market value of real estate than that of nearby school districts;
2. The School Laws of Pennsylvania permit respondent to seek financial assistance from Delaware County and from the State to provide adequate attention for all of the orthogenic backward and other exceptional children in Chester's public schools;
3. Funds are available for school purposes under the provisions of the National Defense Education Act;
4. New and modern school buildings should be able to be located within the several new urban renewal projects now planned in Chester; and
5. The use of other State and Federal funds could and should be explored by the respondent. Particular attention is directed to the Federal Economic Opportunities Act.

During the hearings, the respondent announced it had requested from the Pennsylvania Department of Public Instruction a professional examination of its entire school system. It was agreed that any reports issued in connection with that survey should be made part of the record in this case. One of the two written reports submitted by the Department of Public Instruction sets forth recommendations for improving the quality of education in the Chester School District. Although these recommendations are silent on the crucial issue of racially segregated public schools, they generally agree with the findings of this Commission in other matters involved in this case, as follows:

1. Intergroup relations material should be included as part of the curriculum;
2. The physical condition and educational facilities at Douglass Junior High School, the only all-Negro junior high school, must be improved;
3. Old and inadequate elementary school buildings, nearly all of which are all-Negro or substantially all-Negro, should be eliminated;
4. Overcrowded conditions exist in six elementary schools, five of which are the all-Negro schools;
5. Educational facilities and programs should be provided for all of the orthogenic backward and other exceptional school children; and
6. Kindergartens and special services are urgently needed for the economically deprived school children.

In the famous school desegregation decision of May 17, 1954, the United States Supreme Court was partly influenced by the strong testimony of social scientists, sociologists and psychologists to the effect that segregation in public schools is harmful. There was abundant testimony in the instant case, too, to convince the Commission that the racially segregated public schools within the respondent School District, although using the same textbooks as other schools, and although staffed by Negro teachers certified by the State, nevertheless provide an inherently unequal education for Negro pupils:

1. Three experts testified in behalf of the complainant to the effect that the segregated public education in Chester is unequal and inferior, and that desegregated education will improve the quality of education in

Chester. They were Dr. Seymour Leventman, sociologist at the University of Pennsylvania, Dr. Kenneth Smith of the Crozier Theological Seminary in Chester, and Dr. Max Wolff, noted community consultant in educational matters, prominent educator and expert in the field of public school desegregation problems.

2. The parents of three Negro pupils whose children once attended all-Negro elementary schools in Chester and elsewhere in Delaware County explained how there was a noticeable change for the better in attitude, motivation and desire to learn when their children transferred to desegregated schools.

3. James Long, a teacher at Pulaski Junior High School, experimented with Negro pupils of the same I.Q. in his school, one from the desegregated William Penn School and the other from the segregated Dewey-Mann School. He testified that there was a noted difference in the achievement ability of the two pupils, the one from Dewey-Mann being at a disadvantage most of the time.

4. Two principals of all-Negro schools in Chester and two teachers in Chester's school system testified that two Negro children of average intelligence and similar socio-economic backgrounds, one attending an all-Negro school and the other a desegregated school in Chester, do not have equal chances to receive a full education, the child attending the desegregated school receiving a fuller education. Mrs. Bernice F. Powell, teacher at the all-Negro Watts School for more than two decades, thus explained that teaching children in an all-Negro school is "like teaching chemistry where you teach all theory without a laboratory."

5. Most of the respondent's witnesses, too, agreed with the basic proposition that education in Chester's segregated schools is inherently

unequal to that in its desegregated schools. Mrs. Emma B. Brinckley, principal of Douglass Junior High School, thus said:

".....Students are a product of the learning experiences which are provided for them, their experiences of interacting with people of various backgrounds socially, economically and culturally. Just as you don't learn to swim by just looking at a swimming pool and without ever getting into it, you don't learn to understand people unless you associate with them. Learning is not confined to just the direction which is given in the four walls of a classroom. Children learn through their association with each other in the cafeteria, eating lunch together. They learn through going on class trips together, journeys and educational excursions. They learn in the way in which they appreciate programs. They learn in the way in which they work together on committees in preparing class projects. And there is no way that a teacher, no matter how excellent she is, there is no way that he or she can give a child this experience."

Aside from this strong testimony, the Commission is convinced that sound educational policy, events which have shaken this nation during the past decade, the provisions of the Pennsylvania Human Relations Act and the provisions, intent and meaning of the Governor's Code of Fair Practices in Pennsylvania, demand that school boards throughout Pennsylvania take affirmative action to desegregate all-Negro and substantially all-Negro public schools within their school districts. The close cooperation between this Commission and the Department of Public Instruction of the Commonwealth of Pennsylvania, in accordance with the provisions of Section 8 of the Pennsylvania Human Relations Act; the preparation and distribution in large quantities of Curriculum Development Series No. 6, Guide to Intergroup Education in Schools, entitled, "Our Greatest Challenge -- Human Relations" by the Department of Public Instruction in cooperation with this Commission; and the issuance by this Commission in June, 1964, of an Affirmative Action Policy on Education, all bear witness to the fact that this Commission considers as a major goal in the field of public education the desegregation of schools.

The Commission, charged with the duty by law "....to prepare a comprehensive educational program, designed for the students of the schools in this

Commonwealth and for all other residents thereof, in order to eliminate prejudice.....and to further good will" sincerely believes that desegregation is as vital for the white pupil as for the Negro pupil. Children in a segregated school are not likely to become committed to the brotherhood of man or to acquire strong convictions concerning racial equality.

The Commission sat as a body during all hearings in this case and has the distinct impression that the respondent, while showing a willingness to eliminate all-Negro and all-white faculties, to bus Negro children in order to alleviate overcrowding, to supply remedial teachers for Negro pupils and to spend money to repair outmoded and old all-Negro school buildings, has consistently been unwilling and still appears to be unwilling to meet the main and crucial issue involved in this controversy, that of desegregating the all-Negro schools in Chester at the earliest possible and practicable time.

On March 9, 1964, the president of the Chester School Board issued a strong statement that the Board will continue to maintain its strict policy of neighborhood schools, announcing to all that it will refuse to budge from its then existing boundary lines and school zones.

Respondent announced at the conclusion of the fifth day of testimony on May 15, 1964, that it would engage educational experts to study the entire situation in Chester and to "tell us what we can do to relieve the problem of de facto segregation in Chester." On June 11, 1964, when Dr. William M. Polishook, the expert engaged by respondent testified that it was impossible to desegregate Chester's public schools because Chester was rapidly becoming an all-Negro city, he also testified that he did not even attempt to seek a workable plan of desegregation, saying, at page 1052 of the notes of testimony:

"....By the way, I'd like to make clear one point --- that I was not brought into this picture in order to help the Chester schools desegregate itself. This was not my mission.."

Community tradition and indifference to racial problems have influenced the respondent to assume its attitude about the sanctity of neighborhood schools, about the alleged impropriety of taking the matter of race into account in making assignments of students to public schools, and about the inability of the school board to find the necessary funds with which to effect desegregation. It should be pointed out, however, that a school district should not try to shift its responsibility to the community in which it is located --- it is the school district's responsibility to do what needs to be done to eliminate a condition of segregation, illegal under the provisions of the Pennsylvania Human Relations Act.

Desegregation proposals were submitted as a matter of record by the eminent Dr. Max Wolff, expert witness for the complainant, a community consultant and educator who has helped many communities, school districts and civic groups throughout the country to effect workable plans of desegregation of public schools. Dr. Wolff's proposals were divided into two parts, short range and long range. Under the short range proposals, Dr. Wolff explained that it would be possible to desegregate Chester's schools in all grades past the 4th grade by the beginning of the new school term in September, 1964. He spent nine days in Chester working out his plan, part of which required every principal of the 16 schools in the Chester School District to answer a lengthy questionnaire, supplying Dr. Wolff with all necessary data. He also personally visited school authorities and school principals and examined school buildings.

Under his short range proposals, the School District would be required to reorganize its schools on a 4-2-3-3 basis whereby the senior high school would continue to function for pupils between grades 10 and 12 inclusive and the junior high schools would likewise continue to function for pupils between grades 7 and 9 inclusive; but instead of elementary schools serving pupils between grades 1 and 6 inclusive, as presently constituted, Dr. Wolff proposed the creation of intermediate schools, two in number, to serve all pupils of grades 5 and 6 in the City of Chester. The remaining schools would continue to function for pupils of kindergarten grade through the 4th grade, inclusive, and would be known as primary schools. Part of Dr. Wolff's proposals also permitted desegregation of the all-Negro Douglass Junior High School on a short term basis, by making a single junior high school complex in the center of Chester to which all junior high school students would go in the same manner as all senior high school students now attend one single senior high school composed of three buildings in different parts of the city.

The long range proposals offered by Dr. Wolff would have permitted desegregation of the remaining grades, kindergarten through the 4th grade, on a gradual basis over a period of years, by gradually adding one grade at a time to the said intermediate schools.

In this simple manner, at a minimum of cost and without disrupting affairs unduly, the respondent, if it desired to do so, could have desegregated all grades above the 4th grade in Chester by September of 1964. The Commission is convinced that Dr. Wolff's proposals, either in their entirety or in part, could have provided respondent with a sound, workable plan of desegregation

had it earnestly desired to find a means of desegregating its all-Negro schools by September, 1964.

On July 13, 1964, the respondent, for the first time, submitted to the Commission an eleven-point proposal of its own. While it is to the credit of the respondent that it finally agreed to submit a formal plan of its intentions, it is unfortunate that the plan again evades and does not squarely meet and resolve the principal and crucial issue involved in these proceedings -- the desegregation of Douglass Junior High School, Dewey-Mann, Franklin, Washington and Watts, the five all-Negro schools within the respondent School District. The School Board proposals do not attempt, other than by vague and indefinite language unsupported by any important details, to propose an effective method whereunder this Commission can be reasonably certain that the all-Negro schools in Chester will be entirely desegregated according to a definite timetable.

It is likewise significant that the respondent has not attempted to determine whether it may be possible to desegregate its schools or some of them by the simple expediency of adopting new boundary lines defining new school zones.

While it is commendable that respondent has already taken steps to assign some Negro teachers to all-white faculties and vice versa, the faculties of several of the schools within the Chester School District still remain either all-white or all-Negro. Of more importance, the testimony of Superintendent Charles B. Long that the community's feelings for tradition prevents the assignment of white teachers to all-Negro faculties except where such white teachers request or agree to such assignment, indicates a violation of the fair employment practices provisions of the Pennsylvania Human Relations Act. This practice should be discontinued.

The Commission finds that the respondent is in violation of Section 5(i) of the Act in failing to provide kindergartens for most of the Negro children in Chester. Four of the five kindergartens are conducted at desegregated schools with school populations predominantly white and only one is conducted at the all-Negro Washington School. The respondent owes a duty to find the means of providing kindergartens for the accommodation and use of larger numbers of Negro children who have special need for this kind of pre-school training.

In August of 1964, the Greater Chester Movement was created, a united effort which promises to develop a modern, progressive and vibrant community, and which bodes well for the future of Chester. The Final Order of the Commission in this case is consistent with the aims and goals of the Greater Chester Movement. The desegregation of the public school system in Chester will inure to the benefit of all by raising the educational quality and standards of the Chester School District. It will create a holding power in Chester's public schools in which all its citizens will take pride.

Dr. John Fischer, president of Teachers College, Columbia University, in New York City, once said that a Negro child entering school "carries a burden no white child can ever know, no matter what handicaps or disabilities he may suffer." The Commission sincerely believes it is the duty of the Chester School District to lighten that burden by making an honest attempt to desegregate the all-Negro schools in Chester. It should not be said that this is too difficult a task --- the Chester School District has never really tried.

FINDINGS OF FACT

1. The respondent, Chester School District, administers 17 public schools in the city of Chester, Delaware County, Pennsylvania, one of which, the Martin School, is a special school for orthogenic backward and exceptional children. The other 16 schools are composed of 11 elementary schools, grades 1 through 6 inclusive (five of which have kindergartens and one of which provides classes for orthogenic backward children); four junior high schools, grades 7 through 9 inclusive; and one senior high school, grades 10 through 12 inclusive.

2. The senior high school is composed of three separate buildings operated as a single high school. It is the only public senior high school in Chester and is therefore desegregated racially. As of May, 1964, 1958 pupils attended this high school, of whom 51% (1003) were white and 49% (955) were Negro.

3. The four junior high schools in the Chester School District are Douglass, Pulaski, Showalter and Smedley. The number and race of pupils attending therein as of May, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Douglass	1	527	528
Pulaski	311	208	519
Showalter	114	672	786
Smedley	570	164	734

4. The names of the 11 elementary schools administered by respondent and the number and race of pupils attending each in May, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Dewey-Mann	None	823	823
Franklin	10	1,018	1,028
Jefferis	385	105	490
Larkin	224	207	431
Lincoln	69	490	559
Morton	77	122	199
Stetser	252	152	404
Washington	None	782	782
Watts	None	344	344
Wetherill	399	37	436
William Penn	732	89	821

5. The pupils at the elementary schools of Dewey-Mann, Washington and Watts are 100% Negro; Franklin Elementary School is 99% Negro; Lincoln Elementary School is 87% Negro; and Douglass Junior High School, with only one white student, is practically 100% Negro. The said public schools are racially segregated.

6. The population of the City of Chester changed racially between 1950 and 1960. In that time, it decreased from 66,069 to 63,658 by losing approximately 10,000 whites and gaining approximately 7,000 Negroes.

7. The total number of pupils in the Chester School District as of May, 1964, was 10,842, of whom 38% (4,117) were white and 62% (6,695) were Negro. In the senior high school 51% were white and 49% Negro; in the four junior high schools 39% were white and 61% Negro; and in the 11 elementary schools 34% were white and 66% Negro.

8. The capacities of the junior high schools are as follows: Douglass - 550 ; Pulaski - 700 ; Showalter - 700 ; and Smedley - 750.

9. The capacities of the 11 elementary schools are as follows:

Dewey-Mann	758
Franklin	980
Jefferis	490
Larkin	479
Lincoln	525
Morton	212
Stetser	360
Washington	770
Watts	385
Wetherill	420
William Penn	690

10. The orthogenic backward children in elementary schools situated in the western part of Chester are placed in six classes situated within the Dewey-Mann School, accommodating 108 pupils; orthogenic backward children in elementary schools situated in the eastern part of Chester are placed in six classes at the

Martin School, accommodating 87 pupils. Only two white orthogenic backward pupils have been assigned over the years to the all-Negro Dewey-Mann School. In the school year 1963-1964, there were 498 orthogenic backward pupils in the western part of Chester, white and Negro but predominantly Negro, 390 of whom were absorbed into the regular school classes because there was no room to accommodate them at Dewey-Mann. In the same school year, there were 108 such students in the eastern part of Chester, white and Negro but predominantly white, 21 of whom were absorbed into the regular school classes because they could not be accommodated at Martin School.

11. The average size of classes at the 11 elementary schools on December 11, 1963, indicated that the all-Negro or nearly all-Negro schools were most overcrowded, as follows:

Dewey-Mann	37
Franklin	35
Jefferis	31
Larkin	31
Morton	33
Stetser	30
Washington	34
Watts	32
Wetherill	31
William Penn	33

12. Most of the Negro children in Chester do not receive any kindergarten training, there being only five kindergartens at Jefferis, Stetser, Washington, Wetherill and William Penn schools. Only one of these kindergartens is conducted at an all-Negro school, Washington Elementary School.

13. High school and junior high school pupils are accepted by respondent on a tuition basis from surrounding school districts, particularly Chester Township and Upland Township. Junior high school tuition students are both white and Negro and are assigned to Douglass and Showalter in Chester. Only Negro tuition pupils are being assigned to the all-Negro Douglass Junior High School.

14. As early as 1934, Negro parents protested to the Chester School Board concerning the poor physical condition of the all-Negro schools. As of February, 1964, the physical condition of the all-Negro school buildings, particularly of Dewey-Mann, Washington, Watts and Douglass, was poor, especially in toilet facilities, painting, lighting, plastering, cleanliness and general upkeep. Generally speaking, the physical condition of the all-Negro schools has been inferior to that of other schools in the Chester School District, with the exception of Morton and Larkin schools, both of which were built prior to 1900.

15. The respondent School District had at no time prior to September, 1964, employed special teachers to assist handicapped pupils in remedial reading or other subjects; nor have there been tutorial programs or cultural enrichment programs in Chester's schools for the culturally or motivationally deprived pupils.

16. The social studies, history and civics textbooks used in Chester's public schools do not adequately treat the contributions of the Negro to the American scene. There are no other textbooks yet available which do give adequate treatment to this subject. The Chester School District has made plans to purchase such books when they become available.

17. The respondent School District has at no time engaged a specially qualified human relations expert to assist principals and teachers to prepare supplementary material in intergroup and intercultural relations for the pupils of Chester's public schools. The Curriculum Development Series No. 6, Guide to Intergroup Education in Schools, entitled, "Our Greatest Challenge -- Human Relations" has been made available by the Pennsylvania Department of Public Instruction to the Chester School District, but its use had not been implemented as of May, 1964.

18. The City of Chester is approximately three miles wide. Within the

concept of the requirement of the Public School Code that elementary school children must be bused if they are assigned to schools more than one and one-half ($1\frac{1}{2}$) miles distant from their homes, there are two and no more than three neighborhood school areas in the City of Chester.

19. The Chester School Board has the sole authority to establish or change school boundary lines for the assignment of pupils to particular public schools in accordance with law. Such boundary lines have been established for both junior high schools and for elementary schools in Chester. The minutes of the Chester School Board meetings do not indicate when the elementary school boundary lines were first established; nor do they reflect all of the changes effected in such boundary lines during the past ten years. Only boundary lines of August, 1954 and September, 1959 are referred to in the minutes of the School Board meetings.

20. Prior to 1954, Negro pupils were required by the Chester School District to pass all-white schools near their homes to attend more distant schools which were all-Negro.

21. During the past ten years, when boundary lines for the William Penn School were established, Negro pupils were permitted by respondent to cross such lines in order to attend the all-Negro Dewey-Mann School. As of May, 1964, such practice was not permitted.

22. Boundary lines for elementary schools are known to have been established by respondent in August, 1954 and are known to have been changed by respondent in September, 1959, on May 4, 1964 and on August 24, 1964. During the past ten years, however, other changes in boundary lines, not recorded in the Chester School Board's minutes, were made changing the western vertical boundary line defining the school zone for the all-Negro Dewey-Mann School.

23. The boundary lines established by respondent for Dewey-Mann,

Washington and Watts Elementary Schools and for Douglass Junior High School define Negro residential areas in Chester and therefore have the effect of perpetuating racially segregated schools in Chester.

24. Prior to May 4, 1964, at least one white pupil, Jacqueline Kelly, 905 Palmer Street, Chester, Pennsylvania, had been crossing the boundary lines defining the all-Negro Dewey-Mann school zone and attending the substantially all-white William Penn School.

25. On May 4, 1964, the Chester School Board changed elementary school boundary lines and, among other changes, eliminated from the pre-existing boundary lines defining the school zone for the all-Negro Dewey-Mann School, an area located in the northwest portion of such zone, said area being composed of white residents only.

26. On August 24, 1964, the Chester School Board again changed boundary lines for elementary schools, eliminating all changes but one in boundary lines put into effect on May 4, 1964. The change not disturbed by the Board's action of August 24, 1964, was the elimination of the all-white residential area from the Dewey-Mann school zone.

27. The Chester School District has established the Chester Creek as the boundary line governing the assignment of orthogenic backward pupils. There are 3,990 pupils, predominantly Negro, in the elementary schools west of that boundary line and 1,923 pupils, predominantly white, in the elementary schools east of that boundary line. There are 108 seats reserved at Dewey-Mann School for orthogenic backward pupils west of said boundary line, and 87 seats reserved at Martin School for orthogenic backward pupils east of said boundary line. The white orthogenic backward pupil consequently has approximately five times as many chances of receiving the special treatment he requires than the Negro orthogenic backward pupil in Chester.

28. The Chester School Board engages teachers for the Chester School District and the Superintendent of the said District assigns teachers to particular schools. Promotions to supervisory and administrative positions within the Chester School District are likewise made by the Board on the basis of recommendations from the Superintendent.

29. The Superintendent of the Chester School District engages and assigns all employes other than teachers, including clerks, stenographers and bookkeepers.

30. There were a total of 438 teachers in the Chester School District as of May 14, 1964, of whom 67% (293) were white and 33% (145) were Negro. As of that date, there were 95% (94) white and 5% (5) Negro teachers in the senior high school; there were 66% (91) white and 34% (46) Negro teachers in the four junior high schools; and there were 53% (108) white and 47% (94) Negro teachers in the eleven elementary schools.

31. A white teacher is not assigned or transferred by respondent to any Chester public school having an all-Negro faculty unless said teacher is willing to be so assigned or transferred.

32. As of May 14, 1964, with the exception of one white music teacher at Douglass Junior High School, only Negro teachers were assigned to the all-Negro schools of Douglass Junior High School, Dewey-mann, Washington and Watts. Only white teachers were assigned to Jefferis, Morton, Stetser, Wetherill and William Penn schools.

33. The number and race of teachers assigned to junior high schools and

elementary schools as of May 14, 1964, are as follows:

<u>School</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Douglass	1	32	33
Pulaski	23	5	28
Showalter	31	7	38
Smedley	36	2	38
Dewey-Mann	None	25	25
Franklin	8	20	28
Jefferis	16	None	16
Larkin	14	2	16
Lincoln	8	9	17
Morton	6	None	6
Stetser	15	None	15
Washington	None	25	25
Watts	None	13	13
Wetherill	15	None	15
William Penn	26	None	26

34. There are no Negro employes in the Chester School District holding any of the 13 supervisory or administrative positions above that of principal. However, with the exception of one known applicant, Negroes have not applied for promotions to such supervisory or administrative positions.

35. Among the 29 bookkeepers, stenographers and other clerks in the Chester School District, five are Negroes, one of whom is assigned to Chester Senior High School. The other four Negro employes are assigned to the all-Negro Dewey-Mann, Franklin, Washington and Watts schools. Just as no Negro clerk has been assigned to predominantly white schools, no white clerk has been assigned to any all-Negro school. No Negro clerk has been assigned to work in the Administration Building.

36. The faculties and student bodies of Douglass Junior High School, Washington and Watts have at all times relevant hereto been all-Negro, with the exception of the music teacher and one white student at Douglass; and the student body, principal, faculty and other employes of Watts Elementary School have been all-Negro since its origin 75 years ago.

37. The same textbooks, courses and curriculum are used in all schools within the Chester School District. All teachers employed by the respondent have the necessary State requirements for teacher certification.

38. Despite use of the same textbooks and curriculum, the education offered to pupils attending the all-Negro schools of Dewey-Mann, Douglass, Franklin, Washington and Watts in the Chester School District, is inherently unequal and inferior to that offered to pupils attending desegregated schools in the District.

39 Two Negro children in Chester of average intelligence and similar socio-economic background, one attending an all-Negro school and the other a desegregated school, would not have an equal chance of receiving a full education. The child who attends the desegregated school receives a fuller education.

40. There is a noted difference in the achievement ability of two Negro pupils of the same I.Q., one entering Pulaski Junior High School from the desegregated William Penn School, the other from the segregated Dewey-Mann School, the pupil from Dewey-Mann being at a disadvantage most of the time.

41. The separation of pupils by race in Chester's public schools prevents experiences which would promote understanding and serves to reinforce divisive prejudices among such pupils.

42. Desegregation of schools and faculties in Chester will improve the quality of education in the Chester School District.

43. In order to relieve overcrowding, the respondent, in November, 1963, began to transport two bus loads of Negro pupils out of Franklin Elementary School to Wetherill School and continued this practice to the end of the 1963-1964 school term at a cost of approximately \$7,800.00. Negro pupils thus transported from the overcrowded, all-Negro Franklin School to the Wetherill School became better motivated in attitude, desire to learn and demeanor.

44. As of May 6, 1964, the respondent, acting through the Chester School Board, had not proposed any effective plan under which the all-Negro schools in Chester might be desegregated; nor discussed at any Board meeting the advisability or inadvisability of eliminating Chester's all-Negro schools.

45. The 1964-1965 Chester School District budget is based upon a $46\frac{1}{2}$ mills tax on real estate having an assessed valuation of about \$71,000,000.00. The tax rate was 44 mills in 1963-1964; 40 mills in 1962-1963; $37\frac{1}{2}$ mills in 1961-1962; and 32 mills in 1960-1961. The tax rate by mills is 75 in adjoining Chester Township, and 80 in adjoining Upland Township. However, the ratio of the assessed real estate valuation to market value thereof is 22.7 in Chester Township, 24.9 in Upland Township and 31.3 in the City of Chester. The school tax rate in the City of Chester is lower in relation to market value of real estate than that of nearby school districts.

46. Proposals for desegregating Chester's public schools were submitted by a duly qualified educator and community consultant, Dr. Max Wolff, whereunder, with a minimum of busing, overcrowding in all of Chester's public schools would be eliminated immediately, space would become available for the establishment of kindergartens at all primary schools, all segregated classes past the 4th grade in all schools would be eliminated immediately, and grades below the 5th grade would be desegregated on a long range basis. Dr. Wolff proposed that the Chester School District:

- (a) Combine Douglass, Showalter, Lincoln and Washington schools into one single junior high school complex for all junior high school pupils in Chester;
- (b) Convert Fulaski and Smedley into intermediate schools to serve all 5th and 6th grade pupils of Chester, making Stetser an annex to Smedley;
- (c) Retain all remaining elementary schools as primary schools for children of kindergarten through the 4th grade; and

- (d) Re-assign pupils below the 5th grade now at Lincoln, Washington and Stetser to nearby primary schools.

47. On July 13, 1964, the respondent rejected the Wolff proposals and offered its own eleven-point proposal as follows:

- (a) Emphasis on quality education in all schools with special emphasis in schools with special problems with expenditures of special funds for this purpose;
- (b) Overcrowdedness to be alleviated by transferring pupils to less crowded facilities by busing if necessary;
- (c) No radical change is to be made in present 6-3-3 school organization plan and the policy of neighborhood schools;
- (d) A long-range plan to alleviate overcrowdedness and eliminate old schools by relocating them in more desirable locations is to be undertaken;
- (e) Provision of more facilities for special education students is an item of high priority in planning;
- (f) Enlargement and conversion of the Showalter Junior High School into a new high school complex and use of the old high school as a junior high will permit the use of the Douglass facility for special education programs;
- (g) Maintenance of a close relationship with community groups to encourage understanding and cooperation;
- (h) Development of plans for a new elementary school in order to relieve overcrowding and provide space for kindergartens and special education classes;
- (i) Provision of kindergarten classes in culturally deprived areas as soon as possible;
- (j) Integrate the non-white staffs by filling vacancies as they develop and by encouraging voluntary transfers; and
- (k) Continuation and expansion of the pre-school program financed by the Chester School District and the Ford Foundation.

48. Beginning with September, 1964, the respondent School District began to implement its said eleven-point proposal, as follows:

- (a) Overcrowding at the all-Negro Dewey-Mann and Franklin schools is being

relieved by busing 240 Negro pupils from Franklin to Wetherill and 69 Negro pupils from Dewey-Mann to William Penn; also 41 additional Negro pupils at Franklin have been re-assigned to walk daily to nearby desegregated schools less crowded. Such busing will cost the respondent between \$26,000.00 and \$27,000.00 for the 1964-1965 school year;

(b) Respondent has made plans and expended money to repair and alter the all-Negro Dewey-Mann, Douglass, Franklin, Washington and Watts schools. In the summer months immediately preceding September, 1964, respondent expended the sum of \$69,000.00 on such repairs and alterations;

(c) Respondent has assigned one Negro teacher to each of the previously all-white faculties of Jefferis, Morton and William Penn, leaving all-white faculties only at Stetser and Wetherill; respondent also assigned 4 white teachers to the previously all-Negro faculty of Dewey-Mann and one white teacher to the previously all-Negro faculty at Washington; and

(d) Respondent engaged three reading specialists to teach slow readers at the all-Negro elementary schools.

49. As of September, 1964, the total public school population had decreased by 36, there now being a total of 10,806 pupils in the Chester School District, of whom 36% (3,909) are white and 64% (6,897) are Negro.

50. The eleven-point proposal of the Chester School District does not adequately or satisfactorily provide with sufficient particularity or a reasonable timetable, for the desegregation of Chester's all-Negro and substantially all-Negro schools.

51. The Chester School District has at no time desired or attempted to desegregate Chester's public schools by the adoption of new school zones through

the medium of new boundary lines for all schools.

52. Although the respondent was aware or should have been aware of the existence of segregated schools within its system, it did not at any time prior to July 13, 1964, attempt to correct this condition.

53. Chester's segregated public school system has not arisen by accident but, in large part, by the following actions and failures to act on the part of the respondent:

(a) Failure to adjust boundary lines from time to time so as to prevent six of the 16 schools in Chester from becoming racially segregated;

(b) Failure to take affirmative action over the years to eliminate its segregated school system which was originally created by the Chester School District's requirement that Negro pupils pass nearby schools to attend all-Negro schools much farther away from their homes;

(c) Failure to permit a policy of open enrollment;

(d) Manipulating boundary lines

(i) by eliminating a white residential area from the all-Negro Dewey-Mann school zone and making it part of the substantially all-white William Penn school zone; and

(ii) by permitting crossing of boundary lines by Negroes from the William Penn school zone to the Dewey-Mann school zone, and by at least one white pupil out of the Dewey-Mann zone into the William Penn zone;

(e) Permitting the physical condition of the all-Negro school buildings to be inferior to that of other schools;

(f) Assigning only Negro teachers and only Negro clerks to all-Negro schools;

(g) Assigning only Negro orthogenic backward pupils to the all-Negro Dewey-Mann School;

(h) Assigning only Negro tuition pupils from nearby school districts

to the all-Negro Douglass Junior High School; and

(i) Failure to approve or adopt any effective plan of desegregation, with a timetable, refusing to give consideration to such possible plan through its School Board.

CONCLUSIONS OF LAW

Upon all the evidence at the public hearings and the foregoing findings of fact, the Pennsylvania Human Relations Commission makes the following conclusions of law:

1. The Pennsylvania Human Relations Commission may properly act as the complainant in this proceeding.
2. At all times herein mentioned, respondent was and still is a place of public accommodations within the meaning of Section 4(1) of the Pennsylvania Human Relations Act.
3. At all times herein mentioned, respondent was and still is an employer within the meaning of Section 4(b) of the Pennsylvania Human Relations Act.
4. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the respondent, Chester School District.
5. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the subject matter of this proceeding and over the instant complaint.
6. The unlawful discriminatory practices involved herein have occurred and still occur within the Commonwealth of Pennsylvania and have deprived Negroes, residents of the City of Chester, Delaware County, Pennsylvania, of their civil rights.

7. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(a) of the Pennsylvania Human Relations Act, in that the respondent assigns only Negro teachers to all-Negro schools and only Negro clerks to all-Negro schools.

8. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(i) of the Pennsylvania Human Relations Act, in that (1) respondent maintains segregated all-Negro and substantially all-Negro public schools within its school system, (2) respondent has established school zones which confine the Negro to all-Negro schools, (3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester, (4) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (5) respondent has failed to accept or adopt any affirmative program or plan whereunder the schools it administers will be effectively desegregated within a reasonable time.

COMMISSION'S DECISION

Upon all of the evidence at the public hearings of this case, and in consideration of the findings of fact and conclusions of law above set forth, the Pennsylvania Human Relations Commission finds and determines:

1. The Commission has jurisdiction over the respondent School District, the subject matter of this proceeding and the complaint, and the Motion to Dismiss is denied.
2. The respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g), 5(a) and 5(i) of the

Pennsylvania Human Relations Act, in that (1) respondent maintains segregated, all-Negro and substantially all-Negro public schools within its school system, (2) respondent has established public school zones which confine the Negro pupils to all-Negro schools, (3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester, (4) respondent assigns only Negro teachers and only Negro clerks to all-Negro public schools, (5) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (6) respondent has failed to accept or adopt any affirmative plan whereby the public schools it administers will be effectively desegregated within a reasonable time.

3. The charge in the Complaint which avers unlawful discriminatory practices by the respondent for using textbooks which do not treat adequately or ignore entirely the contributions of the Negro to the American scene is dismissed.

4. The charge in the Complaint which avers that the respondent has committed unlawful discriminatory practices by failing to appoint Negroes to supervisory and administrative positions is hereby dismissed.

5. The Pennsylvania Human Relations Commission will retain jurisdiction in the subject matter of this proceeding until such time as the respondent fully complies with the Commission's Final Order.

FINAL ORDER

AND NOW, November 20th, 1964, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Commission's Decision, and pursuant to Section 9 of the Pennsylvania Human Relations Act and Sections 105.23 and 105.24 of the Regulations of the Commission, it is hereby

ORDERED, by the Pennsylvania Human Relations Commission

1. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from assigning only Negro teachers to those public schools, the faculties of which are entirely Negro.

2. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from refusing to assign or transfer a white teacher to a public school, the faculty of which is entirely Negro or almost entirely Negro, unless said white teacher gives prior consent to be so assigned or transferred.

3. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes shall cease and desist from assigning only white teachers to Stetser Elementary School and to Wetherill Elementary School.

4. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall cease and desist from assigning only Negro bookkeepers, stenographers and clerks to the all-Negro Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Washington Elementary School and Watts Elementary School.

5. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to establish kindergartens at the following all-Negro elementary schools: Dewey-Mann, Franklin and Watts.

6. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to desegregate effectively the all-Negro Douglass Junior High School, and the following all-Negro or substantially all-Negro elementary schools: Dewey-Mann, Franklin, Lincoln, Washington and Watts.

7. That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take the following affirmative action which, in the judgment of the Commission, will effectuate the purpose of the Pennsylvania Human Relations Act:

a. Advise and direct in writing all individual members of the Chester School Board, all of its agents, employes and interviewers having any duty or function with respect to the solicitation, recruitment, referral, selection, hiring, assignment or transfer of teachers and of bookkeepers, clerks and stenographers, that it is the policy and intent of the respondent to comply fully with the Pennsylvania Human Relations Act, and that in the assignment of teachers, bookkeepers, clerks and stenographers, respondent will assign solely on the basis of individual merit and that

- (1) respondent will not assign only Negro teachers, bookkeepers, clerks and stenographers to the all-Negro Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Washington Elementary School and Watts Elementary School,
- (2) respondent will not assign only white teachers to Stetser Elementary School and Wetherill Elementary School, and
- (3) respondent will not require the consent of any white teacher, bookkeeper, clerk or stenographer before assigning or transferring said employe to any public school which it administers;

b. Furnish the Commission with copies of said directive signed by each recipient to indicate its receipt by each of them;

c. Formulate a Plan consistent with the principles and findings of this decision, to establish kindergartens at the following three all-Negro elementary schools: Dewey-Mann, Franklin and Watts, and submit such plan or plans for approval of this Commission on or before December 31, 1964, so that said plan or plans may be implemented beginning no later than February, 1965;

d. Formulate a Plan consistent with the principles and findings of this decision, to desegregate effectively the following schools:

Douglass Junior High School, Dewey-Mann Elementary School, Franklin Elementary School, Lincoln Elementary School, Washington Elementary School and Watts Elementary School. In the formulation of such plan of desegregation, the Commission urges the respondent carefully and seriously to consider the following guidelines:

- (1) The plan must state all details as to the school or schools to be replaced, converted or paired, including but not limited to costs, proposed methods of obtaining the required funds, and actual dates when the proposed construction or alterations will be commenced and completed;
- (2) If the plan proposes conversion of a present school facility, it must also state with particularity the boundary lines which will define the school zone for such converted school, the number of children required to be bused to such school, and the cost of such busing;
- (3) If the plan proposes construction of new school buildings, it must state specifically all details concerning the exact sites at which such buildings will be erected, the boundary lines which will define the school zones for each such new school, the number of children required to be bused to each such school, and the cost of such busing;
- (4) For short range and immediate action, the plan could embody any or all of the following:
 - (a) The adoption of new boundary lines creating new zones which would desegregate some of the segregated schools;

- (b) The creation of middle or intermediary schools for all 5th and 6th grade pupils, to desegregate such grades;
- (c) The establishment of a single junior high school complex in the central part of Chester, similar to the present senior high school arrangement, which would desegregate the all-Negro Douglass Junior High School;
- (d) The conversion of Chester High School into a junior high school to accommodate pupils now attending Douglass and Showalter Junior High Schools, and the conversion of Showalter Junior High School into a senior high school, to desegregate the all-Negro Douglass Junior High School;

e. Submit said Plan of Desegregation, with detailed information and stating a definite timetable, to this Commission for its approval, on or before January 31, 1965, so that said Plan or Plans, if approved by this Commission, may be implemented no later than the beginning of the 1965 - 1966 school year; and

f. Notify the Pennsylvania Human Relations Commission at its office at 1401 Labor and Industry Building, Harrisburg, Pennsylvania, 17120, in writing, within fifteen (15) days of the date of service of this Final Order, as to the steps the respondent has taken to comply with each ordered provision of this Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By

HARRY BOYER
Chairman

Attest:

By

EDWARD M. GREEN
Secretary

For: J. 304
EMS

PENNSYLVANIA HUMAN RELATIONS COMMISSION, Appellant : IN THE SUPERIOR COURT OF PENNSYLVANIA

v. :

CHESTER SCHOOL DISTRICT : No. 12 March Term, 1967

Appeal from the Order of the Court of Common Pleas of Dauphin County at No. 637 Commonwealth Docket, 1964.

DISSENTING OPINION BY HOFFMAN, J.: Filed: November 17, 1966

I respectfully dissent.

This case raises important questions regarding the power of the Pennsylvania Human Relations Commission to remedy racial imbalance in the public schools. The opinion of the lower court, which the majority affirms today, narrowly construes the Commission's statutory mandate and, in my view, improperly curtails the Commission's authority in this critical area.

In the fall of 1963, civil rights groups and residents of the City of Chester began a series of increasingly bitter public demonstrations. They charged that the School Board engaged in discriminatory practices in managing the City's educational system. All efforts to resolve the dispute through conciliation met with failure.

At the direction of the Governor, the Pennsylvania Human Relations Commission entered the controversy in May of 1964. The Commission filed a formal complaint under § 5 (1) (1) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. § 955 (1) (1). That section provides:

"It shall be an unlawful discriminatory practice....(1) For any person being the...manager, superintendent, agent or employe of any place of public accomodation...to (1) Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry or national origin, either directly or indirectly, any of the accomodations, advantages, facilities or privileges of such place of public accomodation...." Public schools ("kindergartens, primary and secondary schools, high schools") are places of public accomodation within the meaning of the Act. § 4 (l), 43 P.S. § 954 (l). The term "discriminate" includes "segregate." § 4 (g), 43 P.S. § 954 (l).

In its complaint the Commission charged, inter alia, that the Chester School District had failed to adopt and make public an affirmative plan to desegregate the schools; that it had "maintained and gerrymandered" boundary lines in order to perpetuate all-Negro schools within the City; and that the City's all-Negro schools were inferior in physical plant and educational standards to schools which were substantially all-white.^{1.} Eight days of public hearings produced a voluminous record of testimony and exhibits.

On November 24, 1964, the Commission issued its adjudication and order. The key paragraph of this order directed:

1. The remaining allegations related to the School Board's assignment of Negro teachers and clerical personnel to all-Negro schools; its failure to appoint qualified Negroes to supervisory and administrative positions; and its approval of textbooks which inadequately treated the contributions of the Negro in American life.

"That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to desegregate effectively the all-Negro or substantially all-Negro Douglass Junior High School, and the following all-Negro or substantially all-Negro elementary schools: Dewey-Mann, Franklin, Lincoln, Washington and Watts." The order further required the school district to formulate a plan for the effective desegregation of those facilities, and suggested guidelines for "short range and immediate action."²

The schools named in the order are located in the center of Chester, in a predominantly Negro residential area. At the time of the hearings, there were 10,842 pupils in the Chester School District. Of these, 4,147, or 38%, were white and 6,695, or 62% were Negro. The racial composition of the schools in question was:

	White	Negro	Total
Douglass	1	527	528
Dewey-Mann	0	823	823
Franklin	10	1018	1028
Lincoln	69	490	559
Washington	0	782	782
Watts	<u>0</u>	<u>344</u>	<u>344</u>
TOTAL	80	3984	4064

2. Other provisions of the order required the School District to cease and desist from assigning teachers and clerical personnel on a racial basis.

The Chester School District sought review of the Commission's decision in the Court of Common Pleas of Dauphin County. That court sustained the Commission in part, but set aside those portions of its order relating to racial imbalance, for the following two reasons:

1. The Commission failed to show by substantial evidence that "intentional" or willful discriminatory practices had produced the admitted segregation in the City's schools.

2. The Commission lacked jurisdiction to enter a remedial order directed at mere "de facto segregation." [The court defined that term as "...a condition which exists not from any formal legal classification based on race or color - which would be violative of constitutionally protected rights - but rather arises from the effect of residential segregation upon patterns of neighborhood school attendance districts."]

From this determination, the Human Relations Commission appeals.

The court's holding rests on the assumption that the statutory words "Refuse, withhold from, or deny...directly or indirectly" contemplate intentional, affirmative acts whose sole purpose is to segregate the races. Absent such a showing, the court held, the Commission is powerless to remedy the admitted racial imbalance in the Chester schools. I cannot agree.

The Human Relations Act represents a legislative recognition of the standards and conclusions enunciated by the U. S. Supreme Court in Brown v. Board of Education of Topeka, 347 U. S. 483 (1954). It assumes that separate educational facilities are inherently unequal; that segregation in our schools

must, of necessity, generate a sense of racial inferiority and infect the motivation of the Negro child.

With this background in mind, it is clear that the Human Relations Commission should not be bound by the strict standards imposed upon it by the lower court. Indeed, the Act specifically directs that it be construed "liberally" for the effectuation of its purposes. § 12 (a), 43 P. S. § 962 (a). The record before us amply demonstrates the need for such a liberal construction. The Commission found, based on much testimony, that Chester's imbalanced schools have dulled the motivation and depressed the achievement level of the City's Negro pupils.

Moreover, local authorities in Chester have persistently and knowingly failed to correct or attempt to correct the severe racial imbalance in the schools. Mrs. Francis P. Donahoo, President of the Chester School Board, testified as follows:

"Q. How long have you been aware that this condition existed of five schools that are from ninety to one hundred per cent Negro and two schools that are from sixty to ninety per cent Negro?

"A. Mr. Yaffe, we have always been that way.

"Q. Have you been aware of it?

"A. Always.

"Q. Have you in discussions with the school board ever tried to do anything about eliminating this problem?

"A. Nothing except trying to fix over what schools we have, putting them in through our maintenance department."

The testimony of Mayor James H. Gorbey is also instructive here:

"Q. And were you aware of the situation with respect to some of the schools in the City of Chester being either completely Negro or predominantly Negro?

"A. Yes.

"Q. Was that brought to your attention recently or were you aware of it quite some time?

"A. I knew it for some time. It seemed to me back in 1927 or thereabouts, I understood that the Negro people requested that, to have separate schools. That's the way I have been told all my life."

Under such circumstances we should not hesitate to find that the Commission has power to act in this case.

The School Board has attempted to justify its inaction in this matter by pointing to patterns of residential segregation in the community at large. In its answer it asserts: "There are three Elementary schools and one Junior High School in Respondent's system which have either all negro pupils or almost entirely all negro pupils. Respondent avers that the sole cause for this is the housing pattern in the City of Chester and the fact that negroes either willingly or because of necessity live in the same neighborhoods."

I find this defense insufficient. Courts in other jurisdictions have recognized that where such residential segregation exists it is enough for school authorities to refrain from willful discriminatory acts.

The Supreme Court of California stated in Jackson v. Pasadena City School District, 59 Cal. 2d 876, 382 P. 2d 878, 882 (1963), "The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographic basis without corrective measures. The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause."

Similarly, in Branche v. Board of Education, 204 F. Supp. 150, 153 (E.D. N.Y. 1962), the Court stated: "The educational system that is...compulsory and publicly afforded must deal with the inadequacy arising from adventitious segregation; it cannot accept and indurate segregation on the ground that it is not coerced or planned but accepted. Failure to deal with a condition as really inflicts it as does any grosser imposition of it." cf. Blocker v. Board of Education, 226 F. Supp. 208 (E.D. N.Y. 1964).

In short, the School District has a continuing duty to re-evaluate school zone lines in order to maintain uniformly high standards of public education. Corrective action is surely warranted when local authorities ignore this obligation, while consciously and rigidly adhering to school district lines which result in a segregated educational system.

In the instant case, the Commission has clearly demonstrated a persistent and knowing failure by the Chester authorities to correct, or attempt to correct, the severe racial imbalance in the City's schools. Such a knowing should be sufficient to confer jurisdiction on the Commission to enter a remedial order under the terms of the Human Relations Act.

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In concluding that the order of the Commission should be affirmed, however, I do not rely solely on the passive acquiescence of the School Board. The record before us reveals numerous affirmative acts by the Chester School District which suggest approval of the status quo and a desire to perpetuate the imbalance in the City's schools.

First, boundary lines defining the all-Negro Dewey-Mann School have been altered from time to time by the School Board. Mr. John J. Vaul, assistant superintendent, testified as follows concerning these changes:

"Mr. Yaffe: What would have happened with the composition of the school population if those boundary lines had remained is the question.

"The witness: It would have remained integrated."

Second, the School Board approved new boundary lines for the City's elementary schools on May 4, 1964. In September of 1964, these changes were rescinded with one exception. The exception is an area referred to as a "panhandle," which is entirely white in composition. Although it was previously part of the all-Negro Dewey-Mann attendance zone, it is now within the boundaries of the substantially all-white William Penn School. Even before the change in attendance zones, at least one white pupil living in the area was permitted to cross boundary lines in order to attend the William Penn School.

Third, orthogenic backward pupils in Chester are assigned to two schools, Dewey-Mann and Martin. In theory, all such pupils in the western part of the City are assigned to the all-Negro Dewey-Mann School. In fact, only Negro backward pupils are assigned to Dewey-Mann. White backward pupils in that area are permitted to remain in their regular classes.

Fourth, ninth-grade tuition students from adjoining school districts are assigned to two Chester junior high schools, the all-Negro Douglass and the integrated Pulaski. The record shows that only Negro tuition pupils have been assigned to the Douglass School.

Fifth, the School District has invariably assigned Negro teachers and clerical personnel only to the City's all-Negro schools.

Sixth, at the time of the hearings, Chester's all-Negro schools were significantly inferior in physical condition to the remaining schools in the system.^{3.} They were also significantly more crowded.^{4.}

3. With the cooperation of the School Board, Mr. Louis Dallett, a member of the City's Human Relations Commission, inspected several of Chester's all-Negro schools. He offered the following testimony:

"There were many spots in the two worst schools where plaster was off of the walls, around plates, sadly in need of paint. The wood frames around the windows were in very bad condition. Many of these large, old windows were loose in their frames causing very drafty conditions. The toilet facilities were very, very poor in these schools mentioned. In many cases, there was a single light bulb for lighting, an exposed bulb.... We found a lack of room for the coats and other paraphernalia for winterwear. We found a generally poor condition of maintenance. There was surface dirt all about. The maintenance was not very well kept up as opposed to the only white school we visited where there was a tremendously higher level of maintenance and cleanliness."

4. Classes in the substantially all-Negro elementary schools contained an average of 32 to 37 pupils. In the remaining elementary schools, the figure ranged from 30 to 33 pupils per class.

It is surely unrealistic to expect the Chester school Authorities to concede that their actions have been generated by any factor other than an attempt to operate an efficient school system. Nevertheless, I think it proper to infer from this record a policy of active approval toward the racial imbalance in the City's schools.

Construing the Human Relations Act in light of its remedial purpose and the record before us, I believe the Commission's jurisdiction in this case should be upheld. In so concluding, I do not read the statute to require the complete abandonment of Chester's "neighborhood school" policy. Nor do I think it demands a fixed ratio of whites to Negroes in every City school.

In each case, the interests protected by adherence to neighborhood attendance zones must be weighed against the substantiality of the racial imbalance in the community's schools. An agency such as the Human Relations Commission is best equipped to make these difficult judgments, and flexible enough to enter appropriate remedial orders.

Accordingly, I would modify the order of the lower court by reinstating those provisions of the Commission's order directed at racial imbalance in the Chester schools.

SPAULDING, J., joins in this dissenting opinion.

PENNSYLVANIA HUMAN RELATIONS: IN THE COURT OF COMMON PLEAS OF
COMMISSION DAUPHIN COUNTY, PENNSYLVANIA

v.

CHESTER SCHOOL DISTRICT

NO. 637 COMMONWEALTH DOCKET 1964

O P I N I O N

BY THE COURT:

With increasing frequency and intensity beginning in the latter part of the year 1963 and continuing into the early months of 1964, demonstrations by organized and unorganized groups were carried on in the City of Chester in protest against a variety of alleged racial discriminatory practices existing in the conduct and operation of the public school system in that city. Efforts by local government officials, school board officials and others through meetings and discussions with interested groups were apparently failing in resolving differences. As time passed general lawlessness and rioting broke out threatening the peace and dignity of the city and its citizens, which conditions became the grave concern of all responsible persons.

The Pennsylvania Human Relations Commission (Commission), having previously attempted to act as a conciliator of the differences that existed, was then directed by the Governor of the Commonwealth to formally undertake to conduct public hearings and act under the powers and authority conferred upon it by law.

It is the power and authority of the Commission as conferred upon it by the Pennsylvania Human Relations Act of October 27, 1955, P. L. 744, as amended, 43 P. S. 951, et seq., which is in issue in this appeal.

When public hearings commenced on May 4, 1964, certain civil rights groups, believing the Commission to be without authority to grant adequate relief, refused to act as complainants. The Commission then decided that the hearings would proceed and that the Commission itself would act as the complainant. It thereupon filed a complaint naming Chester School District as the respondent.

The complaint (paragraph 3(a) through (i)) charges that respondent discriminates against pupils and teachers in its public school system in that:

1. Respondent maintains all-one-color schools within its school system. (Paragraph 3(a)).
2. Textbooks authorized for use in the public schools by the respondent do not treat adequately or ignore entirely the contributions of the Negro in American life. (Paragraph 3(b)).
3. Negro teachers are assigned to all-Negro schools only. (Paragraph 3(c)).
4. Negro secretaries, clerks and telephone operators engaged by the respondent are assigned to all-Negro schools or substantially all-Negro schools only, and none is assigned to administration offices. (Paragraph 3(d)).
5. The physical condition of all-Negro schools and substantially all-Negro schools is noticeably inferior to that of the substantially all-white schools. (Paragraph 3(e)).
6. The educational standards in all-Negro schools are inferior to those in sub-

stantially all-white schools; especially in that the Chester School Board has failed to provide for the highest possible educational standards in all-Negro schools, as, for example, by smaller classes, better counseling services and a program of motivation. (Paragraph 3(f)).

7. Respondent has failed to appoint qualified Negroes to supervisory and administrative positions or to encourage Negro personnel to apply for such positions. (Paragraph 3(g)).
8. Boundary lines defining school zones have been maintained and gerrymandered by school authorities in order to perpetuate all-Negro schools and in order to permit white pupils to attend substantially all-white schools. (Paragraph 3(h)).
9. Respondent has failed to adopt and make public an affirmative program and acceptable plan to desegregate the public schools and provide a timetable for implementation. (Paragraph 3(i)).

These actions, the Commission avers in its complaint, were violative of the Governor's Code of Fair Practices ⁽¹⁾ and of Sections 4(1) and 5(i) of the Pennsylvania Human Relations Act. Respondent's answer specifically denies each of the material averments of the complaint and generally denies that the Commission had power to initiate a complaint on its own motion or that it had the power and authority to act in the premises.

Eight days of public hearings produced a voluminous record of testimony and exhibits. On November 24, 1964 the Commission issued its adjudication, in which it denied appellant's motion to dismiss for want of jurisdiction filed at the

(1) The Governor's Code of Fair Practices proclaimed June 6, 1963 is stated "to be the governing policy throughout the executive branch of government of the Commonwealth." It affords no legal foundation whatsoever for a complaint against a school district which is a creature or agency of the Legislature: CHARTIERS VALLEY JOINT SCHOOLS v. ALLEGHENY COUNTY BOARD OF SCHOOL DIRECTORS, 418 PA. 520 (1965).

conclusion of the hearings, and which adjudication contained an extensive discussion, fifty-three findings of fact, conclusions of law, the "Commission's decision" and a final order. In the "Commission's decision", it dismissed the charges in the complaint relating to discriminatory practices in the use of textbooks (Paragraph 3(c)) and in the appointment of Negroes in supervisory and administrative positions (Paragraph 3(g)). The final order directs the appellant-school district to cease and desist (1) from assigning only Negro teachers to schools with all-Negro faculties, (2) from asking for the consent of white teachers before they are assigned to a school now having an all-Negro faculty, (3) from assigning only white teachers to Stetser Elementary School and to Wetherill Elementary School, (4) from assigning only Negro bookkeepers, stenographers and clerks to the all-Negro public schools. Additionally, the school district is ordered to (5) establish kindergartens at the all-Negro Dewey-Mann, Franklin and Watts elementary schools, (6) desegregate six all-Negro or substantially all-Negro public schools, (7) formulate a plan consistent with the Commission's decision to desegregate its public schools and submit such plan for the Commission's approval.

As provided by Section 10 of the Pennsylvania Human Relations Act allowing any order of the Commission to be reviewed as prescribed by the provisions of the Administrative Agency Law,⁽²⁾ respondent school district appealed to this Court and filed its exceptions to the Commission's adjudication. It

(2) Act of June 4, 1945, P. L. 1388, 71 P. S. 1710.1, et seq.

is this appeal which is before us for disposition.⁽³⁾

The scope of our review on appeals from administrative agencies is limited. A decision of such an agency will be sustained unless based upon facts or conclusions not adequately supported by evidence; or unless it has committed a clear abuse of discretion, exceeded its power or based its conclusion or order upon an erroneous interpretation of the law: Section 44, Administrative Agency Law, *supra*; *BLAIRSVILLE NATIONAL BANK v. MYERS*, 409 PA. 526 (1963); *SANITARY WATER BOARD v. COUDERSPORT BOROUGH*, 81 DAUPH. 178 (1963).

Two of the three principal contentions advanced by appellant are directed to the issue of whether the Commission's action and its adjudication are based upon its erroneous interpretation of the Pennsylvania Human Relations Act, thus resulting in its making erroneous conclusions of law. The first of these two contentions raises the issue of whether the Commission had the power to act as complainant in the proceedings it initiated against appellant school district. Appellant maintains that the Commission on its own initiative lacks the authority to so act when school discrimination is generally charged. Its position is that the correct and only lawful procedure to have followed by the Commission in this case would have been to have held investigatory public hearings as pre-

(3) By leave of court the National Association for the Advancement of Colored People and the Chester Parents' Association submitted briefs and were heard as *amicus curiae*.

scribed by Section 105.26 of the Commission's Regulations.⁽⁴⁾

Appellant first points out that prior to the 1961 amendments to the Act,⁽⁵⁾ the courts of this Commonwealth had complete jurisdiction to prevent discrimination against any public school pupil because of race or color, in either an individual or a class action. Under the Act of June 8, 1881, P. L. 76, it was made unlawful for any school director, superintendent or teacher to make any distinction by reason of the race or color of any pupil. Thus, in *KAINE v. COMMONWEALTH*, 101 PA. 490 (1882), it was held that mandamus would lie to compel the school directors and superintendent of the school district to admit a Negro to a particular school when their answer did not specifically deny that he had been refused admission because of race.

The Act of 1881 was repealed by the School Code of May 18, 1911, P. L. 309, but a similar provision has been continued in our public school laws ever since that time. Section 1310 of the Public School Code of 1949⁽⁶⁾ provides, inter alia:

(4) "Section 105.26 INVESTIGATORY PUBLIC HEARINGS. The Commission may conduct investigatory public hearings without a complaint to investigate alleged discriminatory practices in employment, education, housing or public accommodations, against any person or group of persons because of race, color, religious creed, ancestry or national origin. During and following such investigatory public hearings, the Commission may issue and make public its findings of fact relating thereto."

(5) Act of February 28, 1961, P. L. 47, expanding the scope and coverage of the original Act and changing its title to that of the Pennsylvania Human Relations Act.

(6) Act of March 10, 1949, P. L. 30, 24 P. S. 13-1310.

"It shall be unlawful for any school directors, superintendent, or teacher to make any distinction whatever, on account of, or by reason of, the race or color of any pupil or scholar who may be in attendance upon, or seeking admission to, any public school maintained wholly or in part, under the school laws of the Commonwealth."⁽⁷⁾

Courts have also exercised control over school boards in equity in cases involving violation of law or improper expenditure of public funds: MCKINLEY v. LUZERNE TOWNSHIP SCHOOL DISTRICT, 383 PA. 289 (1955); McLAUGHLIN v. LANSFORD BOROUGH SCHOOL DISTRICT, 335 PA. 17 (1939); HIBBS v. ARENSBERG, 276 PA. 24 (1923); GEMMELL v. FOX, 241 PA. 146 (1913).

Because of this existing statutory and decisional law, appellant urges us to conclude that as applicable to matters of discrimination in a public school system the Legislature had no intention of changing or supplementing this prior law, and thus the Commission, under the provisions of the Pennsylvania Human Relations Act, lacks the power to initiate the complaint and employ the procedures provided for in said Act. Implicit in appellant's contention would seem to be a correlative contention that a contrary interpretation would of necessity repeal existing law vesting matters of school policy and programs in the first instance in local school districts, subject only to review by the courts when such policies or programs are alleged to be contrary to law.

We cannot agree that the statutory and decisional law existing prior to the adoption of the Act requires it to be so

(7) See also the Act of June 24, 1939, P. L. 872 (18 P. S. 4654) which makes it a misdemeanor for anyone to discriminate against public school pupils because of race or color.

interpreted, nor that a contrary interpretation would have such a deleterious result in usurping the powers of local school boards over their respective public school districts.

Section 12 of the Act in question provides:

"(a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply.

"(b) Nothing contained in this act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted law of this Commonwealth relating to discrimination....."

It is self-evident from this language that the Act repeals only prior inconsistent laws. The procedures established by the Act are but an alternative method for the enforcement of the enumerated rights sought to be protected. Such practice is neither unusual nor unconstitutional. To argue, as the main thrust of appellant's argument does, that the Legislature did not intend to place general matters of school policy in the hands of the Commission does not answer the question as to whether the Commission is authorized to act as complainant in this case. Such a contention more properly goes to the extent of the Commission's jurisdiction and powers rather than to whether the Commission can act as a complainant in the first instance.

Suffice it to say that we do not find the remainder of appellant's argument in the least bit persuasive, as it leaves totally unexplained the meaning which we are to ascribe to Section 9 of the Act. That section, after setting forth the procedure to be followed by an individual filing a complaint, provides:

"... The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint....." (Emphasis supplied)

In addition, Section 7 provides:

"The Commission shall have the following powers and duties:

* * * * *

"(f) To initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices." (Emphasis supplied)

It is axiomatic that a statute is to be construed, if possible, to give effect to all its parts. To hold that the Commission has no power to act as a complainant would be to ignore the clear and express terms of the statute. We, therefore, hold that the Commission had the power to act as complainant in this case.

We turn next to consider the extent of the Commission's jurisdiction in this case. Of primary importance is the question of whether the Commission has authority to act in the area of what has come to be termed as de facto segregation. The position of the Commission is clearly stated in its Ninth Annual Report 1964 at page 30:

"Even when school segregation is the result of housing conditions and not because of deliberate discrimination, the Commission feels it necessary that affirmative steps must be taken by boards of public school districts to alleviate racial imbalance, regardless of its cause. Positive, corrective measures are often feasible and it is not justifiable for boards of public school districts to take refuge in the fact that the original condition of segregation is not of their making."

De facto segregation is a meaningful term and yet one which remains undefined in its full concept. Originally coined to describe a factually discriminatory condition beyond the orbit of constitutionally protected individual rights, it means many things to many people. As it relates to public schools, it is said to be a condition which exists not from any formal legal classification based on race or color - which would be violative of constitutionally protected rights - but rather arises from the effect of residential segregation upon patterns of neighborhood school attendance districts. The resulting racial imbalance of predominantly or all-Negro schools in areas of the Commonwealth, the Commission contends, is not only a proper subject of legislative concern, but one upon which it has already spoken by adopting the Pennsylvania Human Relations Act. And this is so, contends the Commission, notwithstanding that the Legislature has not attempted to define the term, nor has it spoken in any way as to the standards to be applied or otherwise directed the Commission in its venture into this most difficult and complex subject.

The Commission advances several arguments in support of its position. We will consider each of them separately.

As we have previously noted, the complaint in this case was brought under Section 5(i)(1) of the Act which provides:

"It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations

established by the United States or the Commonwealth of Pennsylvania:

* * * * *

"(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation, resort or amusement to

"(1) Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry or national origin, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement."

Section 4(1) of the Act defines "place of public accommodation, resort or amusement" to include kindergartens, primary and secondary schools, and high schools. The only other pertinent section to the present inquiry is Section 4(g) of the Act which provides: "The term 'discriminate' includes segregate."

The Commission contends that the words "directly or indirectly" used in Section 5(i)(1) above, indicate a clear intention of the Legislature that de facto segregation is a subject within the Commission's jurisdiction.

Preliminarily, we note that in interpreting the intention of the Legislature, the court must take into consideration more than the literal words of the Act: *NEW YORK LIFE INSURANCE COMPANY v. GUARANTY CORPORATION*, 321 PA. 359 (1936). In *SWARTLEY v. HARRIS*, 351 PA. 116 (1944), our Supreme Court said at page 119:

"..... The language of a statute must be read in a sense which harmonizes with the subject matter and its general purpose and object. The general design and purpose of the law is to be kept in view and the statute given a fair and reasonable construction with a view to

effecting its purpose and object, even if it be necessary, in so doing, to restrict somewhat the force of subsidiary provisions that otherwise would conflict with the paramount intent: 25 R.C.L. Sec. 253, page 1013; Pocono Manor Association et al. v. Allen et al., 337 Pa. 442, 12 A. 2d 32."

We cannot agree with the Commission that the use of the phrase "directly or indirectly" evidences a clear and unambiguous intent that de facto segregation was to be within the scope of its jurisdiction and powers. The phrase "directly or indirectly" is frequently employed in drafting statutes and legal instruments. The volume of litigation involving the meaning of this phrase, however, indicates that its use in any particular context is often ambiguous. See WORDS AND PHRASES, VOL. 12A, pp. 151-154. As used in this particular statute, it is clear that the phrase "either directly or indirectly" relates to and modifies the words "refuse, withhold from, or deny." Such words contemplate intentional or affirmative acts on the part of the wrongdoer. Read in this manner, as we believe it must, the statute negates rather than supports the Commission's contention, for no matter how the term "de facto segregation" may ultimately be defined in total meaning no instances have been found in researching this subject in which it has been applied to describe a condition brought about by intentional or affirmative acts directed towards an individual's race or color.

The Commission, however, also points to Section 2(a) of the Act as evidence that the Legislature intended it to act in matters of de facto segregation. Section 2(a) provides:

"FINDINGS AND DECLARATION OF POLICY"

"The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, age or national origin is a matter of concern to the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants."

It is significant to note that the Legislature in this policy declaration states that "racial segregation in the public schools" is the result of discrimination in the area of the denial of equal housing accommodations. It does not say that racial imbalance in the public schools (which are public accommodations) is, in itself, a discriminatory practice. Yet this is precisely what we would have to read into this policy statement if the Commission's contention is to be upheld. We can find no such inference. Further, read in its entirety, this declaration of policy repeatedly relates the concept of discrimination not

to the mere existence of a fact situation, but rather to a fact situation being brought about by or resulting from some affirmative act on the part of the actor directed to another's race or color. Discrimination is first alluded to as a "practice or policy", thus suggesting an intent on the part of the actor; and thereafter throughout the section the Legislature condemns, as against the public interest, discrimination because of or by reason of race or color.

If by the enforcement of the Act discrimination in the areas of employment and housing is largely overcome, or through the recognition by man of the inherent worth of his neighbor regardless of race, creed or color, de facto segregation would to a substantial degree also be overcome as racial imbalance in the public schools is essentially a result of patterns of neighborhood school attendance districts. Thus, while racial imbalance in the public schools can be said to be the result of discriminatory practices, it cannot be said to be discrimination in and of itself within the intendment of the Legislature's declaration of policy as expressed in Section 2 of the Act. We, therefore, conclude that Section 2(a) shows no intent on the part of the Legislature to confer jurisdiction upon the Commission to deal with de facto segregation in the public schools.

In so concluding, we are not unmindful of the fact that at the time of the enactment of the Pennsylvania Human Relations Act and its subsequent amendments, this nation was and is still engaged in a social revolution of a magnitude never

previously experienced. Civil rights groups have been outspoken in their demands for better education. Public school classrooms have become a focal point for discussion in communities where substantial racial imbalance exists. The Commission argues that the fact that the Legislature, during 1961, enacted two separate acts dealing with equal opportunities in educational institutions⁽⁸⁾ shows that it had in mind the problem of de facto segregation. We believe, however, that if the Legislature had intended the Commission to have the power to deal with such a controversial subject as that of racial imbalance in the public schools, such an intent would have been clearly expressed.

Lastly, the Commission argues that "segregate", as used in Section 4(f), embraces within its meaning the concept of de facto segregation. In the absence of legislative definitions, words are ascribed their ordinary definitions: COMMONWEALTH v. DEWAN, 181 PA. SUPER. 203 (1956). In WEBSTER'S THIRD INTERNATIONAL DICTIONARY, we find the following definition of "segregate": "1: to separate or set apart from others or from the general mass or main body ... 2: to cause or force the separation of (as races or social classes) from the rest of society or from a larger group....." These definitions imply an active policy of discrimination rather than a passive de facto state of separation.

(8) Pennsylvania Fair Educational Opportunities Act of July 17, 1961, P. L. 776, and the Act here in question.

Additional support for our belief that the common use of the word "segregate" does not cover racial imbalance is found in GIRARD COLLEGE TRUSTEESHIP, 391 PA. 434 (1958). The court there said (p. 456):

"... The Orphans' Court did not act to exclude Negroes from Girard College. None had ever been admitted. What the Orphans' Court did was to refuse to admit the Negro applicants because they did not qualify for admission under the terms of Girard's will. And, to speak of Girard College as remaining 'segregated' as a result of the Orphans' Court action is to use a term whose present-day stigmatizing connotation has no proper place in this case."

The failure of the Legislature to set forth any definition of de facto segregation or racial imbalance compels us to believe that the Legislature did not intend that the Commission should deal with such problems. To determine otherwise would also present a serious constitutional question relating to the delegation of legislative powers. Assuming the power of the General Assembly to legislate on this subject, it would have the authority to delegate only within the constitutional limitation that standards be prescribed under which the delegated authority is to act. The statute in question, however, is not only silent as to the definition of de facto segregation, but equally bare of any standards by which the Commission is to deal with it. When precisely does a public school become racially imbalanced? Is racial imbalance to be determined by the Commission on an ad hoc basis, and if so is the Commission to declare methods or procedures by which it is to be corrected, or does such prerogative still remain with the local school board?

All of these questions suggest to us that the Legislature did not intend such doubtful and possible unconstitutional results. As the Federal Circuit Court of Appeals (1st Cir.) recently noted in *SPRINGFIELD SCHOOL COMMITTEE v. BARKSDALE*, 348 F. 2d 261 (1965), at page 264:

"We pass the unsettling problem which would face every school committee of anticipating what amount of imbalance the local federal court will consider equivalent to segregation. The difficulties prophesied in applying the relatively simple rule of 'one man, one vote' would seem small in comparison. Deciding what is excessive racial imbalance necessarily involves the resolution of expert appraisals of highly intangible factors. But more fundamentally, when the goal is to equalize educational opportunity for all students, it would be no better to consider the Negro's special interests exclusively than it would be to disregard them completely."

For all of the above stated reasons, we conclude that the Pennsylvania Human Relations Commission has no authority to act in the area of de facto segregation in the public schools.

Appellant's third principal contention goes to the issue of whether the record made before the Commission supports twenty-six of the fifty-three findings of fact made by it to which appellant has excepted, as it has to the Commission's conclusions of law, "decision" and final order founded upon these disputed fact findings.

As previously noted, the scope of our review in an appeal from an administrative agency is limited to a determination of whether such findings of fact are supported by substantial evidence. We are not to substitute our judgment for that of the Commission.

In undertaking such a review, however, we need not consider a substantial number of such findings of fact to which appellant has excepted⁽⁹⁾ as they unquestionably relate exclusively to the subject of de facto segregation, which we have concluded as not being within the ambit of the provisions of the Pennsylvania Human Relations Act.

Of the remaining findings of fact to which appellant has excepted - being sixteen in all - those numbered 29, 31, 32 and 35 were not orally argued nor contested by appellant in its brief and, therefore, will be given no further consideration. The remaining twelve⁽¹⁰⁾ might be considered as supporting the Commission's conclusions of law, its "decision" and final order on subject matters which appellant does not contest as being within the jurisdiction of the Commission under the provisions of the Act. In general terms, these go to matters of discrimination against pupils because of race, or like discriminatory practices against appellant's professional and non-professional employes.

Does the record support the Commission's findings of fact in these areas and thus afford to it a proper foundation

(9) Numbers 5, 18, 23, 42, 43, 44, 45, 50, 51, 52.

(10) Numbers 13, 20, 21, 22, 24, 25, 26, 38, 39, 40, 41, 53.

for its legal conclusions that appellant has violated the provisions of the Act?⁽¹¹⁾

In resolving this question, our task is difficult because the Commission in its adjudication discusses at length, and makes findings of fact and conclusions without any effort to distinguish between de facto segregation and those discriminatory practices which are proscribed by the Act. Having assumed at the outset that it had jurisdiction over the subject matter of de facto segregation, it then proceeded to perform its duties and render its adjudication in this context. As to any particular findings of fact, it is difficult for this reason to determine whether the Commission in making such a finding did so in the context of de facto segregation or in the context of a discriminatory practice admittedly within its jurisdiction.

Illustrative of this difficulty is the Commission's finding of fact No. 13 which determines that:

"High school and junior high school pupils are accepted by respondent on a tuition basis from surrounding school districts, particularly Chester Township and Upland Township. Junior high school tuition students are both white and Negro and are assigned to Douglass and Showalter in Chester. Only Negro tuition pupils are being assigned to the all-Negro Douglass Junior High School."

(11) The Commission's determinations relating to discriminatory practices of appellant against its professional and non-professional employes are grounded upon Section 5(a) of the Act which was not pleaded in its complaint as the legal basis for the related factual averments alleged to have been unlawful. Appellant, however, has not raised this variance of allegation and proof.

This finding is factually correct as stated and is amply supported by credible evidence. However, whether the Commission adopted this finding of fact to support its conclusion that appellant was guilty of de facto segregation or of a discriminatory practice prohibited by the Act is impossible to determine. If adopted for the former purpose, it acted beyond its authority in doing so. If adopted for the latter purpose, the necessary inference taken from such facts to reach the conclusion that appellant was in violation of the Act - that Negro tuition students were assigned to all-Negro or predominantly Negro schools because of their race - is not supported by the record. Rather the record refutes any such inference as the only evidence on this subject is the testimony of school officials to the effect that geographical boundary lines were uniformly applied in the assignment of tuition pupils to local schools, and there is no evidence whatsoever that such lines were established or maintained for the sole or partial purpose of discriminating against pupils of any color or race. That de facto segregation of Negro tuition pupils resulted therefrom cannot be denied. That appellant is guilty, as a matter of inference from such facts, of violation of the Act cannot be sustained, absent substantial evidence to support such an inference. Such evidence cannot be characterized as substantial in supporting such an inference.

Findings of fact numbers 20, 21, 22, 24 and 26 relate to the issue of whether appellant is guilty of violations of Sections 4(g) and 5(i) of the Act which prohibit discriminatory practices, including segregation, against pupils in public

schools because of their race or color.

In concluding that appellant is guilty of such discriminatory practice, the Commission supports its conclusion upon the following findings:

"20. Prior to 1954, Negro pupils were required by the Chester School District to pass all-white schools near their homes to attend more distant schools which were all-Negro."

"21. During the past ten years, when boundary lines for the William Penn School were established, Negro pupils were permitted by respondent to cross such lines in order to attend the all-Negro Dewey-Mann School. As of May, 1964, such practice was not permitted."

"22. Boundary lines for elementary schools are known to have been established by respondent in August, 1954 and are known to have been changed by respondent in September, 1959, on May 4, 1964 and on August 24, 1964. During the past ten years, however, other changes in boundary lines, not recorded in the Chester School Board's minutes, were made changing the western vertical boundary line defining the school zone for the all-Negro Dewey-Mann School."

"24. Prior to May 4, 1964, at least one white pupil, Jacqueline Kelly, 905 Palmer Street, Chester, Pennsylvania, had been crossing the boundary lines defining the all-Negro Dewey-Mann school zone and attending the substantially all-white William Penn School."

"25. On May 4, 1964, the Chester School Board changed elementary school boundary lines and, among other changes, eliminated from the pre-existing boundary lines defining the school zone for the all-Negro Dewey-Mann School, an area located in the northwest portion of such zone, said area being composed of white residents only."

"26. On August 24, 1964, the Chester School Board again changed boundary lines for elementary schools, eliminating all changes but one in boundary lines put into effect on May 4, 1964. The change not disturbed by the Board's action of August 24, 1964, was the elimination of the all-white residential area from the Dewey-Mann school zone."

If these findings of fact are supported by the record they afford a factual basis for the Commission's conclusion. Taken together, a reasonable person could properly conclude that appellant in the past and currently maintains school attendance boundary lines with the intent and purpose in mind of segregating pupils by reason of their color or race contrary to the provisions of the Act. Appellant contends, however, that some of these findings are factually incorrect, questions the relevancy of others and argues that unfounded inferences are taken by the Commission from the record in making such findings and conclusions. In substance, appellant argues that while one or two isolated instances in the past did exist whereby a Negro pupil did not attend a school otherwise within the neighborhood attendance area of the child's residence, these instances were in the distant past. Appellant further contends that the record does not support findings of any such recent actions on the part of the appellant whereby school attendance boundary lines have been changed with an intent to discriminate against any pupil because of race or color or that any such condition in fact exists.

We shall first consider the evidence said by the Commission to support each of these contested findings and then consider them together.

The evidence in support of finding of fact No. 20 is solely that of a school principal of an all-Negro pupil school who testified that in 1946 appellant maintained "fluid boundary lines" requiring Negro pupils to go out of their neighborhood

areas to attend a public school.

Except for showing possible motive or intent on the part of appellant at the present time, the relevancy and materiality of this evidence and the finding of fact made therefrom is nebulous. Not only does it relate to a time long preceding the date of the Act in question, but it also precedes in time the decision of the U. S. Supreme Court in BROWN v. BOARD OF EDUCATION OF TOPEKA, 347 U. S. 483, in 1954 which afforded constitutional protection against such action on the part of public school systems.

The only evidence in support of finding of fact No. 21 is the testimony of the superintendent of schools who testified that the children of several Negro families were permitted to attend their former predominantly Negro school after new neighborhood attendance boundary lines were established for a newly erected school in the area which would have placed such children in a predominantly white school, a practice which no longer exists.

One would assume from the Commission's findings that such a practice was not discontinued until May of 1964. To the contrary, the only evidence on this point is that it was discontinued shortly after the new school was operative, some four or five years prior to 1964. Hence, while the Commission's

finding is factually correct, the inference to be taken from such facts is unsupportable. Nor can we find in such activity alone any discriminatory practice in violation of the Act as applicable to Negro pupils. A privilege afforded to a group of pupils cannot be characterized as a discriminatory practice against these same pupils. Hence, the finding in itself affords no foundation for the legal conclusion of the Commission that appellant is in violation of the Act. An exhaustive review of the record reveals that while most of the constituent facts contained in the Commission's finding of fact No. 22 are supported by the record, the inference which the Commission seeks to take from such facts is without any record support.

At various times during the course of the hearings the Commission called several school officials who testified on the subject of neighborhood school attendance boundary lines. While much of this testimony is vague, it does support a finding that in the past such boundary lines were from time to time changed. In spite of cross examination by Commission counsel of its own witnesses, however, the only evidence as to the reason for such changes was that they were incident to the completion of a new school facility or to relieve an overcrowded condition in a particular school. There is no evidence to support an inference that such changes were effected with any purpose or intent other than the factors testified to. Hence, while the finding may be factually correct, it affords no foundation whatsoever, either alone or cumulatively, for the Commission's conclusion that appellant is in violation of the

Act. Additionally, as previously noted, even assuming some other motive for its past actions in changing boundary lines at a time when such action was not unlawful affords little weight for a conclusion that the appellant is presently violating a subsequently enacted law.

The Commission's finding of fact No. 24 is supported by the record. In making this finding, and thereby attaching some weight to it in reaching its legal conclusion, the Commission discounted the explanation of a school official who testified that this one pupil - out of some 10,000 pupils - attended the wrong school because of his mistake in applying an established boundary line to an actual geographic area, and that the mistake was promptly corrected when it became known. At most, this evidence and the resulting finding of fact can be characterized as but a mere scintilla of evidence going to the issue of whether the Commission's legal conclusion is supportable by the record.

Finding of fact No. 25 is also supported by the record. Again, however, the issue is what permissible inference may be taken from such facts rather than the establishment of the facts themselves. We are again faced with rather vague, general and sometimes inconsistent testimony which the Commission contends supports its position. The evidence in support of this finding is found in the testimony of a school official who testified as to the circumstances surrounding the changing of the boundary line in question. On one occasion he stated it was done to alleviate overcrowding and on another occasion that it was done

to effect a straight boundary line. This same official and others also generally testified that neighborhood school attendance boundary lines were established, maintained and modified on the basis of population changes in relation to number of school pupils and that while de facto segregation was admittedly a factual result, no action on this subject was taken by appellant with regard to the race or color of the pupils to be served. There is also testimony in the record that while the affected geographical area in question was basically one of white residents, their school age children all attended parochial schools. Hence, the result of this action by appellant was not to transfer white pupils from a predominantly Negro to a predominantly white school, but at most the creation of an eligibility for white pupils in said area to attend a predominantly white rather than a predominantly Negro school. And there is no evidence in the record that any such change occurred. From this evidence and finding of fact the Commission infers that appellant is guilty of a discriminatory practice contrary to the provisions of the Act. Viewed even in its most favorable light, such evidence is but a mere scintilla of evidence to support the ultimate inference the Commission has taken from it and standing alone is wholly inadequate to support the Commission's conclusion.

In making its finding of fact No. 26, the Commission relies to a great extent upon the same testimony it relied upon to support finding No. 25 and draws the same inference therefrom. To the extent this finding suggests that school attendance

boundary lines were from time to time changed, it is supported by the record, as is its finding that line adjustments were made by appellant in August of 1964. That such boundary lines, with the exception of one, were restored in August 1964 to their pre-May 1964 positions lacks definitive record support. Again, however, it is the inference to be taken from the supporting record that is of importance here. In reviewing this and the preceding finding by the Commission, we have read and re-read the record and reviewed the exhibits in a vain search for any evidence to support the Commission's conclusion. We can find none. Despite cross examination of its own witnesses, despite questions framed to elicit a particular answer, and despite comments, observations and questions by the Commission's counsel on the subject of de facto segregation and possible means to alleviate it during the course of his examination of these witnesses, they persisted in their position that school attendance boundary lines were established and from time to time changed to meet neighborhood school population problems, and that such actions were not taken with regard to the race or color of the pupils. It is from this evidence that the Commission finds and concludes by inference that appellant is guilty of discriminatory practices as to its pupils contrary to the provisions of the Act.

Recognizing the importance of this case as not only one of first impression on the subject of the jurisdiction of the Commission, but also as one on a subject which occupies the minds of all citizens, we have carefully and deliberately weighed

the record in search of support for the Commission's findings and concluding inference that appellant has discriminated against its pupils because of race or color. We have reviewed the individual findings and the record said to support them. We have concluded that taken individually most are wholly unsupported by any substantial evidence or by at best a mere scintilla of evidence, and that individually none of such findings support the Commission's legal conclusion on this issue. We are also of the opinion that considered collectively these findings are not supported by substantial evidence from which one could properly infer the appellant to have been in violation of the Act. We, therefore, conclude that the Commission, in determining as a matter of law that the appellant is in violation of the Act in discriminating against its pupils by reason of their race or color, is not supported by substantial evidence and is therefore arbitrary and capricious.

While the Commission's findings of fact Nos. 38, 39, 40 and 41 essentially relate to the subject matter of de facto segregation,⁽¹²⁾ which subject we have already concluded as not being within its jurisdiction, in its brief in support of these findings it seems to contend that since the United States Supreme Court has declared separate but equal school facilities to be violative of a person's constitutional rights, there is no reason why separate schools created by housing patterns should be considered differently. To the extent that such a contention

(12) Together with those listed in footnote 9.

inferentially raises constitutional questions, we need not pass upon them as both parties agree that no constitutional issues have been raised in this case or are before this Court on appeal. ⁽¹³⁾ If such a contention is advanced in support of the Commission's position that it has jurisdiction over the subject matter of de facto segregation, we have already concluded that it does not. At most, therefore, it is but an argument in persuasion of the position that the subject of de facto segregation should be brought within the jurisdiction of the Commission, an argument properly directed to the Legislature and not to this Court.

Finding of fact No. 53 by the Commission consists of a summation of other findings, including many relating solely to the subject matter of de facto segregation, and also includes a number of facts upon which the Commission chose not to make any conclusion of law or require action on the part of the appellant in its final order. Both parties in their briefs and argument recognize the summary nature of this finding. Accordingly, we do not deem it necessary to comment further thereon.

Having determined (a) that the Commission had the authority to initiate this proceeding against appellant; (b)

(13) As to whether de facto segregation is violative of constitutional protection see: TAYLOR v. BOARD OF EDUCATION CITY OF NEW ROCHELLE, 191 FED. SUPP. 181 (S.D.N.Y. 1961); aff'd 294 FED. 2d 36 (2d Cir. 1961); cert. denied 368 U. S. 940 (1961); EVANS v. BUCHANAN, 207 FED. SUPP. 820 (1962); BELL v. SCHOOL CITY OF GARY, INDIANA, 324 FED. 2d 209 (1963); cert. denied 377 U. S. 924 (1964).

that it is without statutory authority to act on the subject of de facto segregation; and (c) that its findings of fact in support of its legal conclusion that appellant is in violation of the provisions of the Act prohibiting discrimination against pupils by reason of race or color were not supported by substantial evidence, there remain for disposition certain portions of the Commission's conclusions of law, "decision" and final order to which appellant has excepted and which will require further comment because of their generality.

Appellant has excepted to five of eight conclusions of law made by the Commission. These conclusions state:

"4. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the respondent, Chester School District.

"5. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the subject matter of this proceeding and over the instant complaint.

"6. The unlawful discriminatory practices involved herein have occurred and still occur within the Commonwealth of Pennsylvania and have deprived Negroes, residents of the City of Chester, Delaware County, Pennsylvania, of their civil rights.

"7. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(a) of the Pennsylvania Human Relations Act, in that the respondent assigns only Negro teachers to all-Negro schools and only Negro clerks to all-Negro schools.

"8. At all times herein mentioned, respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4(g) and 5(i) of the Pennsylvania Human Relations Act, in that (1) respondent maintains segregated all-Negro and substantially all-Negro

public schools within its school system,
(2) respondent has established school zones which confine the Negro to all-Negro schools,
(3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester,
(4) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (5) respondent has failed to accept or adopt any affirmative program or plan whereunder the schools it administers will be effectively desegregated within a reasonable time."

For reasons heretofore set forth, appellant's exception to conclusion of law No. 4 will be dismissed and will be sustained in part to No. 5 to the extent that the conclusion includes the subject matter of de facto segregation. Appellant's exception to conclusion No. 6 will likewise be sustained to the extent that it encompasses the subject matter of de facto segregation. To the extent that this conclusion also includes a legal determination that appellant in establishing, maintaining and revising neighborhood school attendance boundary lines did so in violation of the Act, appellant's exception thereto will also be sustained as any such conclusion is not founded upon substantial evidence for the reasons hereinbefore set forth.

✓ Appellant's exception to conclusion No. 7 will be dismissed. Other than contesting the Commission's authority to initiate these proceedings against appellant on the subject matter of this legal conclusion - as well as all other subject matters contained in the complaint - appellant neither attacks the facts upon which this conclusion is founded nor that it is within the prohibited practices set forth in the Act.

The Commission's conclusion No. 8 is in part a summary of previous conclusions and in part conclusions pertaining to other subject matters. To the extent that the components of this conclusion relate to the subject matter of de facto segregation,⁽¹⁴⁾ appellant's exceptions thereto will be sustained as we have concluded de facto segregation to be beyond its jurisdiction. To the extent that it includes a legal determination that appellant in maintaining neighborhood school attendance boundary lines in violation of the Act, appellant's exception will likewise be sustained for reasons previously expressed. Clause (3) of said conclusion, to the effect that appellant engaged in a discriminatory act in not providing kindergartens in all-Negro schools, is not seriously contested by appellant and we are advised in the contesting parties' briefs that this condition has been or is being remedied. This portion of the conclusion, therefore, will be sustained. Clause (4) of said conclusion - to the effect that appellant engaged in a discriminatory practice in permitting the physical condition of all-Negro school buildings to be inferior to that of other school buildings in the school system - was not contested by appellant as lacking substantial evidence to support it or as being beyond the discriminatory practices prohibited by the Act. It, therefore, will be sustained. It is to be noted, however, that the Commission in its final order took no action on this conclusion for the avowed reason that directing this condition to be remedied would pro-

(14) Clauses (1), (2) and (5) of conclusion of law No. 8.

mote continued de facto segregation. At oral argument the Court was advised that these conditions were being remedied.

After having made its conclusions of law, the Commission in its adjudication next set forth the "Commission's Decision" to which portions thereof appellant specifically excepted. This novel portion of the adjudication is essentially a restatement or summary of previously stated conclusions of law. No purpose would be served in restating these conclusions and we will consider the same as surplusage in disposing of this appeal.

Finally, appellant generally excepts to the Commission's final order which affirmatively directs appellant to take particular actions or procedures on the various subject matters which it found to exist and to be violative of the discriminatory practices prohibited by the Act. The contents of this final order have hereinbefore been summarized. The subject matters encompassed within the first five numbered paragraphs we have concluded - or appellant has not contested - as being within the discriminatory practices prohibited by the Act. De facto segregation, the subject matter of paragraphs 6 and 7 of the final order, we have concluded as being beyond the authority of the Commission. It, therefore, lacks jurisdiction to make any order against appellant concerning the same and appellant's exception to the final order will be sustained to this extent.

For the reasons heretofore expressed, we make the following

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission under the provisions of the Pennsylvania Human Relations Act has the authority to initiate on its own behalf a complaint against a school district of the Commonwealth alleging the respondent to be engaged in one or more discriminatory practices prohibited by the Act.

2. The Pennsylvania Human Relations Act does not prohibit as a discriminatory practice in the public school systems of the Commonwealth the practice of establishing, maintaining or revising neighborhood school attendance boundary lines when such boundary lines are established, maintained or revised without regard to the race, color, religious creed or national origin of its pupils or potential pupils, even though such practice results in racial imbalance in particular neighborhood schools in the system.

3. There is no substantial evidence in the record made at the hearings before the Commission to support its conclusion of law that the Chester School District, subsequent to the adoption of the Pennsylvania Human Relations Act, established, maintained or revised its neighborhood school attendance boundary lines because of or by reason of the race, color, religious creed or national origin of its pupils or potential pupils.

4. The conclusions of law of the Pennsylvania Human Relations Commission that the Chester School District, contrary

to the provisions of the Pennsylvania Human Relations Act, has committed unlawful discriminatory practices in that (a) it assigns only Negro teachers to all-Negro schools and only Negro clerks to all-Negro schools, (b) it has failed to make available kindergartens in sufficient numbers to accommodate the children of Negroes living in Chester, and (c) it has permitted the physical condition of all-Negro school buildings to be inferior to that of other school buildings in its system, are supported by substantial evidence.

Accordingly, we make the following

O R D E R

AND NOW, this *7th* day of February, 1966, the appeal of Chester School District is sustained in part and dismissed in part and the adjudication of the Commission is modified as follows:

1. Its conclusions of law Nos. 1, 2, 3 and 4 are affirmed.
2. Its conclusion of law No. 5 is affirmed except to the extent it includes a determination that the Commission has jurisdiction over the subject matter of de facto segregation in the public schools. As encompassing this subject, it is set aside.
3. Its conclusion of law No. 6 is affirmed in part to the extent that it includes discriminatory practices not contested by the appellant as being within its jurisdiction. It is

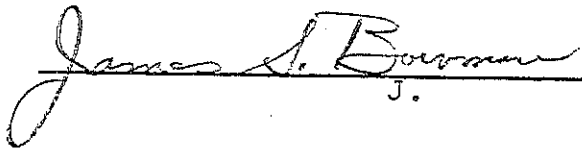
set aside to the extent that it includes a determination that the Commission has jurisdiction over de facto segregation in the public school system and that it determines appellant to have unlawfully discriminated against its pupils or potential pupils contrary to the Act in the establishment, maintenance and revision of school attendance boundary lines.

4. Its conclusion of law No. 7 is affirmed.

5. Clauses (1), (2) and (5) of its conclusion of law No. 8 are set aside. Clauses (3) and (4) of said conclusion are affirmed.

6. Paragraphs 1 through 5 of its final order are affirmed and paragraphs 6 and 7 thereof are set aside.

Each party is to bear its own costs.


J.

(Judge William W. Lipsitt took no part in the consideration or determination of this case.)

IN THE SUPREME COURT OF PENNSYLVANIA

Middle District

PENNSYLVANIA HUMAN RELATIONS COMMISSION,	:	No. 82 May Term, 1967
	:	
Appellant	:	
	:	
V.	:	Appeals from the Order of the Superior Court, No. 12 March Term 1967 at No. 637 Commonwealth Docket, 1964.
CHESTER SCHOOL DISTRICT	:	

OPINION OF THE COURT

ROBERTS, J.

FILED: SEPTEMBER 26, 1967

The crux of this controversy concerns the authority of the Pennsylvania Human Relations Commission over charges of alleged de facto segregation in the school system of City of Chester.¹ Akin to this central problem is whether the Commission's findings of fact are supported by substantial evidence.

In November 1964, after a series of public hearings conducted in the City of Chester, the Commission ordered the Chester School District "by and through the Chester School Board, its officers, agents, and employes," to "take immediate steps to desegregate effectively" six

1. As the courts below observed, de facto segregation "remains undefined in its full concept," yet at the same time it is a meaningful term. 85 Dauph. 18, 25, 224 A.2d 811, 820 (1966). According to one student of the problem, "de facto segregation may be defined simply as the racial imbalance in schools which occurs when the number of Negroes in a compact Negro area becomes so great that drawing school zone boundaries on a geographical basis causes the great majority of Negro children to attend schools which are overwhelmingly Negro in population." Kaplan, Segregation Litigation and the Schools -- Part I: The New Rochelle Experience, 58 N.W.L. Rev. 1, 2 (1963). See also, United States v. Jefferson County Bd. of Educ., 372 F.2d 836, 878 n. 92 (5th Cir. 1966) for other definitions of the term.

public schools whose enrollments were either all Negro or substantially all Negro.² On appeal the Court of Common Pleas of Dauphin County, sitting as the Commonwealth Court, held that unless the Chester School District intentionally fostered or maintained segregation in the public schools, the Commission exceeded its jurisdiction in ordering the School District to take affirmative steps to relieve racial imbalance in its schools.³ Moreover, the court further held those findings relied upon by the Commission to substantiate such responsibility were arbitrary and capricious. The Superior Court, adopting the Dauphin County Court's opinion as its own, affirmed; Judge Hoffman filed a dissenting opinion in which Judge Spaulding joined, 209 Pa. Superior Ct. 37, 224 A.2d 811 (1966). We granted allocatur. For reasons stated hereinafter we reverse the decisions of the courts below.

I. The Factual Background

The academic year 1963-64 was one of unfortunate racial strife for the citizens of Chester. Negro residents of the city, assisted by civil rights advocates from neighboring communities, conducted a series of protest demonstrations aimed at inducing city officials to furnish their children quality, integrated education and to halt certain administrative practices which they alleged resulted in racial discrimination. The School Board contended that the all Negro schools were the result of residential patterns for which they were not responsible, and denied the allegations of purposeful discrimination. Largely as a result of the

2. Douglass Junior High School and the following elementary schools: Dewey-Mann, Franklin, Lincoln, Washington, and Watts. The Chester School System consists of one senior high school, four junior high schools, and eleven elementary schools.

3. The Dauphin Court's opinion is reported at 85 Dauph. 18, 224 A.2d 811, 816 (1966).

obstinate refusal by both the School Board and the civil rights groups to meet with each other in an attempt to solve their differences, relations between the Negro and white community rapidly deteriorated. Tensions between the two groups reached a climax on the evenings of March 27 and 28 when, during the course of massive civil rights demonstrations, the police arrested scores of individuals to accompanying cries of police brutality.

Sometime prior to the March demonstrations the Mayor of Chester had appointed a Chester Commission on Human Relations which, after study, recommended that the School Board integrate the faculties and develop a plan for integration of the elementary schools. The School Board, however, remained adamant in its support of the existing pattern of neighborhood schools and seemed to foreclose any possibility that it might voluntarily take steps to alleviate the cause of discontent in the Negro community. With the almost total collapse of interracial good will following the March demonstrations, the Chester Human Relations Commission became defunct. Up to this time the Pennsylvania Human Relations Commission, while cooperating with the Chester Commission, had not directly participated in the Chester problem. However, in mid April, at the specific request of former Governor William Scranton and the late Attorney General Walter Alessandrini, the Pennsylvania Human Relations Commission intervened and succeeded in temporarily halting the demonstrations. The Commission also arranged a meeting on April 20, 1964, between the School Board and civil rights leaders, but this meeting failed even to establish a framework for future discussions. Thereafter on April 22 and 24 the demonstrations were resumed; again mass arrests were made, many demonstrators were injured, and charges of police brutality were levied.

With the crisis in Chester worsening, an emergency meeting was held in Philadelphia on Sunday, April 26. At this meeting, attended by the Governor, the Attorney General, the Mayor of Chester, the Chester City Solicitor, counsel for the Chester School Board and representatives of the Pennsylvania Human Relations Commission, it was decided that the Commission would hold immediate public hearings on the charges of alleged racial discrimination in the Chester School System, that the Commission would attempt to induce the parties to settle the controversy themselves, but that if necessary the Commission would issue an appropriate order.

The participants in the April 26 meeting expected the civil rights groups would act as the complainants in the proceedings. However, when the public hearings commenced these groups declined to do so because of expressed uncertainties about the power of the Commission to issue an effective order, and because they were afraid their participation in the hearings would prejudice their standing in the event they decided to file a court suit.⁴ Under the circumstances the Commission filed its own complaint wherein it set forth verbatim the same nine charges made by the civil rights groups in a letter addressed to the Commission's General Counsel. Public hearings were held on 4, 5, 6, and 14 May, 11 June, 17 and 29 September 1964. In addition on July 13 an off the record meeting was held between the Commission and the representatives of the School District in an attempt to reach a solution without the necessity of issuing a formal adjudication and order. This attempt proved unsuccessful. On November 20, 1964, the Commission issued its opinion, which included

4. When the Human Relations Act is invoked, the procedures and remedies provided therein are exclusive. Act of October 27, 1955, P.L. 744, §12, as amended, 43 P.S. §962.

fifty-three findings of fact and eight conclusions of law. In its decision the Commission dismissed two of the nine allegations charged in the complaint but found:

"The respondent has committed and continues to commit unlawful discriminatory practices in violation of Sections 4 (g), 5 (a) and 5 (i) of the Pennsylvania Human Relations Act, in that (1) respondent maintains segregated, all-Negro and substantially all-Negro public schools within its school system, (2) respondent has established public school zones which confine the Negro pupils to all-Negro schools, (3) respondent has failed to make available kindergartens in sufficient number to accommodate the children of Negroes living in Chester, (4) respondent assigns only Negro teachers and only Negro clerks to all-Negro schools, (5) respondent has permitted the physical condition of the all-Negro school buildings to be inferior to that of other school buildings in its system, and (6) respondent has failed to accept or adopt any affirmative plan whereby the public schools it administers will be effectively desegregated within a reasonable time."

At the same time, the Commission issued its final order wherein it directed the Chester School District to cease and desist from these practices and to take immediate corrective measures.

As provided for in section 10 of the Pennsylvania Human Relations Act,⁵ the School District appealed the Commission's decision under the

5. Ibid. §10, 43 P.S. §960.

provisions of the Administrative Agency Law.⁶ Initially, exceptions to twenty-six of the fifty-three findings of fact made by the Commission, its conclusions of law, decision, and final order were filed, but several of these exceptions have since been abandoned. Specifically, the School District no longer objects to that part of the Commission's order concerning its practice of assigning Negro clerks and teachers to all Negro schools nor with its failure to provide most Negro children with kindergartens, although with respect to the latter it continues to believe there was no legal or factual basis for the Commission's conclusions. Indeed the School District claims to have made substantial progress regarding both complaints. Preserved for our review are the crucial questions of jurisdiction and whether the record supports the Commission's finding that the neighborhood school system as applied in Chester violates the Pennsylvania Human Relations Act.

II. The Procedure Adopted

The School District takes the position that, in the absence of a complaint filed by an aggrieved individual, the Commission possessed authority only to conduct an investigatory hearing but could not itself serve as the complainant or issue a final order. This procedural argument was rejected by the courts below; since we are in accord with the reasons expressed in the Dauphin County Court's opinion on this aspect of the controversy, 85 Dauph. at 22-25; 224 A.2d at 818-20, there is no need to consider it anew.

6. Act of June 4, 1945, P.L. 1388, 71 P.S. §1710.1 et seq.

III. The Commission's Jurisdiction

The School District does not suggest that it would be unconstitutional for the Legislature to command them to consider race in their districting proposals in order to achieve a semblance of racial balance in its schools, nor do we believe there would be any merit in such a contention. See Jackson v. Pasadena City School Dist., 59 Cal.2d 876, 382 P.2d 878 (1963); Guida v. Board of Educ. of New Haven, 26 Conn. Supp. 121, 213 A.2d 843 (1965); School Committee of Boston v. Board of Educ., _____ N.E. 2d _____, 35 Law Week 2743 (Mass. 1967); Booker v. Bd. of Educ. of Plainfield, 45 N.J. 161, 212 A. 2d 1 (1965); Balaban v. Rubin, 14 N.Y. 2d 193, 199 N.E. 2d 375, 250 N.Y.S. 2d 281, cert denied, 379 U.S. 381, 85 S.Ct. 148 (1964); cf. Hobson v. Hansen, _____ F. Supp. _____, _____ (D. D.C. June 19, 1967) (Civ. No. 82-66); United States v. Jefferson County Bd. of Educ., 372 F. 2d 836 (5th Cir. 1966), aff'd en banc, March 29, 1967 (per curiam). But see Tometz v. Board of Educ. of Waukegan City School Dist., _____ N.E. 2d _____ (Ill. June 20, 1967) (Dock. No. 40292--Mar. 1967). Rather its position is that the Legislature has not chosen to require this, and in the absence of such a directive, the School Board need not consider race in drawing boundary lines. The School District, while believing de facto segregation to be regrettable from an educational standpoint, views the solution as lying in the integration of the community's residential sections over which it has no control.

Both parties recognize the correctness of their respective views regarding the Commission's jurisdiction depends upon the construction of the phrase "directly or indirectly" in the context of the following statutory language:

"It shall be an unlawful discriminatory practice. . .for . . .any place of public accommodation. . .to. . .Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry or national origin, either directly or indirectly, any of the accommodations, advantages, facilities of privileges of such place of public accommodation. . . ."

Pennsylvania Human Relations Act, §5, Act of October 27, 1955, P.L. 744, as amended by the Act of February 28, 1961, P.L. 47, 43 P.S. §955(i)(1). By virtue of §4, 19 P.S. §954, public schools are places of public accommodation.

In adopting the construction urged by the School District, the courts below reasoned: "As used in this particular statute, it is clear that the phrase 'either directly or indirectly' relates to and modifies the words 'refuse, withhold from, or deny.' Such words contemplate intentional or affirmative acts on the part of the wrongdoer," 85 Dauph. at 27, 224 A.2d at 821. We cannot agree. To begin with the Legislature has specifically mandated in section 12 that "the provisions of this act shall be construed liberally for the accomplishment of the purposes thereof." In our view a more reasonable construction of the disputed phrase would be that where, as here, the responsible party has the power to take corrective measures, indeed of necessity it must redistrict periodically, its failure to act amounts to the continued withholding from most Negro children the admitted advantages of an integrated education. Total non-action by school boards is thus impossible and even seemingly neutral

decisions frequently encourage de facto segregation.⁷ Such a construction, of course, does not mean that a totally integrated school system must be achieved overnight or that Chester need abandon neighborhood schools but only that complete inaction under the circumstances of this case amounts to a denial of these advantages.

Along these lines, and without benefit of a similar statute, the California Supreme Court recently observed in considered dictum:

"(E)ven in the absence of gerrymandering or other affirmative discriminatory conduct by a school board, a student under some circumstances would be entitled to relief where, by reason of residential segregation, substantial racial imbalance exists in his school. So long as large numbers of Negroes live in segregated areas, school authorities will be confronted with difficult problems in providing Negro children with the kind of education they are entitled to have. Residential segregation is in itself an evil which tends to frustrate the youth in the area and to cause anti-social attitudes and behavior. Where such segregation exists it is not enough for a school board to refrain from affirmative discriminatory conduct. The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographic basis

7. See note 12 infra and accompanying text. An analogy has been suggested in Kaplan, supra note 1 at 55, between the failure of school boards to alleviate racial imbalance and the failure of state legislatures to redistrict; in the latter case there is clearly an affirmative obligation to take corrective action, e.g., Baker v. Carr, 369 U.S. 186, 82 S.Ct 691 (1962).

without corrective measures. The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause."

Jackson v. Pasadena City School Dist., 59 Cal. 2d 876, 382 P.2d 878, 881-82 (1963). See also Barksdale v. Springfield School Committee, 237 F.Supp. 543 (D. Mass), vacated on other grounds, 348 F.2d 261 (1st Cir. 1965).

The canons of statutory construction require that a statute be read in a manner which will effectuate its purpose, a task which compels consideration of more than the statute's literal words. E.g., Chartiers Valley Joint Schools v. Allegheny County Bd. of School Directors, 418 Pa. 520, 211 A.2d 487 (1965); Rossiter v. Whitpain Twp., 404 Pa. 201, 170 A.2d 586 (1961); New York Life Ins. Co. v. Guaranty Corp., 321 Pa. 359, 184 Atl. 31 (1936); Act of May 28, 1937, P.L. 1019, 46 P.S. §551. In ascertaining this legislative purpose, especially when the act in question is a manifestation of a fundamental policy of the Commonwealth, courts may properly consider the historical setting which gave impetus to its enactment. See New York Life Ins. Co. v. Guaranty Corp., supra; Orlosky v. Haskell, 304 Pa. 57, 155 Atl. 112 (1931); 50 Am. Jur. §295 (1944). Thus even if we assume arguendo that the interpretation we have adopted is not apparent solely from the wording of the statute, any latent ambiguity disappears once we examine the circumstances of its passage.

In 1954, the Supreme Court of the United States ushered in a new era of constitutional development when it held segregated educational facilities deprived children of minority groups the opportunity to obtain an education equal to that received by their Caucasian counterparts. Brown v. Board of Educ., 347 U.S. 483, 74 S.Ct. 686 (1954). The consolidated cases decided in Brown involved areas where the state gave active support to a dual system of schools, and for several years the greatest emphasis was placed upon achieving compliance with the Supreme Court's mandate in the southern states. See, e.g., Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1399 (1958). However, Negro leaders recognized that their children were not receiving equal educational opportunities in northern communities, where the schools were frequently segregated on a de facto basis, and in the late fifties they began to focus their attention on this problem. See, e.g., Taylor v. Board of Educ. of New Rochelle, 191 F.Supp 181 (S.D.N.Y.), aff'd, 294 F.2d 36 (2nd Cir.), cert. denied, 368 U.S. 940, 82 S.Ct. 382 (1961).

The legislative development of the Human Relations Act casts considerable light upon the legislative intention as it effects the present litigation. In 1955, the Pennsylvania Fair Employment Practice Commission was created to supervise the provisions of the then newly enacted Pennsylvania Fair Employment Practice Act.⁸ When this act was amended in 1961 to include discrimination in housing and public accommodations, it was retitled the Pennsylvania Human Relations Act. The Commission's name of course was also changed to reflect its broadened jurisdiction. Two of the 1961 amendments are especially pertinent here: (1) Section 5

8. Act of October 27, 1955, P.L. 744.

(i) (1), the section under which the Commission has proceeded in the instant case, first became a part of our statutory law; (2) the Legislature amended the section dealing with its findings and declaration of policy so as to specifically refer to the evils resulting from racial segregation in the public schools. Section 2(a) now reads as follows:

"The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, age or national origin is a matter of concern of the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants."⁹

9. Ibid., as amended by the Act of February 28, 1961, P.L. 47, §1, 43 P.S. §953 (Additions in italics).

Had the Legislature intended to reach by the 1961 amendments only de jure segregation, its legislative pronouncements would have been unnecessary. The 1954 Brown decision made it eminently clear that de jure segregation -- racial isolation produced by the acts of public officials -- is unconstitutional. A legislative pronouncement to this effect, and this effect only, would be mere gild on the lily.

Because the courts below found the underlying inequities, as expressed in this declaration of policy, not to include de facto segregation as such, it refused to conclude that the Legislature intended to grant the Commission jurisdiction over problems of racial imbalance. Instead the courts reasoned: "It is significant to note that the Legislature in this policy declaration states that 'racial segregation in the public schools' is the result of discrimination in the area of the denial of equal housing accommodations. . . . If by the enforcement of the Act discrimination in the areas of employment and housing is largely overcome, or through the recognition by man of the inherent worth of his neighbor regardless of race, creed or color, de facto segregation would to a substantial degree also be overcome as racial imbalance in the public schools is essentially a result of patterns of neighborhood school attendance districts." 85 Dauph. at 28, 224 A.2d at 822. (Emphasis in original.)

In our view this is a vast oversimplification and does not adequately reflect the mandate that the statute be liberally interpreted to reflect its purpose. The restrictive construction placed upon this section by the courts below ignores completely the legislative con-

clusion that racial segregation in the public schools, whatever its source, threatens "the peace, health, safety and general welfare of the Commonwealth and its inhabitants."¹⁰ There are many social and economic causes for the rigidified residential patterns which dominate our communities, and despite anti-discrimination laws the barriers to integrated housing are often difficult to breach.¹¹ Indeed the way to attack discrimination in housing and employment may be to begin with a program of quality integrated education. The best way to demonstrate the "inherent worth of (one's) neighbor" is to place individuals in a situation where they are exposed to their neighbor. This is especially true if a child can become aware of his neighbors' capabilities before

10. Compare the letter of President Lyndon B. Johnson to John A. Hannah, Chairman, U.S. Commission on Civil Rights, reprinted in, *Racial Isolation in the Public Schools* (U.S. Commission on Civil Rights 1967) iv:

"(L)ong after we have done all we can to eliminate past inequities, we will continue to pay their costs in stunted lives. Because millions of Negroes were deprived of quality education and training in basic skills, because they were given to believe that they could aspire only to the most menial and insecure places in our society, they are seriously handicapped in taking advantage of opportunities afforded by new laws, new attitudes and an expanding economy. We can no longer tolerate such waste of human resources.

"Although we have made substantial progress in ending formal segregation of schools, racial isolation in the schools persists -- both in the North and the South -- because of housing patterns, school districting, economic stratification and population movements. It has become apparent that such isolation presents serious barriers to quality education."

11. For a comprehensive study of the socio-economic causes of racial isolation, see *Racial Isolation in the Public Schools* (U.S. Commission on Civil Rights 1967) 17-77.

his prejudices have had a chance to develop, but inter-racial cooperation may also have a beneficial effect on the thinking of adults. Thus, participation in such school activities as the P.T.A. may promote a better understanding which is the crucial first step toward the achievement of a truly integrated society. To paraphrase Mr. Justice Holmes, one such experience may be worth several volumes of sociology.

In line with their interpretation of §5(i)(1), supra, the courts below also concluded that the last clause of the declaration of policy contemplated an affirmative "practice or policy" on the part of the actor. Yet seemingly neutral decisions by school officials, such as construction sites of new schools, school size, attendance zones, and methods of relieving overcrowded schools, frequently perpetuate racial isolation.¹² Moreover, some of the actions taken by the Chester School District can hardly be classified as neutral. For example, only after the Commission issued its order in the present case did the School Board abandon its practice of assigning only Negro teachers and clerks to all Negro schools, although the consideration of race in faculty assignments is violative of Brown and precludes the establishment of an integrated school system.¹³ As one federal district court recently phrased it: "(T)he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a 'colored school' just as certainly as if the words

12. See *ibid*, at 44-59.

13. See, e.g., Bradley v. School Bd. of Richmond, 382 U. S. 103, 86 S.Ct. 224 (1965); Smith v. Board of Educ. of Morrilton, 365 F.2d 770, 778 (8th Cir. 1966).

were printed across its entrance in six-inch letters." Brown v. County School Bd. of Frederick County, 245 F.Supp. 549, 560 (W.D. Va. 1965).

Finally, we must be cognizant of the consequences of a particular interpretation. Act of May 28, 1937, P.L. 1019, 46 P.S. §551. The interpretation adopted by the courts below would almost totally deprive the Commission of effectiveness in the area of racial imbalance, for as the New York Court of Appeals observed in an early case interpreting New York's anti-discrimination law: "One intent on violating the Law Against Discrimination cannot be expected to declare or announce his purpose." Holland v. Edwards, 307 N.Y. 38, 45, 119 N.E.2d 581, 584 (1954). Pennsylvanians are justly proud of this Commonwealth's leadership in promoting equal opportunities for all its citizens, and we believe it to be more than coincidental that the 1961 amendments were adopted at a time when many educators and sociologists were giving serious attention to the educational problems posed by de facto segregation.

Nor do we find the counter arguments advanced by the School District against the construction we have adopted persuasive. Essentially, the School District believes Commission jurisdiction in this area will result in the usurpation of its functions under the Public School Code. While the School District agrees that if it were guilty of purposeful discrimination (a question we do not now pass upon), the Commission could issue a cease and desist order, it contends that "regardless of the Commission's findings, its order must be limited to requiring the end of the discriminatory practice." But if the Commission can order an end to the discriminatory practice, it must be able to do so effectively; indeed the simple answer to the School District's contention is found in section 9

of the Human Relations Act which not only instructs the Commission to enter affirmative orders but also requires those in violation of the act to file a report indicating the manner of compliance.

In particular the School District is concerned that the Commission's order will result in forcing them to adopt a system of busing and in the destruction of the neighborhood school system. In order to prevent this they urge us to hold that the Commission is without jurisdiction over problems of racial isolation. We are not at all convinced these fears are justified, but in any event they do not warrant our subverting the legislative goal.

Because of acute overcrowding in certain schools, the Chester School District has found it necessary, for several years prior to the hearings in this case, to transport a number of its pupils out of their neighborhoods to less crowded schools, and in at least one instance, to temporary classrooms in a housing project. Under the Public School Code a school district need not provide transportation for pupils who live within a mile and a half of their schools.¹⁴ Since the City of Chester, with eleven elementary schools and four junior high schools, is only three miles wide, it would seem that the threat of additional mass busing would not be a serious handicap to the integration of its public schools, a conclusion with which several of the School District's witnesses agreed. Moreover, at no time during the hearing did the Commission urge Chester officials to utilize extensive busing as a means of alleviating its racial imbalance. Indeed under the so-called Wolff plan, which was

14. See *Landerman v. Churchill Area School Dist.*, 414 Pa. 530, 200 A. 2d 867 (1964).

submitted by one Dr. Max Wolff¹⁵ and was received favorably by the Commission, there would have been a substantial savings to the School District because, according to its author, there would be no need to bus any pupils. Although a witness later disputed Dr. Wolff's conclusions about busing, even he conceded that, under his interpretation of the Wolff plan, only \$2,000 more, or about an 8% increase, than was currently being expended for busing would be needed.

The argument that the Commission's order will destroy the neighborhood school system completely distorts the historical rationale of neighborhood schools. Traditionally, the neighborhood school has been an exercise in democracy, "a single structure serving a heterogeneous community in which children of varied racial, cultural, religious, and socio-economic backgrounds were taught together -- the proverbial melting pot."¹⁶ One educator has recalled:

15. Dr. Wolff, a community consultant and educator has in recent years specialized in developing programs aimed at the effective desegregation of public schools. He has testified for the proponents of desegregation in litigation involving, among others, the cities of New Rochelle, N.Y., Gary, Ind., and Plainfield, N.J.

16. Carter, De Facto School Segregation: An Examination of the Legal and Constitutional Questions Presented, 16 West. Res. L. Rev. 502, 507 (1965).

"Most men and women over 40 recall a childhood schooling in which the sons and daughters of millowners, shop proprietors, professional men, and day laborers attended side by side. School boundaries, reaching out into fields and hills to embrace the pupil population, transcended such socio-economic clusterings as existed."¹⁷

However, increasing population density in our nation's urban areas have caused neighborhoods to shrink drastically until today convenience is the most common justification for school attendance zones. Thus, "because of rigid racial and socio-economic stratification, ethnic and class similarity has become the most salient present-day neighborhood characteristic, particularly in urban areas. The neighborhood school, which encompasses a homogeneous racial and socio-economic grouping, as is true today, is the very antithesis of the common school heritage."¹⁸ Rather than neighborhood schools, we have all too frequently developed a system of ghetto schools. Integration need not see the demise of neighborhood schooling, although unquestionably new patterns of districting will have to occur. Thus, the Commission found Chester to be at the best a three neighborhood community and Dr. Wolff testified that he believed the School Board by proper planning could offer every child the true benefits of the neighborhood school. Up to now, however, Chester has not begun to realize this potential.

17. Quoted in Racial Isolation in the Public Schools, supra note 11 at 40.

18. Carter, supra note 16 at 507.

The Human Relations Commission's primary function is to assure compliance with the act through "conference, conciliation and persuasion."¹⁹ Only after this approach has failed, is it empowered to hold hearings, make findings of fact, and issue a final order. Such a procedure was followed in the instant case.

IV. The Evidence

Having concluded that the Commission's view of its jurisdiction is correct, we turn to a consideration of the evidence adduced at the hearings. There can be no serious doubt that the education offered pupils in all Negro or substantially all Negro schools is inherently inferior to that offered in integrated schools.²⁰ Even the Chester School District's brief contains several passages which support this basic proposition, such as:

"As to the racial intermingling of the children, solely because of their different color, the School District agrees that as a matter of morals and better educational standards it is better, where it is reasonably possible to do so, to have no all-Negro or predominantly all-Negro schools."

One of the School Board's witnesses, the principal of Douglass Junior High School, described the disadvantages of a segregated education in the following terms:

19. Act of October 27, 1955, P.L. 744, 9, as amended, 43 P.S. 959.

20. See, e.g., Racial Isolation in the Public Schools (U.S. Commission on Civil Rights 1967); Equality of Educational Opportunity (U.S. Office of Education 1966).

"Students are a product of the learning experiences which are provided for them, their experience of interacting with people of various backgrounds socially, economically and culturally just as you don't learn to swim by just looking at a swimming pool and without ever getting into it. You don't learn to understand people unless you associate with them. Learning is not confined to just the direction which is given to four walls of a classroom. Children learn through their association with each other in the cafeteria, eating lunch together. They learn through going on class trips together, journeys and educational excursions. They learn in the way in which they appreciate programs. They learn in the way in which they work together on committees in preparing class projects. And there is no way that a teacher, no matter how excellent she is, there is no way that he or she can give a child this experience."

Under the circumstances we need not consider the extent to which the Chester School District was responsible for the existing condition. We note only that there was evidence which suggests, in the words of the Commission, "that the segregation of the public schools in Chester is not entirely accidental."²¹ While these findings add weight to its adjudication on the de facto issue, we need not, and do not decide,

21. Prior to 1954, school segregation in Chester apparently had official sanction. See, e.g., Report to Board of School Directors of the City of Chester, March 9, 1964, Complainant's Exhibit No. 15.

whether its conclusion that the school authorities purposefully perpetuated the existing segregated structure meets the substantial evidence test.²²

The Commission's final order of November 20, 1964, contained seven provisions. Nos. 1-4 ordered the School District to cease and desist from following practices which had resulted in the substantial segregation of the faculties and staffs; the School District had abandoned its objections to these portions of the final order. No. 5 ordered the School District to establish kindergartens in three all Negro schools and while it objects to the propriety of this order, the School Board does not press its challenge here; indeed, according to its brief, it has already established six additional kindergartens. No. 7 required the School District to take certain affirmative action which, in the Commission's judgment, would effectuate the purpose of the Human Relations Act and to file a report with the Commission indicating the steps taken in compliance with the order. No. 7 also is not challenged except for those portions which require the School District to formulate a plan for the alleviation of racial imbalance in its schools.

22. With respect to the quantum of evidence necessary to support a finding of purposeful segregation under the fourteenth amendment, compare Dowell v. School Bd. of Oklahoma City, 244 F.Supp 971 (W.D. Okla. 1965), aff'd, 375 F.2d 158 (10th Cir. 1967), with Downs v. Board of Educ. of Kansas City, 336 F.2d 988 (10th Cir. 1964), cert. denied, 380 U.S. 914, 85 S.Ct. 898 (1965); compare Taylor v. Board of Educ. of New Rochelle, 191 F.Supp. 181 (S.D.N.Y.), aff'd., 294 F.2d 36 (2nd Cir.) cert. denied, 368 U.S. 940, 82 S.Ct. 382 (1961), and Blocker v. Board of Educ. of Manhasset, 226 F.Supp 208 (E.D.N.Y. 1964) with Bell v. School City of Gary, 213 F.Supp. 819 (N.D. Ind.), aff'd., 324 F.2d 209 (7th Cir. 1963), cert. denied, 377 U.S. 924, 84 S.Ct. 1223 (1964).

Thus, for the purposes of this appeal, the key provision is No. 6, wherein the Commission ordered:

"That the respondent, Chester School District, by and through the Chester School Board, its officers, agents and employes, shall take immediate steps to desegregate effectively the all-Negro Douglass Junior High School, and the following all-Negro or substantially all-Negro elementary schools: Dewey-Mann, Franklin, Lincoln, Washington and Watts."

At the time of the hearing the racial composition of the schools in question was:

	White	Negro	Total	% Negro
Douglass	1	527	528	99+
Dewey-Mann	0	823	823	100
Franklin	10	1018	1028	99
Lincoln	69	490	559	87
Washington	0	782	782	100
Watts	0	344	344	100

Clearly, the above figures, which are not disputed, satisfy any definition of de facto segregation. But because "racial imbalance" is not precisely defined, in the Human Relations Act, the School District argues that the Legislature has failed to provide adequate standards within which the Commission may act; thus, it suggests there has been an unconstitutional delegation of authority. We find this contention to be without merit, for as early as 1872, this Court stated:

"The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things under which the law makes, or intends to make, its own action depend."

Locke's Appeal, 72 Pa. 491, 498 (1872); cf. Chartiers Valley Joint Schools v. Allegheny County Bd. of School Directors, 418 Pa. 520, 211 A.2d 487 (1965), and authorities analyzed therein. Should the Commission at some future date abuse its authority, the Administrative Agency Law provides adequate protection.

Moreover, having expressed its findings and goals in an early section, the Legislature undoubtedly envisioned a case-by-case approach to the elimination of racial imbalance in public schools. Most observers agree that when courts are forced to devise and supervise programs whose goal is the elimination of racial imbalance they are acting in an area alien to their expertise.²³ These observers would prefer to see de facto segregation attacked by the community itself utilizing other organs of the government. The Human Relations Commission, whose function is to work with the parties to the dispute in an attempt to alleviate the source of the friction through "conference, conciliation and persuasion," and whose procedure is considerably more flexible than the courts, is, as the Legislature recognized, better equipped to deal with this problem than the courts. "In each case, the interests protected by adherence to neighborhood attendance zones must be weighed against the substantiality of the racial imbalance in the community's schools. An agency such as the Human Relations Commission is best equipped to make these difficult judgments, and flexible enough to enter an appropriate order."²⁴

23. See, e.g., Hobson v. Hansen, _____ F. Supp. _____, _____ (D. D.C. June 19, 1967) (Wright, J.) (Civ. No. 82-66) s.o. at 180; Taylor v. Board of Educ. of New Rochelle, 191 F. Supp. 181, 197 (S.D.N.Y. 1961) (Kaufman, J.)

24. Instant case, 209 Superior Ct. at 46-47, 224 A. 2d at 816 (dissenting opinion).

The Commission's handling of the instant case illustrates its acute awareness of the complexities involved in the desegregation of a school system. Both the Commission and its witnesses recognized that long range planning was necessary if Chester was ever to enjoy a truly integrated school system, and total integration was not expected to blossom overnight.²⁵ What the Commission did seek, in addition to long range planning, was the formulation of an immediate program which would eliminate the worst pockets of racial isolation.²⁶ But the Commission did not order the authorities to adopt any particular program,²⁷ for in its view, and ours, the School District bears primary responsibility for the choice and implementation of an effective desegregation program. At the same time, the Commission properly retained jurisdiction.²⁸

25. For example, while Dr. Wolff's plan called for the integration of all elementary grades past the fourth and the junior high school by the opening of the new school year in September 1964, he recognized that more time would be necessary in order to achieve total desegregation of the elementary schools.

26. On July 13, 1964, the School District for the first time did submit a proposal of its own. The Commission, however, found this plan wanting because it did not attempt to resolve the crucial issues of the proceeding, viz., the desegregation of the six named schools: "The School Board proposals do not attempt, other than by vague and indefinite language unsupported by any important details, to propose an effective method whereunder this Commission can be reasonably certain that the all-Negro schools in Chester will be entirely desegregated according to a definite timetable." We believe the Commission's judgment here is fully justified.

27. In formulating a plan of desegregation, the Commission's order urged "the respondent carefully and seriously to consider the following guidelines:

"(1) The plan must state all details as to the school or schools to be replaced, converted or paired, including but not limited to costs, proposed methods of obtaining the required funds, and actual dates when the proposed construction or alterations will be commenced and completed; (cont'd on next page)

(Footnote 28 on next page)

The Administrative Agency Law permits us to set aside or modify the Commission's adjudication only in those instances where the findings of fact necessary to support its adjudication are "not supported by substantial evidence." Act of June 4, 1945, P.L. 1388, §44, 71 P.S. §1710.44; see Blairsville Nat'l Bank v. Myers, 409 Pa. 526, 187 A.2d 655 (1963); Pennsylvania State Bd. of Medical Educ. v. Schireson, 360 Pa. 129, 133, 61 A.2d 343, 346 (1948). For the reasons stated we are abundantly satisfied that the Commission's crucial order, No. 6, is supported by substantial evidence. Accordingly it would serve no

27. (cont'd from previous page)

"(2) If the plan proposes conversion of a present school facility, it must also state with particularity the boundary lines which will define the school zone for such converted school, the number of children required to be bused to such school, and the cost of such busing;

"(3) If the plan proposes construction of new school buildings, it must state specifically all details concerning the exact sites at which such buildings will be erected, the boundary lines which will define the school zones for each such new school, the number of children required to be bused to each such school, and the cost of such busing;

"(4) For short range and immediate action, the plan could embody any or all of the following:

"(a) The adoption of new boundary lines creating new zones which would desegregate some of the segregated schools;

"(b) The creation of middle of intermediary schools for all 5th and 6th grade pupils, to desegregate such grades;

"(c) The establishment of a single junior high school complex in the central part of Chester, similar to the present senior high school arrangement, which would desegregate the all-Negro Douglass Junior High School."

28. Compare Brown v. Board of Educ., 349 U.S. 294, 75 S.Ct. 753 (1955).

useful purpose for us to determine whether any one of the findings of fact specifically objected to by the School District is indeed "arbitrary and capricious," because such a conclusion with respect to an individual finding would not alter the validity of the contested adjudication.

In its final order, the Commission instructed the School District to submit a plan for the desegregation of the six named schools by January 31, 1965. This date, of course, has long since past. Under the circumstances, we shall remand the record to the Pennsylvania Human Relations Commission with instructions to set a new date for the submission of a plan by the Chester School District, and if necessary to modify its order in light of any intervening circumstances.

The order of the court below is modified and those provisions of the Pennsylvania Human Relations Commission's order directed at racial imbalance in the Chester schools are reinstated.

Record remanded with instructions.

MR. JUSTICE COHEN took no part in the consideration or decision of this case.

MR. CHIEF JUSTICE BELL filed a dissenting opinion

MR. JUSTICE JONES dissents

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IN THE
SUPREME COURT OF PENNSYLVANIA
Middle District

PENNSYLVANIA HUMAN : No. 82 May Term, 1967
RELATIONS COMMISSION, Appellant : Appeals from the Order of the
 : Superior Court of Pennsylvania at
 v. : No. 12 March Term, 1967, Affirming
 : the Order of the Court of Common Pleas
CHESTER SCHOOL DISTRICT : of Dauphin County at No. 637
 : Commonwealth Docket 1964

DISSENTING OPINION

BELL, C.J.

SEPTEMBER 26, 1967

Article X, Section 1, of the Pennsylvania Constitution provides: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this Commonwealth may be educated." The General Assembly in and by the Public School Code of 1949* has created school districts to act as agents in carrying out this Constitutional mandate. These school districts act through boards of school directors, the members of which in most districts in Pennsylvania are elected by the voters to administer the school district. The Code imposes on school districts and on their boards of school directors certain mandatory duties and certain discretionary powers. These include the duty to provide grounds and buildings (Section 701), and also the duty to assign pupils to the various schools within the district, but makes it unlawful (as does the Pennsylvania Human Relations Act, *infra*) "for any school directors, superintendent, or teacher to make any distinction whatever, on account of, or by reason of, the race or color of any pupil" (Section 1310).

It is clear, therefore, that under the Public School Code school directors have the power and the duty to determine where schools shall be built ^{and} ~~where~~ the pupils shall be assigned, so long as no distinction or discrimination is made for or against pupils by reason of race or color. It is equally clear that no change in these

* Act of March 10, 1949, P.L. 30, 24 P.S. Sec. 1-101, et seq.

powers and duties was made by the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, 43 P.S. § 951, et seq., which we shall now consider.

Facts, Acts and Basic Errors

Considering these in inverse order, the basic errors of the Majority in interpreting this Act are threefold: (1) It treats the Pennsylvania Human Relations Commission as a statewide super-school board; and (2) the Act, except by a Procrustean stretch of the English language, gives no authority to the Commission to compel what amounts to a destruction or end of the "neighborhood school" which has been a traditional and very important cog in the wonderful development of our local communities, our State and Nation; and (3) the Commission made no findings of fact which were adequate to support its Order or the Majority's Opinion. For example, there was no evidence and certainly no substantial evidence that the Chester School Board created racial imbalance by intentionally or purposely discriminating against Negroes in its buildings or in its assignment of students to the various schools in the School District of Chester.

The Commission (1) merely found the well known and indisputable fact that racial imbalance (sometimes called "de facto segregation") exists in the Chester School System, and particularly in the six named schools, and (2) issued an Order requiring the Chester School Board to propose and, with the Commission's approval, take steps to immediately and effectively desegregate these six schools in order to eliminate all the racial imbalance which exists de facto therein. In practical effect, this amounts to a mandatory ending (by the Commission) of the "neighborhood school," and the mandatory transplanting of countless children who attend public (and necessarily the parochial) schools in Pennsylvania. The Dauphin County Court, sitting as a Commonwealth Court, held that this Order of the Commission exceeded the authority granted by the Legislature to the Pennsylvania Human Relations Commission, and the Superior Court affirmed (with two Judges dissenting).

The real basic question is whether in the absence of a finding supported by substantial evidence that the school district has intentionally discriminated against

its pupils or prospective pupils because of their race, creed or color, the Commission can usurp the province and functions of a board of school directors and require the school board to locate its schools and assign pupils thereto as the Commission deems wise for color or racial or religious reasons.

I strongly agree with the decision of the Dauphin County Court and of the Superior Court. There is no legislative or Constitutional authority to support the Majority Opinion or decision which can be reached and justified only by a farfetched stretch of the English language.

The Chester school system is set up on a neighborhood school basis -- i.e., students are assigned to the school which in the opinion of the Chester School Board is most nearly or easily accessible to the student. The racial imbalance in the Chester schools is unquestionably due to the racial imbalance in the various neighborhoods where the children reside, which in turn is undoubtedly the result of many different factors. It is agreed by everyone that the Chester School Board did not create and is not responsible for, nor can it change or eliminate such neighborhood racial imbalance.

The Pennsylvania Human Relations Commission is given by the Legislature certain powers, but, we repeat, it is not given authority either under the Constitution or under this or any other Act to be a super-Board of Education or to usurp and, in practical effect, eliminate the province and the fundamental functions and powers of the School Board.*

The Majority rely on four sections of the Act -- 4(g), 5(a), 5(i) and 12(a) -- to support the Commission's authority to order and compel an end to all de facto racial imbalance, even though such imbalance was not created by the school board but was the result of the residential neighborhood. A careful analysis of these statutory provisions demonstrates that they do not and cannot by any reasonable construction support the Majority's distorted interpretation.

* I believe, although it is not clear, that the Majority impliedly admit this.

Section 5 of the Act, upon which the appellant and the Majority principally rely, provides in pertinent part, that "it shall be an unlawful discriminatory practice* . . . for any place of public accommodation (defined in Section 4 to include 'public schools'). . . to . . . refuse, withhold from or deny to any person because of his race, color, religious creed. . . either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of accommodation." The key words in the prohibition of unlawful discrimination are "to refuse. . . any accommodations. . . because of his race, color or religious creed." It is only when accommodation is intentionally refused or denied directly or indirectly, because of color, etc., that discrimination is declared to be unlawful and is prohibited by the Act. This key language the Majority change or distort(1) by reference to the broad general policy of the Act which is set forth in its preamble and (2) by Section 12(a) which says the Act should be liberally construed -- not rewritten.

The Majority Opinion, in construing Section 5, completely ignores the accompanying clear and controlling language of Section 5, namely, the denial of school accommodations must be because of color or race. The Majority's construction is not only realistically unwise in the light of our Country's history, in which neighborhood schools have provided the interest, the friendships, the pride and the development of local neighborhoods and businesses, but even more important, finds, we repeat, no support in the Acts of the Legislature** or in the Constitution.

As the educational achievements of the citizens of this Commonwealth (and indeed, throughout our entire Country) have demonstrated, this public school system has for some two hundred years served the Commonwealth (and our Country) exceptionally well, and should not be drastically changed or abandoned unless the Legislature clearly, specifically and unequivocally said so.

Moreover, resort by the Majority to Section 12(a) (i.e., the Act should be liberally construed) cannot possibly extend the coverage of the Act to areas or situations not

* Italics throughout, ours

** We note that the Legislature, in its recent School Bus Act of June 15, 1965, No. 91, which amended the Public School Code which this Court sustained in Rhoades et al. v. School District of Abington, et al., 424 Pa. 202, 226 A. 2d 53, staunchly supported the neighborhood school because it promoted better school attendance, reduced the distance pupils must travel, and provided better health for the pupils and more safety from the hazards of traffic.

encompassed or provided for by any section or by any language of the Act. Specifically, it cannot supply authority to the Commission to act in circumstances and in situations where the Commission or a majority of this Court believe the Legislature should have, but did not, empower it to act.

Expressed in other words, the majority have rewritten the Act to require policies and actions which they believe are socially or politically desirable, completely oblivious of the fact that under our Constitution and its guaranteed Republican Form of Government, it is the ordained and fundamental province, power and duty of the Legislative branch of the Government to determine and enact legislation, and that is not the province or function of the Courts.

Inadequate Standards

Racial imbalance undoubtedly exists (as above noted) in some of the schools operated by the Chester School Board which are in fact either almost all or predominantly Negro, or almost all or predominantly white. For example, in the Chester elementary school system, the school population is approximately 65 per cent "Negro" and 35 per cent "white." Without Legislative standards -- not even definitions were given or guidelines erected -- it is impossible to know whether a school that is 85 per cent "Negro," or 75 per cent, or 65 per cent or 60 per cent "Negro" would be considered as racially imbalanced. Without any standards and without any definition of "Negro" or "white," how is it possible to determine whether a person who is one-third or one-half or two-thirds, or some part Negro would be considered as either a "Negro" or a "white" person for school purposes? Surely the Legislature would have dealt clearly, certainly and definitely with these and numerous other problems inherently involved and knowingly existing, if it had intended to end per se, de facto racial imbalance in the public schools. Moreover, I believe the Majority has not sufficiently carefully considered the important question of whether the delegation of powers (which they envision) to the Commission is unconstitutional. See Holgate Brothers Co. v. Bashore, 331 Pa. 255, 200 A. 2d 81.

I believe that the commingling of all kinds and so-called classes of society -- the rich and the poor, the people of all faiths and creeds, the white, the black, the red, the yellow and brown -- makes for a better America! But I further believe that it is a gross distortion and misnomer to call this friendly social and business and political "commingling," "Education." I strongly disagree with much of the social and political philosophy expressed by the Majority in support of its interpretation of the Human Relations Act, the passage of which was motivated more by political than educational considerations.

To pile Pelion upon Ossa, the Administrative Agency Law (June 4, 1945, P.L. 1388, 71 P.S. §1710) permits a Court to set aside or modify the Commission's Orders only in those cases where the findings of fact necessary to support the Orders of adjudications of the Commission are "not supported by substantial evidence." There were no factual findings by the Commission which are necessary to support its Orders, i.e., findings of intentional discrimination by the school board because of race or color, and consequently no substantial evidence to support the Commission's conclusions, Orders or adjudication.

I further note that the Majority's decision goes far beyond any decision of the Supreme Court of the United States in the field of Education, and I reserve the right to pass upon the Constitutionality of the Act in connection with the power of the Commission over public schools and school boards.

To summarize: The short and irrefutable answer to the Majority's Opinion is that if the Legislature had intended the drastic change envisioned by the Majority, namely, to end all de facto per se racial imbalance, which it knew (and everyone knows) exists in many public schools, it would not only have set up and provided definitions, guidelines and standards, but even more important it would have clearly and specifically said so!!!

For these reasons, I dissent.