

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS)
COMMISSION)

Complainant)

vs)

DOCKET NO. P-691

BOARD OF PUBLIC EDUCATION OF)
THE SCHOOL DISTRICT OF)
PITTSBURGH, PENNSYLVANIA)

Respondent)

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

FINDINGS OF FACT

I. The Complainant herein is the Pennsylvania Human Relations Commission, an administrative agency of the Commonwealth of Pennsylvania.

II. The Respondent herein is the Board of Public Education of the School District of Pittsburgh, Pennsylvania, which administers, in the City of Pittsburgh and Borough of Mt. Oliver, 115 public primary and secondary schools.

III. The Respondent was requested by the Complainant and the Pennsylvania Department of Education, on February 2, 1968, to submit a plan and timetable for the implementation of that plan to correct the problem of racial imbalance in its educational facilities.

IV. On March 29, 1968, the Respondent was provided by the Complainant with its and the Pennsylvania Department of Education's "Desegregation Guidelines for Public Schools" and

outline of "Services" to Schools Regarding Public School Desegregation."

V. In May of 1968, Respondent was provided by Complainant and the Pennsylvania Department of Education with their "Recommended Elements of a School Desegregation Plan."

VI. Between February 2 and June 1, 1968, representatives of Respondent participated in one regional and one two-day seminar on school desegregation, convened by Complainant and the Pennsylvania Department of Education. At the two-day seminar, the three documents mentioned above in Paragraphs IV and V were discussed and distributed to all participants.

VII. On three occasions, Complainant's Commissioners and staff met with Respondent's Board Members and staff to discuss the request for submission of a plan and timetable, guidelines for same, and services available for developing an acceptable plan and timetable.

VIII. In response to Respondent's request Complainant granted three extensions of time totaling one year (from July 1, 1968 to July 1, 1969) within which to develop an acceptable desegregation plan and timetable.

IX. A racially-segregated or racially-imbalanced school is one whose concentration of Negro or white pupils is disproportionate to the enrollment of that particular racial group in all of the schools of the same grade span of a school district.

X. A disproportionate racial concentration of pupils in a public school consists of a pupil enrollment in which the percent

of Negro pupils is less than or more than thirty (30%) percent of the percent of Negro pupils in schools of the same grade span of a school district, as defined by Complainant and Pennsylvania Department of Education in "Desegregation Guidelines for Public Schools" and "Recommended Elements of a School Desegregation Plan."

XI. The enrollment of Negro pupils in Respondent's grade spans, the number and proportion of these schools that are racially-segregated and the Negro enrollment therein are as follows:

A. Concerning all schools of all grade spans:

- (1) In school year 1967-68, 94 of the 108 schools were racially-segregated; in 1970-71, 92 of the 115 schools were racially-segregated.
- (2) In school year 1967-68, 38%, or 41, of the schools had enrollments of over 95% Negro or over 95% white; in 1970-71, 40%, or 46, of the schools had over 95% one-race enrollments.
- (3) In school year 1967-68, 74.2% of Negro pupils, or 21,654, were in schools with disproportionately too many Negro pupils; in 1970-71, 73.2% or 21,219 were in such schools.
- (4) In school year 1967-68, 44.8% of Negro pupils, or 13,073, were in schools of over 95% Negro enrollment; in 1970-71, 45.7% or 13,244, were in such schools.

B. Concerning the senior high grade span:¹

- (1) The percent of Negro pupils was 33.2% in the school year 1967-68 and is 34.8% in the school year 1970-71.
- (2) A racially-segregated senior high school, in school year 1967-68, was a school whose Negro enrollment was less than 23% or more than 43%, and in 1970-71, is one with less than 24% or more than 45%.
- (3) In school year 1967-68, 11 of the 13 senior high schools were racially-segregated; in 1970-71, 11 of the 14 schools were racially-segregated.
- (4) In school year 1967-68, 2 schools had enrollments of over 95% Negro or over 95% white; in 1970-71, 2 schools had over 95% one-race enrollments.
- (5) In school year 1967-68, 71.0% of Negro pupils, or 5,619, were in schools with disproportionately too many Negro pupils; in 1970-71, 64.6% or 5,259, were in such schools.
- (6) In school year 1967-68, 52.2% of Negro pupils, or 4,135, were in schools of over 95% Negro enrollment; in 1970-71, 44.0% or 3,586, were in such schools.

¹ Senior high schools are those schools whose grade spans include grade levels 10 through 12, excluding Connelley Vocational-Technical High School.

C. Concerning the junior high school grade span:²

- (1) The percent of Negro pupils was 47.4% in the school year 1967-68 and is 48.0% in the school year 1970-71.
- (2) A racially-segregated junior high school, in school year 1967-68, was a school whose Negro enrollment was less than 33% or more than 62%, and in 1970-71, is one with less than 34% or more than 62%.
- (3) In school year 1967-68, 6 of the 7 junior high schools were racially-segregated; in 1970-71, 6 of the 7 schools were racially-segregated.
- (4) In school year 1967-68, 3 schools had enrollments of over 95% Negro or over 95% white; in 1970-71, 3 schools had over 95% one-race enrollments.
- (5) In school year 1967-68, 59.1% of Negro pupils, or 1,198, were in schools with disproportionately too many Negro pupils; in 1970-71, 82.6% or 1,696, were in such schools.
- (6) In school year 1967-68, 43.5% of Negro pupils, or 883, were in schools of over 95% Negro enrollment; in 1970-71, 38.0%, or 781, were in such schools.

D. Concerning the elementary school grade span:³

² Junior high schools are those whose grade span is grade level 7 through 9.

³ Elementary schools are those schools whose lowest grade level is kindergarten or first grade.

- (1) The percent of Negro pupils was 40.7% in the school year 1967-68 and is 42.0% in the school year 1970-71.
- (2) A racially-segregated elementary school, in school year 1967-68, was a school whose Negro enrollment was less than 29% or more than 53%, and in 1970-71, is one with less than 29% or more than 55%.
- (3) In school year 1967-68, 77 of the 86 elementary schools were racially-segregated; in 1970-71, 75 of the 89 schools were racially-segregated.
- (4) In school year 1967-68, 36 schools had enrollments of over 95% Negro or over 95% white; in 1970-71, 41 schools had over 95% one-race enrollments.
- (5) In school year 1967-68, 78.8% of Negro pupils, or 14,837, were in schools with disproportionately too many Negro pupils; in 1970-71, 78.0% or 14,264, were in such schools.
- (6) In school year 1967-68, 42.8% of Negro pupils, or 8,055, were in schools of over 95% Negro enrollment; in 1970-71, 48.6% or 8,877, were in such schools.

XII. Respondent's desegregation activities, as described in its July 18, 1968 Plan, its supplementary report, dated June 30, 1969, and its progress report of June 15, 1970, have had the following effect, on desegregation in the three-year period from school year 1967-68 to 1970-71:

- A. The number of racially-segregated junior and senior high schools remained the same, and the number of racially segregated elementary schools decreased by two.
- B. The proportion and number of over 95% one-race schools increased, from 38%, or 41 schools, to 40%, or 46 schools.
- C. The proportion of Negro pupils in disproportionately Negro schools decreased 1%, from 74.2% to 73.2%.
- D. The proportion and number of Negro pupils in over 95% Negro schools increased, from 44.8%, or 13,073 to 45.7% or 13,244 Negro pupils.

XIII. Respondent's activities have included some of the "Recommended Elements of a School Desegregation Plan," as follows:

- A. The Respondent showed evidence of a commendable record of promotions of black personnel to administrative and supervisory positions.
- B. The Respondent is affirmatively recruiting professional employees at black institutions in several states.
- C. Respondent's recruitment and placement practices regarding new professional staff that resulted in continued untoward concentrations of black staff in predominantly black schools have been corrected.
- D. The Respondent showed substantial progress in developing curriculum content in Afro-American history and culture for many subject areas.

XIV. Respondent's activities have included some school construction providing desegregated learning experiences, as follows:

- A. The Respondent created the Columbus Middle School of 700 pupils, which had some desegregating effect on its feeder schools.
- B. The opening of the Arsenal Middle School is providing an integrated education to its 800 pupils.
- C. Northside Elementary School will replace three segregated schools.
- D. The construction of the East Hills Elementary School added a racially integrated school, although it did not reduce the number of pupils or schools in a racially segregated status.

XV. Respondent's plans have lacked decisions necessary to achieve maximum desegregation as soon as possible, as follows:

- A. The commitment to build racially integrated Great High Schools lacked reorganization elements necessary to desegregate schools of lower grade spans.
- B. Respondent's plans included no specific commitment to desegregate any existing schools until after the completion of school construction or renovation.
- C. Respondent's plan created a racially balanced Arsenal Middle School, but lacked commitment to specific desegregation effects in the feeder schools.

- D. Respondent's plan for the Greenway Middle School lacked decisions essential to its desegregating effect, such as its attendance area and desegregating adjustments of the attendance areas of its feeder schools.
- E. Respondent's plan for the East Middle School lacked the initial specific of selection of the site.

XVI. Some of the Respondent's desegregation activities have provided, at most, part-time desegregated learning experiences, as follows:

- A. Since September, 1969, the Washington Education Center provides exploratory occupational, vocational, technical (OVT) training to an integrated group of 1900 seventh and eighth grade public and parochial school pupils, but for only a half-day per week.
- B. A similar exploratory OVT center on the south side involves 1800 public and parochial pupils in a part-time desegregated experience.

XVII. Some of Respondent's activities have lacked specifics as to desegregating effects, as follows:

- A. Over 1,000 pupils have transferred to other schools with the assistance of Respondent's open enrollment program with the Board paying transportation costs, but the number of pupils thereby going from segregated to integrated schools is not indicated.

- B. An unspecified number of Negro pupils have been re-assigned from overcrowded, predominantly black schools to underutilized, predominantly white schools.

XVIII. Respondent abandoned key commitments to desegregate, as follows:

- A. The commitment and progress toward reducing racial imbalance by creating two Great High Schools was abandoned by Respondent.
- B. The plan to provide the "creative experience" of half-day sessions per week to all third graders for activities in music, art, physical education and library never was implemented.

XIX. Respondent is pursuing planning activities toward desegregation, as follows:

- A. The Respondent school board on September 22, 1970, passed a resolution reaffirming its commitment to the goal of racial integration in the school system, and in June 1970 created a Division of School Reorganization to prepare for the board's consideration plans to achieve that goal.
- B. Respondent is in the process of planning a \$100 million six to ten year school construction program that will affect 14,000 pupils. This program's goals include improving racial balance wherever possible. To date, the Board has approved three of these ten or more new schools and additions.

XX. Untoward concentrations of Negro staff persist in predominantly Negro schools, as follows:

- A. The proportion of both Negro professional and non-professional staff has increased since school year 1967-68. However, the percentage of Negro staff in 90 - 100% Negro schools has increased from 53% in 1967-68 to 59% in 1970-71. These schools house 23% of Respondent's total enrollment.
- B. The proportion of Negro staff in 0-9% Negro schools has declined from 6% in 1967-68 to 5% in 1970-71. These schools contain 32% of the District's total enrollment.
- C. No financial incentives or other steps have been taken to effect transfers of staff to correct faculty racial imbalance.

XXI. Respondent lacks a complete plan and timetable as required by Complainant to correct racial imbalance among its schools.

XXII. A racially-integrated education is a desirable and important educational advantage and is beneficial to all children, especially Negro children.

XXIII. State and federal departments of education guidelines stress that compensatory education services can best be rendered at location free of racial isolation.

XXIV. The advantages of a racially-integrated education are that it provides all children the experience of relating to persons of other races with respect, understanding, appreciation, and

cooperation and that it provides Negro children the learning advantage of association with classmates representative of a variety of socio-economic levels and learning expectations.

XXV. The advantages of a racially-integrated education has been denied to thousands of Respondent's pupils by its failure to adopt a plan and timetable that would substantially reduce the number of pupils in its segregated schools.

CONCLUSIONS OF LAW

Upon all the evidence at the public hearing and the foregoing Findings of Fact, the Pennsylvania Human Relations Commission makes the following Conclusions of Law:

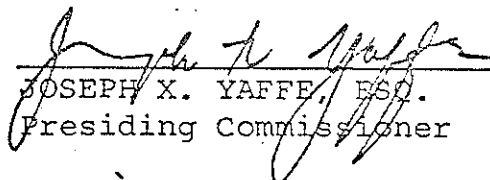
1. The Pennsylvania Human Relations Commission may properly act as Complainant in this proceeding.

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

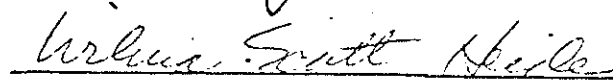
3. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over Respondent and the subject matter of the Complainant herein.

4. The failure, and continuing failure, of Respondent to adopt a plan and timetable for its implementation that would substantially reduce the number of its pupils attending its segregated educational facilities is an unlawful discriminatory practice in violation of § 5(i)(1) of the Pennsylvania Human Relations Act.

It is, therefore, recommended that the Commission enter an Order against Respondent requiring it to adopt a plan and a timetable for its implementation that would substantially reduce the number of its pupils attending its segregated educational facilities.



JOSEPH X. YAFFE, ESQ.
Presiding Commissioner



WILMA SCOTT HEIDE
Hearing Commissioner



ROBERT W. GOODE
Hearing Commissioner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN
RELATIONS COMMISSION
Complainant

VS

THE BOARD OF PUBLIC
EDUCATION OF THE SCHOOL
DISTRICT OF PITTSBURGH,
PENNSYLVANIA

Respondent

DOCKET NO. P-691

COMMISSION'S DECISION

AND NOW, this 7th day of June, 1971, upon the recommendation of the Hearing Commissioners, and upon all the evidence at the public hearing of this case, and in consideration of the Findings of Fact and Conclusions of Law, the Pennsylvania Human Relations Commission finds and determines that Respondent, the Board of Public Education of the School District of Pittsburgh, Pennsylvania, has committed an unlawful discriminatory practice in violation of Section 5 (i) (1) of the Pennsylvania Human Relations Act in that it has not adopted a plan and timetable for implementation of that plan which would substantially reduce the number of pupils attending segregated educational facilities.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN
RELATIONS COMMISSION
Complainant

VS

BOARD OF PUBLIC EDUCATION
OF THE SCHOOL DISTRICT OF
PITTSBURGH, PENNSYLVANIA
Respondent

:
:
: DOCKET NO. P-691

FINAL ORDER

AND NOW, this 7th day of June, 1971, upon consideration of the foregoing Findings of Fact and Conclusions of Law and pursuant to Section 9 of the Pennsylvania Human Relations Act, the Pennsylvania Human Relations Commission

ORDERS:

- A. Respondent, the Board of Public Education of the School District of Pittsburgh, Pennsylvania, to:
1. Develop and submit to the Pennsylvania Human Relations Commission for its approval a plan and timetable for implementation thereof that will eliminate racial imbalance in its schools. Such plan shall conform to the "Recommended Elements of a School Desegregation Plan," dated May 15, 1968, which is attached hereto and made a part hereof as follows:
 - a. Submit to the Commission within 30 days of the date of service of this order that portion of the plan that will be implemented during the 1971-72 school year.
 - b. Submit to the Commission by November 1, 1971, the balance of the plan and timetable for its implementation.

B. That the plan and timetable for its implementation submitted shall accomplish the following:

1. By the beginning of the school year 1971-72, elimination of racial imbalance¹ in 20% of the schools with racial imbalance as of the school year 1970-71.
2. Elimination of racial imbalance in all senior high school grade spans (9-12) by the beginning of the school year 1972-73.
3. Elimination of racial imbalance in all middle and junior high school grade spans (6-8) by the beginning of school year 1972-73.
4. Elimination of racial imbalance in all elementary school grade spans (K-5) in and by the following steps:
 - a. By the beginning of the school year 1972-73, reducing by at least one-third the remaining number of schools with racial imbalance.
 - b. By the beginning of the school year 1973-74, reducing by at least one-half, the remaining number of schools with racial imbalance.
 - c. By the beginning of the school year 1974-75, eliminating the remaining racially imbalanced schools.

C. That the plan and timetable for its implementation submitted shall:

1. Include beginning and completion dates for each desegregation step, together with the projected desegregation results of each step in terms of the number and identity of the district's schools and the number of the district's pupils changed from a status of racial imbalance to racial balance.

¹Racially imbalanced schools are those having a percent Negro enrollment less than or more than 30% of the percent Negro pupils among the buildings of the same grade span.

2. Avoid transportation of pupils for lengths of time or distance that risk their health or significantly impinge on their educational process. If the result of this stipulation is that racial imbalance will not be corrected in all schools, this plan must include justification acceptable to the Commission for this modification.
 3. Not place an undue share of the participation in re-assignment or transportation on one racial group.
 4. Include a plan and timetable of implementation that by the beginning of the school year 1972-73 shall correct the untoward concentration of professional and non-professional Negro staff in limited numbers of schools.
- D. That the Respondent shall forthwith cease and desist from opening any new school without a racially-balanced pupil enrollment.
- E. That any decentralization plan adopted or implemented by Respondent be consistent with this Final Order.
- F. That the Respondent in applying for the approval of the Pennsylvania Department of Education of any steps of school building projects, shall provide the Commission with the following data concerning the facility:
1. Location of the building site.
 2. Pupil capacity.
 3. Attendance area boundaries.
 4. Projected enrollment by race.

G. That the Respondent report to the Commission as follows:

1. By February 1 of each year, for as long as the Commission shall require it to comply with this Order, the pupil enrollment and staff assignment by race of each school building in the district, on report forms to be provided by the Commission.
2. By June 1 and December 1 of each year, for as long as the Commission shall require it to comply with this Order, a progress status report regarding its curricular desegregation programs.

H. That the Pennsylvania Human Relations Commission shall retain jurisdiction in this matter and reserves the right to amend this Final Order from time to time to ensure that the public school pupil enrollment within the School District of Pittsburgh will continue to remain racially-balanced.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By 

E. E. Smith, Chairman

ATTEST:

By 

Dr. Robert Johnson Smith,
Secretary

May 15, 1968

Recommended Elements of a School Desegregation Plan

by

Pennsylvania Human Relations Commission

and

Department of Public Instruction

1. Does the desegregation plan indicate the projected racial composition of each elementary and secondary school attendance area and the racial composition of the total staff of each building as of the completion dates of each step?
2. Does the desegregation plan identify the location of proposed school building construction sites?
3. How nearly does the desegregation plan bring the per cent Negro pupils in each building to within 30% of the per cent Negro pupils among the buildings of the same grade span?
4. Does the desegregation plan include procedures to affirmatively and effectively recruit and assign an integrated staff at all levels for all schools?
5. Does the desegregation plan correct any untoward concentrations of professional or non-professional Negro staff in any buildings?
6. Does the desegregation plan equally match the services of its professional staff and program with the educational needs of each school building?
7. Does the desegregation plan include plans for in-service training of staff to meet the needs and problems incident to the implementation of desegregation plans?
8. Does the desegregation plan include steps to include intergroup education programming and the inclusion of the contributions of Negroes and other racial and ethnic groups in the history courses about Pennsylvania and the United States?
9. Does the desegregation plan include a timetable indicating deadline dates by which each step will be completed? Are these dates as early as possible?
10. Does the desegregation plan indicate involvement of the community in its development and implementation?
11. Is the desegregation plan consistent with the Long Range Developmental Plan submitted to the Department of Public Instruction?

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REPORT OF HEARING PANEL RE: PITTSBURGH SCHOOL
DESEGREGATION - JULY 30, 1979

SUBMITTED BY: DORIS M. LEADER

Pursuant to action of the Commission at its June 25, 1979 meeting, 3 days of public hearings were held in the case of Pennsylvania Human Relations Commission vs. Board of Public Education of the School District of Pittsburgh, Docket No. P-691.

Notice of the hearing was sent to all local news media, and to all groups known to the Commission or to the Board as being concerned with the issue of school desegregation. All individuals or groups who presented timely requests to the Commission were placed on the agenda, in addition to representatives of the school district, the Commission staff and expert witnesses.

In keeping with concepts appropriate to administrative hearings, all relevant testimony and other evidence deemed to assist the Commission in arriving at a just decision on the merits was permitted.

Procedurally, the hearing occurred in three phases:

On Friday, July 20, the Pittsburgh School District as author of the plan was provided opportunity to present sworn testimony and other evidence in support of the plan. In addition, Commissioners sitting as the hearing panel and legal counsel representing the complainant questioned the school district with regard to the plan.

On Saturday, July 21, 1979, focus was upon receipt of input from representatives of the community. During this phase, questions were put only by the hearing panel.

The third phase, held on Friday, July 27, 1979, was designed to be responsive to the evidence and testimony previously presented. In this session Commission staff presented its analysis of the plan, and expert witnesses added conclusions based upon their experience and knowledge. During this phase both the hearing panel and the school district were given the opportunity to ask questions or to cross examine the witnesses.

The panel consisted of the following persons:

Commissioners: Elizabeth M. Scott, Mary Dennis Donovan and Doris M. Leader, full time; Robert Johnson Smith, Doris A. Smith and John P. Wisniewski attended almost all sessions; Homer C. Floyd, Executive Director of PHRC, full time. Doris M. Leader chaired the panel; Michael Hardiman, Assistant General Counsel in the Harrisburg Regional Office served as legal advisor to the panel. Legal Counsel for the complainant were Assistant General Counsel, Ellen Doyle and General Counsel, Robert S. Mirin; and for the District, Frederick Boehm.

The key guide for the hearing panel is contained in the November 8, 1978 Commonwealth Court Order which required the school district to submit a definitive desegregation plan which would address the problems of school desegregation

in "good faith and realistic fashion." The Commonwealth Court indicated that the plan should take into account the Recommended Elements of a School Desegregation Plan (Prepared in May, 1968 by PHRC and the Department of Public Instruction) although the court noted that some degree of flexibility would be tolerated in that a plan which failed to satisfy some aspect of the Recommended Elements might prove acceptable.

The panel also noted with particular emphasis the language found in the August, 1978 Pennsylvania Supreme Court opinion which admonished the school district that it must demonstrate that "substantial and persuasive justification exists for any departure from the Recommended Elements."

The opening day testimony of the school district centered on examination of the eleven Recommended Elements which were initially incorporated in the Amended Final Order issued by the Commission on September 25, 1972.

Testimony was presented by Dr. Jerry Olson, Superintendent of Schools, Dr. Curtis Walker, Deputy Superintendent of Schools, Louise Brennan, Assistant Superintendent for Elementary Schools, Dr. William Green, Assistant Superintendent for Middle Schools, Dr. Helen Faison, Assistant Superintendent for Secondary Schools, and Mary Jane Jacobs, President of the Board of Education; by two members of the Magnet School Advisory Committee, Betty Pickett and Alice Carter, as well as the consultant to the magnet school advisory committee, Dr. Donald Waldrip.

Purpose of the school district testimony was intended to demonstrate how in its opinion the district had either complied with the Recommended Elements or shown that compliance was not necessary or not possible; and that the plan was intended to meet the mandate that the district submit a definitive desegregation plan that would address the problem of school segregation in good faith and realistic fashion.

The magnet school advisory committee members and their consultant focused upon components of the magnet school plan, and upon the change given to them by the school board: to produce an educationally sound plan. They perceived desegregation as a possible effect, rather than a primary focus of such a plan.

On the second day, 29 individuals presented testimony for the record. In addition, the panel has received a number of written statements from individuals and groups who were not present, but whose statements will be included in an appendix which will become part of the transcript of the case.

Much of the community testimony rejected the plan as inadequate to achieve desegregation; noting particularly failure to address segregation at the elementary school level. Some, opposed to any form of mandated desegregation, were opposed to the plan because of a perceived potential for involuntary desegregation; a few supported the plan as a desirable part of an overall desegregation plan. A number^a specifically urged city-wide school reorganization into a 5-3-4 grade structure which would achieve greater desegregative impact thru middle schools.

On the third day the following witnesses were heard:

RICHARD B. ANLIOT, Director of the Education Division for PHRC, who presented his analysis and testified to deficiencies in the plan based on lack of adherence to the Recommended Elements and to directives of the various court orders and prior Commission orders.

DR. GORDON FOSTER, Director of the Florida Desegregation Assistance Center and consultant to numerous urban school districts in their work on school desegregation plans. Dr. Foster testified on the merits of the Pittsburgh Plan measured against specific goals for school desegregation.

DR. JEROME TAYLOR, Associate Professor of Education and Psychology at the University of Pittsburgh, Director of Clinical Psychology; and a specialist in child development, educational development and race relations, who testified regarding the potentially damaging sociological and psychological effects of specific elements of the plan.

CONRAD JOHNSON, attorney with Neighborhood Legal Services Association, representing parents and students from the Baxter School, (a predominantly Black school, closed by the School Board). Mr. Johnson is in litigation involving the reassignment of the children who formerly attended Baxter.

ANALYSIS

Having had an opportunity to review the plan submitted prior to the hearing and after listening to the testimony presented during the course of the hearing the panel has become convinced that the plan before the Commission does not meet the requirements contained in the specific language found in the Commonwealth Court Order of November 8, 1978. What follows is in summary fashion, an explanation of the major deficiencies of the plan:

The Pittsburgh plan, as evidenced by the testimony received throughout the three (3) day hearing, fails as a desegregation plan, because it was never intended to be a desegregation plan. What the School Board sought and received was a magnet school program. Both the consultant hired by the School board to develop the magnet plan and the Magnet School Advisory Committee members who testified, indicated that their function was to develop a sound educational tool. In fact, the Advisory Committee was specifically charged with the responsibility for drafting a sound educational plan and not a desegregation plan. Dr. Olson's testimony also supports this conclusion. He indicated that the magnet concept would, if effective, merely assist in desegregation.

Staff analysis and expert witness testimony lead to the same result. The essence of this testimony was that while the magnet concept has, at times, served as a limited desegregation vehicle, it is not sufficient, in and of itself, to effectively desegregate a school system.

The most obvious proof of the shortcomings of the plan are found in the results anticipated if the plan is totally successful. It should be noted that the projections provided by the School District for the four (4) year period of the plan may prove to be overly optimistic in light of the significant discrepancy between the 5493 projected voluntary enrollment and the 3630 who actually enrolled for the 1978-79 school year. The school district concedes, for example, that if all current projections are met fully 49% of the schools in the district will not be desegregated by the 1982-83 school year. Moreover, while the district has indicated that 73.5% of the students will have had a "desegregated experience" (defined by the district as a part time removal from racial isolation) a vast majority of those students will not participate in an educational process conducted within a racially balanced setting. In fact, in a number of programs the testimony indicates that schools will be defined as "desegregated" despite the fact while the students being brought in may never have an opportunity to interact with those students already in the school.

To understand why the plan fails it is important to understand some of the restrictions placed upon the district by the School Board prior to development of the plan. The primary components of the 25 "guidelines" imposed by the Board were that no busing could be considered solely to desegregate; and that desegregation had to be accomplished primarily through voluntary participation in the magnet plan with no more than limited involuntary assignment of students. The

mandatory assignment, moreover, had to be for "programatic purposes" and not simply as a means to desegregate.

Apart from the above restrictions, testimony elicited from Dr. Olson and others revealed that while additional options which would have increased the amount of desegregation were available, they were either rejected by the Board or not even considered. For example, Dr. Olson noted that his staff had recommended use of the 5-3-4 grade organization. Use of this structure, noted Dr. Olson, would certainly have increased the desegregative effect of the plan at the middle school level. Yet, the Board saw fit to reject the option. Also, Dr. Olson, and others, noted that substantial additional desegregation could have been accomplished by pairing schools in close proximity by redrawing school attendance boundaries, by use of clustering concepts and by establishing certain feeder patterns.

The limitations placed upon the district by the Board certainly precluded adoption of a plan that would place the district at or even near the percent ratio contained in the Recommended Elements and also in the Commission's Amended Final Order. However, neither the plan nor the testimony offered by the School District offered a "substantial and persuasive justification" for the failure to approach the percent ratio. It should be noted that there were allusions to "White flight" and to adverse community opinion, as a basis for the Board action; however, there was little or no objective evidence from which the panel could conclude that a substantial justification existed.

Certainly, the failure of the district to demonstrate through persuasive justification why it could not satisfy or approach satisfaction of element 3 of the Recommended Elements is reason enough to reject the plan. There are, however, other failures that need be but touched upon. Recommended Element #2 seeks the identification of proposed construction sites. The district responded to this simply by indicating that no construction was presently anticipated. Item #7 looks to in-service training and #8 speaks of intergroup education programming. The plan presented includes little more than conclusory statements regarding the fact that both are included. There was not sufficient information presented for the panel to seriously consider the merits of whatever the district is using to respond to these items and expert testimony underscored the necessity for comprehensive, well-structured plans. Also, Item 9 looks for deadline dates for completion of various steps of the program, the plan provided deadlines based upon goals not certainties. Lastly, the district has indicated that it cannot comply with the long-range plan requested because it has not yet been completed. Obviously the panel cannot weigh the merits of a plan not yet in existence.

RECOMMENDATION OF THE HEARING PANEL

I. The panel, while cognizant of some potential educational values in the plan, must nevertheless recommend that the Commission reject it, due to its failure to address "in good faith and realistic fashion" the problem of racial segregation in the Pittsburgh School District.

The panel's recommendation is founded upon its conviction that the existing plan, even if fully implemented - that is, even if future enrollments actually met the projections will not achieve significant full-time desegregation of large numbers of schools within the District. More specifically, the panel has concluded that the school district failed to demonstrate any "substantial and persuasive justification" for its failure to desegregate the schools within the 31% guideline provided in Item #3 of the Recommended Elements of a School Desegregation Plan.

II. The panel, in rejecting the plan, believes that two steps should be taken concurrently:

1. A letter should be sent to the School District informing it of the decision to reject the plan. Moreover, in light of the Pennsylvania Supreme Court mandate that any objections to the plan be set forth in writing and stated with some specificity, the panel recommends that both specific objections and, where appropriate, suggested alternatives should be provided.

These objections and alternatives are to be drafted by Homer C. Floyd, Executive Director of the PHRC and appropriate staff, working in conjunction with the Chairperson of the panel, representing the panel's recommendations and with Michael Hardiman, legal advisor to the panel.

2. General Counsel should be instructed to prepare an application for an order to show cause why the School District should not be held in contempt of the November 8, 1978 Commonwealth Court Order. However, the General Counsel should also be instructed to delay action for ninety (90) days (from the date that the Commission letter is mailed to the School District) in order to provide the District with the opportunity to alter the plan so that it overcomes the objections raised by the Commission.

Should the School District be unwilling to correct the deficiencies, at the end of the ninety (90) days period, contempt proceedings should be instituted forthwith.

As in the past, Commission staff will be available to assist the School District in any appropriate fashion.