

Comparison: School Construction  
and Consolidation

1. Presently existing facilities. Both proposed decrees recognize that many of the presently existing school facilities throughout the State do not conform to the standards of the State Department of Education regarding the adequacy of physical structures and the minimum number of teachers and students, and that the continued use of these schools impede the pace of desegregation. We proposed to deal with that problem in two ways: First, the State Superintendent is enjoined to require all local school systems that have been the subject of a survey in the past to submit prior to the 1967-68 school year, all plans that have been formulated or adopted for the consolidation or abandonment of such schools. Second, we require the State Superintendent to continue conducting surveys and seek to control the manner in which those surveys shall be conducted. Presumably, if the surveys are conducted in a nondiscriminatory manner, the State Department will recommend consolidation. Plaintiffs' proposed decree deals with the problems of existing facilities in a more specific manner. That decree points to the closing of all such facilities.

The first dimension of plaintiffs' proposed decree relates to the compilation of three lists. The State Superintendent is requested to compile one list of all schools that have been designated in previous surveys as either "temporary" or "should be abandoned"; a second list of all schools that had previously been subject to a survey and which during the 1966-67 school year fall below any of the State Department of Education standards regarding the minimum number of students, the minimum number of teachers or the minimum acreage; and a third list of all the schools within the State, whether or not they had been previously surveyed which are "deficient" - i.e., fail to meet any of the State Department of Education's standards regarding students, teachers, acreage or physical structure. The first two lists must be submitted within 60 days of the entry of the decree, and the third list must be submitted within 90 days of the entry of the decree.

The second dimensions concern the closing of all facilities previously designated in a survey "temporary" or "to be abandoned." The proposed decree provides that "each facility in the state designated as 'temporary' or 'to be abandoned' shall be closed prior to the commencement of the 1967-68 school year unless insufficient capacity exists in the remaining schools in the district to absorb these students attending these facilities." The concept "insufficient capacity," described by plaintiffs in the following terms: "The capacity of any school within the system cannot be considered to be exceeded until its pupil-teacher ratio is equal to or greater than the highest pupil-teacher ratio based upon enrollment within the past 5 years of any school in the system and it has no unused classrooms." In the case where there is insufficient capacity, the decree establishes a priority of the schools which must be closed. The Negro schools designated "to be abandoned" are the first to be closed, then the white schools so designated, then the Negro schools designated "temporary," then the white schools designated "temporary." In addition, the State Superintendent is required to submit a report to the Court within 60 days of entry of the decree explaining why any facility designated "to be abandoned" or "temporary" is to be operated during 1967-68 school year; and that report must contain a plan for the closing of such facilities. Moreover, in the report the State Superintendent must submit listing all the public schools within the State that fail to contain a "deficiency" (i.e., <sup>as for the present</sup> any State Department of Education standards), a plan for correcting the deficiencies must be included, and the proposed decree states that "this plan will, of necessity, require the closing and consolidation of existing facilities and the reassignment of teachers and pupils." \*/

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\*/ The proposed decree also states: "All deficiencies shall be corrected prior to the 1967-68 school year, unless the Superintendent of Education shows cause why such deficiencies cannot be corrected at that time. In such event, a projected date for such corrections shall be fixed."

The third step under plaintiffs' proposed decree relates to reassignment of students and faculty: whenever a facility is closed, the teachers and pupils must be reassigned in such a manner as to promote integration, or as stated at one point, the maximum integration. The State Superintendent is required to report to the Court as to the method of reassignment; and in the case of facilities already designated "to be abandoned" or "temporary", the report must be submitted within 30 days of the anticipated closing. The proposed decree also provides that all parties shall have 15 days after the submission~~ing~~ of this reassignment plan to object.

2. Construction of new facilities. Our proposed decree does not focus upon the construction of new facilities as much as it focuses upon the approval of that construction by the State Superintendent. The proposed decree specifically provides that this approval shall not be based upon any previous surveys or upon any survey that does not accord within the standards set out in the decree; and the decree also provides that the approval of the State Superintendent shall be withheld if the construction will not "further the eradication of the vestiges of the dual system and the elimination of the effects of segregation."

Plaintiffs' proposed decree differs from these provisions in several important respects.

(a) The State Superintendent is required to withdraw his approval of all construction plans under which actual construction has not yet commenced.

(b) The State Superintendent is required, under the proposed decree, to continue to approve all sites selected and new construction by local systems.

(c) The State Superintendent is required to condition such approval upon the "implementation of the recommendations contained" in the future surveys, which according to another provision in the proposed decree, must include "a plan for the assignment of all students and faculties designed to produce an entirely integrated school system," which plan cannot be based "solely" on freedom of choice.

3. Future surveys. Under our proposed decree, we require the State Superintendent to continue conducting surveys, to collect and report data by race and to make recommendations in the survey to effect desegregation. The plaintiffs' proposed decree does not specifically provide that surveys must be conducted in the future; however, such a condition can be implied since the State Superintendent can only approve construction sites that are in accord with recommendations contained in future surveys (i.e., those containing the desegregation plans). If no future surveys are conducted there would be no further school construction in the State. Another point of similarity consists of the requirement that all data included in the survey be collected and reported on the basis of race.

There are, nevertheless, significant differences between the proposed decrees. Plaintiffs' proposed decree, unlike ours, contains a provision tending to nullify all surveys conducted before the entry of the decree; it provides that the recommendations included in past surveys "shall be expressly disapproved and such disapproval shall be communicated immediately by the State Superintendent" to all local school systems. Moreover, plaintiffs' proposed decree differs in that it requires that all future surveys include desegregation plans, and also that these future surveys and the data relied upon in establishing the survey and the plan for desegregation be submitted to the Court. Finally, there is a provision designed to prohibit what plaintiffs call "partial surveys" -- that is, surveys of only one part of the school systems. The proposed decree provides: "No site, construction, addition or improvement may be based upon a partial survey."