



To the extent the legal issues hereafter set forth with respect to the sufficiency of the complaint to state a claim and the standing of the United States to sue might be termed "jurisdictional," they are at issue to the same extent as though they had been stated in this paragraph of the pre-trial order.

2. Pending Motions

The following questions are raised by the motion of the County School Board to dismiss:

- (a) Does the complaint state a claim against the County School Board upon which relief can be granted?
- (b) Do the attorneys of record for the plaintiff have authority to prosecute this suit?
- (c) Does the plaintiff have standing to assert the claim set forth in the complaint?

The motion to dismiss filed by the Commonwealth of Virginia raises the following questions:

- (a) Does the complaint state a claim upon which relief can be granted?
- (b) Is the State either a necessary or proper party to the suit?
- (c) Does the plaintiff have legal standing to maintain the suit?

The first responsive pleading of the Pupil Placement Board raises the following questions:

- (a) Does the plaintiff have standing to institute this suit?

(b) Do the attorneys of record on behalf of the plaintiff have authority to prosecute this litigation?

(c) Does the plaintiff have any right to claim any relief with respect to the rights asserted in the complaint?

The County School Board's motion for summary judgment raises the following questions:

(a) Are there any genuine issues of material fact in this case?

(b) If not, is the defendant County School Board entitled to judgment as a matter of law?

3. Amendments to the Pleadings

No further amendments are proposed to the pleadings.

4. Summary of the Plaintiff's Claim

The plaintiff maintains an Army installation in Prince George County, known as Fort Lee. Servicemen and civilian employees of the Army, of both the white and Negro race, are stationed and employed at Fort Lee. Many of them live with their families on the post, and others off the post in the surrounding area. Under Virginia law the County School Board of Prince George County is responsible for providing education for such of the children as reside within Fort Lee, or elsewhere within Prince George County. In connection with the County Board's education of these children the plaintiff has paid, or is paying the County Board, \$1,150,596.58 for the operating expenses of its schools during the period from 1951 to the present time. The estimated payment for the current school year is

\$272,790. In addition, the plaintiff has paid, or is committed to pay the County School Board, a total of \$1,405,951.50 in school construction grants applied for by the Board. In each application for a school construction grant the Board gave written assurance, as required by 20 U.S.C. 636, that its school facilities will be available to the federally-connected children "on the same terms, in accordance with the laws of the State . . . , as they are available to other children." The plaintiff has an official policy against racial discrimination with respect to the education of these children. This policy has been formulated in both the Department of Defense and the Department of Health, Education and Welfare. The defendants, contrary to this policy and contrary to the written assurance of the County School Board, are assigning the federally-connected children to particular schools upon the basis of their race and color and are otherwise operating a dual school system based upon race for the education of these and other children.

5. Summary of Defendants' Claims

The defendants do not assert any affirmative claims for relief nor do they assert any affirmative defenses to the claim upon which the plaintiff relies in its complaint. The legal position of the defendants in their defense of this suit is set forth in Items 1, 2, 7, and 8 of this order.

6. Facts Established by the Pleadings, Stipulations, and Admissions of Counsel.

The following facts are conceded by all of the parties:

a. The County School Board of Prince George County administers eleven public schools in Prince George County.

b. James O. Morehead is Division Superintendent of Schools of Prince George County and as such is the chief executive officer of the School Board.

c. The Pupil Placement Board is an agency of the Commonwealth of Virginia and is vested with the power of placing pupils in particular public schools within the school districts in which such pupils enroll.

d. E. J. Oglesby, Edward T. Justis and Alfred L. Wingo are members of the Pupil Placement Board.

e. The school age dependents of military personnel stationed at Fort Lee include 554 Negroes.

f. During the period from 1951 to the present time the School Board of Prince George County has applied for and received the following amounts from the plaintiff under the provisions of P.L. 874:

<u>Year</u>	<u>Amount</u>
1951	9,072.81
1952	17,705.06
1953	26,009.79
1954	39,826.43
1955	35,286.72
1956	47,763.21
1957	68,238.75
1958	94,581.93
1959	143,498.88
1960	174,248.00
1961	221,575.00
1962	272,790.00
	<u>\$1,150,596.58</u>

Appendix A to the complaint correctly states the amounts annually paid to the County School Board under P.L. 874 and the numbers of federally-connected children of each category for whom the County School Board provided education each year.

g. Of the public schools being maintained by the School Board of Prince George County the following are attended solely by white children:

William A. Walton Elementary,  
 Carson Elementary,  
 Disputanta Elementary,  
 Burrowsville Elementary, and  
 Prince George Junior-Senior High School

The following are attended solely by Negro children:

Burrowsville Graded Elementary,  
 Providence Elementary,  
 Bessie H. Mason Elementary,  
 Old Academy Elementary,  
 Harrison Grove Elementary, and  
 J.E.J. Moore Junior-Senior High School

h. Only white teachers are employed by the School Board of Prince George County in the schools attended by white children. Only Negro teachers are employed by the County School Board of Prince George County in the schools attended by Negro children.

i. The six schools attended by Negro children are served by different school buses and drivers than are the five schools attended by white children.

j. The County School Board of Prince George County has applied for and received under P.L. 815 the following grants for the construction of schools in Prince George County on account of the federally-connected children attending the Prince George County schools:

<u>Date of Approval</u>	<u>School</u>	<u>Amount</u>
6/20/51	Prince George Junior-Senior High	\$364,008.00
11/8/55	Same (addition)	159,695.00
3/22/56	J.E.J. Moore Junior-Senior High	87,685.00
8/24/59	Wm. A. Walton Elementary	600,400.00
1/23/62	New Elementary School	94,500.00
6/27/62	New Elementary School	99,663.50

k. It has been and is the practice of the County School Board of Prince George County to accept applications for placement in the public schools of the county on the

standard form issued by the Pupil Placement Board of Virginia, Form PPB-1. After receiving the applications executed by the guardian or parent of the school child it has been and is the practice of the County Board to transmit the applications to the Pupil Placement Board for assignment of the child to a particular school. In transmitting the applications, the County Board recommends a particular school assignment.

1. The County School Board of Prince George County has not heretofore recommended the placement of any Negro children in a school attended by white children nor has it recommended the placement of a white child in a school attended by Negroes.

m. It has been and is the policy and practice of the Pupil Placement Board routinely to approve the recommendations of the County Board as to placement of the children in particular schools, unless the parent or guardian of a child has requested a school assignment different from that recommended by the County Board. The Pupil Placement Board has never acted contrary to a placement recommendation by the County School Board of Prince George County.

n. It is the policy and practice of the Pupil Placement Board, as set forth in Memorandum 35 of the Board, not to consider a request for placement or transfer to a specific school, other than the school in the usual attendance area of the child, unless the request is filed no later than May 31 preceding the opening date of the fall semester to which the request applies.

o. For the past several years the County School Board of Prince George County has had an informal arrangement

with the School Board of the City of Petersburg, Virginia, whereby the School Board of the City of Petersburg has educated in its public schools the children of Negro military personnel stationed at Fort Lee who reside on Fort Lee with their families. This arrangement, together with similar arrangements with other school districts, was suspended by the Superintendent of Schools of Petersburg on or about September 14, 1962 because of the crowded conditions of the Petersburg schools.

p. On August 24, 1962, each of three Negro members of the plaintiff's Armed Forces stationed at and residing with their families within Fort Lee applied at William A. Walton Elementary School for the placement of a Negro child in that school.

q. On August 27, 1962, James O. Morehead wrote a letter to each of the three Negro members of the plaintiff's Armed Forces referred to above, advising him that, because of an agreement of long standing between the Prince George County School Board and the City School Board of Petersburg for the education of a portion of the Prince George County children in the schools of the City of Petersburg, he should make application for placement of his child by the Pupil Placement Board through the City School Board of Petersburg.

r. On August 28, 1962, five Negro members of the plaintiff's Armed Forces, stationed and residing within Fort Lee, applied to the County School Board of Prince George County for placement of a child of each of them in the Prince George Junior-Senior High School.

s. On August 30, 1962, James O. Morehead wrote a letter to each of the five Negro members of the plaintiff's



Armed Forces referred to above, advising him that, because of an agreement of long standing between the Prince George County School Board and the City School Board of Petersburg for the education of a portion of the Prince George County children in the schools of the City of Petersburg, he should make application for placement of his child by the Pupil Placement Board through the City School Board of Petersburg.

t. On September 11, 1962, the County School Board by letter (Plaintiff's Ex. 44), transmitted to the Pupil Placement Board the eight pupil placement applications referred to in paragraphs p through s, each with a recommendation that the child be placed in the schools of the City of Petersburg.

u. The Pupil Placement Board did not consider the merits of the eight placement requests to William A. Walton Elementary School and Prince George Junior-Senior High School referred to in the preceding paragraph, but routinely approved the recommendation of the County School Board for placement of the children in the Petersburg schools upon the ground that each of the requests for placement had been filed after May 31, 1962.

v. Prior to acting upon the eight applications referred to in the preceding paragraph, the Pupil Placement Board had previously, upon the basis of prior pupil placement applications filed by the same parents with the Superintendent of Schools of Petersburg, placed seven of the eight Negro children in Petersburg schools. These seven children, at the time of the Pupil Placement Board's action on their second applications, were in attendance in public schools in Petersburg. The eighth child was attending a parochial school in Prince George County.

w. On September 19, 1962, the Pupil Placement Board wrote each of the applicants referred to in paragraphs p through v that the Pupil Placement Board had not considered his application for pupil placement because of the failure of the applicant to follow established procedure as outlined in Memorandum No. 34 of the Board.

x. Since September 4, 1962, the County School Board has accepted 338 children for enrollment in the public schools of the county. Of these, 63 have been enrolled and placed in William A. Walton Elementary School.

7. Contested Issues of Fact

All material allegations of fact appearing in the complaint are contested by the defendants except those matters which are set forth in Item 6 of this order.

8. Contested Issues of Law

The plaintiff bases its claim upon the following assertions of law and assertions of mixed law and fact:

I. Plaintiff is entitled to injunctive relief against the County School Board for violation of its written assurances contained in the construction grant applications.

A. The County's assurance that its school facilities will be available to the federally-connected children "on the same terms, in accordance with the laws of the State . . . , as they are available" to local children is a legally enforceable obligation.

(1) It is a contractual obligation.

(2) If not, it is a statutory obligation.

B. The assurance prohibits unlawful racial discrimination against or among the federally-connected children.

- C. The policy and practice of the County Board in placing the federally-connected children in particular schools is racially discriminatory.
  - D. Injunctive relief is proper for the breach of the assurance.
- II. All of the defendants have, in their manner of placing the children of Fort Lee personnel in particular schools, unlawfully burdened in plaintiff's exercise of its warpower under the Constitution.
- A. In maintaining the Armed Forces the plaintiff has an established policy of preventing and eliminating racial discrimination against Armed Forces personnel and their dependents, whether such discrimination occurs inside or outside the various military installations.
  - B. The conduct of the defendants in assigning children of Fort Lee personnel to schools upon the basis of their race conflicts with the above-stated policy.
  - C. The conduct of the defendants is unlawful under the Fourteenth Amendment.
  - D. The conduct of the defendants necessarily impairs the efficiency and morale of the Armed Forces.
  - E. Injunctive relief is appropriate to remove the burden.

One or more of the defendants contest each of the above legal assertions upon which plaintiff rests its claim.

9. Exhibits Not Objected To.

The plaintiff will offer the following exhibits to which no objection is made by any of the defendants:

<u>Plaintiff's</u> <u>Ex. No.</u>	<u>Description</u>
1	Map of Prince George County, Virginia, showing schools attended by federally-connected children.
2	Memorandum entitled "Education of Dependents," dated 23 July 1962, issued by Headquarters, Fort Lee, Virginia.

<u>Plaintiff's</u> <u>Ex. No.</u>	<u>Description</u>
3	Dependent School Children Questionnaire of August 1962, issued by Headquarters, Fort Lee.
4	Thirteen orders and policy memoranda of the President, the Department of Defense and the Army regarding racial discrimination against service personnel and their dependents.
5.	Letter of June 22, 1962, from President Kennedy to Gerhard A. Gesell, regarding the President's Committee on Equality of Opportunity in the Armed Forces.
6	Army Regulation 350-295, dated 5 June 1958, entitled "Education of Dependents in Continental United States and Puerto Rico."
7	Army Regulation 350-290, dated 4 January 1962, entitled "Education of Dependents in Oversea Areas."
8	Applications by County School Board of Prince George County for Federal school construction grants under P.L. 815 (Attachment C - To plaintiff's answers to interrogatories served by the County School Board of Prince George County).
9.	Application for placement of Robert Clarence Gaskill, Jr., dated August 15, 1962.
10	Application for placement of Robert Clarence Gaskill, Jr., dated August 24, 1962.
11	Letter of August 27, 1962, from James O. Morehead, Division Superintendent, to Robert C. Gaskill.
12	Letter of September 19, 1962, from Pupil Placement Board to Robert Gaskill.
13	Application for placement of Edward Maurice Fulford, dated May 18, 1962.
14	Application for placement of Maurice Edward Fulford, dated August 24, 1962.
15	Letter of August 27, 1962, from James O. Morehead, Division Superintendent, to Sgt. Curtis D. Fulford.

<u>Plaintiff's</u> <u>Ex. No.</u>	<u>Description</u>
16	Letter of September 19, 1962, from Pupil Placement Board to Sgt. Curtis D. Fulford.
17	Application for placement of Terri Lynne Price, dated July 24, 1962.
18	Application for placement of Terri Lynne Price, dated August 24, 1962.
19	Application for placement of Karen Diane Price, dated August 28, 1962.
20	Letter of August 27, 1962, from James O. Morehead, Division Superintendent, to James W. Price.
21	Letter of August 30, 1962, from James O. Morehead, Division Superintendent, to James W. Price.
22	Letter of September 19, 1962, from Pupil Placement Board to James W. Price.
23	Application for placement of Darryl Felton Johnson, dated August 28, 1962.
24	Letter of August 30, 1962, from James O. Morehead, Division Superintendent, to Captain Lawrence K. Johnson.
25	Letter of September 19, 1962, from Pupil Placement Board to Captain Lawrence K. Johnson.
26	Application for placement of Daniel Morris Walker, Jr., dated August 28, 1962.
27	Letter of August 30, 1962, from James O. Morehead, Division Superintendent, to Daniel M. Walker, Sr.
28	Letter of September 19, 1962, from Pupil Placement Board to Daniel M. Walker.
29	Application for placement of Jesse W. Lawler, Jr., dated August 28, 1962.
30	Letter of August 30, 1962, from James O. Morehead, Division Superintendent, to Jesse Lawler.
31	Letter of September 19, 1962, from Pupil Placement Board to Jesse Lawler.
32	Application for placement of Willie R. Toomer, dated August 28, 1962.

<u>Plaintiff's Ex. No.</u>	<u>Description</u>
33	Letter of August 30, 1962, from James O. Morehead, Division Superintendent, to James Toomer.
34	Letter from Pupil Placement Board, dated September 19, 1962, to James Toomer.
35	Application for placement of Linda Dale Bressant, dated September 14, 1962.
36	Application for placement of Leon DeCosta Bressant, Jr., dated September 14, 1962.
37	Application for placement of Garland Junior Jackson, dated September 19, 1962.
38	Application for placement of Jacqueline McPherson Borden, dated September 8, 1962.
39	Application for placement of Clyde McPherson Borden, dated October 8, 1962.
40	Application for placement of Deborah Jean Borden, dated October 8, 1962.
41	Application for placement of Queen Esther Borden, dated October 8, 1962.
42	Application for placement of Gail Bernadette Marable, dated October 23, 1962.
43	Application for placement of Jonathan Sherman Marable, Dated October 23, 1962.
44	Letter of September 11, 1962, from James O. Morehead, Division Superintendent, to Pupil Placement Board, enclosing 8 applications from Negro parents for admission of 8 children to Prince George County School Division and to all white schools.
45	Excerpts from minutes of the meeting of the Pupil Placement Board, September 17, 1962, reciting that the Board did not consider the applications submitted to it on September 11, 1962, by Mr. Morehead for the reason that they were not filed in accordance with regulations.

<u>Plaintiff's</u> <u>Ex. No.</u>	<u>Description</u>
46	Letter of September 24, 1962, from Pupil Placement Board to Mr. J.O. Morehead, Division Superintendent, enclosing 274 applications approved by the Board on September 17, 1962.
47	Letter of September 19, 1962, from James O. Morehead, Division Superintendent, to the Pupil Placement Board, enclosing application for placement of Garland Junior Jackson.
48	Letter of November 9, 1962, from Pupil Placement Board to James O. Morehead, Division Superintendent, enclosing 140 applications approved by the Board on November 6, 1962.
49	Letter of September 26, 1962, from James O. Morehead to Pupil Placement Board enclosing applications for transfer of Kay Denise Hill and Fay Cary Hill from the Bessie H. Mason (Negro school) to William A Walton (white school).
50	Regulations of the Pupil Placement Board.
51	Letter of October 11, 1962, from Pupil Placement Board to James O. Morehead enclosing 984 applications approved by the Board on October 8, 1962.
52	Letter of November 5, 1962, from James M. Quigley, Assistant Secretary of the Department of Health, Education and Welfare, to County School Board of Prince George County.

The defendants do not presently anticipate offering any exhibits in evidence. The County School Board of Prince George County, however, reserves the right to offer in evidence any material contained in the personnel files of the Negro servicemen stationed at Fort Lee who have school age dependents as set forth in plaintiff's answer to Interrogatory No. 1 of the County School Board. The plaintiff will, prior to trial, make these personnel files available to counsel for the County School Board and counsel for the County School Board will, prior to trial, advise counsel for the plaintiff which, if any, of the materials contained

in the files the defendant intends to use upon the trial. Plaintiff will at that time, and prior to trial, advise the Court and counsel whether it has any objections to the introduction of such material in evidence.

Counsel for the County School Board similarly reserves the right, subject to the same conditions, to offer into evidence any materials from the files of the Department of Health, Education and Welfare regarding the various school construction projects referred to in the complaint.

10. Exhibits Ojected To.

None of the exhibits proposed to be offered by the plaintiff are objected to by the defendants.

Inasmuch as none of the defendants presently anticipates offering any exhibits the plaintiff has no occasion to frame objections at this time.

11. Witnesses.

Plaintiff proposes to call the following witnesses:

Borden, Mrs. Ellen (18)  
Bressant, Capt. Leon D. (15)  
Bressant, Viola L. (16)  
Caldwell, Capt. Joseph R. (14)  
Chase, Sgt. Bobby J. (23)  
Churchwell, SFC Harvey (24)  
Covington, Capt. William (22)  
Culbertson, Col. Eual W. (2)  
Ferguson, Margaret (6)  
Forbes, Maj. Clarence (21)  
Fulford, Sgt. Curtis (8)  
Gaskill, Capt. Robert C. (7)  
Grigsby, Rall I. (4)  
Jackson, Lt. Garland R. (17)  
Jackson, Stephen S. (3)  
Jenkins, Sgt. Samuel E. (25)  
Johnson, Capt. Lawrence K. (10)  
Kienseler, SFC J. L. (19)  
Lawler, Sgt. Jesse (12)  
MacIntosh, Maj. Gen. Hugh (1)  
Marable, Maj. Sherman S. (20)  
Price, Maj. James W. (9)  
Quigley, James M. (5)  
Toomer, SFC James (13)  
Walker, Maj. Daniel Morris (11)



A brief synopsis of the expected testimony of each of the above witnesses is set forth as an attachment to this order. The address of each witness is contained in the synopsis of his testimony. The number appearing in parenthesis after the name of each witness listed above indicates the order in which the synopsis of his testimony appears in the attachment.

The defendant members of the Pupil Placement Board do not presently propose to call any witnesses at the trial but reserve the right to testify in their own behalf. If one or more of the members of the Board testifies, his testimony will relate to (a) the Board's handling of the particular pupil placement applications which are the subject of this litigation, and (b) the general procedures and practices adhered to by the Board in performing its statutory duties.

The County School Board of Prince George County and James O. Morehead propose to call the following witnesses to testify regarding the following matters:

a. James O. Morehead will testify regarding the general policy and practices of the County School Board of Prince George County in handling applications for enrollment in the county schools and the facts relating to the handling of the particular applications which are the subject of this suit.

b. John D. Meade, Superintendent of Schools of the City of Petersburg, will testify regarding the arrangement between Prince George County and the City of Petersburg for the education in Petersburg schools of certain children residing in Prince George County and the fact that such arrangement is now ended.

c. Charles W. Smith, former Superintendent <sup>of Schools</sup>/of Prince George County, will testify regarding the arrangement between Prince George County and the City of Petersburg for

the education of certain children, and regarding the circumstances surrounding the county's applications to the United States Commissioner of Education for school construction grants under P.L. 815. He will testify that the County School Board, in applying for the grants, had no intention to bind itself in any way with regard to racial questions.

The Commonwealth of Virginia does not propose to call any witnesses.

12. Objections to Testimony.

The plaintiff has no objection to the general lines of testimony which the defendants propose to elicit from their witnesses as outlined in the preceding item.

The defendants have no objection to the testimony which the plaintiff proposes to elicit from its witnesses as outlined in the attachment to this order, except with respect to the testimony of Stephen S. Jackson regarding the policy of the Department of Defense against racial discrimination. Such testimony by Mr. Jackson will be objected to upon the grounds that it is irrelevant and immaterial to any issue in the case.

13. Depositions and Interrogatories.

The plaintiff proposes to offer in evidence all depositions and all answers to interrogatories taken or filed by any party to this case. One or more of the defendants will offer some or all of said depositions and interrogatories in his own behalf.

14. Objections to Depositions and Interrogatories.

None of the parties has any objection to the introduction in evidence of any or all of the depositions and interrogatories taken or filed by any of the parties.

15. Additional Matters.

Counsel for the parties know of no additional matters which would aid the Court in the disposition of this action.

16. Length of Trial.

Counsel expects that the trial in this action will take four days.

This pre-trial order will control the subsequent course of this action unless modified to prevent injustice.

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United States District Judge

May , 1963.