

IN THE
COURT OF CHANCERY
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ETHEL LOUISE BELTON, an Infant, by her Guardian ad Litem, Ethel Belton, ELBERT JAMES CRUMPLER, an Infant, by his Guardian ad Litem, Joseph Crumpler, RICHARD LEON DAVIS and JOHN TERRELL DAVIS, Infants, by their Guardian ad Litem, John W. Davis, SPENCER W. ROBINSON, an Infant, by his Guardian ad Litem, Willie Robinson, STYRON LUCILLE SANFORD, an Infant, by her Guardian ad Litem, Emma Fountain, ALMENA A. SHORT, an Infant, by her Guardian ad Litem, John Short, MYRTHA DELORES TROTTER, an Infant, by her Guardian ad Litem, Harlan Trotter, ETHEL BELTON, JOSEPH CRUMPLER, JOHN W. DAVIS, WILLIE ROBINSON, EMMA FOUNTAIN, JOHN SHORT, and HARLAN TROTTER, Plaintiffs,

vs.

FRANCIS B. GEBHART, WILLIAM B. HORNER, EUGENE H. SHALLCROSS, JESSE OHRUM SMALL, N. MAXSON, TERRY, JAMES M. TUNNELL, Members of the State Board of Education of the State of Delaware, GEORGE R. MILLER, JR., State Superintendent of Public Instruction of the State of Delaware, ALFRED EUGENE FLETCHER, GEORGE CLIFFORD JOHNSON, SAGER TRYON, EARL EDWARD ROWLES, Members of the Board of Education of the Claymont Special School District, HARVEY E. STAHL, and HAIG KUPJIAN, Defendants.

Civil Action
No. 258

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Complaint

1. The plaintiffs are citizens of the United States and of the State of Delaware, resident in the Claymont Special

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School District, in New Castle County, in said State, and are the following individuals:

(a) Louise Ethel Belton, an infant, who sues by her guardian ad litem, Ethel Belton;

(b) Elbert James Crumpler, an infant, who sues by his guardian ad litem, Joseph Crumpler;

(c) Richard Leon Davis and John Terrell Davis, infants, who sue by their guardian ad litem, John W. Davis;

(d) Spencer W. Robinson, an infant, who sues by his guardian ad litem, Willie Robinson;

11 (e) Styron Lucille Sanford, an infant, who sues by her guardian ad litem, Emma Fountain;

(f) Almena A. Short, an infant, who sues by her guardian ad litem, John Short;

(g) Myrtha Delores Trotter, an infant, who sues by her guardian ad litem, Harlan Trotter;

(h) Ethel Belton, Joseph Crumpler, John W. Davis, Willie Robinson, Emma Fountain, John Short, and Harlan Trotter, adults.

All of the plaintiffs are among those persons classified as "colored," of Negro blood and African ancestry.

12 2. The State of Delaware has declared public education a state function. The Constitution of the State of Delaware, Article X, Section 1, provides:

"The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child, not physically or mentally disabled, shall attend the public schools, unless educated by other means."

Complaint.

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Pursuant to this mandate, the General Assembly of Delaware has established a system of free public schools in the State of Delaware, according to the plan set out in 36 Laws of Delaware, Chapter 222. The general administration and supervision of the public schools and of the educational interests of the State is vested in a State Board of Education of the State of Delaware, Boards of Education of Special School Districts, and Trustees of School Districts. (37 Laws of Delaware, Chapters 193 and 196; 32 Laws of Delaware, Chapter 160).

3. (a) Defendants Francis B. Gebhart, William B. Horner, Eugene H. Shalieross, Jesse Ohnum Small, N. Maxson Terry and James M. Tunnell, are members of the State Board of Education of the State of Delaware, an administrative agency of the State of Delaware, and, as such, are under a duty to carry into effect the school laws of the State of Delaware; to maintain a uniform, equal and effective system of public schools throughout the State of Delaware; to determine the educational policies of the State; to adopt rules and regulations for the administration of the free public school system of the State of Delaware, and to appoint such professional and clerical assistants as are necessary for carrying out the policies and the rules and regulations of the State Board of Education; to decide, without expense to the parties concerned, all controversies and disputes involving the administration of the public school system of the State of Delaware, and to decide appeals from decisions of Boards of Education of Special School Districts in the State of Delaware. (36 Laws of Delaware, Chapter 222; 32 Laws of Delaware, Chapter 160). Administrative detail for said defendants, as members of the State Board of Education, is carried out through professional and clerical assistants of said defendants in a State Department of Public Instruction of the State of Delaware.

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(b) Defendant George R. Miller, Jr., is Executive Secretary of the State Board of Education and State Superintendent of Public Instruction, a statutory officer.

17 (c) Defendants Alfred Eugene Fletcher, George Clifford Johnson, Sager Tryon, and Earl Edward Rowles are members of the Board of Education of the Claymont Special School District, in New Castle County, in the State of Delaware, and are vested with the duty of the general administration and supervision of the free public schools and the educational interests of the said Claymont Special School District and with the further duty to determine the educational policies of said Special School District; to appoint a Superintendent of Schools, teachers, officers and other employees of said Special School District; to prescribe rules and regulations for the conduct and management of the schools of said Special School District; to decide all controversies and disputes involving the rules and regulations of the Board of Education of the Claymont Special School District and the proper administration of the public schools of said Special School District.

18 (d) Defendant Harvey E. Stahl, is the Superintendent of Schools of the aforementioned Claymont Special School District and, as such, has the immediate professional administration of the public schools within the Claymont Special School District, and defendant Haig Kupjian has the immediate professional administration of the Claymont High School, maintained in the Claymont Special School District.

(e) All defendants are sued in their respective official capacities.

4. Defendants for some time prior hereto have maintained and administered and at the present time are maintaining and administering a public school known as the

"Claymont High School" in the Claymont Special School District, in New Castle County, in the State of Delaware, and although said Claymont High School is the only public school for the secondary, or high school, education of children residing within the aforesaid Claymont School District and is supported and maintained out of public moneys of the State of Delaware, it is maintained exclusively for the use of white school children.

5. Infant plaintiffs satisfy all lawful requirements for admission to said Claymont High School, have presented themselves for admittance, enrollment and attendance in said school at appropriate times and places, and were refused and denied the right of admission, enrollment and attendance in said school, such refusal and denial having been made first by defendants Kupjian and Stahl, acting in their aforementioned official administrative capacities, and such refusal and denial subsequently having been made successively by the defendants Fletcher, Johnson, Tryon, and Rowles, as members of the Board of Education of the aforementioned Claymont Special School District, and by the remaining defendants as members or employees of the aforementioned State Board of Education of the State of Delaware. (See, as examples of letters sent to all the adult plaintiffs, refusing and denying admission of infant plaintiffs to the Claymont High School, copy of letter dated January 30, 1951, addressed by the defendant Fletcher, as President of the Board of Education of the Claymont Special School District, to plaintiff Emma Fountain, and copy of letter dated March 19, 1951, addressed by the defendant George R. Miller, Jr., State Superintendent of Public Instruction, to said Emma Fountain, said letters being attached to this complaint as Exhibits Nos. 1 and 2, respectively). The aforesaid refusal and denial by the defendants of admission of the infant plaintiffs to said

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Complaint.

Claymont High School was solely and expressly because of infant plaintiffs' color or ancestry, white children residing in the Claymont Special School District and similarly qualified as the infant plaintiffs for high school attendance and instruction being admitted to and enrolled in, and in attendance at said high school.

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6. Infant plaintiffs, solely because of their color or ancestry, in order to obtain public high school instruction within the State of Delaware, are required to leave the Claymont Special School District in which they live and travel a minimum of approximately eighteen miles per school day to high schools outside the Claymont Special School District, which are segregated on the basis of color and where infant plaintiffs do not and cannot receive educational opportunities and advantages equal to those afforded and furnished to white children similarly situated, that is, resident in the aforesaid Claymont Special School District and qualified for high school instruction, which differential and inferior treatment accorded infant plaintiffs to the opportunities and advantages accorded white children similarly situated is in violation of the rights of infant plaintiffs under the Fourteenth Amendment to the Constitution of the United States.

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7. Adult plaintiffs are the parents and natural guardians of infant plaintiffs. By not being permitted to send their children and wards to the Claymont High School, the only public high school within the Claymont Special School District, and being required to send their children and wards outside the aforesaid special school district to obtain high school instruction, which requirement is not imposed on parents of white children residing within said special school district, adult plaintiffs are obliged to bear burdens and forego advantages, solely because of their color or

ancestry, in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

8. The defendants, in contravention of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, deny to infant plaintiffs educational opportunities equal to the educational opportunities provided by defendants for white children similarly situated, in that infant plaintiffs, in order to obtain high school instruction, by expenditure of time which otherwise would be devoted to study, recreation or gainful employment, are required to travel outside the aforesaid Claymont Special School District, while white children similarly situated, that is, resident in the said Claymont Special School District and qualified for and desirous of high school instruction, attend and receive such instructions at the Claymont High School, within the aforesaid Claymont Special School District, maintained by the defendants out of public funds of the State of Delaware and its governmental subdivisions for white children exclusively.

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9. The action of the defendants in denying and refusing to infant plaintiffs admission to said Claymont High School, the only high school in the Claymont Special School District maintained out of public funds of the State of Delaware, places infant plaintiffs and others similarly situated at great disadvantage with regard to obtaining a high school education, as compared with certain other residents of said Special School District; amounts to denial to plaintiffs, citizens of the United States and of the State of Delaware, and others similarly situated, by the State of Delaware, or an administrative agency thereof, of the equal protection of the laws; is unequal, oppressive and discriminatory; deprives the plaintiffs, and others similarly situated, of liberty and property without due process

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of law, and is violative of the Fourteenth Amendment to the Constitution of the United States.

10. Plaintiffs and others similarly situated and affected, on whose behalf this suit is brought, are suffering irreparable injury and face irreparable injury in the future by reason of the acts complained of herein. Plaintiffs have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of, other than this suit for a declaration of rights and an injunction. Any other remedy to which plaintiffs and others similarly situated might be remitted would be attended by such uncertainties and delays as to deny substantial relief; would involve a multiplicity of suits; would cause further irreparable injury and vexation, not only to plaintiffs and others similarly situated, but to defendants.

11. This is a class action authorized by Rule 23 (a) 3 of the Rules of the Court of Chancery of the State of Delaware, in that the plaintiffs are members of a class so numerous as to make it impracticable to bring them all before court, the character of the rights which plaintiffs seek to enforce are several, there are common questions of law and fact affecting the several rights, and common relief is sought. For these reasons plaintiffs bring this action in their own behalf and on behalf of all members of the class without specifically naming said members herein.

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WHEREFORE, plaintiffs respectfully pray the Court that:

1. The Honorable Court enter a judgment or decree declaring that the Constitution of the State of Delaware, Article X, Section 2, and the statute of the State of Delaware, 36 Laws of Delaware, Chapter 222, are unconstitutional insofar as they require and empower defendants to maintain separate schools for colored and white school children.

2. The Honorable Court enter a judgment or decree declaring that the policy, custom, usage and practice of defendants, operating under Article X, Section 2, of the Constitution of the State of Delaware, and 36 Laws of Delaware, Chapter 222, in denying infant plaintiffs and other colored children residing in the Claymont Special School District, in New Castle County, State of Delaware, solely because of color or ancestry, the right and privilege of enrolling in, attending, and obtaining high school instruction in the Claymont High School are violations of the equal protection and due process clauses of the United States Constitution and are therefore unconstitutional and void.

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3. The Honorable Court issue a permanent injunction forever restraining and enjoining the defendants from enforcing and executing so much of Article X, Section 2, of the Constitution of the State of Delaware, and 36 Laws of Delaware, Chapter 222, as requires and empowers them to maintain separate schools for colored and white children.

4. The Honorable Court issue a permanent injunction forever restraining defendants from denying the plaintiffs and other colored children similarly situated, residing within said Claymont Special School District, the right and privilege of attending the Claymont High School aforesaid, and from making any distinction based upon color or ancestry in the opportunities which the defendants provide for public high school education.

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5. The Honorable Court will allow plaintiffs their costs herein, reasonable counsel fees, and such other and further relief as may appear to the Court equitable and just.

LOUIS L. REDDING
923 Market Street
Wilmington 7, Delaware
Attorney for Plaintiffs

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Exhibit 1.

January 30, 1951

Mrs. Emma Fountain
113 Hickman Road
Claymont, Delaware

Dear Mrs. Fountain:

Your letter of application for your child's entrance to Claymont Special District High School, dated January 20, 1951, I have received. The Claymont Board of Education has authorized me to answer your letter.

35 The Constitution of the State of Delaware, Article X, Section 2, provides for a dual system of public schools for Delaware. I quote: "and separate schools for white and colored children shall be maintained."

Furthermore, the School Laws of our State, under our Constitution make provisions for separate schools in Chapter 71, Free Public Schools, Article 1, State Board of Education—2631, Section 9—"Shall Maintain Uniform School System: Separate Schools for White Children, Colored Children" (36 Delaware Laws, Chs. 211 and 212), and in Article 5—School Attendance 2684, Section 62, "White Schools and Colored Schools, White Schools Free to White Children and Colored Schools Free to Colored Children," etc., (32 Del. Laws, Ch. 160, 41).

36 Therefore, under the regulations of our Delaware State Constitution and the existing School Laws, your child, Styron Lucille Sanford, is not now eligible to enroll in the Claymont Special District High School for White Children.

Yours very truly,

President of Claymont
Board of Education

AEF:BB

Exhibit 2.

March 19, 1951

Mrs. Emma Fountain
113 Hickman Road
Claymont, Delaware

Dear Mrs. Fountain:

Your petitions to the State Board of Education relating to the admission of Negro children into the white schools of Claymont, Newark, Hockessin and Alexis I. duPont have been carefully reviewed by the State Board of Education.

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The Constitutional Provisions, adopted in Convention June 4, 1897, Article 10, Section 2 read in part as follows: " * * * and the money so apportioned shall be used exclusively for the payment of teachers' salaries and for furnishing free textbooks; provided, however, that in such apportionment, no distinction shall be made on account of race or color, and separate schools for white and Colored children shall be maintained".

It is the opinion of the members of the State Board of Education that, since the apportionment of State monies is conditioned by the Constitutional requirement that separate schools shall be maintained for white and Colored children, the petitions seeking admission into the Claymont, Newark, Hockessin and Alexis I. duPont white schools for certain Negro children are hereby denied.

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Very sincerely yours,

GEORGE R. MILLER, JR.
State Superintendent

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Plaintiffs,

vs.

42 FRANCIS B. GEBHART, WILLIAM B. HORNER, EUGENE H. SHALLCROSS, JESSE OHRUM SMALL, N. MAXSON TERRY, JAMES M. TUNNELL, Members of the State Board of Education of the State of Delaware, GEORGE R. MILLER, JR., State Superintendent of Public Instruction of the State of Delaware, ALFRED EUGENE FLETCHER, GEORGE CLIFFORD JOHNSON, SAGER TRYON, EARL EDWARD ROWLES, Members of the Board of Education of the Claymont Special School District, HARVEY E. STAHL, and HAIG KUPJIAN,

Defendants.

Civil Action
No. 258

Answer of All Defendants to the Complaint.

All of the foregoing defendants, by H. Albert Young, Attorney General of the State of Delaware, for answer to the complaint in the foregoing action, state:

1. Admit each and every allegation of Paragraph 1 of the complaint.

2. For answer to Paragraph 2 of the complaint, defendants admit that the general administration and supervision of the Public Schools and of the educational interests of the State of Delaware, is vested in a State Board of Education, Board of Education of Special School Districts, and Trustees of School Districts. Defendants believe that they have established a free school system in accordance with the Constitution and the Statutes of the State of Delaware.

3. Admit each and every allegation of Paragraph 3 and all the sub-paragraphs thereof, of the complaint. 44

4. Admit the allegations of Paragraph 4 of the complaint.

5. For answer to Paragraph 5 of the complaint, defendants state that they refused the plaintiffs admittance, enrollment, and attendance in the Claymont High School on the basis of what the defendants conceived to be the mandatory Constitutional and statutory provisions requiring that separate schools be maintained for white and negro children. Otherwise, defendants admit the allegations of Paragraph 5 of the complaint.

6. For answer to Paragraph 6 of the complaint, defendants state that all the plaintiffs are eligible to attend either the Howard High School or George Washington Carver High School, both of which schools are located within 9 miles of the Claymont High School. Defendants state that the aforesaid distance constitutes the maximum difference each way between the distance required to be traveled by negro children residing in the Claymont Spe- 45

cial School District and the distance required to be traveled by white children residing in the same District. The differential in travel time involved is not of sufficient duration to deprive plaintiffs of the opportunity for educational advantages equal to those afforded to white children similarly situated. Defendants deny that plaintiffs do not and cannot receive educational opportunities and advantages equal to those afforded and furnished to white children similarly situated and allege that the educational opportunities and advantages afforded by the aforesaid Howard High School or George Washington Carver High School are equal to the educational opportunities and advantages afforded by the Claymont High School. Defendants admit that the Howard High School and the George Washington Carver High School are segregated on the basis of color but deny that such segregation constitutes inequality with the meaning of the 14th Amendment to the Constitution of the United States. Defendants deny that the acts complained of constitute a violation of the 14th Amendment to the Constitution of the United States.

7. Admit the first sentence of Paragraph 7 of the complaint. Deny the 2nd sentence of Paragraph 7 of the complaint.

8. Deny the allegations of Paragraph 8 of the complaint.

9. Deny the allegations of Paragraph 9 of the complaint.

10. Deny the allegations of Paragraph 10 of the complaint.

11. Admit the allegations of Paragraph 11 of the complaint.

WHEREFORE, defendants respectfully pray the Court that a decree be entered denying the injunction prayed for, declaring that defendants are not violating the 14th Amendment to the Constitution of the United States by virtue of the Acts complained of and dismissing the complaint with costs to the plaintiffs.

Respectfully submitted,

H. ALBERT YOUNG,
Attorney General.

LOUIS J. FINGER,
Deputy Attorney General. 50