

64

Relevant Docket Entries.

#10 Apr. 1, A. D. 1952—OPINION BY THE CHANCELLOR—FILED.

#11 Apr. 15, A. D. 1952—ORDER OF THE COURT—FILED.

#12 Apr. 21, A. D. 1952—NOTICE OF APPEAL—FILED.

IN THE
COURT OF CHANCERY
OF THE STATE OF DELAWARE

65

IN AND FOR NEW CASTLE COUNTY

SHIRLEY BARBARA BULAH, an Infant, by
her Guardian ad Litem, Sarah Bulah,
FRED BULAH and SARAH BULAH,

Plaintiffs,

vs.

FRANCIS B. GEBHART, WILLIAM B. HORNER,
EUGENE H. SHALLCROSS, JESSE OHRUM
SMALL, N. MAXSON TERRY, and JAMES M.
TUNNELL, Members of the State Board of
Education of the State of Delaware,
GEORGE R. MILLER, JR., State Superin-
tendent of Public Instruction of the State
of Delaware, GORDON F. BIEHN, FREDERICK
H. SMITH, HENRY C. MITCHELL, and ETHEL
C. McVAUGH, Members of the Board of
School Trustees of Hockessin School
No. 29,

Defendants.

Civil Action
No. 265

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Complaint.

1.

(a) The infant plaintiff, Shirley Barbara Bulah, is a citizen of the United States and the State of Delaware, and

resides in the village known as Hockessin, New Castle County, Delaware.

(b) Plaintiffs, Fred Bulah and Sarah Bulah, are the parents of plaintiff Shirley Barbara Bulah, citizens of the State of Delaware, and of the United States and reside in the village known as Hockessin, Delaware.

(c) Plaintiffs are among those classified as "colored," are of Negro blood and African ancestry.

2.

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

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"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."

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, Boards of Education of Special School Districts, and Trustees of School Districts. (37 Laws of Delaware, Chapters 193 and 198; 32 Laws of Delaware, Chapter 160.)

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3.

71 (a) The defendants, Francis B. Gebhart, William B. Horner, Eugene H. Shallcross, Jesse Ohrum Small, N. Maxson Terry, and James M. Tunnell, are the members of the State Board of Education, 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. (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.

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

(c) The defendants, Gordon F. Biehn, Frederick H. Smith, Henry C. Mitchell, and Ethel C. McVaugh, reside in Hockessin, New Castle County, State of Delaware, are the members of the Board of School Trustees of Hockessin School No. 29, at Hockessin, New Castle County, State of Delaware, and, as such members, are the representatives of the State Board of Education in Hockessin School District No. 29.

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

4.

Defendants maintain and administer Hockessin School No. 29 as a free public school for the elementary instruction of white children exclusively.

Defendants Francis B. Gebhart, William B. Horner, Eugene H. Shallcross, Jesse Ohlum Small, N. Maxson Terry, and James M. Tunnell, as members of the said State Board of Education, also maintain Hockessin School No. 107 for the elementary instruction exclusively of colored children in parallel grades with those conducted and maintained at Hockessin School No. 29.

74

Defendants also maintain, as an integral part of the school program at Hockessin School No. 29, a system of bus transportation for pupils attending said school but do not maintain bus transportation, nor furnish a substantial equivalent thereto, for pupils attending Hockessin School No. 107. (See letters addressed to plaintiff, Fred Bulah, dated October 10, 1950, and December 11, 1950, by Preston G. Eisenbrey, Supervisor of Transportation, State of Delaware Department of Public Instruction, and December 18, 1950, by defendant George R. Miller, Jr., Secretary, State Board of Education, copies of which, marked "Exhibit 1," "Exhibit 2," and "Exhibit 3," respectively, are attached to this complaint.)

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5.

Infant plaintiff, Shirley Barbara Bulah, satisfies all lawful requirements for admittance to Hockessin School No. 29 and has sought admittance to said school, first seeking such admittance from defendants Biehn, Smith, Mitchell, and McVaugh, as members of the Board of School Trustees

Complaint.

of Hockessin School No. 29, and, subsequently, from the remaining defendants, as members and Executive Secretary, respectively, of the State Board of Education. Said infant plaintiff was effectively refused and denied admittance to Hockessin School No. 29, such refusal and denial being solely and expressly because of plaintiff's color or ancestry. (See letters addressed to Mrs. Fred Bulah (plaintiff, Sarah Bulah) dated February 18, 1951, by defendant Gordon F. Biehn, Chairman, Board of School Trustees, Hockessin School No. 29; dated February 26, 1951, and March 19, 1951, by defendant, George R. Miller, Jr., as State Superintendent of the State of Delaware Department of Public Instruction, copies of said letters being attached to this complaint and marked respectively "Exhibit 4," "Exhibit 5," and "Exhibit 6.")

6.

(a) Hockessin School No. 107 is greatly inferior and unequal to Hockessin School No. 29 in the following deprivations and inequalities in facilities and instruction incurred by pupils at Hockessin School No. 107 and not incurred by pupils at Hockessin School No. 29: at No. 29 instruction of the six elementary grades is divided among four teachers, while at No. 107 instruction of the six elementary grades is divided between two teachers, with the result that less teacher time, attention, instruction and study supervision, is given to the pupils in each individual grade in No. 107 than in No. 29, this tending toward retardation of pupils in No. 107; at No. 29, there is a well-equipped playground conducive to optimum physical growth and development of pupils, while at No. 107 the playground is makeshift or poorly designed and the equipment is scanty, poor, makeshift, and not calculated to conduce to sound physical growth and development of pupils; the site of No.

Complaint.

79

29 is well-located, on attractive, elevated terrain, and the physical plant, including school building and playground, are meticulously kept and cared for, while at No. 107 the site is low-lying, close by railroad tracks, and the physical plant is poorly kept; at No. 29 there is bus transportation furnished by defendants to take pupils to and from school, while at No. 107, no bus transportation, nor any substantial equivalent, is furnished.

(b) Hockessin School No. 107 is inferior and unequal to Hockessin School No. 29, because No. 107, maintained by defendants as a public school of the State of Delaware, is set apart and segregated for the required attendance of infant plaintiff and others similarly situated, that is, a minority of citizens of the United States designated as "colored" and of African ancestry, and because such segregation causes embarrassment and humiliation to plaintiffs, bars infant plaintiff, solely because of her color and ancestry, from the free association and exchange of ideas with a majority of other citizens which is an essential ingredient of the public school learning process, and irreparably injures her by retarding and stunting the development of the personality of said infant plaintiff.

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7.

The action and practices of defendants in maintaining Hockessin School No. 107 as an inferior and segregated public school, unequal to Hockessin School No. 29, and in barring infant plaintiff from admission to Hockessin School No. 29 constitute a denial to infant plaintiff of the equal protection of the laws; are unequal, oppressive and discriminatory, and deprive the plaintiffs of liberty and property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

81

Complaint.

8.

83 The action of the defendants in denying and refusing to infant plaintiff admission to said Hockessin School No. 29, maintained out of public funds of the State of Delaware, places infant plaintiff and others similarly situated at great disadvantage with regard to obtaining an elementary education as compared with certain other residents of Hockessin, Delaware; 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 of law, and is violative of the Fourteenth Amendment to the Constitution of the United States.

9.

84 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.

10.

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.

WHEREFORE, the plaintiffs respectfully pray the Court that:

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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 plaintiff and other colored children residing in Hockessin, Delaware, solely because of color or ancestry, the right and privilege of enrolling in, attending, and obtaining elementary school instruction in Hockessin School No. 29 are violations of the equal protection and due process clauses of the United States Constitution and 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.

89 4. The Honorable Court issue a permanent injunction forever restraining defendants from denying the infant plaintiff and other colored children similarly situated, residing in Hockessin, Delaware, the right and privilege of attending Hockessin School No. 29, and from making any distinction based upon color or ancestry in the opportunities which the defendants provide for elementary school education for infant plaintiff and other colored children similarly situated.

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, Delaware
Attorney for Plaintiffs

Complaint.

91

STATE OF DELAWARE }
 NEW CASTLE COUNTY } ss.:

BE IT REMEMBERED, that on this 17th day of August, 1951, personally came before me, the subscriber, a Notary Public for the State of Delaware, Fred Bulah and Sarah Bulah, who being by me duly sworn did depose and say: that they are the Guardians ad Litem of Shirley Barbara Bulah, infant plaintiff in the foregoing cause, and that they are individual plaintiffs in said cause; and that they are cognizant of the contents of the attached complaint; that the matter contained therein, insofar as it concerns their own act and deed is true, and insofar as it relates to the act and deed of any other person, is believed by them to be true.

92

(s) FRED BULAH

(s) SARAH BULAH

Sworn to and subscribed before me,
 the day and year aforesaid.

(s) LOUIS L. REDDING,
 Notary Public.
 (Notarial Seal)

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Exhibit 1.

STATE OF DELAWARE
DEPARTMENT OF PUBLIC INSTRUCTION
Dover
BUSINESS ADMINISTRATION

R. L. Herbst
Assistant Superintendent

October 10, 1950

95 Mr. Fred Bulah
Limestone Road
Hockessin, Delaware

Dear Mr. Bulah:

I wish to acknowledge the receipt of the application for transportation for your daughter, Shirley, to attend the Hockessin School #107C.

I am very sorry, however, that we have no transportation facilities provided for this school. Therefore, the only transportation benefits to which you would be entitled would be the private allowance based on the distances as shown in Rule 18 of the enclosed Rules and Regulations.

The application will be properly investigated and you will be notified just what the allowance will be.

96

Yours very truly,

DEPARTMENT OF PUBLIC INSTRUCTION
PRESTON G. EISENBREY
Supervisor of Transportation

PGE:mw
enc.
cc Gov. Elbert N. Carvel

Exhibit 1.

97

Preston G. Eisenbrey, Supervisor
of Transportation, Dover

Harry Smith, Supervisor of
Maintenance, Milton

John H. Bastian, Supervisor of
Business & Accounting, Dover

B. F. Lovell, Supervisor of School
Buildings & Grounds, Dover

Exhibit 2.

98

STATE OF DELAWARE
DEPARTMENT OF PUBLIC INSTRUCTION
Dover
BUSINESS ADMINISTRATION

R. L. Herbst
Assistant Superintendent

December 11, 1950

Mr. Fred Bulah
Limestone Road
Hockessin, Delaware

Re: Your letter of November 22nd

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Dear Mr. Bulah:

I have thoroughly investigated your request in respect to your daughter being transported on the school bus that is being operated for the benefit of pupils attending the Hockessin School #29. Inasmuch as there is no provision made for this bus, or any bus, to go to the Hockessin

School #107, I have no way of issuing a permit for your daughter to ride.

You, no doubt, realize that the laws of Delaware require the State Board of Education to provide separate schools for colored pupils. Therefore, we who, are responsible for administering the laws, have always considered this to include the transportation of pupils. However, since this is the first formal request of which we have any record, we are referring it to the State Board of Education for their consideration. We will advise you of their action as soon as possible.

101 The next official Board meeting of the State Board of Education will be December 15th.

Yours very truly,

DEPARTMENT OF PUBLIC INSTRUCTION
PRESTON G. EISENBREY
Supervisor of Transportation

PGE:mw

cc Gov. E. N. Carvel

Dr. G. R. Miller

Preston G. Eisenbrey, Supervisor
of Transportation, Dover

102 Harry Smith, Supervisor of
Maintenance, Milton

John H. Bastian, Supervisor of
Business & Accounting, Dover

B. F. Lovell, Supervisor of School
Buildings & Grounds, Dover

Exhibit 3.**State Board of Education**

James Beebe, M.D., President, Lewes

Jacob H. Speicher, Vice-Pres., New Castle

Harold W. T. Purnell, Georgetown

Peter S. Collins, Magnolia

J. Ohnum Small, Wilmington

Eugene H. Shallcross, Middletown

Ex Officio

William S. Carlson, Newark

President, U. of D.

President, State College

George R. Miller, Jr.

Secretary and

State Superintendent

R. L. Herbst

Assistant Secretary

STATE OF DELAWARE

STATE BOARD OF EDUCATION

Dover, Del.

December 18, 1950

Mr. Fred Bulah

Hockessin, Delaware

Dear Mr. Bulah:

Your letter of November 22 in which you requested transportation for your children on the school bus operating for the benefit of pupils attending the Hockessin School #29, has been considered by the State Board of Education.

It is the consensus of the State Board members that bus transportation is an integral part of a school program, and

106

Exhibit 3.

that, since the State Constitution requires separate educational facilities for colored and white children, your children may not ride on a bus serving a white school.

Very sincerely yours,

GEORGE R. MILLER, Jr.,
Secretary

GRM:j

Exhibit 4.

107

Feb. 18, 1951

Dear Mrs. Bulah:

I have received your letter of February 13.

Your letter concerns a matter which is not the jurisdiction of the local school board. Therefore I am referring your letter to Dr. George R. Miller, Jr., State Superintendent, Dept. of Public Instruction, Dover, Del. You should hear from Dr. Miller in the near future.

Yours truly,

GORDON F. BRENN, Chairman
Board of School Trustees
Hockessin School No. 29

108

Exhibit 5.

STATE OF DELAWARE
DEPARTMENT OF PUBLIC INSTRUCTION
Dover

George R. Miller, Jr.
State Superintendent

February 26, 1951

Mrs. Fred Bulah
Hockessin
Delaware

113

Dear Mrs. Bulah:

I have your letter concerning the case of your seven year old daughter Shirley Bulah who is now attending Hockessin School #107. The matter will be taken up for consideration by the State Board of Education at its next regular meeting which will be held on Friday, March 16, 1951.

Very sincerely yours,

GEORGE R. MILLER, JR.
State Superintendent

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t

cc Mr. Gordon F. Biehn

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

SHIRLEY BARBARA BULAH, an Infant, by
her Guardian ad Litem, Sarah Bulah,
FRED BULAH and SARAH BULAH,

Plaintiffs,

vs.

110 FRANCIS B. GEBHART, WILLIAM B. HORNER,
EUGENE H. SHALLCROSS, JESSE OHRUM
SMALL, N. MANSON TERRY, and JAMES M.
TUNNELL, Members of the State Board of
Education of the State of Delaware,
GEORGE R. MILLER, JR., State Superin-
tendent of Public Instruction of the State
of Delaware, GORDON F. BIEHN, FREDERICK
H. SMITH, HENRY C. MITCHELL, and ETHEL
C. McVAUGH, Members of the Board of
School Trustees of Hockessin School
No. 29,

Defendants.

Civil Action
No. 265

Answer.

114 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, defend-
ants 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 of the complaint.

4. Admit the allegations of Paragraph 4 of the complaint except deny that defendants do not furnish to the pupils attending Hockessin School No. 107 a substantial equivalent to the bus transportation furnished to the pupils attending Hockessin School No. 29. Defendants further allege that it is the policy of the State Board of Education to set up a transportation route and furnish bus transportation whenever a sufficient number of children can be grouped along the route and the sum of the private allowances furnished by the State Board of Education to each child is large enough to justify maintaining the bus route. All pupils attending the Delaware public schools are furnished with an allowance to cover costs of transportation. There is no differential in such allowances based on color. The maintenance of a system of private bus transportation is dependent solely on geographical factors and has no relation whatsoever to the color of the pupils. As a matter of state policy, colored children are not furnished or denied bus transportation under conditions any different from those under which white children are furnished or denied private bus transportation.

116

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5. For answer to Paragraph 5 of the complaint, defendants state that they refused the plaintiffs admittance, enrollment, and attendance in the Hockessin School No. 29 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

Answer.

children. Otherwise, defendants admit the allegations of Paragraph 5 of the complaint.

6. (a) For answer to Paragraph 6 of the complaint defendants state that Hockessin School No. 107 is substantially equal to Hockessin School No. 29 in facilities and instruction. All schools, whether colored or white, are furnished with teachers on the basis of enrollment, 1 teacher being furnished for every 25 pupils or major fraction thereof. The number of pupils attending Hockessin School No. 29 is 106, and there are 4 teachers, or one teacher for every 26.5 pupils; the number of pupils attending Hockessin School No. 107 is 43, and there are 2 teachers, or 1 teacher for every 21.5 pupils. The curriculum in both schools is the same and the salary schedule in both schools is the same, both teachers in Hockessin School No. 107 are fully qualified under the standards set up by the State Board of Education whereas only 50% of the teachers in Hockessin School No. 29 are fully qualified. The teachers' time, attention, instruction and study supervision is substantially equal both in Hockessin School No. 107 and Hockessin School No. 29. The playground at Hockessin School No. 107 contains slides, horizontal ladder and swings and is satisfactory. Part of the funds from which the playground at School No. 107 is maintained were furnished by the State Board of Education. The funds for the playground at Hockessin School No. 29 were furnished almost wholly by the Parent Teachers Association and the landscaping was done by the pupils at the school. Due to the efforts of the PTA at Hockessin School No. 29 and the time put in by the pupils, the playground at Hockessin School No. 29 has the best equipment of any school of its size in the state. The differences between the playground at Hockessin Schools No. 29 and 107 is not based on any discrimination by the State Board of Education but is the result of the differences in time and attention given by the parents and pupils at the two schools. The site of Hockes-

sin School No. 107 was selected as the result of a survey and contains as much space per pupil as the site at Hockessin School No. 29. Both Hockessin Schools No. 29 and 107 receive their proportionate part of the state funds on the formula basis which applies regardless of color. Defendants incorporate the allegations of Paragraph 4 of this answer with respect to the bus transportation in answer to Paragraph 6 (a) of the complaint.

6. (b) Defendants deny each and every allegation of Paragraph 6 (b) of the complaint.

7. Defendants deny each and every allegation of Paragraph 7 of the Complaint.

122

8. Defendants deny each and every allegation of Paragraph 8 of the complaint.

9. Defendants deny each and every allegation of Paragraph 9 of the complaint.

10. Defendants admit the allegations of Paragraph 10 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 respect to the plaintiffs.

123

Respectfully submitted,

(s) H. ALBERT YOUNG
Attorney General

LOUIS J. FINGER
Deputy Attorney General