

SCHOOL REZONING FOR INTEGRATION BARRED BY COURT; Allen's Order to Transfer Pupils in Malverne, L. I., Is Declared Invalid

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ALBANY, Jan. 10 — Efforts to bring about racial balance in public schools by redrawing district lines suffered a new setback today.

Ruling in a Malverne, L. I., case, State Supreme Court Justice Isadore Bookstein said that whether their intentions were good or not, school authorities had no right to consider racial or ethnic factors in drawing school zones.

His decision invalidated an order issued last June 17 by Education Commissioner James E. Allen Jr. that would have shuffled pupils in the MalverneLakeview school district.

The Commissioner had directed that pupils from kindergarten through third grade be assigned to either the Davison Avenue or Lindner Place school, each of which has an enrollment about 14 per cent Negro, and that all fourth-grade and fifth-grade pupils attend the Woodfield Road School, which has an enrollment that is 75 per cent Negro.

Allen's Position

Dr. Allen's order had been stayed pending today's decision by Justice Bookstein.

Charles Brind, counsel for the State Education Department, had declared when the case was argued before Justice Bookstein that Commissioner Allen's order was based on educational considerations. He contended that the racial

imbalance was harmful to education.

Mason Hampton, lawyer for parents challenging the order, insisted that redistricting to achieve racial balance was illegal whatever the motivation. It was this contention that Justice Bookstein upheld today.

His ruling reinforced a decision handed down in an almost identical case last September by Supreme Court Justice Edward G. Baker in Brooklyn.

Justice Baker held in that case that the New York City Board of Education could not legally alter school district lines in the Brownsville and East Flatbush sections to remedy de facto racial segregation there.

Justice Baker's ruling is currently on appeal before the Appellate Division of State Supreme Court in Brooklyn. Both the Brooklyn and Malverne cases hinged on Section 3201 of the State Education Law, which declares:

“No person shall *be* refused admission into or be excluded from any public school in the State of New York on account of race, creed, color or national origin.”

Justice Bookstein's decision noted:

“While the United States Constitution forbids segregation by law in the public schools, it neither forbids racial imbalance nor compels racial balance.”

In support of the principle, he cited the decision of a District Court in Indiana (Bell vs. City of Gary, Ind). This decision, subsequently upheld by a Federal Court of Appeals, held that a neighborhood school plan set up with no intention of segregating races, need not be revised if it results in racial imbalance because a district happens to be populated predominantly by one race or another.

At the same time, Justice Bookstein's decision contained several references to court rulings declaring it unconstitutional to gerrymander, or manipulate, school district lines to maintain racial segregation.

Justice Bookstein made no reference to Justice Baker's decision, although the Brooklyn case had been cited frequently during argument of the Malverne case.

Justice Bookstein said that Commissioner Allen himself, in a situation that arose in 1956, had subscribed to the principles set forth in today's court decision. He quoted the Commissioner as saying at that time:

“Because of the incidence of location, the mere fact that the preponderance of the children who would normally attend the neighborhood School happened to be white or Negro, of Polish, Irish, Scotch, Swedish, Italian or English descent or otherwise, or who espouse one religion or another, does not require a board to attempt to gerrymander the lines, to assign but a certain percentage to a particular school. This would constitute as much discrimination as a gerrymandered line to accomplish the opposite effect.”

The State Education Department said today there would be no immediate decision on whether to appeal Justice Bookstein's ruling.

Order Followed Inquiry

Dr. Allen's order followed charges by parents and civil rights groups that the schools in the Malverne area were racially imbalanced.

Dr. Allen appointed a committee to investigate the charges, and the committee reported that 75 per cent of the pupils at the Woodfield Road, School were Negroes and that the ratio was increasing.

In issuing his order, Dr. Allen said the educational standards in the Woodfield School were not below those of the two other elementary schools in the district. But he added:

“Having concluded that racial imbalance exists in the Woodfield Road School, the question before me is whether under the circumstances present in the district, such imbalance constitutes a deprivation of equality of educational opportunity envisioned under the Education Law of New York State. I find that it does. While the board's special efforts to improve the quality of teaching in this school are desirable, they do not overcome the disadvantages attached to racial imbalance.”

N.A.A.C.P. To Appeal

Robert L. Carter, general counsel of the National Association for the Advancement of Colored People, announced that the organization would appeal the decision.

He said that Justice Bookstein's ruling was more far-reaching than the earlier decision by Justice Baker, because “it affects every school district in the state.”

Asserting that Justice Bookstein's analysis did not meet the basic issue posed by this and other cases involving the constitutionality of de facto school segregation, Mr. Carter declared:

“If segregated education is inferior education constitutionally, as the United States Supreme Court has held in the Brown case, there must be a constitutional requirement imposed on school authorities to take action to eliminate the segregated school.”

Miss June Shagaloff, the organization's special assistant for education, added:

“In view of the intense Concern of Negro parents and the clear and continuing damage to their children in segregated schools, it is inevitable that Negro parents will increasingly feel that they must rely upon nonjudicial approaches such as political persuasion and direct action in order to make their case and bring about meaningful school desegregation. The N.A.A.C.P. will certainly continue to provide leadership and support in these efforts.”

Madison S. Jones, executive director of the City Commission on Human Rights, expressed shock and disappointment at the decision. He said that New York City and other communities should proceed with plans to integrate the schools.

James B. Donovan, president of the city's Board of Education, said the board was awaiting the results of its appeal from Justice Baker's decision.