In The Matter of Charlene SKIPWITH, Sheldon Rector, children twelve years of age.
Domestic Relations Court of City of New York, Children's Court Division, New York County.
Dec. 15, 1958.

180 N.Y.S.2d 852
14 Misc.2d 325

(excerpts)

On October 28, 1958, Stanley and Bernice Skipwith were [charged by the Board of Education] with neglect of their daughter, Charlene, a 12-year-old girl. The petition alleged that the child was without proper guardianship in that her parents, "refuse to send the child to Junior High School 136 or private school meeting the requirements of the Board of Education law."

On October 29, 1958, Charles and Shirley Rector were likewise cited … in regard to their son, Sheldon, a 12-year-old boy who had failed to attend Junior High School No. 139.

The parents frankly acknowledge that they have refused to send their children to Junior High Schools Nos. 136 and 139, and do not claim either the physical or mental inability of their children to attend school as a reason for nonattendance. They do not offer evidence of substitute teaching in compliance with the law as a defense, although they have in fact arranged for some private tutoring of their children.

The parents assert, in justification of their refusal to send their children to these two schools, that both schools offer educationally inferior opportunities as compared to the opportunities offered in schools of this city whose pupil population is largely white. This inferiority of educational opportunities, they assert, results from two conditions which they allege exist in these schools and for the existence of which conditions they claim the Board of Education is responsible. One of the alleged conditions is *de facto* racial segregation in these two schools all of whose pupils are either Negro or Puerto Rican. The other alleged condition is the discriminatory teacher staffing of these two schools with personnel having inferior qualifications to those possessed by teachers in junior high schools in New York City, whose pupil population is largely white.

As a consequence of the situation alleged to exist in these two schools, it is claimed that the children attending them are denied equal educational opportunities in violation of the "equal protection of the laws" guaranteed by the Fourteenth Amendment to the Constitution of the United States. Additionally, it is urged that for this court to compel these parents to send their children to schools offering such unequal educational opportunities would be a further violation of equal protection of the laws.

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"Neglected child means a child under sixteen years of age … who is unlawfully kept out of school." If this court adjudicates a child to be neglected, section 83 of the Domestic Relations Court Act provides that the judgment of this court may:

"(b) Place the child ... under supervision to remain in its own home or in the custody of a relative or other fit person, subject, however ... to the further orders of the court;

"(c) Commit the child to the care and custody of a suitable institution maintained by the state or a subdivision thereof, or to the care and custody of a duly authorized association, agency, society or institution ...;

...(f) Render such other and further judgment or make such other order or commitment as the court may be authorized by law to make."

… In other words, the Board of Education contends that one arm of the State -- this court -- must blindly enforce the unconstitutional denial of constitutional rights by another arm of the State -- the Board of Education.

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The two schools to which the children in these cases were assigned are the only junior high schools in the City of New York whose student population is 100% Negro and Puerto Rican. Junior High School No. 136 has 1,560 (98.4%) Negro children and 25 (1.6%) Puerto Rican children. Junior High School No. 139 has 1,629 (98.5%) Negro children and 25 (1.5%) Puerto Rican children.

There are seven additional junior high schools in New York City in which the student population is over 95% Negro and Puerto Rican. In 40 junior high schools, the student population is over 95% white, described by the Board of Education as "other" in the tables submitted by it.

Also revealing is the information contained in these tables as to "X" schools and "Y" schools. The term "X" school is used to describe a school with a Negro and Puerto Rican population of 85% or more; and the term "Y" school is used to designate a school with a Negro and Puerto Rican population of less than 15%. The tables prepared by the Board of Education for this hearing show that, among the 127 junior high schools in New York City, there are 16 "X" schools and 52 "Y" schools.

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I turn now to alleged discrimination in the staffing of "X" schools, with the alleged result that schools attended predominantly by Negro and Puerto Rican children are taught by less qualified teachers and, hence, enjoy inferior education advantages. Before summarizing the evidence on that point, however, it is important to note that if such is the situation, a terrible injustice is done to children who already have to suffer the blighting effect of segregation.

As of September 11, 1958, the average percentage of vacancies in the "X" schools (over 85% Negro and Puerto Rican students) was 49.5%, while the average percentage of vacancies in the "Y" schools (over 85% white students) was 29.6%. In the two schools to which the children of the respondents were assigned, there were over 50% vacancies in one and 51% vacancies in the other. The following is a summary of the present situation:

Vacancies in "X" [over 85% Negro and Puerto Rican students] and "Y" [over 85% white students] schools

	X schools		Y schools	
	Number of schools	% [of faculty positions that are vacant of filled by unlicensed teachers]	Number of schools	% [of faculty positions that are vacant of filled by unlicensed teachers]
Manhattan	7	48.8	2	28
Brooklyn	3	55.0	22	31.6
Queens	2	33.0	18	27.8
Bronx	4	55.0	10	29.0
Total	16	49.5	52	29.6

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From the foregoing, the conclusion must be drawn that *de facto* racial segregation exists in the junior high schools of New York City. This confirms what is a matter of common knowledge. What the record in this case does not show is to what extent, if any, such segregation is the consequence of circumstances other than residential segregation not attributable to any governmental action. There is no evidence before the court that the racial composition of junior high schools in New York is the product of gerrymandering of school districts, or of any policy or lack of policy of the Board of Education in establishing school districts, or in choosing school sites, or in assigning pupils to schools on the basis of race. Upon the record in this case, the court holds that no showing has been made that *de facto* segregation in New York City is the consequence of any misfeasance or nonfeasance of the Board of Education. So far as the respondents rest their defense upon that ground, their refusal to send their children to Junior High Schools Nos. 136 and 139 is not justified. (Cf. *Henry* v. *Godsell*, 165 F. Supp. 87; *Holland* v. *Board of Public Instruction* , 258 F. 2d 730.)

As was said in the Report of the Commission on Integration, submitted June 13, 1958: "Whether school segregation is the effect of law and custom as in the South, or has roots in residential segregation, as in New York City, its defects are inherent and incurable. In education there can be no such thing as 'separate but equal.' Educationally, as well as morally and socially, the only

remedy for the segregated school is its desegregation." . . . Where, as here, power and responsibility for teacher assignment rests in the Board of Education, teachers who exercise that power are . . . not acting in matters of merely private concern like the directors or agents of business corporations. They are acting in matters of high public interest . . . The courts of this State will not excuse failure of performance of a constitutional duty because the City of New York might be unwilling to pay the bill for the costs of what needs to be done . . . Nor will they relieve the Board of Education of its duties because of "hardship upon the existing teaching force."

These parents have the constitutionally guaranteed right to elect no education for their children rather than to subject them to discriminatorily inferior education. I am wholly satisfied from their testimony and demeanor that this is not a case where parents have chosen to make such a choice without regard to the welfare of their children. On the contrary, it is my impression that they are doing whatever is within their means to provide alternative education, though it may not meet the requirements of the Education Law. In my judgment, the course upon which they embarked, and which brought them before this court, was undertaken for the sake of their children and for the tens of thousands of other children like them who have been unfairly deprived of equal education.