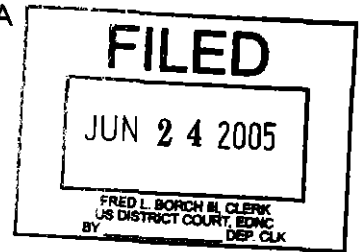


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

2:67-CV-632-BO



UNITED STATES OF AMERICA,

Plaintiff,

v.

BERTIE COUNTY BOARD
OF EDUCATION, *et al.*

Defendants.

CONSENT ORDER

On April 23, 2003, the Court ordered defendant Bertie County Board of Education to prepare and submit a plan for further desegregation of the county schools. The school board submitted such a plan and the plaintiff United States objected. Since that time the parties have engaged in good-faith negotiations to develop a mutually agreeable desegregation plan to present to the Court. In its response to the board's proposed plan, the United States raised a new issue of the adequacy of school facilities in the county. This Consent Order is intended to comply with this Court's April 23, 2003, Order and also to address the question of facilities, in an effort to move toward final resolution of all desegregation issues in Bertie County. Accordingly, the United States and the Bertie County Board of Education consent to the entry of this order.

I. STUDENT ASSIGNMENT

Effective with the 2005-2006 school year, the board will re-configure the elementary school attendance zones as outlined at Attachment A and described as Plan D in the United States' February 24, 2005, Memorandum Responding to the Board's Proposed Desegregation Plan. Under this student reassignment plan, all of the existing elementary schools will remain open but

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the attendance lines will be redrawn. If, in re-drawing the attendance lines, there results in an over-capacity of students in a particular classroom or an over-capacity of students at a particular facility, the board reserves the right to adjust only to the extent necessary the attendance lines or to assign select students to schools outside of their attendance zone for the sole purpose of bringing the numbers of students back to capacity. The board will exercise this right only if the over-capacity is the direct result of the changed attendance lines. In exercising this right, the board will make only those changes whose net effect will have no negative impact on the desegregation of Askewville Elementary School. The board will notify the United States by July 26, 2005 if any adjustments are necessary.

This plan will further the board's desegregation efforts by increasing the number of African American students at Askewville Elementary School to approximately 58%. This increase is a result of both adding black students to the enrollment at Askewville and redrawing lines so that some white students currently at Askewville will attend neighboring schools. The projected racial make-up for each school under this student assignment plan is as follows:

School	Grades	Black	% Black	Non-Black	Total
Askewville	K-5	91	58%	66	157
Aulander	K-5	133	90%	15	148
Colerain	K-5	188	89%	24	212
J.P.Law	K-5	71	77%	21	92
West Bertie	K-5	388	92%	36	424
Windsor	K-5	413	88%	54	467
Total Elementary		1284	86%	216	1500

II. STUDENT TRANSFERS

The United States' initial concern about student transfers, and the basis of the Court's Order, was the school system's previous practice of allowing students to attend any school in the county and releasing Bertie students to attend schools in neighboring school systems. In response to these concerns, in 2002, the board adopted new admission and transfer policies that restricts both inter-district and intra-district transfers. See Attachment B. The board has been, and will continue, to deny requests for intra- or inter-district transfers which do not comply with these new policies. These policies adequately address all concerns raised by the United States and this Court regarding student transfers.

III. FACILITIES

The United States has concerns with the state of the facility of J.P. Law Elementary School, a historically black school with declining enrollment. For that reason, several of the desegregation alternatives proposed by the United States included closing J.P. Law and reassigning its students. These proposals were based on the United States' view that students currently enrolled at J.P. Law are not provided equal educational opportunities because of the state of the aging facility. The United States also believes that J.P. Law and other elementary schools are not sufficiently large to ensure stable long-term desegregation. For those reasons, the United States' position is that before the board can successfully eliminate the vestiges of past segregation and be declared a unitary system, J.P. Law will either need to be closed, significantly renovated or rebuilt.

The Board of Education's position has been that the status of physical facilities was not among the legal issues previously raised by the United States and was not the subject of the Court's 2003 order. Nevertheless, in an effort to assure that all issues related to desegregation are addressed and that this case can finally be brought to a conclusion, the board will address the concerns expressed by the United States.

The board shall engage a consultant not affiliated with the school system to conduct a comprehensive facilities assessment for the district's elementary and middle schools. The assessment will be completed by November 1, 2005, and will result in a report with recommendations addressing the projected life span of each facility; the capacity of each school to provide the programs needed for the students; the economic feasibility and wisdom of renovating any facilities that are in poor condition; and strategic alternatives to the current assignment of students, including options designed to provide cost-savings to the district. The school board will provide a copy of the facilities assessment report to the United States as soon as it becomes available.

The board recognizes that this facilities assessment may result in recommendations to close one or more current schools in the district, to consolidate student populations into a new facility, and to build new facilities. The board is prepared to consider fully all recommendations included in the final assessment, including any possible recommendations that involve closing facilities and consolidating student populations.

The board remains committed to providing quality educational opportunities to all students and is interested in those options that may enrich the educational opportunities for all students. To the extent that there are strategic alternatives to the current assignment of students that could provide greater educational opportunities for the students of Bertie County, the board will consider these options carefully. The board also recognizes that there may be options available that may make sound economic sense and lead to significant cost savings for the district. To the extent that these options also benefit the students of Bertie County, they will receive serious consideration.

The board will present to the United States a proposed Amended Student Assignment Plan for its review and agreement no later than January 15, 2006. This proposed plan, and any final plan accepted by both parties, shall address both the recommendations contained in the facilities

assessment and the facilities concerns raised by the United States regarding J.P. Law Elementary School. In designing its proposed plan, the board recognizes that the United States will not accept a plan that allows J.P. Law to remain open to students beyond the end of the 2007-2008 school year without significant renovations.

IV. REPORTING REQUIREMENTS

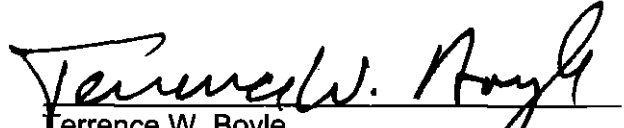
On October 1, 2005, the board will submit the following information to the United States for the 2005-2006 school year:

1. The student enrollment, by race, at each school in the district;
2. For each classroom in each school, the enrollment in the class, by race and ethnicity, the grade served, and the subject or program of the class;
3. The racial breakdown of administrators, faculty and staff, by position and school;
4. The total number of students who have requested intra-district transfers, indicating for each such request: the student's grade level, race or ethnic group, sending school (school which student is zoned to attend), receiving school (school to which transfer is sought), reason for the transfer request, and whether the board granted the transfer. The board shall provide the same information for inter-district transfers.

Based on the consent of the parties, and finding that these proposed revisions to the county's desegregation plan comply with the Order of April 23, 2003, and will further the Bertie County Schools' progress toward elimination of all remaining vestiges of past segregation and toward declaration of unitary status, the Court ORDERS, ADJUDGES and DECREES that the plan described above be implemented and that the parties report to the Court no later than March 1, 2006, on the status of this matter. The report to the Court shall include the parties' views as to

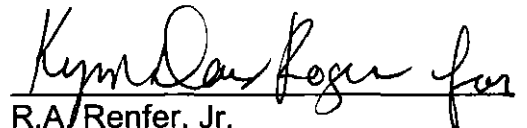
whether the school system has achieved unitary status and, if not, the additional steps and time required to reach that goal.

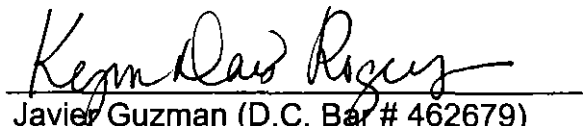
SO ORDERED, this 21 day of June 2005.


Terrence W. Boyle
Chief United States District Judge

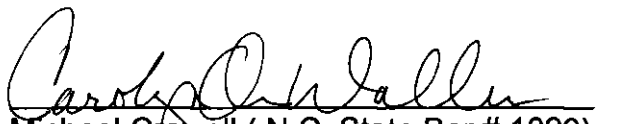
WE CONSENT:

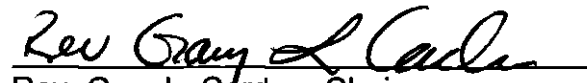
For the plaintiff United States:

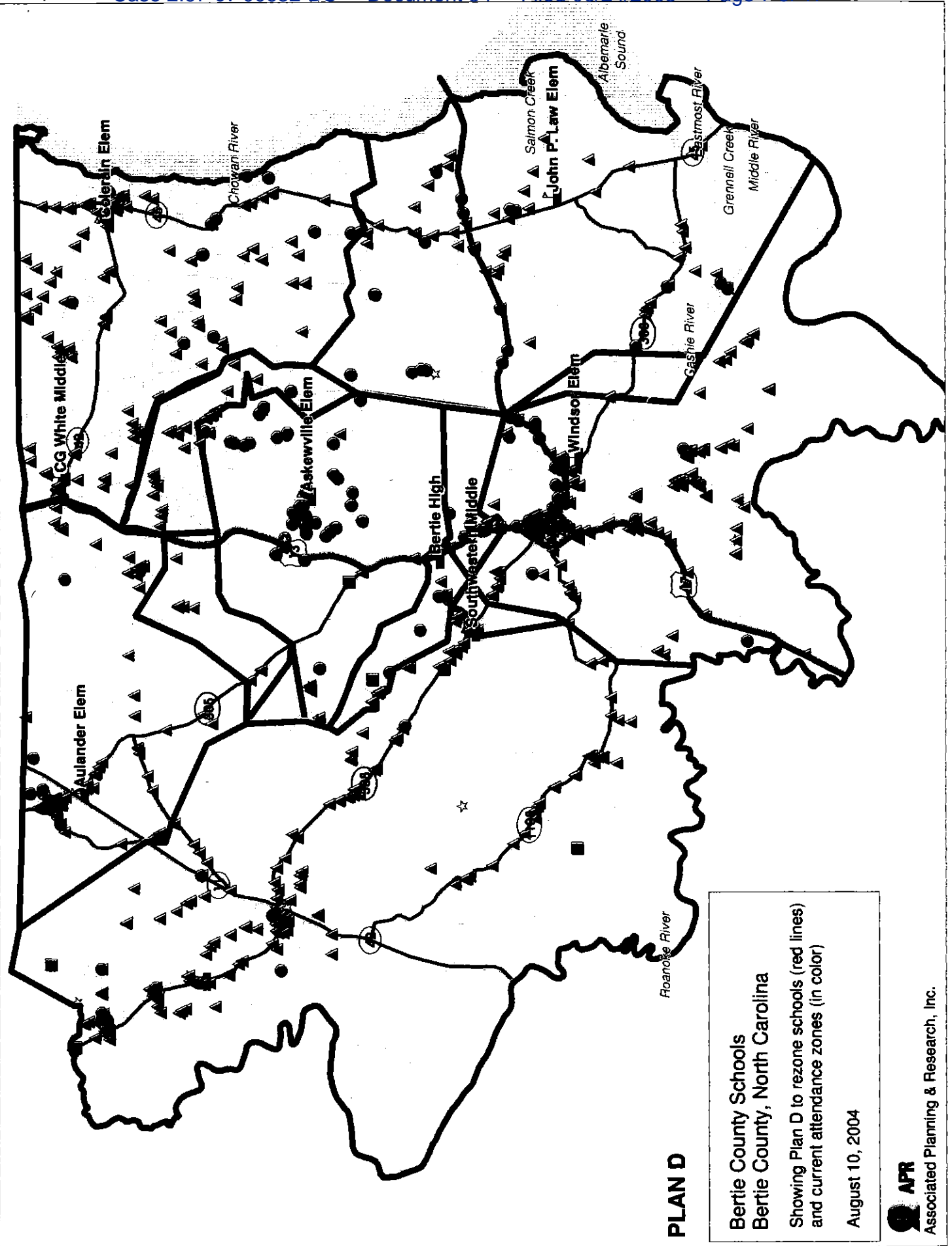

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Rev. Gary L. Cordon, Chair
Bertie County Board of Education



PLAN D

**Bertie County Schools
Bertie County, North Carolina**

Showing Plan D to rezone schools (red lines)
and current attendance zones (in color)

August 10, 2004

APR
Associated Planning & Research, Inc.

SCHOOL ADMISSIONS

4045

Qualifications for admission to the Bertie County Schools shall be considered complete upon satisfaction of the criteria listed under the respective types of entrants.

DEFINITIONS

- A. "Domicile" denotes a permanent, established home, as distinguished from a temporary, although actual, place of residence. The domicile of an unemancipated minor is the same as that of his parents or legal guardian. A student over the age of eighteen, who is married or who is legally emancipated may establish his own domicile.
- B. "Residence" is where a person actually lives, whether permanent or temporary.
- C. "Legal Custodian" is a person or agency awarded legal custody of a child by a court of law.
- D. "Long-term Suspension" is a removal from school for more than ten days but not exceeding the remainder of the school year.
- E. "365-day Suspension" is a removal from school for 365 calendar days from the start of the suspension.
- F. "Expulsion" is a permanent removal from the Bertie County Schools.

PREREQUISITES TO ADMISSION

Before a student will be enrolled in the Bertie County Schools, the following requirements must be met:

- A. Student has not completed the prescribed course for graduation from high school.
- B. Student has satisfied North Carolina immunization requirements.
- C. The parent, guardian, or custodian has presented documentation establishing the student's age (birth certificate) and grade placement (transcript or report card from previous school if transferring from elsewhere).
- D. For a student presented for enrollment, after enrollment in a private or public school in this or any other state, the student's parents, guardian, or custodian shall provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from the previous

school and/or has been convicted of a felony in this state or any other state.

1. The Board may deny admission or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. § 115C-391 or who has been suspended from another public or private school within this state or any other state for conduct that could have led to a suspension in the Bertie County Schools, until the period of suspension has expired.
 2. The Board may deny admission or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. § 115C-391 or who has been expelled from another public or private school within this state or any other state for conduct that could have led to an expulsion in the Bertie County Schools; or who was expelled from a school for behavior that indicated the student's continued presence in the school constituted a clear threat to the safety of other students or employees; or who has been convicted of a felony in this or any other state.
 3. A student who has been expelled from another public or private school in this or any other state or who has been convicted of a felony in North Carolina or any other state and who is denied admission to Bertie County public schools may request the Board to reconsider that decision as provided in the Due Process Policy. Suspended students who are denied admission are not entitled to a hearing to request the Board to reconsider its decision to deny admission.
- E. No child shall be permitted to enter kindergarten unless a current health assessment form is presented to the principal on or before the child's first day of attendance. If the form is not presented, the principal shall present a notice of deficiency to the parent/guardian, or person in loco parentis. If the health assessment form is not received within 30 calendar days from the first day of attendance, the child may not continue to attend school until the health assessment form has been presented.

The health assessment shall be made no more than 12 months prior to the date of school entry. It must include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis.

Within 60 calendar days after the commencement of a new school year, the principal shall file a health assessment status report with the Department of Environment, Health and Natural Resources. The report shall document the number of children in compliance and not in compliance with the requirement to provide the health assessment form.

F. The student meets the age requirements outlined below:

1. **Preschool:** To enroll in a preschool program, a child must meet the age requirements for the program in which he seeks to enroll.
2. **Kindergarten:** To enroll in kindergarten, a student must be at least five years of age by October 16 of the school year in which the student seeks to enroll, be qualified to enroll as a four- and a half-year-old under State Board of Education guidelines and the principal's discretion or be qualified because of previous enrollment in kindergarten in another public school system or private school in another state or country.

The initial point of entry shall be at the kindergarten level. After initial entry into kindergarten, the principal may place a child in first grade, by reason of the child's maturity, without regard to chronological age.

The parent or guardian of a child who is making initial entrance into school shall be required to furnish, before admission is approved, a certified copy of the child's birth certificate.

When a child has begun attendance in a public school in another state or foreign country in accordance with the laws or regulations of that state or country, and upon receipt of official school records, the child will be eligible for official enrollment regardless of his or her age. Grade placement will be determined by the principal.

3. **Older Students:** Students older than 21 years of age or who have already completed the requirements for graduation from high school are no longer eligible to enroll.

G. The parent, guardian, or custodian must present a child for initial enrollment into kindergarten within the first 120 days of the school year.

ENTITLEMENT TO ADMISSION

A student is legally entitled to be enrolled in the Bertie County Schools if the student meets one of the following criteria:

- A. The student is domiciled in Bertie County;
- B. The student resides with a legal custodian who is domiciled in Bertie County; or
- C. The student meets the abandonment exception as follows:
 1. Student resides with an adult, who is domiciliary of Bertie County, as a result of:
 - a. Death, serious illness, or incarceration of a parent or legal guardian; or
 - b. Abandonment by a parent or legal guardian of complete control of the student as evidenced by the failure to provide substantial financial support and proper guidance; or
 - c. Abuse or neglect by parent or legal guardian; or
 - d. Physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student; or
 - e. Loss or uninhabitability of the student's home as a result of a natural disaster; and
 2. The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or expulsion from the Bertie County Schools; and
 3. The adult with whom the student resides and the student's parent, guardian, or legal custodian presents to the school principal a completed and signed separate affidavit that
 - a. Confirms the qualifications set out in this subsection establishing the student's residency;

- b. Attests that the student's claim of residency in Bertie County is not primarily related to attendance at a particular school within Bertie County or attendance in the Bertie County schools generally; and
 - c. Attests that the adult with whom the student is residing has been given and accepts responsibility for the educational decisions for the child, including receiving notices of discipline, attending conferences, granting permission for school-related activities, and taking appropriate action in connection with student records.
- D. The student is living in a foster home, group home, or other institution or care facility that is located in Bertie County; or
- E. The student is a homeless student who is currently found in Bertie County; or
- F. The student is identified as "special needs" student residing in Bertie County; or
- G. The student is otherwise found by the Bertie County Board of Education to be entitled to enroll in the Bertie County public schools.

DISCRETIONARY ADMISSION/TUITION STUDENTS:

- A. Discretionary student admissions are discouraged due to space limitations within the system.

Until court-ordered obligations to desegregate have been met, each request for discretionary admission to the Bertie County schools will be evaluated to determine its effect on the integration of the schools. A request usually will be denied if the student seeking admission is of the same race as the majority of students in the school the student would attend. A request usually will be granted if the student is of a different race than the majority of students in the school the student would attend and if there is space available.

- B. Tuition will be charged to all students granted discretionary admission. The tuition rate for the succeeding year is determined as follows:
- 1. The tuition rate is determined by dividing the current year's Bertie County budget appropriation (current expense plus capital outlay) and capital improvements by the current year's twentieth day membership.

2. The tuition rate will be determined and reported to the Board of Education no later than August 1 of each year.

C. Tuition students must satisfy the following requirements for admission:

1. Submit an application form completed by the parent or guardian and the last report card received by the student.
2. Present a planned course of study for the current or coming year if a secondary student.
3. Furnish transcript and other student record data including evidence of compliance with North Carolina immunization requirements.
4. Present evidence that the pupil is in good standing at the last school attended.
5. Pay the tuition fee in accordance with a collection schedule to be established by the superintendent.
6. Present evidence that the student has not completed the prescribed course for graduation from high school.

D. Exemptions: Notwithstanding the above, the following categories of pupils are exempt from the requirement to pay tuition, regardless of their domiciliary status:

1. Pupils who are placed in or assigned to a group home, foster home, or other similar facility or institution within Bertie County.
2. Pupils entering from a school unit with reciprocal arrangements. Tuition may not be charged to any such pupil if there is a written student assignment agreement between the Bertie County Board of Education and the Board of Education in the administrative unit in which the pupil is domiciled which specifies that payment of tuition shall not be required.
3. Students granted discretionary status who reside on a military or naval reservation within North Carolina if federal funds designed to compensate for the impact on public schools of military dependent students are provided to the Bertie County Schools in an amount not less than fifty percent (50%) of the total per capita cost of education for students in the school system, exclusively of capital outlay and debt service.

4. Foreign and international exchange students who are participating in exchange programs with school districts that have reciprocal agreements for Bertie County students. Foreign and international exchange students must enter the United States with a valid J-1 visa. Foreign students, whether residing inside Bertie County or outside the United States, will not be issued an I-20 A-B (Certificate of Eligibility for Non-immigrant [F-1] Student Status - For Academic and Language Students.).
- E. The Board, in its discretion, may waive the tuition charged upon finding that there are extenuating circumstances that justify such a waiver.
- F. Where applicable, students granted discretionary admission for part of the school year shall be required to pay tuition on a pro rata basis. They will not be charged tuition for any period of time when they are entitled to be Bertie County students.
- G. The superintendent or designee shall determine the domiciliary status, qualification for admission, and applicability of tuition for each pupil desiring to attend the Bertie County Schools. Final decisions by the superintendent regarding domiciliary status may be appealed to the Board in accordance with the Student and Parent Grievance Policy.

DISCRETIONARY RELEASES TO ATTEND SCHOOL IN OTHER DISTRICTS

- A. Bertie County students seeking release to attend public school in another public school system may apply to the Board for a release.
- B. Release from the Bertie County Schools releases the school system from any obligation to provide transportation and/or tuition for the student.
- C. The Bertie County Board of Education will consider release requests only if the student seeks release from the Bertie County Schools for the express purpose of gaining access to an academic program available in another public school district but which is not available within the Bertie County Schools.

Until court-ordered obligations to desegregate have been met, each request for release to attend public school in another public school system will be evaluated to determine its effect on the integration of the Bertie County schools. Even if a request meets the other requirements stated above, it usually will be denied if the student seeking the release is of the same race as a minority of the students in the Bertie County school the student would be leaving.

- D. The superintendent shall grant release of students only upon such terms and conditions as may be agreed in writing with the Board of Education of the other school administrative unit involved in the release. Any approved release of a student is valid only for the school year for which approval is granted. Requests may be made annually. A parent may appeal the superintendent's decision not to release a student under the procedure outlined in the Transfer of School Assignment policy.

APPEALS TO THE BERTIE COUNTY BOARD OF EDUCATION

Final decisions by the superintendent regarding domiciliary status of students seeking to attend the Bertie County Schools and payment of tuition may be appealed to the Board.

Applications for discretionary admission or release shall be made with the Student Assignment Office.

LEGAL REF: G.S. 115C-40,-364,-366,-366.1,-366.2; G.S. 130-87 through 93.01, G.S. 130a-440,
-441, § 16 N.C.A.C. 6E-0105

ADOPTED: December 2, 2002

REVISED: December 1, 2003

TRANSFER REQUESTS

4055

A written request for transfer of a student to another school may be submitted by the parent or court-appointed guardian on a form provided by the school system, available at any school or central office. Instructional needs of the student, building capacity, classroom capacity, and maintenance of appropriate racial diversity in all schools shall be factors in considering a request for transfer.

A written request for transfer should indicate a priority of school choices. Choice I, Choice II, Choice III schools should be indicated.

Specific reasons for transfer must be stated. The administration may approve transfers for the following reasons:

- A. Students who desire a course or course of study not taught by the school serving their attendance area will be considered.
- B. Health conditions of the student who is severely physically handicapped (e.g., has a serious heart problem or is confined to a wheel chair and needs to attend a school on a single floor) or who has a serious emotional problem may warrant a transfer.

Applications for transfer which are filed more than ten (10) days after the date of the original receipt of assignment may be denied except for extraordinary or unusual reasons.

Parents and/or guardians submitted their transfer requests by the applications deadline and are denied by the administration may appeal that decision to the Board of Education.

Reassignment to another school, based upon a voluntary request for transfer, shall result in the waiver of the school system's requirement to provide transportation.

All reassignments due to voluntary transfer requests are valid for no more than one school year and no subsequent transfer within the same year will be permitted except for a change of the student's parent's residence from one attendance area to another. In the event of a change of residence, the parent may elect for the student to remain in the school of enrollment for the remainder of the school year. Transportation for such students is a responsibility of the parent. Students who are granted transfers must remain in good standing at the school throughout the year. The student must attend school and class, be on time, be well-behaved, and maintain passing grades.

Failure to fulfill a specified reason for transfer will result in the rescission of the transfer. Failure to adhere to the expectations for school personnel may result in the rescission of the transfer.

In some circumstances, concurrent enrollment in two schools might be appropriate. Under a concurrent arrangement, a student would be allowed to participate in extracurricular activities at the base school.

A student who is granted a voluntary transfer away from the base school for reason A in this policy shall not participate in athletic activities that come under the jurisdiction of the North Carolina High School Athletic Association (NCHSAA) and the State Board of Education for 365 days from the first approved transfer date. The superintendent or his/her designee may hear appeals of this section of this policy and may grant permission for students to participate in athletic activities based upon such hearings. The superintendent shall develop written regulation and procedures to govern appeals of this section of this policy.

Until the school system's court-ordered obligations to desegregate have been met, a transfer request will be approved if space is available and if, regardless of other circumstances, the student who requests the transfer is of the same race as a majority of the students in the school the student will be leaving, and is of a different race than the majority of the students in the school to which the student wishes to transfer.

LEGAL REF: G.S. 115C-45(c), -366(b), -368, -370, and -116

ADOPTED: December 2, 2002

REVISED: December 1, 2003