

MARGARET WILLIAMS, INFANT, BY JOSHUA B. WILLIAMS, JR., HER FATHER AND NEXT FRIEND, AND JOSHUA B. WILLIAMS, JR., INDIVIDUALLY,

VS.

DAVID W. ZIMMERMAN, PRINCIPAL OF THE CATONSVILLE HIGH SCHOOL, CLARENCE G. COOPER, SUPERINTENDENT OF BALTIMORE COUNTY PUBLIC SCHOOLS, SECRETARY AND TREASURER BOARD OF EDUCATION, HENRY M. WARFIELD, PRESIDENT, ET AL.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
LEON A. RANSOM,
EDWARD P. LOVETT,

For the Appellants.

WILLIAM L. RAWLS,
CORNELIUS V. ROE,

For the Appellees.

IN THE
Court of Appeals
OF MARYLAND.

APPEAL FROM
THE CIRCUIT COURT
FOR
BALTIMORE COUNTY.

APPEAL TO THE
APRIL TERM, 1937
OF THE
COURT OF APPEALS
OF MARYLAND.

Filed March 19, 1937.

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE CASE OF

MARGARET WILLIAMS, INFANT, BY JOSHUA B. WILLIAMS, JR., HER FATHER AND NEXT FRIEND, AND JOSHUA B. WILLIAMS, JR., INDIVIDUALLY,

VS.

DAVID W. ZIMMERMAN, PRINCIPAL OF THE CATONSVILLE HIGH SCHOOL, CLARENCE G. COOPER, SUPERINTENDENT OF BALTIMORE COUNTY PUBLIC SCHOOLS, SECRETARY AND TREASURER BOARD OF EDUCATION, HENRY M. WARFIELD, PRESIDENT, ET AL.,

TO THE

COURT OF APPEALS OF MARYLAND.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
LEON A. RANSOM,
EDWARD P. LOVETT,
For the Appellants.

WILLIAM L. RAWLS,
CORNELIUS V. ROE,
For the Appellees.

In the Circuit Court for Baltimore County.

Margaret Williams, Infant, by Joshua B. Williams, Jr., her father and next friend, and Joshua B. Williams, Jr., Individually,

vs.

David W. Zimmerman, Principal of the Catonsville High School, Clarence G. Cooper, Superintendent of Baltimore County Public Schools, Secretary and Treasurer Board of Education, Henry M. Warfield, President and James P. Jordan, T. W. Stingley, Oscar B. Coblentz, Joseph G. Reynolds and Edward B. Passano, Members of the Board of Education of Baltimore County.

March 14, 1936—Plaintiffs' Petition and affidavit thereon for a Writ of Mandamus fd.

Mch. 14, 1936—Order of Court filed directing that Writ of Mandamus be issued unless cause to the contrary be shown on or before Mch. 28, 1936, providing copy of Petition, Affdt. and Order of Court be served on Defendants on or before Mch. 21st, 1936.

Same day—Tested copy of Pet., Affdt. and Order of Court delivered to Shff. Balto. Co. to be served on the Defdts. App. of Thurgood Marshall, Esq., for the Petitioners.

Mar. 16, 1936—Copy of Petition for Writ of Mandamus, Affidavit and Order of Court served on and left with Clarence G. Cooper, Superintendent of Baltimore County Public Schools and Secretary and Treasurer of Board of Education, this 16th day of March, 1936. Shffs. ret. fd.

Mch. 27, 1936—App. of Wm. L. Rawls and C. V. Roe, Esqrs., for the Defdts.

Same day—Answer of the Board of Education of Balto. Co. fd.

May 5, 1936—Replication fd. by Petitioners with service of copy admitted thereon.

May 9, 1936—Motion Ne Recipiatur by Defendants fd.

May 22, 1936—Plaintiff's answer to Motion Ne Recipiatur fd.

May 22, 1936—(Hon. Frank I. Duncan) Hearing on Motion Ne Recipiatur had. Held Sub Curia.

June 25, 1936—(Hon. Frank I. Duncan) Motion Ne Recipiatur overruled with leave to rejoin in 15 days.

July 2, 1936—Defendants' Demurrer to replication and affidavit with service of copy admitted thereon fd.

July 9, 1936—(Hon. Frank I. Duncan) Hearing on Demurrer to Replication had. Held Sub Curia.

Aug. 4, 1936—Opinion of the Court filed overruling Demurrer to Plaintiffs' replication with leave to Defendants to take issue on traverse.

Aug. 18, 1936—Defdts. Rejoinder under affidavit fd. Rule Surrejoinder.

Aug. 20, 1936—Petitioners' request for an exception to the Court's Opinion overruling Defdts. Demurrer and fd. Aug. 4, 1936, fd.

Aug. 28, 1936—Plaintiffs' Surrejoinder with admission of service thereon joining issue on Defdts. Rejoinder filed.

Sept. 14, 1936—(Hon. Frank I. Duncan) Testimony started.

Sept. 15, 1936—Testimony resumed.

Sept. 15, 1936—Case passed to Sep. 18, 1936.

Sept. 18, 1936—Testimony resumed.

Sept. 18, 1936—Testimony concluded, Briefs to be filed.

Oct. 22, 1936—Memorandum of Court dismissing Petition fd.

Oct. 23, 1936—Order of Court that the Petition for Writ of Mandamus filed in this case be and the same is hereby dismissed, the costs of the case to be paid by the Petitioners, Order fd.

Dec. 21, 1936—Stipulations fd.

Dec. 21, 1936—Order for an Appeal to the Court of Appeals of Maryland fd.

Mar. 18, 1937—Bill of Exceptions and Testimony filed.

Mar. 18, 1937—Seventeen photostatic copies of exhibits sent with record, the originals of which are filed in Court Stenographer's custody, and eleven typewritten copies of exhibits prepared by Court Stenographer sent.

PETITION FOR WRIT OF MANDAMUS.

(Filed March 14, 1936.)

To the Honorable, the Judges of said Court:

The Petition of Margaret Williams, infant, by Joshua B. Williams, Jr., her father and next friend, and of Joshua B. Williams, Jr., individually, respectfully shows:

First: Margaret Williams is fourteen years of age, a citizen of the United States, and the State of Maryland, and a resident of Baltimore County, in said State, living at home with her father, Joshua B. Williams, Jr. She has been illegally and arbitrarily refused admission to the free public high schools of Baltimore County as hereinafter set forth, and by her father and next friend brings this action against the defendants named. Joshua B. Williams, Jr., is of full age, a citizen of the United States, a citizens and taxpayer of the State of Maryland, and a resident in Baltimore County, in said State. He files this suit as father and next friend of Margaret Williams, and in his individual capacity.

Second: David W. Zimmerman is the Principal of the Catonsville High School, a free public school established and maintained by the Board of Education of Baltimore County pursuant to the constitution and laws of the State of Maryland. As principal of said school he acts as agent of the Board of Education of Baltimore County, Clarence G. Cooper is Superintendent of the Baltimore County Public Schools, and Secretary and Treasurer of the Board of Education of Baltimore County. Henry M.

Warfield is President of said Board of Education, and James P. Jordan, T. W. Stingley, Oscar B. Coblenz, Joseph G. Reynolds and Edward B. Passano the remaining members thereof. All the foregoing defendants held their respective offices at all the times herein material, and are sued in their official capacities.

Third: The Superintendent aforesaid is appointed pursuant to the laws of the State of Maryland and is by law the executive officer of the Board of Education, having supervision over the Baltimore County public schools, including the Catonsville High School. The Board of Education was created by and exists pursuant to the laws of the State of Maryland, as an administrative department of the State, and the members thereof are appointed by the Governor.

Fourth: The Board of Education of Baltimore County is authorized, empowered, directed and required by law to maintain a uniform and effective system of free public schools throughout Baltimore County. The funds for the support and maintenance of the public free schools of the said County are derived from appropriations by the State Legislature, out of the public Treasury of the State of Maryland, and from taxes collected in Baltimore County, including monies paid into the state treasury and into the county tax fund by your petitioner, Joshua B. Williams, Jr.

Fifth: Pursuant to the power vested in and the duty imposed upon it by law the Board of Education of Baltimore County has established and maintains throughout Baltimore County a system of uniform free public elementary and high schools for the residents thereof. Through their officers and agents said Board offers a uniform seven year course of study in the free elementary schools; and upon the students' satisfactorily completing said elementary school course, it offers them a uniform four year course of study in the free high schools. Said free high schools are by law under the direct control of the Board of Education of Baltimore County and the defendant Superintendent. The Catonsville High School is one of said free high schools, and is the nearest free high school in Baltimore County to the residence of petitioners, Margaret Williams and Joshua B. Williams, Jr.

Sixth: By rule of the Board of Education of Baltimore County and by administrative practice approved by the defendant Cooper as Superintendent and executive officer of said Board, the pupils of the Baltimore County free elementary schools upon satisfactorily completing the course therein are promoted and transferred to the free high school nearest their respective residences? Subject to the authority of the defendant Superintendent and of said Board of Education, the principals of the free high schools, as agents of the Board of Education, are the admitting officers to pass upon the qualifications of the pupils desiring to *enrol* in the high schools and to accept them into said schools.

Seventh: Petitioner Margaret Williams attended one of the uniform free elementary schools in Baltimore County established and maintained by said Board of Education, and on or about June 21, 1935, did satisfactorily complete the seven year elementary school course and was duly certified by the lawful and duly authorized agents of said Board of Education as promoted from the seventh to the eighth_ grade, meaning thereby that she was qualified and eligible for admission into the first year of the free high schools aforesaid.

Eighth: On or about September 12, 1935, within the period of enrolling new students under the rules of said Board of Education, petitioner, Margaret Williams in company with her father and next friend, Joshua B. Williams, Jr., reported to the Catonsville High School and made in due form formal application to defendant, David W. Zimmerman, Principal, to have petitioner Margaret admitted as a regular student in eighth grade (first year class) of said high school. They offered themselves ready and willing to abide by all lawful rules governing the conduct of pupils in said schools. Defendant Zimmerman admitted that petitioner Margaret Williams, was educationally qualified to be admitted and had the proper residence, but wrongfully and arbitrarily refused to receive her into said high school as a student.

Ninth: Petitioners thereupon promptly appealed from the wrongful and arbitrary decision of defendant Zimmerman to defendant Cooper as his superior officer, and as Superintendent of Schools and the executive offi-

cer of the Board of Education aforesaid; but the defendant Cooper wrongfully and arbitrarily affirmed the illegal exclusion of Margaret Williams from the Catonsville High School and further arbitrarily and wrongfully refused to admit her to any other free high school in Baltimore County. From the illegal and arbitrary decision of the defendant, Cooper, petitioners appealed to the defendants, the Board of Education of Baltimore County, but said Board arbitrarily and wrongfully refused to admit petitioner to the Catonsville High School or any other free high school in Baltimore County. There is now other officer or agency to which either petitioner may appeal except this Honorable Court.

Tenth: Petitioner, Margaret Williams, is of lawful school age, in all respects qualified to be admitted into the free high schools in Baltimore County established and maintained as aforesaid, and is legally entitled to admission therein, but the defendant wrongfully and arbitrarily exclude her and refuse to give her any education in the free schools in Baltimore County beyond the elementary course although they offer free high school education to the other residents of Baltimore County.

Eleventh: The aforesaid actions of the defendants have arbitrarily and wrongfully deprived petitioner, Joshua B. Williams, Jr., as a resident of Baltimore County and a taxpayer of the State of Maryland and of Baltimore County, and as father of a minor daughter of school age, resident in his household, of his right to have his said daughter educated in the free high schools of said County as her qualifications entitle her to be.

Twelfth: The aforesaid arbitrary and wrongful actions of the defendants violate the Declaration of Rights, the Constitution and the laws of the State of Maryland; and constitute a denial by the State of Maryland to each petitioner of the equal protection of the laws guaranteed them the Fourteenth Amendment of the Constitution of the United States and the laws of the land.

Thirteenth: Unless this Honorable Court, by its writ of mandamus shall secure, preserve and enforce the rights of petitioners in the premises they will suffer irreparable injury and will be without redress or remedy.

Wherefore your petitioners pray this Honorable Court to issue a Writ of Mandamus directed to the defendants David W. Zimmerman, Principal of Catonsville High School, Clarence G. Cooper, Superintendent of Schools, Secretary and Treasurer of the Board of Education of Baltimore County, Henry M. Warfield, President, and James P. Jordan, T. W. Stingley, Oscar B. Coblentz, Joseph G. Reynolds and Edward B. Passano, Members of the Board of Education of Baltimore County, constituting and being the Board of Education of Baltimore County, at their office in the Court House, Towson, Maryland, requiring the said defendants, by and through their agent, David W. Zimmerman, to admit the said Margaret Williams as a regular student in the eighth grade (first year class) of the Catonsville High School, and further ordering and requiring such other and further relief and protection to your petitioners and their several rights as may be proper and necessary in the premises.

MARGARET WILLIAMS, Infant,

JOSHUA B. WILLIAMS, JR.,

Father and Next Friend,

JOSHUA B. WILLIAMS, JR.,

Individually.

THURGOOD MARSHALL,

CHARLES H. HOUSTON (J. M.),

Counsel for Petitioners.

ORDER OF COURT.

(Filed Mar. 14, 1936.)

Upon the foregoing Petition for Writ of Mandamus and affidavit, it is this 14 day of March, 1936, by the Circuit Court of Baltimore County Ordered that the Mandamus prayed for in the said Petition be granted and issued forthwith unless cause to the contrary be shown by the defendants David W. Zimmerman, Clarence G. Cooper, Henry M. Warfield, James P. Jordan, T. W.

Stingley, Oscar B. Coblentz, Joseph G. Reynolds, and Edward B. Passano, on or before the 28 day of March, 1936, provided a copy of this petition and order be served upon the said defendants on or before the 21 day of March, 1936.

C. GUS GRASON.

ANSWER.

(Filed Mar. 27, 1936.)

To the Honorable, the Judges of said Court:

The Answer of the defendants, David W. Zimmerman, principal of the Catonsville High School, Clarence G. Cooper, superintendent of Baltimore County Public Schools, Secretary and Treasurer Board of Education, Henry M. Warfield, President, and James P. Jordan, T. W. Stingley, Oscar B. Coblentz, Ernest H. Akehurst, successors to Joseph G. Reynolds, deceased, and Edward B. Passano, members of the Board of Education of Baltimore County, to the petitioner of the plaintiff filed herein, respectfully shows:

First: They admit the allegations of the first paragraph of the petition except that they emphatically deny that the said Margaret Williams has been illegally and arbitrarily refused admission to the free public high schools of Baltimore County, said allegations being further answered in subsequent paragraphs of this answer.

Second: They admit the allegations of the second paragraph of said petition except that Joseph G. Reynolds named as one of the members of the Board of Education of Baltimore County died, and Ernest H. Akehurst was appointed in his place as a member of said Board of Education.

Third: These defendants admit the allegations of the third paragraph of said petition.

Fourth: These defendants admit the allegations of the fourth paragraph of said petition.

Fifth: These defendants admit that the Board of Education of Baltimore County has established and maintains throughout said County a system of uniform free public and elementary and high schools for the residents thereof, as is alleged in said fifth paragraph of said petition, and as will be more fully stated hereinafter in this answer. These defendants admit that through their officers and agents said Board of Education offers a uniform seven year course of study in the free elementary schools, and admit that the students satisfactorily completing said elementary school course are offered a uniform four year course of study in the free high schools, except as to the colored pupils of which the said infant plaintiff was one, a five year course of study in high schools is provided in the manner hereinafter set forth. These defendants admit that said free high schools are by law under the direct control of the Board of Education of Baltimore County and the defendant superintendent, except as to the high schools hereafter mentioned. The defendants admit that the Catonsville High School is one of the free high schools maintained in said county, but they deny that plaintiff was or is entitled to admission to said high school, even though it was the nearest high school to her residence.

Further answering said paragraph of said petition, these defendants say that said Board of Education is required by law to maintain separate schools for colored children in said county. Annotated Code of Maryland, Art. 77, Sec. 109, 200.

In accordance with law the said Board of Education has established throughout Baltimore County twenty-four (24) elementary schools for colored children, located in various sections of said county. That by far, the greater portion of colored population in said Baltimore County is located in the territory of said county contiguous to Baltimore City, that the colored population in the other parts of the county is comparatively small; that the entire number of colored pupils in the elementary schools of the county for the present year is 1912; that upon completion of the elementary course when qualified as hereinafter set forth, the colored pupils through an arrangement with the Board of School Commissioners of

Baltimore City existing over a period of years attend one of the three colored high schools of said City, namely, Douglass, Booker T. Washington and Dunbar High Schools, the same being reasonably accessible, to the said colored pupils, and affording adequate courses for said pupils and giving said pupils educational advantages in all respects equivalent to those afforded by the white schools maintained by said Board of Education of Baltimore County.

Sixth: These defendants deny all of the allegations of the sixth paragraph of said petition, except that they admit that subject to the authority of the defendant superintendent and the said Board of Education the principals of said free high schools as agents of the Board of Education are the admitting officers to pass upon the qualifications of the pupils desiring to enroll in the high schools and to accept them into said schools, subject however to the qualifications that no principal of any high school in said County or in Baltimore City is authorized by the Board of Education of Baltimore County to admit a pupil to said high school who has not passed the uniform examination hereinafter mentioned.

Further answering said sixth paragraph of said petition, these defendants allege that under the rules and regulations prevailing under the authority of said Board of Education and said superintendent, all pupils, white and colored, throughout said county who desire to attend a high school, were required to take a uniform examination and to attain a prescribed average upon said examination; that no principal or teacher is authorized to recommend or promote for entrance into a high school from any elementary school in Baltimore County any pupil, either white or colored, except upon the successful passing of said examination by said pupil, upon which and only upon which said principal is authorized to recommend said pupil for entrance into a high school; that the said Margaret Williams, infant, as hereinbefore alleged, was a colored pupil and attended one of the colored elementary schools of said county, namely, No. 21 in the Thirteenth Election District of Baltimore County, located at or near Cowdensville; that at the end of the seventh grade said Margaret Williams, in compliance

with the aforementioned rules and regulations of the Board of Education presented herself to the proper authority as designated by said Board and said superintendent to conduct said examination on June 20, 1934, and took the same, but failed to attain the required average, her average being upon said examination $38\frac{3}{4}$ out of a possible 100, with 60 as the minimum passing mark; that said infant, Margaret Williams, thereafter attended the seventh grade in School No. 21 above mentioned, during the school year of 1934-1935; that on June 20, 1935, said infant, Margaret Williams, again presented herself to the properly designated authorities as aforesaid, to take again the required examination for entrance into a high school, but still failed to successfully pass said examination as required by the rules and regulations aforesaid, attaining upon said examination a mark of 244 with a minimum passing mark of 250, out of a possible credit of 390, and accordingly the said Margaret Williams was never qualified for admission to a high school, anywhere under the control or authority of the Board of Education of Baltimore County or said superintendent or any other agent of said Board.

Seventh: The defendants deny all the allegations of the seventh paragraph of said petition, except that the said Margaret Williams attended one of the uniform free elementary schools in Baltimore County established and maintained by the Board of Education.

Further answering said paragraph these defendants allege that the said Margaret Williams did not satisfactorily complete the seven year elementary school course, as is alleged in said seventh paragraph of said petition, but upon the contrary failed to pass the required uniform examination for such purpose. These defendants deny that the said Margaret Williams was duly certified by the lawful and duly authorized agents of said Board of Education as promoted from the seventh to the eighth grade, meaning thereby that she was qualified and eligible for admission into the first year of the free high schools aforesaid, as is alleged in said seventh paragraph of said petition. These defendants repeat that no principal or person acting under the Board of Education of Baltimore County was authorized to recommend any pupil

from the seventh grade who had not successfully passed the said uniform examination.

Eighth: These defendants admit that on or about September 12, 1935, the petitioner, Margaret Williams, in company with her father and next friend, Joshua B. Williams, Jr., reported at the Catonsville High School and made application to defendant, David W. Zimmerman, principal, to have petitioner, Margaret Williams, admitted as a regular student in the first year class of said high school; but they deny that the said Joshua B. Williams, Jr., or the said Margaret Williams, infant, offered themselves ready and willing to abide by all lawful rules governing the conduct of pupils in said schools: that the said Margaret Williams had no right of any kind to attend said Catonsville High School by reason of her failure to pass the examination hereinbefore mentioned, or any other high school maintained or provided by the Board of Education of Baltimore County.

These defendants, and particularly, the defendant Zimmerman, expressly deny that the said Zimmerman admitted that petitioner Margaret Williams was *educationly* qualified to be admitted and had the proper residence, and allege, upon the contrary, that said Zimmerman told said Joshua B. Williams, Jr., that he had no authority to admit said Margaret Williams into said Catonsville High School. That said Catonsville High School is one maintained and for and attended by white children, and that no one acting under the Board of Education was authorized to admit said Margaret Williams into said school. These defendants deny that the said David W. Zimmerman wrongfully and arbitrarily refused to receive the said Margaret Williams into said Catonsville High School as a student as is alleged in said eighth paragraph of said petition, these defendants alleging that said refusal was in all respects legal and in accordance with the rules and regulations and practice of the Board of Education of Baltimore County.

Ninth: Answering the ninth paragraph of said petition, these defendants admit that the said petitioners appealed from the decision of the defendant Zimmerman to the defendant Cooper as his superior officer and as Superintendent of Schools and the executive officer of the

Board of Education aforesaid, as is alleged in the ninth paragraph of said *said* petition; but these defendants deny that the defendant Cooper wrongfully and arbitrarily affirmed the illegal exclusion of Margaret Williams from the Catonsville High School—and further deny that he arbitrarily and wrongfully refused to admit her to any other free high school in Baltimore County, for the reason *particular*y, as hereinbefore set forth, that said Board of Education of Baltimore County had provided adequate and equal educational advantages to the said Margaret Williams in the three colored high schools of Baltimore City under the arrangements aforesaid. These defendants admit that the petitioners appealed to the defendants, the Board of Education of Baltimore County, from the decision of the said defendant Cooper, but deny that said decision was illegal or arbitrary and these defendants further deny that the said Board arbitrarily and wrongfully refused to admit petitioner to the Catonsville High School or any other high school in Baltimore County for the reasons hereinbefore and hereinafter set forth.

Tenth: Answering the tenth paragraph of said petition, these defendants admit that the said Margaret Williams is of lawful school age, but deny that she is in all respects qualified to be admitted into the free high schools in Baltimore County established and maintained by the Board of Education of said County, as is alleged in said tenth paragraph; and also deny that the defendants wrongfully and arbitrarily exclude her and refuse to give her any education in the free schools of Baltimore County beyond the elementary course, as is alleged in said tenth paragraph, for the *resons* hereinbefore and *and* hereinafter set forth.

Eleventh: These defendants deny the allegations of the eleventh paragraph of said petition.

Twelfth: These defendants deny that any action on their part was arbitrary or wrongful or in violation of the Declaration of Rights and the Constitution and laws of the State of Maryland, and constitutes a denial by the State of Maryland to each petitioner of the equal protection of the laws guaranteed by the Fourteenth Amend-

ment to the Constitution of the United States and the laws of the land, as alleged in said twelfth paragraph.

Thirteenth: These defendants deny that the petitioners have shown any right whatsoever to a writ of mandamus to secure to the petitioner, Margaret Williams, the right to be admitted as a regular student in the first year class of the Catonsville High School, and further deny that the said petitioners will suffer irreparable injury and will be without redress or remedy without said writ of mandamus, as is alleged in said thirteenth paragraph of said petition.

These defendants allege that it has been shown by the foregoing allegations of this answer that said Margaret Williams was not eligible to attend any high school established or provided by the Board of Education of Baltimore County, and particularly that she was not eligible or qualified to attend the Catonsville High School.

Further answering each and all allegations of said petition, these defendants say:

(a) That in the orderly and regular conduct the public schools of Baltimore County it was required under the authority of said Board of Education that in order to attend a high school provided by said Board of Education for either white or colored pupils said pupils should pass in the manner aforesaid the uniform examination that said requirement for the taking of said examination was in pursuance of the lawful authority of said Board of Education.

That as appears from the allegations of this answer, said Margaret Williams had twice taken and failed said uniform examination given to white and colored pupils alike, and was not entitled, eligible or qualified to attend any high school provided by the Board of Education of Baltimore County.

(b) These defendants further allege that it has long been the custom in Baltimore County and in Baltimore City, in cases where it would be more convenient to the pupils in a particular section of the city or county, to provide reciprocally for the attendance of pupils at certain designated schools in Baltimore City by pupils re-

siding in Baltimore County, and by pupils residing in Baltimore City at certain designated schools in Baltimore County; that said plan, these defendants believe and accordingly allege has promoted the welfare and convenience of said pupils in said city and county, and that it provides and has provided at reasonably accessible schools and high schools equal educational advantages to white and colored pupils, alike; that as alleged above, the colored population of Baltimore County is mainly centered around the territory contiguous to Baltimore City, and that the colored population in other parts of the counties is small, and the number of pupils successfully completing the seventh grade of the elementary course as hereinbefore described is comparatively few; that as a matter of fact in the entire county there are only 155 colored pupils attending the five grades of the three colored high schools hereinbefore mentioned in Baltimore City; and further that of the total 1912 pupils enrolled in the colored elementary schools of Baltimore County there are 231 seventh grade elementary pupils, in said schools. These defendants allege that the said Board of Education has found no reasonable necessity or occasion, in view of the provision made for entrance by colored pupils into the Baltimore City high schools aforesaid, to erect or maintain within the limits of Baltimore County a colored high school or high schools, that by providing the educational advantages afforded by said high schools said defendants, the Board of Education of Baltimore County, have fully and completely discharged their duty to the colored pupils residing in said county; that *he* said Board of Education has maintained and established high schools for white pupils residing in Baltimore County, but this was justified and necessitated by the fact that there are approximately 2,000 white pupils in Baltimore County qualified annually to attend high school, residing in the various sections of the county.

That the plan and arrangement hereinbefore set forth of providing high school advantages to colored high school pupils in the three colored high schools of Baltimore City by the said Board of Education has not been actuated by motives of economy because it believes that it could maintain a high school in Baltimore County for the total annual sum paid Baltimore City for rendering

said high schools available to the colored pupils of Baltimore County.

That said Board, however, after deliberate and mature consideration determined that with the large colored population around Baltimore City the said plan afforded educational advantages certainly equal to if not better than any that *he* Board of Education could provide in a small high school, in Baltimore County; that under the arrangement with the Board of School Commissioners of Baltimore City, the Board of Education of Baltimore County pays one hundred fifty dollars (\$150.00) per year for senior high school pupils, and ninety-five dollars (\$95) per year for junior high school pupils. The High Schools maintained under the Board of Education of Baltimore County average around sixty-three dollars (\$63) per pupil.

Having fully answered the petition filed herein these defendants pray that they may be hence dismissed with their proper costs.

And as in duty bound, etc.

WILLIAM L. RAWLS,

CORNELIUS V. ROE,

Attorneys for Defendants.

REPLICATION.

(Filed May 5, 1936.)

To the Honorable, the Judges of said Court:

The replication of the petitioners to the answer filed herein respectfully shows:

First: Replying to the first paragraph of the answer insofar as the allegations of the first paragraph of the answer deny the allegations of the first paragraph of the petition your petitioners join issue with such allegations of the answer.

Second: Replying to the second paragraph of the answer, petitioners admit the allegations contained therein.

Third: Replying to so much of the fifth paragraph of said answer as does not admit the allegations of the fifth paragraph of the petition your petitioners allege they have no personal knowledge of a five year course of study in high schools for colored pupils, and therefore can neither admit nor deny the same; however, they demand strict proof of such allegations; petitioners allege that they are residents of Baltimore County and citizens of Maryland and entitled to the equal protection of the laws under the 14th Amendment aforesaid, no more and no less, and as such do not desire any special protection, privilege or benefit above that accorded the white citizens of person_ of the State; they object to any waste of taxpayers' monies in maintaining a system of providing five year high school training for one group of students when the same could be give_ in Baltimore County in four years petitioners allege further that the unequal system of requiring colored pupils to take a five year course while the defendants provide a uniform four year course giving the same type of education amounts to loss of one year of infant petitioners' life and is an unequal burden or discrimination placed upon the petitioners and others by the defendants on account of their race or color, petitioners allege that Margaret Williams is entitled to admission to the Baltimore County high school nearest to her residence namely Catonsville High School.

Petitioners are informed *an* believe and therefore admit that there are twenty-four colored elementary schools throughout Baltimore County, as set out on page three of the answer, these petitioners allege that fourteen of these twenty-four elementary schools are the inferior, inadequate and unequal "one teacher" type schools, that the defendants in violation of their own confessed legal obligations set out in paragraph four of the petition and admitted in the answer and in violation of the 14th Amendment of the Constitution of the United States have established and maintain in Baltimore County a system of education for Negroes unequal, inferior and inadequate in every respect, that in the matter of transporta-

tion physical plant text books materials of instruction libraries health service number and distribution of schools, curriculum offerings, supervision, enforcement of school attendance laws and other respects, the defendants both by rule and administrative policy discriminate directly against the Negro population of Baltimore County, and petitioners, making it difficult for infant petitioner and others of her race to qualify for higher education; petitioners are informed and believe and therefore, admit that the greater portion of the colored population in said County is located in the territory contiguous to Baltimore City and that the colored population in the other parts of the County is comparatively small; Petitioners allege further that the greater portion of the white population of the County is also located in the territory contiguous to Baltimore City and that the white population in the other parts of the County is comparatively small, yet the largest high schools of the County are located in the territory contiguous to Baltimore City, there are other white high schools consolidated with elementary schools in other sections of the County, they are without information as to the entire number of colored pupils in the elementary schools of the County for the present year and can neither affirm nor deny such allegations but call for strict proof of the matters alleged; petitioners emphatically deny that the arrangement with the Board of School Commissioners of Baltimore City affords to the colored pupils or petitioners adequate courses and/or educational advantages in all respects equivalent to those afforded by the white high schools maintained by said Board of Education of Baltimore County, that the three colored high schools of Baltimore City mentioned in said paragraph are located near the center of Baltimore City, that under the arrangement mentioned above no provision was made for the transportation of those students required to go out of the County to obtain a high school education, under this system infant petitioner would be forced to lose considerable time in going to and from Baltimore City in addition to transportation costs, her parents would not have their child under their control if that said child would be out of the County, it would be inconvenient to follow the education of the child, Petitioner Joshua B. Williams,

Jr., not being a resident of Baltimore City would have no power to require the Board of School Commissioners of Baltimore City to act on behalf of his daughter infant petitioner would be forced to attend school in an entirely different environment among total strangers and to study under a system of high school education prepared for pupils accustomed to large city elementary schools, rather than the "one teacher" type school, where infant petitioner obtained her elementary school education.

Fourth: Replying to the sixth paragraph of the answer insofar as the allegations of sixth paragraph of the said answer deny the allegations of the sixth paragraph of the petition, your petitioners joins issue with such allegations of the answer.

As to the further answer contained in said sixth paragraph of the answer petitioners deny that under the rules and regulations prevailing under the authority of said Board of Education and said Superintendent, all pupils, white and colored, throughout said County who desire to attend a high school were required to take a uniform examination and to attain a prescribed average these petitioners allege they are without information as to the type or form of examination required of white students and demand strict proof of the same, the present system of the defendants, is to require the colored pupils who have satisfactorily completed the seven year elementary school course to take an additional examination for the purpose of having their tuition paid into Baltimore City and not for the purpose of qualifying for a high school education, and not only is the examination itself an unfair discrimination, but it is also conducted under conditions which are set up for the purpose of discouraging rather than encouraging the colored pupils, that *may* colored pupils are not permitted to take the examination, the taking of this examination has never been a matter of right but has been left to the arbitrary will of agents of the defendants, that the examinations have been given in three central points and that the colored children attending other school have been required to journey to these points and there to take examinations made out by the supervisors of white schools, agents of the defendants, absolutely unfamiliar with the training of colored

pupils, that said examinations were given by the said supervisors who were total strangers to the colored pupils, that these examination papers were marked by the same people, that some students had to travel more than twenty miles to take these examinations and their parents had to furnish the means of transportation that the entire system of examinations for the payment of tuition is in itself an unequal burden of discrimination placed on petitioners and others of their race and color, petitioners admit that Margaret Williams is a colored pupil and attended one of the colored elementary schools as set out in the answer, they allege that said school was one of the unequal inferior and inadequate "one teacher" type schools mentioned above that at the end of the seventh grade said Margaret Williams presented herself for the purpose of taking an examination as an applicant for high school tuition in Baltimore City, that petitioners have no information other than from the defendants as to whether or not she failed said examination and therefore, can neither affirm nor deny said allegation but call for strict proof thereof, that Margaret Williams repeated the seventh grade as alleged in said paragraph of the answer and again presented herself to take an examination as set out above, petitioners have no information other than from the defendants as to the result of this examination and therefore, can neither affirm nor deny said allegation but call for strict proof thereof, that Margaret Williams had satisfactorily completed the seven year elementary course that the examination was given at Catonsville, away from the school attended by infant petitioner, that petitioner Joshua B. Williams, Jr., was required to furnish means of transportation to and from Catonsville, that at the place of the examination petitioner was suddenly thrown into a different environment from the "one teacher" school to which she was accustomed, that the examination was prepared by the supervisor of the white schools and given by one of them who was an absolute stranger to infant petitioner, that said supervisor marked the examination papers, and informed petitioner that she had failed said examination petitioners expressly deny that Margaret Williams was never qualified for admission to a high school anywhere under the control or authority of the Board of Education of

Baltimore County or said superintendent or any other agent of said Board.

Fifth: Replying to the seventh paragraph of the answer insofar as the allegations of said seventh paragraph deny the allegations of the seventh paragraph of the petition, your petitioners join issue with such allegations of the answer.

As to that further answer set out in said seventh paragraph petitioners deny that Margaret Williams did not satisfactorily complete the seven year elementary course, they deny that there was any uniform examination for the purpose of completing the seventh grade, *the* deny the examination was uniform. As to all other allegations set out in said paragraph these petitioners join issue.

Sixth: Replying to the eighth paragraph of the answer insofar as the allegations of said eighth paragraph deny the allegations of the eighth paragraph of the petition, your petitioner join issue with such allegations of the answer.

Seventh: Replying to the ninth paragraph of the answer insofar as the allegations of said ninth paragraph deny the allegations of the ninth paragraph of the petition, your petitioners join issue with such allegations of the answer.

They deny that said Board of Education of Baltimore County had provided adequate and equal educational advantages to the said Margaret Williams.

Eighth: Replying to the tenth paragraph of the answer, insofar as the allegations of the said tenth paragraph deny the allegations of the tenth paragraph of the petition, your petitioners join issue with such allegations of the answer.

Ninth: Replying to the eleventh paragraph of the answer, insofar as the allegations of said eleventh paragraph deny the allegations of the eleventh paragraph of the petition, your petitioners join issue with such allegations of the answer.

Tenth: Replying to the twelfth paragraph of the answer insofar as the allegations of said twelfth paragraph

deny the allegations of the twelfth paragraph of the petition, your petitioners join issue with such allegations of the answer.

Eleventh: Replying to the thirteenth paragraph of the answer insofar as the allegations of the said thirteenth paragraph deny the allegations of the thirteenth paragraph of the petition your petitioners join issue with such allegations of the answer.

Replying to that part of the answer beginning with "Further answering" at line 19 on page 8 of the answer, petitioners allege:

(a) The petitioners deny that under the authority of the Board of Education both white and colored pupils are required to pass a uniform examination as set out in the answer, that all colored pupils who complete the seven year elementary course and desire to attend high school are required to take the necessary examinations to complete the seventh grade and in addition thereto are required to apply for free tuition to Baltimore City schools and to take another examination in order to qualify to have their tuition paid to the Baltimore City schools the inferior and unequal and discriminatory system of elementary school education offered to infant petitioner and others of her race the plan of discouraging colored students from taking these examinations, and the method of giving said examinations make it an unreasonable unequal and unjust burden, these examinations are given at central points at the larger schools, and the colored pupils are required to travel to these schools at their own expense away from the elementary schools attended by them and there to take examinations prepared and given by the supervisors of white schools, that the examination papers are marked by the said supervisors, that this system of examinations has been prepared for the purpose of excluding the larger part of Negro pupils desiring to attend high school and to thereby limit the amount of money to be paid by the defendant Board of Education for tuition, that by the system of then requiring the colored students to take unfair examinations under unfamiliar and strange surroundings, the infant petitioner and the majority of Negro students completing the elementary school course are arbitrarily and wrongfully denied the

opportunity of obtaining a high school education, that said system of examinations is an unreasonable burden placed on the infant petitioner by the defendants because of her race or color, and denies to both petitioners the equal protection of the law under the 14th Amendment. The petitioners deny that said requirements for the taking of said examinations were in pursuance of the lawful authority of the said Board of Education, and allege that it is an arbitrary and unlawful rule and practice for the purpose of denying to these petitioners the equal protection of the law and is in direct conflict and a violation of the standards for County high schools as promulgated by the State Department of Education.

The petitioners admit that Margaret Williams had twice taken the examination given to colored pupils but deny that said examinations were given to white and colored pupils alike, that they have no information or knowledge as to whether or not infant petitioner failed said examination except upon information from defendants, and therefore, can neither admit nor deny such allegations but demand strict proof thereof if the same be material, they emphatically deny that said infant petitioner was not entitled, eligible or qualified to attend any high school provided by the Board of Education of Baltimore County, that Margaret Williams was required by law to attend the elementary school nearest to her residence, said elementary school was one of the unequal and inferior "one teacher" type schools, that said Margaret Williams satisfactorily completed the seven year elementary school course offered at said school, that in order to continue her education she was obliged to apply for free tuition to Baltimore schools, that there were no schools maintained in Baltimore County for the education of infant petitioner other than those mentioned in the answer as white high schools, that there were no high schools in Baltimore for the exclusive use of colored children that infant petitioner applied for said paid tuition and was instructed by the defendants to take an examination at the Catonsville elementary school, that Margaret Williams was not offered transportation to said Catonsville school, to take the examination, that she went to Catonsville on or about June 20, 1934, and there took an examination prepared by the Supervisors of white schools and given

by said Supervisors that said examination was given in an environment totally strange to infant petitioner and under circumstances created for the purpose of discouraging her from qualifying for said paid tuition, that Margaret Williams was informed that she had failed the examination, that she repeated the seventh grade in the same school, was duly certified as promoted, made application for tuition took another examination under the same circumstances and was again informed that she had failed, therefore, was not eligible for free tuition, petitioners allege that the system of requiring infant petitioner to apply for paid tuition and to take the examination as mentioned above for the purpose of obtaining an education outside the County was an unequal burden or discrimination place upon them by the defendants on account of their race or color, that the plan of providing eleven white high schools throughout the County and denying infant petitioner the right to attend one of these schools with transportation offered to her the same as other citizens was a denial of the equal protection of the laws under the 14th Amendment to the Constitution, that the system of requiring infant petitioner to leave the County and to be offered free tuition in Baltimore City upon the successful passing of the aforementioned examinations and to require Joshua B. Williams, Jr., to pay for the transportation of his daughter to and from Baltimore or to pay board and lodging in Baltimore City was not equal to the high school facilities offered other citizens of Baltimore County and, therefore, was in violation of the Constitution and laws of the State of Maryland, and in violation of the 14th Amendment of the Constitution of the United States that the said plan required petition to attend high school five years for the purpose of obtaining the same quality of education offered to other citizens in Baltimore County in four years amounted to a loss of one year of petitioner's life, and was an unreasonable unjust and unequal burden.

(b) That petitioner have neither information nor knowledge as to the allegation of paragraph (b) of said further answer setting forth the system of reciprocally providing for the attendance of pupils at certain designated schools in Baltimore County and Baltimore City, and, therefore, neither admit nor deny said allegations

but call for strict proof thereof, if material, these petitioners deny that there is any plan of providing reciprocally for the attendance of Negro high school students for the reason that there was no colored high schools in Baltimore County, that the plan of sending children to the colored high schools of Baltimore City, was not based on any plan reciprocity but for the purpose of discrimination, they deny that the plan for the high school education of colored children of Baltimore County has promoted the welfare and convenience of said pupils, they allege that while the plan of providing reciprocally for the attendance of white students in the city and county was brought about because of geographical convenience the plan for colored students was brought about for the purpose of discrimination despite inconvenience, petitioners deny that defendants provide and have provided at reasonably accessible schools and high schools equal education advantages to white and colored pupils alike that the opportunities for high school education for the colored pupils of Baltimore County are not equal to those offered to white pupils for the reason that although there are eleven high schools admitting white students conveniently located in eleven different election districts throughout the County with transportation also offered these white pupils at a minimum costs petitioners are without any form of high school in said County, except those mentioned in the answer as white high schools. Petitioner, Margaret Williams and others of her race are forced to compete in examinations to have their tuition paid and those who are fortunate enough to be accepted by defendants are required to leave the County and to go into the heart of Baltimore City, and there to attend school under an entirely different environment away from their homes and neighborhood, that at this time defendants refuse to either transport these pupils or to pay for the same, Petitioners admit that the colored population of Baltimore County is mainly centered around the territory contiguous to Baltimore City, and allege that the white population is also mainly centered around the territory contiguous to Baltimore City, and that largest white high schools of said county are located near Baltimore City, petitioners admit that there only 155 colored pupils attending the Baltimore City schools from Baltimore County but allege that this small number is caused

by the system of elimination set out above, that 729 colored pupils have completed the seven year elementary course in Baltimore County during the last five years that over this period the defendants have systematically excluded approximately sixty five per cent of the colored pupils completing the elementary course from obtaining a high school education petitioners deny that the Board had found no reasonable necessity or occasion to erected or maintain within the limits of Baltimore County a colored high school and allege that the colored taxpayers of Baltimore County have repeatedly petitioned the Board to do so but that said Board has always refused to consider the matter and on October 8, 1935, refused to either receive a petition for a hearing or to hear the colored taxpayers, that such action of the defendant Board has been arbitrary and unlawful petitioners emphatically deny that the defendants have completely discharged their duty to petitioner or the other colored pupils residing in Baltimore County, the petitioners admit that the defendants have established high schools for white pupils in Baltimore County and allege that in excluding the infant petitioner from these high schools said defendants have acted wrongfully and arbitrarily and in violation of the Constitution and laws of the State of Maryland and such action denies to petitioners the equal protection of the laws, these petitioners deny that there are approximately 2,000 white pupils qualified annually to attend high schools and allege that they are informed and believe and therefore, allege that the number is considerably smaller, they allege further that approximately one tenth as many colored pupils complete the elementary course as white pupils but that by the systematic exclusion of the Board less than thirty five per cent of these colored pupils are sent to Baltimore City.

Petitioners deny that the plan of providing high school advantages was not actuated by motives of economy and allege that not only is the plan of providing education and then making it impossible for petitioner or others to qualify for the purpose of depriving petitioners of the rights to the equal protection of the laws but also to refuse to give to the petitioner equal education facilities in Baltimore County.

Petitioners deny that the said plan for colored stu-

dents was determined after any deliberate and mature consideration of the requirements for equal educational advantages but alleg_ that said plan was for the purpose of refusing equal educational advantages to petitioners and others of their race, as to the allegation that this plan afforded educational advantages equal to if not better than any that the Board of Education could provide in a small high school in Baltimore County, these petitioners allege that such allegations are immaterial to their rights herein and allege further that said plan does not afford educational advantages equal to to those afforded other citizens and taxpayers of Baltimore County, petitioners are informed and believe and, therefore, admit that the Board pays \$150. for senior high school pupils and \$95 for junior high school pupils, and that high schools maintained under the Board of Education of Baltimore County averages \$63 per pupil but allege that this figure does not include a capital outlay of more than \$1,863,500.00 for the high school maintained by Baltimore County, nor fixed charges or other expenditures but although approximately one tenth as many colored pupils complete the elementary course as white pupils that the current expenses (excluding all capital outlay) for white pupils in high schools is more than twenty four times that expended in tuition for colored pupils.

That as to all allegations in the answer filed herein which deny the allegations set out in the petition herein, these petitioners join issue. That as to all allegations of new matter contained in said answer and not expressly replied to in this replication are hereby denied.

And as in duty bound, etc.

MARGARET WILLIAMS, Infant,
 JOSHUA B. WILLIAMS, JR.,
 Father and Next Friend,
 JOSHUA B. WILLIAMS, JR.,
 Individually.

THURGOOD MARSHALL,
 CHARLES H. HOUSTON,
 Counsel for Petitioners.

MOTION NE RECIPIATUR.

(Filed May 9, 1936.)

To the Honorable, the Judges of said Court:

The defendants respectfully move this Honorable Court not to receive the replication filed by plaintiff in the above entitled case for the following reasons:

Plaintiffs have failed to comply with Section 5 of Article 60 of the Code regulating proceedings in mandamus cases in the filing of the said replication.

Said paper called a "Replication" is not a common traverse as known to the common law, but an elaborate attempt to overcome the averments of the answer to the Bill of Complaint, and set up a new and different case from that made by the bill of complaint and that which was answered by the defendants.

WILLIAM L. RAWLS,
CORNELIUS V. ROE,

Solicitors for Defendants.

ANSWER TO MOTION NE RECIPIATUR.

(Filed May 22, 1936.)

To the Honorable, the Judges of said Court:

The petitioner answering the Motion Ne Recipiatur filed in the above entitled case say:

The grounds for the Motion Ne Recipiatur as set out by the defendants in their motion are not cognizable under a Motion Ne Recipiatur.

I

The petitioner have fully complied with Section 5 of Article 60 of the Code.

II.

A Motion Ne Recipiatur cannot be evoked for the second reason set out in the motion filed herein, namely, that there has been a departure in the pleadings.

Wherefore, the Petitioners respectfully urge this Honorable Court to refuse the Motion Ne Recipiatur and to require the defendants to answer the Replication as required by Section 5 of Article 60 of the Code.

THURGOOD MARSHALL,
CHARLES H. HOUSTON,
Attorneys for Petitioners.

DEMURRER.

(Filed July 2, 1936.)

Defendants' Demurrer to the replication filed by Petitioners and allege as grounds of their demurrer, that the replication constitutes a departure from the allegations of the petition, and that nothing is shown in said replication or in the replication taken in connection with the petition and answer to entitle the said Margaret Williams, infant plaintiff, to any relief in this case.

WILLIAM L. RAWLS,
CORNELIUS V. ROE,
Solicitors for Defendants.

MEMORANDUM.

(Filed Aug. 4, 1936.)

The petition for the writ of mandamus in the above entitled case, filed by Margaret Williams, infant, by her father and next friend, Joshua B. Williams, and by Joshua B. Williams, individually, alleges that Joshua B. Williams is a resident and taxpayer of Baltimore Coun-

ty; that his daughter lives at home with him and is fourteen years old; that she has been illegally and arbitrarily refused admission to the free public High School of the County by David W. Zimmerman, Principal of the Catonsville High School, that by rule of the Board of Education of the County upon satisfactory completion of the Elementary Scholar course the pupils are promoted and transferred to the free High School nearest their respective residences.

That the petitioner, Margaret Williams, attended one of the free elementary schools and satisfactorily completed the seven year elementary course and was duly certified by the lawful agents of the duly authorized agents of the Board of Education as promoted from the seventh to the eighth grade meaning thereby that she was qualified and eligible for admission into the first year of the free high school of the County.

That within the period for enrolling new students the petitioner accompanied by her father reported to the Catonsville High School and made formal application to the defendant, David W. Zimmerman, principal, for admission in the first year class of said High School, but that the said principal while admitting that the petitioner was educationally qualified to be admitted and had the proper residence nevertheless wrongfully and arbitrarily refused to receive her as a student.

The petitioner appealed to the Superintendent of Schools, Mr. Cooper, but he arbitrarily affirmed her exclusion. He then appealed to the Board of Education of the County and this Board refused to admit petitioner to the Catonsville High School or any other free high school in Baltimore County.

That the defendants wrongfully and arbitrarily excluded her and refuse to give her any education in the free schools of the County beyond the elementary course although they offer free High School education to the other residents of the County.

The petitioner then asks for the writ to compel the Board of Education through their agent David W. Zimmerman to admit the petitioner as a regular student in the first year class of the Catonsville High School.

The complaints in this petition were set out clearly and distinctly. It says that a child of a resident taxpayer who had completed her course of study in the elementary school of the County in a satisfactory manner and who had been duly certified by the duly authorized agents as qualified and eligible for admission to the High School was illegally and arbitrarily refused admission.

The answer to this Petition upon the charges set out in it, are that no teacher or principal is authorized to recommend or promote for entrance into a high school from any elementary school any pupil white or colored, except upon the successful passing of an examination that the petitioner did attend one of the elementary schools and at the end of the seventh grade presented herself to the proper authorities designated by the Board for an examination for promotion to the High School and took the same but failed to attain the required average; her average being $38\frac{1}{4}$ out of a possible of 100 with 60 as the minimum passing mark that the petitioner thereafter attended the seventh grade for another year and again presented herself for an examination but still failed to pass said examination her average being 244 with a minimum passing mark of 250 out of a possible of 390.

The answer denies that the petitioner was certified by the lawful and duly authorized agents of the Board of Education as promoted from the seventh to the eighth grade.

That the defendant Zimmerman denies that he told the petitioner or her father, that the petitioner was educationally qualified for her admission to the High School.

So that up to this time there is an answer to the petition and the case about ready for a hearing on the facts.

But the answer went further. It sets up new matter not suggested by the petition. The petitioners answered this in a replication at great length, replying in detail to all new matter set up in the answer. The defendants demurred; one of the objections being that the case set up by the petitioner in her replication is altogether different from that presented in the petition and is therefore a departure that ordinarily is not permitted in mandamus cases.

The defendants having pleaded, the statute, Section 5 of Article 60, says, "the petitioner may plead to or traverse all and any of the material averments set forth in said answer".

This the petitioner did. I will therefore overrule the Demurrer with leave to the defendants to take issue or traverse.

Having made this decision on the demurrer, the pleadings present an altogether different case than that presented by the petition. It opens a wide field of inquiry, but after all the petition must fail if it is not shown by evidence that the petitioner passed the required examination or tests prescribed by the School Board to enter the County High Schools. If the petitioner fails in this, all the other questions raised by the pleadings are moot questions and should not be considered in these proceedings.

I will, therefore, rule now that this question of fact will be heard first, and disposed of first, and other questions raised by the pleadings will be held in abeyance until that allegation of fact is disposed of.

FRANK I. DUNCAN.

REJOINDER.

(Filed Aug. 18, 1936.)

To the Honorable, the Judge of said Court:

The rejoinder of the respondents to the replication filed herein, insofar as the same contains new matter not heretofore admitted or denied in the answer hereinbefore filed by your respondents respectfully shows:

First: Answering the new matter contained in paragraph third of said replication these respondents deny that the system of providing five year high school training for colored students as alleged in the answer is an unequal burden or discrimination upon the petitioners or others on account of their race or color, that the twen-

ty four colored elementary schools are inferior, inadequate and unequal; that they, by rule or administrative policy, discriminate directly against the negro population of Baltimore County, or the petitioners, or that they have made it difficult for petitioner or others of her race to qualify for higher education. They deny that no provisions is made for the transportation of students required to go out of the County to obtain a high school education, that the parents of the infant petitioner would have no control of their child while out of the County; or that it would be inconvenient to follow the education of the child. They deny that the system of high school education at present available to petitioner is in any way unsuitable or inferior to that afforded the white population.

Second: Answering the new matter contained in paragraph Fourth of said replication these respondents deny that the purpose of the additional examination for colored pupils is to have their tuition paid in to Baltimore City; they deny that said examination is an unfair discrimination or is conducted under conditions which are set up for the purpose of discouraging rather than encouraging the colored pupils; they deny that any colored pupil who has completed the elementary course is not permitted to take such examination; they further deny that said examination is left to the arbitrary will of agents of the defendants; that the examinations are made out by supervisors of white schools unfamiliar with the training of colored pupils; that the system of examinations is any way an unequal burden or discrimination placed upon the petitioners or others of their race or color; that the school attended by the infant petitioner was unequal, inferior or inadequate or that the infant petitioner had satisfactorily completed the seven year elementary course.

Third: Answering the new matter contained paragraph eleventh of said replication these respondents deny that the system of examination given to colored pupils who complete the seven year elementary course is unreasonable, unequal and unfair, or that it imposes an unjust *burden* upon colored students; or that the same have been prepared for the purpose of excluding the larger part of Negro pupils desiring to attend high school and thereby limit the amount of money to be paid by the defendant

Board of Education for tuition; that said system arbitrarily and wrongfully denies the opportunity to the petitioner or a majority of Negro students completing the elementary course of obtaining a high school education; that said system is an unreasonable burden placed upon the infant petitioner on account of her race or color or that said system denies to her the equal protection of the laws under the 14th Amendment. These respondents further deny that the requirements for the taking of said examinations were arbitrary or unlawful, or for the purpose of denying the petitioners the equal protection of the laws, or in direct conflict or violation of the standards for County High Schools as promulgated by the State Department of Education. These respondents further deny that the infant petitioner was required to attend an unequal and unfair elementary school that she had satisfactorily completed the seven year elementary school course offered at said school; that the examination given her was given for the purpose of discouraging her from qualifying herself to attend said high school; that she was duly certified as promoted upon the completion of the seventh grade or that the system of education provided for colored pupils was unequal or discriminative or that said system was not equal to other high school facilities offered other citizens of Baltimore County.

(b) These respondents deny that the system or plan of sending children to the colored high schools of Baltimore City was for the purpose of discrimination, they further deny that the infant petitioner or others of her race are forced to take an examination solely in order to have their tuition paid in the city high school or that they refuse to pay the transportation of colored pupils; they deny that the_ have systematically excluded any colored pupils completing the elementary course from obtaining a high school education; they further deny that they have been arbitrary or unlawful in refusing to erect a colored high school in Baltimore County or that in excluding the infant petitioner from a white high school they have acted wrongfull or arbitrarily or in violation of the laws of the State of Maryland or that such action denies to the petitioner the equal protection of the laws. They deny that the plan of providing high school advantages was determined for the purpose of refusing equal

educational advantages to petitioners or others of their race.

As to all the allegations in said replication which deny the allegations contained in the answer, these respondents join issue.

WILLIAM L. RAWLS,
CORNELIUS V. ROE,
Attorneys for Respondents.

EXCEPTION.

(Filed Aug. 20, 1936.)

To the Honorable, the Judge of said Court:

The petitioners in the above entitled case hereby request this Honorable Court to grant them an exception to the following paragraphs on page four of the opinion overruling defendants' demurrer and filed August 4th, 1936:

"Having made this decision on the demurrer, the pleadings present an altogether different case than that presented by the petition. It opens a wide field of inquiry, but after all the petition must fail if it is not shown by evidence that the petitioner passed the required examination or tests prescribed by the School Board to enter the County High Schools. If the petitioner fails in this, all the other questions raised by the pleadings are moot questions and should not be considered in these proceedings.

"I will therefore rule now that this question of fact will be heard first, and disposed of first, and other questions raised by the pleadings be held in abeyance until that allegation of fact is disposed of."

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
Counsel for Petitioners.

SURREJOINDER.

(Filed Aug. 28, 1936.)

To the Honorable, the Judge of said Court :

The Surrejoinder of the petitioners to the rejoinder filed herein respectfully shows :

First: Petitioners join issue with the allegations of the first paragraph of said rejoinder.

Second: Petitioners join issue with the allegations of the second paragraph of said rejoinder.

Third: Petitioners join issue with the allegations of third paragraph of said rejoinder.

THURGOOD MARSHALL,
CHARLES H. HOUSTON,
Counsel for Petitioners.

REQUEST FOR SUMMONSES.

(Filed Sep. 10, 1936.)

Mr. Clerk :

Pleas_ issue summons for the following witness :

Clarence G. Cooper, Board of Education, Court House, Towson, Maryland, to bring with him the following books, records and papers :

(a) Minutes of the Board of Education from 1926 to the present time.

(b) All petitions and letters from citizens of Baltimore County requesting improvement of high school facilities for Negroes from 1924 to the present time.

(c) All records of the appearance of citizens of Baltimore County before the Board of Education of Baltimore County requesting the improvement of high school facilities for Negroes from 1924 to the present time.

(d) Annual reports of Board of Education for the years 1927 to date.

(e) Course of study used in Baltimore County Public Schools.

(f) All examinations given to Negro pupils of the seventh grade in the elementary schools for the years 1926 to date.

(g) All records of results of said examinations.

(h) All examinations given to white pupils of the seventh grade in the elementary schools for the years 1926 to date.

(i) All records of results of said examinations.

(j) All records and papers from the Cowdensville Colored Elementary School for the years 1933-1934-1935.

(k) All records showing the number of colored pupils throughout the County completing the seventh grade from 1930 to 1936.

(l) All records showing the number of colored pupils throughout the County passing the examinations given seventh grade pupils from 1930 to 1936.

MEMORANDUM.

(Filed Oct. 22, 1936.)

On March 14, 1936, a petition was filed by Margaret Williams, infant, by her father and next friend, Joshua B. Williams against David W. Zimmerman, the Principal of a high school in Baltimore County, Clarence G. Cooper, Superintendent of Schools for Baltimore County, and the members of the School Board of Baltimore County for the Writ of Mandamus.

The petition alleged the petitioner who is fourteen years of age, and the daughter of a citizen and taxpayer of Baltimore County, attended one of the uniform free elementary schools in Baltimore County and satisfactorily completed the seven year elementary school course

and was duly certified by the lawful and duly authorized agents of said Board of Education as promoted from the seventh to the eighth grade, meaning thereby that she was qualified and eligible for admission into the first year of the free high school nearest to her residence.

That the petitioner accompanied by her father and next friend made formal application to the defendant, David W. Zimmerman, Principal of the Catonsville High School in Baltimore County, to be admitted as a regular student in the eighth grade (first year class of said High School), that the said Zimmerman admitted that the petitioner was educationally qualified to be admitted but he arbitrarily and wrongfully refused to receive her into said High School as a student. The petitioner then appealed to the Superintendent of Schools and upon his refusal to admit her appealed to the County School Board and that the action of the Principal and Superintendent of Schools was approved by the said Board.

In their Answer the defendants deny that the petitioner satisfactorily completed the seven grades in the elementary course and that under the rules and regulations prevailing under the authority of the County Board of Education and said Superintendent, all pupils, white and colored, throughout the County desiring to attend a High School are required to take a uniform examination and to attain a prescribed average upon said examination, and that no Principal or Teacher is authorized to recommend or promote for entrance into a High School from any elementary school in the County any pupil white or colored, except upon the successful passing of said examination upon which and only upon which said Principal is authorized to recommend said pupil for entrance into a High School.

That the petitioner was a colored pupils and attended one of the colored elementary schools and that at the end of the seventh grade in compliance with the said rules and regulations the Petitioner presented herself to the proper authority as designated by the said Board of Education to conduct said examination on June 20, 1934, and took the same but failed to attain the required average her average being $38\frac{3}{4}$ out of a possible 100 with 60 as

the minimum passing point. That in year 1934-1935 to wit on June 20, 1935, the petitioner again presented herself to take the examination but still failed to secure the passing average, attaining a mark of 244 with a minimum passing mark of 250 out of a possible count of 390. And they say that no principal or other person acting under the Board of Education of the County was authorized to recommend any pupil from the seventh grade who had not successfully passed the said uniform examination.

The Defendants and particularly the said Zimmerman deny that the said Zimmerman admitted that the Petitioner was educationally qualified to be admitted but said that the said Zimmerman told the father of the Petitioner that he had no authority to admit the Petitioner into the Catonsville High School.

The Petitioner then filed a replication in which they attempted to on trial the entire educational system of the County; especially the method of conducting examinations and of promoting pupils from the elementary grades to the first year of the High Schools of the County.

The defendants then filed a motion ne recipiatur which was overruled and then demurred to the replication. The Court overruled the demurrer and said: "Having made this decision on the demurrer the pleadings present an altogether different case than that presented by the petition. It opens a wide field of inquiry, but after all, the petition must fail if it is not shown by evidence that the Petitioner passed the required examinations or tests prescribed by the School Board to enter the County High School. If the petitioner fails in this, all the other questions raised by the pleadings are moot questions and should not be considered, in these proceedings. I will therefore rule now that this question of fact will be heard first and disposed of first and other questions raised by the pleadings be held in abeyance until that allegation of fact is disposed of".

The defendants then filed their rejoinder and the Plaintiffs their surrejoinder, after excepting to the opinion of the Court above set forth.

The case was then heard and testimony taken and submitted on briefs filed by both parties.

After considering all the pleadings and evidence I am still of the opinion that there is but one question in the case for our consideration.

A. Did the Petitioner satisfactorily complete the seven year elementary school course, and

B. Was she duly certified by the lawful and authorized agents of said Board of Education as promoted from the seventh to the eighth grade meaning thereby that she was qualified and eligible for admission into the first year of the free high schools.

The contention of the Petitioner is that having completed her seven year elementary school course to the satisfaction of her teacher she is entitled to be admitted to the High Schools without any certification from the County School Board that she has satisfactorily passed the uniform examination prescribed by said Board and therefore entitled to be admitted.

This contention is largely based upon the language contained in the "Manual of Standards for Maryland County High Schools" issued by the State Department of Education in November 1927 as follows "The possession of an elementary school certificate signifying the successful completion by the pupil of the course of study prescribed for the elementary school is sufficient to entitle the pupil to enter an approved High School without examination".

The State Board of Education is one of the most important branches of the State Government. By Section 11 of Article 77 (Bagby's Code) "it is given power to determine the educational policies of the State and to enact by-laws for the administration of the public school system which, when enacted and published shall have the force of law". This section further provides "that it shall decide all controversies and disputes arising under the laws as to its intent and meaning and that their decision shall be final". It is not contended that the language employed in the Manual of 1927 under the heading "Admission by elementary school certificates", was ever enacted into a by-law, and not having been enacted as a by-law it has no binding force and is a mere

expression that might or might not be adopted by the Board of County School Boards. As a matter of fact it was never adopted or endorsed by the County Board and according to the testimony of the Secretary of the State Board of Education and the Superintendent of the County Board has been repudiated by the State Board. The contention of the Petitioner that the language in the Manual is binding upon the County School Board and that the examinations and tests adopted by the County Board are illegal raises a question that may be important.

Section 11 of the Code Article 77, quoted above says: "The State Board of Education is given power to determine the educational policies of the state" and "that it shall decide all controversies and disputes arising under the law as to its intent and meaning and that their decision shall be final."

There was surely a controversy and dispute between the Petitioner and the County Board over that expression in the Manual and was it not a question to be determined by the State Board to decide on appeal from the decision of the County Board before resorting to Mandamus proceedings?

By section 41 Article 77 of the Code of Public General Laws (Flack's 1935 Edition) all property theretofore vested by law in the Public School Authorities of any County is vested in the County Board of Education who are authorized, directed and required to maintain a uniform and effective system of Public Schools throughout their respective counties. By Section 43 Article 77 (Bagby 1924 Edition) it is provided that the County Board shall to the best of its ability cause the provisions of this Article the by-laws and policies of the State Board of Education to be carried into effect, subject to this article and to the by-laws and policies of the State Board of Education the County Board of Education shall determine, with and on the advice of the County Superintendent the educational policies of the County and shall prescribe rules and regulations for the conduct and management of the schools.

By this section the County Board of Education shall determine with and on the advice of the County Super-

intendent the educational policies of the County and shall pass rules and regulations for the conduct and management of the schools, and by section 192 of article 77 (Bagby), the County Board of Education of any county is given authority to establish High Schools in their respective counties when in their judgment it is advisable to do so, subject to the approval of the State Superintendent of Schools, and it is expressly provided that such High Schools shall be under the direct control of the several County Boards of Education.

So that the County Boards under the Statutes are given power to determine on the educational policies of the County and shall prescribe rules and regulations for the conduct and management of the elementary schools and in addition section 192 says that High Schools shall be under the direct control of the County Boards of Education.

Acting under this authority the School Board by and with the advice of the County Superintendent adopted a uniform examination for all pupils attending the elementary schools who had completed a seven year course, the result of this examination to determine whether the pupil had passed the seven elementary grades satisfactorily and had qualified to enter the High School. The petitioner in this case took this examination and failed as set out in the defendant's answer, and was refused admission to the Catonsville High School. It would be strange indeed if the principals of the many schools in this County could each examine their pupils, using only their own judgment and certify to their proficiency without even the supervision of the School Board or the County Superintendent. One teacher might be very lenient and pass the entire class, another might be the reverse and pass no one.

We feel that the uniform test adopted by the School Board was fair and reasonable and that the examinations were fairly conducted and that the teacher who undertook to promote the Petitioner without the approval of the School Board did so without authority.

The Petition will be refused.

FRANK I. DUNCAN.

ORDER OF COURT.

(Filed Oct. 23, 1936.)

This case coming on to be heard before the Court sitting as a jury, testimony produced upon behalf of both parties having been considered, together with the pleadings in the case, It is Ordered this 23 day of October, 1936, that the petition for the writ of mandamus filed in this case be and the same is hereby dismissed, the costs of the case to be paid by the petitioner.

FRANK I. DUNCAN.

STIPULATION.

(Filed Dec. 21, 1936.)

It is hereby stipulated and agreed by and between counsel for the respondent and counsel for the petitioner herein that the petitioner, Margaret Williams, by and through her counsel, Thurgood Marshall, did on September 27, 1935, address a letter to the State Board of Education, a copy of which is attached hereto and shall be taken as part of this stipulation. Enclosed with said letter was a copy of a letter of the same date addressed to the Board of Education of Baltimore County, said last named letter being the same introduced in evidence in this case and marked Plaintiff's Exhibit 4." Thereafter on November 14, 1935, a letter was addressed to the State Board of Education by Thurgood Marshall, a copy of which is attached hereto and shall be regarded as a part of this stipulation. Enclosed in said letter was a petition, a copy of which is also hereto attached and shall be regarded as a part of this stipulation. Thereafter on November 22, 1935, a hearing was had before the State Board of Education, at which Mr. Marshall was heard on behalf of the persons signing the last named petition. Subsequent to said hearing a letter was addressed to

Thurgood Marshall, by the Secretary of the State Department of Education, a copy of which is attached hereto and shall be taken as part of this stipulation.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
LEON A. RANSOM,
EDWARD P. LOVETT,

Counsel for Petitioner.

CORNELIUS V. ROE,
WILLIAM L. RAWLS,

Counsel for Respondents.

September 27, 1935.

State Board of Education,
2014 Lexington Building,
Baltimore, Maryland.

Gentlemen :

Enclosed please find a copy of a letter to the Board of Education of Baltimore County concerning the refusal of the officials of Baltimore County to admit the children of two residents and taxpayers of said county to the Catonsville High School.

The facts in this matter are set forth in the enclosed letter, and in view of the fact that the school term has already commenced, we are asking that the State Board of Education, which is vested with powers to determine the educational policies of the State, to investigate this matter to the end that these children shall not be denied the equal protection of the law guaranteed by the Constitution of the United States and the Constitutional laws of the State of Maryland.

Will you kindly give the matter your immediate attention and advise us of the action taken thereon.

Sincerely yours,
(Signed) THURGOOD MARSHALL.

STATE DEPARTMENT OF EDUCATION.
2014 Lexington Building
Baltimore, Maryland.

November
twenty-third
1935.

Mr. Thurgood Marshall,
Phoenix Building,
4 East Redwood Street,
Baltimore, Maryland.

My Dear Mr. Marshall:

At the meeting held on Friday, November 22, 1935, the State Board of Education instructed the Secretary to write you that it had given sympathetic consideration to your presentation of the need for high schools for colored pupils in Baltimore County. The Board however is of the opinion that it has no authority under the law to take action in the matter.

Sincerely yours,

ALBERT S. COOK,

Secretary.

Copies sent to members of the State Board of Education

Mr. Clarence G. Cooper.

Mr. William Lee Rawls.

THURGOOD MARSHALL

Attorney at Law
604 Phoenix Building
4 E. Redwood St.,
Baltimore, Md.

November 14, 1935.

State Board of Education,
Lexington Building,
Baltimore, Maryland.

Gentlemen:

The Board of Education of Baltimore County maintains according to its annual report twelve high schools designated "White high." No separate high schools are maintained for the education of Negroes in Baltimore County. It has been, and is still, the policy of the Baltimore County Board of Education to refuse to admit qualified Negro students to the "white high" schools of the County. The Negro residents and taxpayers of Baltimore County are without high school facilities in the County where, at the same time adequate high school facilities are maintained for all other races and classes in said County.

Repeated petitions and requests over a period of years have been made to the Baltimore County Board of Education requesting the establishment of High Schools in Baltimore for the education of Negroes. All such petitions have been denied.

On October 8, 1935, at the regular meeting of the Board of Education of Baltimore County a petition (copy of which is herein enclosed) was presented. The Board of Education refused to receive or consider this petition, and definitely refused to establish high school facilities in Baltimore County for Negroes.

The decision of the Board of Education of Baltimore County was unlawful, arbitrary and in violation of the

Constitution of the United States and the Constitution and laws of the State of Maryland.

Therefore, the Petitioners, whose names appear on the enclosed petition appeal to this Board to hear this petition and a representative of the petitioners and to require the Board of Education of Baltimore County to maintain the educational system of that County in accordance with the law, and to establish and maintain adequate high school facilities in Baltimore County for the education of Negroes equal to those maintained for other citizens of said County.

Will you please advise me of the date set for the next regular meeting of the State Board.

Very truly yours,

(Signed) THURGOOD MARSHALL,

Attorney for Petitioners.

To the Board of Education of Baltimore County :

The undersigned petitioners respectfully represent to this Board as follows :

1. They are citizens and taxpayers of the State of Maryland and residents and taxpayers of Baltimore County.
2. They file this petition on behalf of themselves and others similarly situated.
3. Baltimore County maintains a system of high school education for a group of its citizens and excludes petitioners and their children from said high school facilities maintained in the said Baltimore County on the sole ground of their color.
4. No provision is made by the said Board of Education of Baltimore County for the education of Petitioners' children or any other children of the negro race within Baltimore County. Your petitioners are advised and believe, and therefore, allege that the refusal of the Board of Education of Baltimore County to provide them with

equal high school facilities within the County equal to those maintained by any other class or group of citizens is a denial to them of the equal protection of the law and, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States and in violation of the Constitution and laws of the State of Maryland.

Wherefore your petitioners pray that the Board of Education of Baltimore County establish high school facilities for the Negro youth who are children of residents and taxpayers of Baltimore County equal to the facilities offered to any other class or group of citizens of Baltimore County.

Julia Jackson
 Etta Johnson
 James Love
 Ellen Love
 Mary A. Stevens
 Malinda Maith
 John Maith
 John Adams

Deshie Adams
 Mr. and Mrs. James Jones
 Mrs. M. Washington
 Mrs. M. E. Fisk
 Mr. and Mrs. John Hasty
 Rebecca Lomax
 Henry Ayers
 Annie E. Ayers.

NOTICE OF APPEAL.

Please enter an appeal to the Court of Appeals of Maryland from the judgment and order of this Honorable Court, in the above entitled case, passed on October 23, 1936, that the petition for the writ of mandamus be dismissed.

CHARLES H. HOUSTON,
 THURGOOD MARSHALL,
 LEON A. RANSOM,
 EDWARD P. LOVETT,

Counsel for Petitioner.

(With an affidavit by Joshua B. Williams, Jr., one of the Petitioners, that the appeal is not taken for the purpose of delay.)

In the Circuit Court for Baltimore County.

*Margaret Williams, Infant, by Joshua B. Williams, Jr.,
Her Father and Next Friend, and Joshua B. Wil-
liams, Jr.,*

vs.

*David W. Zimmerman, Clarence G. Cooper, Henry M.
Warfield, James P. Jordan, T. W. Stingley, Oscar B.
Coblentz, and Edward B. Passano, Members of the
Board of Education of Baltimore County.*

Towson, Maryland, September 14, 1936.

The above-entitled cause came on to be heard before his Honor Judge Frank I. Duncan, on Monday, September 14, 1936.

Appearances:

Present on behalf of petitioners, Thurgood Marshall, Esq., Leon A. Bonsom, Esq., and Edward P. Lovett, Esq.

Present on behalf of respondents. William L. Rawls, Esq., William L. Marbury, Jr., Esq., and Cornelius V. Roe, Esq.

(The Court) The next *cse* is the case of Williams vs. the School Board of Baltimore County. Are you ready, gentlemen?

(Mr. Marshall) Yes, sir, your Honor.

(The Court) You may proceed, gentlemen.

**OPENING STATEMENT ON BEHALF OF
PETITIONERS.**

(Mr. Marshall) If your Honor pleases, I do not want to go too far into the facts of the case, because of the fact that the Court is so familiar with it as a result of the argument on the motion and the demurrer.

At the outset I want to call the attention of the Court to certain admissions in the pleadings, towards the end, that there will not be a duplication of testimony, and we will not be proving facts that it is not necessary to prove. We find that in the pleadings there are certain facts which are admitted. And among these facts we find that the parties are, of course, admitted, that the defendants in the particular case were the defendants during the time of the trial, with the exception of the one defendant who has been supplanted on the Board of Education. It is admitted that Margaret Williams is a citizen and resident of Baltimore County, and a citizen of the State of Maryland, and that her father is a citizen and resident, and also a taxpayer, and that the father, Joshua B. Williams, brings this suit in a dual capacity, both as father and next friend of the infant petitioner, and also in his own behalf as a taxpayer.

It is admitted in the pleadings that David W. Zimmerman is the principal of the Catonsville High School, and that this is a free public school established and maintained by the Board of Education of Baltimore County, pursuant to the Constitution and laws of the State of Maryland; it is admitted that Mr. Zimmerman acts as agent of the Board, that Mr. Cooper is the Superintendent, and Secretary and Treasurer of the Board.

And then we outline the principles of the Board, which are admitted, and that all the defendants held their respective offices at the times herein mentioned, and show their relation to the petitioners in this case, and that they are sued in their professional capacity.

Then the status of the Superintendent of the Board of Education is admitted. It is admitted that the Superintendent is appointed pursuant to the laws of Maryland, that he is by law the executive officer of the Board, having supervision of public schools, and the Catonsville High School, which is included.

It is admitted that the Board was created and exists pursuant to the laws of the State of Maryland, and it is admitted that this is an administrative department of the State of Maryland; that the members of the Board are appointed by the Governor.

The duties of the Board are admitted: That the Board is authorized, empowered, directed and required by law to maintain a uniform and effective system of free public schools; that the funds for the support and maintenance of these free public schools is derived from appropriations by the State Legislature, and out of the public treasury of the State and out of the taxes of Baltimore County, including moneys paid into this tax fund by Joshua B. Williams, petitioner.

The set-up of the school system is admitted, that there is a uniform system of free public elementary and high schools for the residents of Baltimore County; that there is a uniform seven-year elementary course; that the students satisfactorily completing the seven-year elementary course are offered a four-year course of study in free high schools, except as to colored pupils.

It is admitted that the free high schools are under the direct control of the Board and the Superintendent; that the Catonsville High School is one of these schools; and that the Catonsville High School is the nearest high school to petitioner's residence.

It is admitted that the principal, the respondent, David W. Zimmerman, is the proper admitting officer.

It is admitted that Margaret Williams attended one of these elementary schools, and that the petitioner and the father reported to this Catonsville school for admission, and that after the refusal he appealed to the superintendent, Cooper, and then to the Board; and finally, it is admitted that Margaret Williams is of lawful school age.

Now, we submit to your Honor that those facts being admitted by the pleadings, we are excused from proving any of those particular facts.

Now, to go briefly into the case itself: This is a petition brought by a resident and citizen, and the father is a taxpayer of Baltimore County, seeking admission of his daughter into the public high schools in Baltimore County. We expect to show that under this system in the County that a child completing the seven-year elementary course goes into the high school. We expect to show in the evidence that this child has been refused.

Now, in order to more or less give the Court a background as to this case—and I believe I am justified in doing it after the argument on the demurrer, certain facts which were brought out—that this case is the result of the repeated attempts of this particular petitioner, along with other people of this County to get a high school for their children; that this petitioner has not been offered any high school in Baltimore County, and as a result he has been driven to the only possible remedy known to the law under these circumstances, to apply to this high school in Catonsville; that it is not his express desire just to go into that school, but his desire is to get his child an education; and the only possible means that he sees is to go into the Catonsville High School; that he was brought to taking that step by the actions themselves, the actions of the Board of Education in Baltimore County. That is what has brought about this case.

Now, we expect to show that this child has been refused admission to the school by, first, the principal and then by the Superintendent, and by the Board of Education; and that this refusal has been illegal, it has been arbitrary, because there is no foundation for the refusal to admit this child.

It can be shown that in refusing to admit this child to this particular school, the Board of Education and the other respondents have not offered the child any educational opportunity equal to that offered in the high schools in Baltimore County. And they are refusing admission to the high school by failing to provide this equal opportunity of some form of education. The Board of Education has deprived to this particular defendant, along with the other negro defendants in Baltimore County, the right of a high school education, which is a denial of equal protection of the laws under the Fourteenth Amendment, as well as being contrary to the Constitution and the laws of the State of Maryland, and the rules as set out by the State Board of Education.

And as to the particular facts, I would prefer to have them developed as we go along, with just a brief statement as to the background surrounding the case.

(The Court) Gentlemen, it would save a great deal of

time if we could have a great many of these things admitted.

(Mr. Rawls) I think the primary facts stated are admitted. The pleadings will show, your Honor. I did not check each statement, but I think the facts as stated are substantially correct.

TESTIMONY ON BEHALF OF PETITIONERS.

Thereupon,

JOSHUA B. WILLIAMS, JR.,

a witness of lawful age, having been first duly sworn was examined and testified as follows:

I live at Cowdensville near Halethorpe, Baltimore County, State of Maryland. I have lived in Cowdensville, Baltimore County, all of my life, 33 years. I am a citizen and taxpayer of Baltimore County and have paid taxes since 1924. My family have been taxpayers as long as I can remember. I am the father and next friend of Margaret Williams, the infant petitioner in this case and I bring this suit on my own behalf as a taxpayer and as father of Margaret Williams as her next friend. I have four children, all of school age. Margaret Williams attended Cowdensville school, a public elementary school in Baltimore County. This school is known as School 21. Margaret began school, I think, in 1926. At the end of her seventh grade she received a report card showing that she had completed the seventh grade. She obtained this report card from the principal of the school. This was in 1934. After she completed the seventh grade she was sent to the elementary school in Catonsville for another test. After she had completed the seventh grade she went to Baltimore City and went to the Junior High School one month. She was sent by the Principal of the school. They told me it was a necessity, or something or other, something set aside by the school authorities. The examination was held in Catonsville school, a little better than three miles from Cowdensville. She was not offered transportation by school authorities. One of my neighbors took her up there and I went up and brought her