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.

IN THE

Court of Appeals

OF MARYLAND.

APRIL TERM, 1937.

GENERAL DOCKET No. 28.

BRIEF UPON BEHALF OF APPELLEES.

WILLIAM L. MARBURY, JR.,
CORNELIUS V. ROE,
WILLIAM L. RAWLS,
Counsel for Appellees.

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THE APPEAL.

(Unless otherwise clearly shown in context, figures in parentheses refer to pages of printed record.)

This is an appeal from a final order of the Circuit Court of Baltimore County (DUNCAN, J.) dismissing a

petition for a writ of mandamus filed by appellant requiring appellees, the Board of Education of Baltimore County, the Superintendent of County Public Schools and the Principal of Catonsville High School to admit the infant appellant, a colored girl, to the Catonsville Public High School, which is maintained for white pupils only.

The appellees contend that appellant was properly denied admittance because she failed to qualify by passing an examination prescribed by the County Board of Education for the purpose of determining whether she was entitled to be promoted to high school, and because she is a person of color and as such not entitled to attend a white school because of the principle of separation of the races enjoined by Section 200 of Article 77 of the Code of Public General Laws (Bagby's 1924 Edition).

In answer to the first defense the appellant contends that she was duly qualified for admission to high school because no authority rested in the County Board of Education to require passage of an examination as a condition of admission to high school, and because the examination given to colored pupils discriminated against them in favor of white pupils similarly seeking admission to high schools; to which the respondents reply that the County Board had proper authority to require the passage of an examination as a condition of promotion to high school, that the examination given to colored pupils did not discriminate against them in favor of white pupils, and that even if the examination were shown to have been discriminatory, the remedy is not to admit petitioner to high school but to require the County Board to give her a fair and non-discriminatory examination.

In answer to the second defense appellant contends that the County Board maintains no high schools for colored pupils and that the statute as thus applied denies to the petitioner the equal protection of the laws, to which the respondents reply that the County Board gratifies every requirement of law by making provision for the admittance of qualified colored children to the high schools in Baltimore City.

The issues raised by this appeal therefore are as follows:

I. Was the County Board of Education authorized to require the passing of an examination as the condition of promotion to high school?

II. Did the examination discriminate against colored children?

III. Do the laws of the State of Maryland authorize the exclusion of qualified colored children from the white high schools?

IV. Does such exclusion deny qualified colored children the equal protection of the laws in view of the provision made for study in the high schools of Baltimore City?

STATEMENT OF THE CASE.

A complete statement of the facts of the case should be made in order that the above issues may be determined.

Appellant in company with her father applied to the principal of the Catonsville High School seeking her ad-

mission to that school in September, 1936 (R. 60). At this time a card was presented showing the record of the appellant as a seventh grade pupil, which had "promoted to eighth grade" written upon it. She was refused admission by the principal, in the first place because the report card was not in due form. He also refused because he had no jurisdiction over the colored race.

At a meeting of the Board of Education of Baltimore County on September 7, 1926, it was decided to pay tuition to the Board of School Commissioners of Baltimore City for the high school education of colored pupils who have satisfactorily completed the work of the elementary schools and are approved by Mr. John T. Herschner, Assistant Superintendent of Schools of the County. The Board reserved the right of discontinuance at any time of payment to the Board for pupils who did not maintain satisfactory records in their studies nor does the Board pay tuition for a longer period than four years from the date of the pupil's enrollment. If a pupil should be assigned to the Junior High School by the school authorities of Baltimore City his enrollment in said school would be considered a part of the four year high school education for which the Board was obligated. The Board instructed the Superintendent to discontinue the eighth grade in the colored elementary schools (R. 65, 66). Later on the Board extended the period mentioned above from four to five years (R. .....).

On July 12, 1927, the minutes of the Board of Education show the following: "The Superintendent reported that a county wide examination to determine the qualifi-

cations of colored pupils for admission to the high schools of Baltimore City according to the terms set out in the minutes of this Board under date of September 3, 1926, was held at the Towson colored school on June 23, 1927. The Board instructed the Superintendent to advise the pupils who made a general average of 60 or more in the examinations, that the Board would pay for their instruction in the colored high schools of Baltimore." Apparently examinations had been given for an indefinite period before this to white seventh grade children, the passing of which was a prerequisite to promotion to high school (R. 63, 64, 65, 81).

Following the action of the Board above mentioned uniform examinations were held for white and colored seventh grade pupils (R. 63, 64, 86, 89). Upon this examination the passing mark for white pupils was 70% in each subject, and the passing mark for the colored pupils was 60% in each subject, the colored pupils being allowed a margin of 10% in their favor (R. 90). The only other differences were that the colored pupils took their examination at five different centers, namely, Catonsville, Reisterstown, Towson, Sparrows Point and Turners, whereas the white pupils took the examination in the school buildings which they attended. The white pupils' papers were marked by the principals of their respective schools, and the examinations of the colored pupils were marked by white supervisors of schools (R. 91, 105). It was also testified by Mr. Cooper, Superintendent of Schools, that it was desirable to collect the white pupils in various centers to take the examination as was done in the case of colored pupils, but owing to the large num-

ber of white school population this could not be done. The white pupils number approximately 24,000 in all schools and grades, the colored pupils number 2,000 in all schools and grades. In 1934, 128 colored pupils took the examination for entrance to high school (R. 91).

The course of study in the colored and white schools is the same, they use the same text books and are given like facilities (R. 87, 106, 107).

On June 15, 1934, one of these uniform examinations was given to all pupils, white and colored, in the Baltimore County schools (R. 63, 64, 71, 86). Margaret Williams took this examination and failed to pass it, notwithstanding the 10% allowance made in favor of colored pupils (R. 84, 92). She received upon this examination 34% out of a possible 100% in Geography; 21% out of a possible 100% in History; 61% out of a possible 100% in English; 37% out of a possible 100% in Arithmetic, her marks indicating that she was unprepared at that time for admission to high school, that is, she had made a very low grade (R. 92). On June 20, 1935, the appellant appeared to take the examination again (R. 92, 104). This examination differed from the examination of 1934 only in that instead of being what is known as the essay form of examination it was a standard objective test. By this is meant that it is a test that is recognized generally as being fair for the pupils taking it, the marking upon an examination not depending upon the judgment of the marker. This standard test was given to the white pupils in January of 1935 (R. 90), and the result showed that a very high percentage of the seventh grade pupils passed the test, in some schools 95% of the pupils

passed. This same examination was given to the colored pupils in June, 1935, and it was this standard test that the appellant took. In the case of the white pupils, the standard test was not used as the sole criterion of eligibility for high school, but it was so used in the case of the colored pupils. At this examination she again failed to pass, obtaining a score of 244 points out of a possible 390, a very unsatisfactory showing, which indicated that she was not eligible for first year high school work (R. 90, 92).

Promotion to high school in Baltimore County from the seventh grade in both white and colored schools can only be made upon the successful passing of the uniform examination, and no principal has authority to promote any pupil to high school who has not passed the examination (R. 71, 73, 77). The card which Margaret Williams presented to Mr. Zimmerman, the principal of the Catonsville High School, had written upon it, as already stated, "promoted to eighth grade". There is no eighth grade in Baltimore County (R. 89). When a seventh grade pupil has passed the examination for entrance to first year high school the pupil's card has noted upon it "promoted to high school" (R. 88).

The Board of Education of Baltimore County has never maintained a colored high school, but since 1926, as noted above, has made provision for giving high school facilities to colored pupils by paying their tuition and providing for their education at the high schools in Baltimore City. The failure to provide a high school in Baltimore County is due to the fact that a high school cannot be efficiently run with only a small number of

pupils. The total number of colored pupils who attended the Baltimore City high school in all of the five year grades was 158. The attendance and capacity of the ordinary white high school is from 500 to 1,250 (R. 91). There is a difference in efficiency between a small and a large school. It is impossible for a small school to offer the various types of subject matter that a large one can offer. It is also difficult to obtain efficient instruction in a small school. That is an accepted principle in education (R. 91). Mr. Cooper testified that the colored pupils get better educational opportunities in Baltimore City than the white children get in Baltimore County, and that if he had his choice he would not erect a high school in Baltimore County as against sending the colored pupils to the schools in Baltimore City (R. 92).

The largest colored school population in Baltimore County is at Towson, Sparrows Point, Turners and Catonsville. The center of this population is Baltimore City. It is very much more convenient for the colored pupils to attend schools in Baltimore City than to attend some high school in Baltimore County. This would be true as to 90% of the population (R. 93).

Summarizing the testimony it shows that the appellant never passed the examination required of all white and colored pupils in the seventh grade in Baltimore County, as a prerequisite to promotion to high school.

The same examination exactly is given to white and colored pupils. The only differences with respect to the examination of white and colored pupils are that white pupils receive the examination in the schools which they

attend, whereas colored pupils take it in five different centers in Baltimore County, and that the white pupils are marked by their principals and that the colored pupils are marked by supervisors.

Baltimore County does not maintain a high school for colored pupils owing to the small number of these pupils, there being only 158 colored pupils at the present time attending the high schools in Baltimore City from Baltimore County. In order to conduct a high school efficiently and provide the best instruction there should be schools of from 500 to 1,000 pupils.

The facilities which Baltimore County has provided for the colored pupils who successfully pass the examination at the end of the seventh grade are equal to or superior to those provided for the white children in Baltimore County. 90% of the colored population of Baltimore County is centered around Baltimore City, and the schools in the city are of more convenient access than would be a school located somewhere in Baltimore County.

ARGUMENT.

I.

By Section 41 of Article 77 of the Code of Public General Laws (Flack's 1935 supp.), all property theretofore vested by law in the public school authorities of any county is vested in the County Boards of Education who are authorized, empowered, directed and required to maintain a uniform and effective system of public schools throughout their respective counties.

By Section 43 (Bagby's 1924 ed.) it is provided that the County Board "shall to the best of its ability cause the provisions of this article, the by-laws and the policies of the State Board of Education, to be carried into effect. Subject to this Article and to the By-Laws and the 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 Section 192 (Bagby's 1924 ed.), 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. It is expressly provided that such high schools shall be "*under the direct control of the several county boards of education*, subject to the provisions of this article."

By Section 11 (Bagby's 1924 ed.), the State Board of Education 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. It is provided that the State Board of Education *shall decide all controversies and disputes arising under the law as to its intent and meaning and that their decision shall be final.*

Section 199 (Bagby's 1924 ed.) authorizes the State Board of Education to prepare the course of study to be used in all high schools, and gives the Board author-

ity to make any by-laws "for their government not at variance with the provisions of this article."

Section 193 (Flack's 1935 supp.) authorizes State aid to high schools qualifying therefor. One qualification is that the education provided should conform to the standards required by the State Board of Education.

By Section 136 (Bagby's 1924 ed.) the County Superintendent of Schools is given power to explain the true intent and meaning of the school laws and of the by-laws of the State Board of Education, and to decide, without expense to the parties concerned, all controversies and disputes involving the rules and regulations of the County Board of Education and the proper administration of the public school system in the county. It is provided that his decision shall be final except that an appeal may be taken to the State Board of Education, if taken in writing within thirty days.

The appellees contend that the power conferred by section 192 upon the County Board of Education plainly includes the power to prescribe the taking and passing of an examination as a condition to promotion to the high school. This would certainly seem to come within the scope of the legislative grant of *"direct control"* over the high schools. The appellant contends, however, that the State Board of Education in the exercise of the power conferred upon it by Sections 11 and 199, has prescribed by-laws having the force of law which directly prohibit the employment of the examination as a method of determining the right of the pupil to enter high school.

The issue is one of fact and of law. The petitioner relies upon the following language appearing in the "Manual of Standards for Maryland County High Schools" issued by the State Department of Education in November, 1927:

> "ADMISSION BY ELEMENTARY SCHOOL CERTIFICATES
>
> "The high school, in order to fulfill its function, should articulate both with the schools below and with the schools above. The high school is not a separate institution, but an integral part of a common school course of eleven or twelve years. In general, for a pupil to enter upon the first year of high school work, he should have completed in a satisfactory manner the elementary course of seven (or eight) years.
>
> "The principal test for entrance should be the ability to do the work of the high school. This is usually based on the character of the pupil's previous achievements, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole.
>
> "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 examinations." (R. 81).

The County Superintendent testified that the Board of Education of Baltimore County has for years followed a definite system under which pupils whose presence in the elementary schools is no longer beneficial to the pupils, are given certificates of promotion entitling them to leave school and go to work (R. 77). An examination is given to all pupils, white and colored, to determine wheth-

er they have satisfactorily completed the seventh grade work. Pupils passing this examination are given certificates of promotion to high schools entitling them, if white, to enter the high schools maintained by the County Board of Education, and if colored, to free tuition in high schools maintained by Baltimore City. Thus, the only certificate signifying the successful completion by the pupil of the course of study prescribed for the elementary school, *is the certificate of promotion to high school.*

Here the petitioner seeks to argue that the report given by her principal, which contained the statement "Promoted to Eighth Grade" was equivalent to a certificate of satisfactory completion of seventh grade work. The undisputed testimony, however, shows that such is not the case, and that such a certificate is wholly unauthorized. There is no eighth grade in the public schools of Baltimore County.

Petitioner further contends that the system maintained by the Board of Education of Baltimore County conflicts with the language of the standards previously quoted. There is no such conflict. Nothing in the quotation from the Manual of the State Board of Education prevents the County Board of Education from basing the right to a certificate of successful completion of the course of study prescribed for the elementary school, and hence the right to promotion to high school, upon the ability of the pupil to pass an examination based upon that course. The statement that usually daily work and tests are considered, is clearly a mere suggestion. The obvious purpose of the State Board is to prevent admission to high school from being based upon standards other

than those of successful completion of elementary school work. It follows that where the right of the pupil to promotion to high school is based upon an examination framed for the purpose of determining whether the pupil has successfully completed the elementary school work, the suggestion of the State Board is fully complied with.

Admitting for the sake of argument that the system maintained by the County Board is in conflict with the suggestions made in the Manual, it is apparent that these suggestions are not mandatory. That they are not by-laws adopted pursuant to Section 11 is clear, both from the emphatic testimony of Dr. Albert S. Cook (R. 192) the State Superintendent and Mr. Cooper (R. 81) the County Superintendent, and from the plain import of the language relied on by the appellant. Manifestly, legislation would not, under ordinary circumstances, be couched in such words. No minute of the State Board of Education was offered to show that this regulation was ever presented to the Board, or adopted by it as a by-law. Compare the pamphlet containing "The Public School Laws of Maryland", published by the State Board of Education in June, 1927, in which are printed the by-laws duly adopted by the State Board of Education.

It is suggested, however, that the quoted language, if not a by-law, is at least a standard, and as such binding upon the County Board because the Catonsville High School is in receipt of State aid under Section 193. That section limits State aid to schools conducted in accordance with standards prescribed by the State Board of Education, but the case at bar does not deal with the

right of the County Board to receive State aid for the Catonsville High School. There is nothing in the law to prevent the County Board from conducting its high schools in such a manner as not to qualify for State aid provided that the statutes of the State and the by-laws duly adopted by the State Board of Education, are not contravened.

Furthermore both the County Superintendent and State Superintendent specifically denied that the language quoted from the 1927 manual is entitled to classification even as a standard. (See references to their testimony, *supra.*) On the contrary, they testified, that the language is a mere introductory observation not intended to be mandatory or to limit or control the discretion of the County Board.

It may be contended on behalf of the petitioner that, even though the language of the 1927 Manual is neither by-law nor standard, yet it expresses the policy of the State Board of Education and is, therefore, binding upon the County Board. But it is respectfully submitted that the County Board is not bound by statements of policy by the State Board of Education , where in the judgment of the County Board, it is not feasible to give effect to such policies. The statute carefully provides that the County Board shall "*to the best of its ability*" carry out the policy of the State Board. This is not the language in which mandatory requirements are phrased. Furthermore, the power of the State Board of Education over the high schools is strictly defined in that section giving them the right to enact by-laws for their governance.

Finally, it is to be observed that the question is one as to the meaning and intent of the State law and the by-laws adopted by the State Board of Education which, by express statutory provision quoted above, is committed to the final determination of the State Board of Education. On the record in this case it is clear that the County Superintendent has determined the question against the contention of the appellant and it does not appear that by proper appeal a different ruling has been obtained from the State Board (R. 45-50).

There is little authority in the State on the question. The power of the State Board of Education to adopt by-laws having the force of law was duly upheld in *Metcalf v. Cook,* 168 Md. 475, but the court did not undertake to define the distinguishing characteristics of such a by-law.

On the other hand the authority granted the State Board of Education to determine controversies arising as to the construction of the law has been consistently upheld where proper administration of the public school system is concerned. *School Commissioners v. Morris,* 123 Md. 398; *Zantzinger v. Manning,* 123 Md. 169; *Underwood v. School Board,* 103 Md. 181; *Shober v. Cochrane,* 53 Md. 544; *Wiley v. School Commissioners,* 51 Md. 401. Compare *Board of Education v. Cearfoss,* 165 Md. 178 where the power of the State Board and of the County Superintendent was held not to extend to adjudicate the meaning and effect of contracts into which the County Board had entered.

It follows, therefore, that the requirement that pupils desiring a certificate of promotion to high school pass an examination, was made by the County Board pursuant to the authority conferred upon it by law.

II.

Inasmuch as the petitioner failed to pass the examinations given in 1934 and 1935, an effort was made to show that those examinations were discriminatory against colored pupils. Obviously, the difficulty of the examination is immaterial provided always (as we here assume) that the Board had a right to give it, and provided further that the same examination or one of equal difficulty, was given to white students.

As to the 1934 examination, the undisputed testimony shows that the same questions were asked both white and colored pupils. An attempt was made to show differences in treatment between white and colored pupils in that (a) the examination of white pupils was given in the schools whereas that of colored pupils was given at a central point; (b) the examination of white children was marked by the principals subject to supervision, whereas the examination of colored children was marked by supervisors; and (c) no transportation was paid to colored children to the central point where there examination was held.

As to the last point, it is sufficient to say that the appellant supplied her own transportation and took the examination and was hence not harmed by the alleged discrimination.

As to the other two points, the testimony tends to show that the difference in treatment was neither intended as a discrimination against the colored pupils nor did it so operate. On the contrary, the undisputed testimony is that the method followed in the case of the colored students is the more desirable one and is better calculated to give the student a fair and impartial examination (R. 91).

In 1935 it appears that the examination given colored students as a sole criterion of their right to promotion to high school, was given to white students at an earlier period, and was not used as the sole criterion. It appears, however, that the examination was, in the judgment of the school authorities, a relatively easy one and worked no injustice to the colored applicant (R. 90). On the contrary, the County Superintendent stated that in his opinion the colored pupils, both by reason of the character of the examination and by reason of the more liberal grade requirements, had a better chance of admission to high school than an equally qualified white student. The only testimony to the contrary is that of Mr. Davids, a so-called expert, who testified that upon mathematical principles some discrimination in favor of the whites would necessarily result (R. 153). He did not explain his opinion nor did he indicate whether the discrimination was material in extent. At all events there is not one word to indicate that the school authorities intentionally imposed upon colored children a heavier burden than that borne by the whites.

In considering the merit of the petitioner's contention, the scope of the Court's power upon application for writ

of mandamus should not be overlooked. It is well settled that the Court has no power to control the discretion of the administrative officers. Where, therefore, in the exercise of the discretion of the proper officers, an examination is prescribed without deliberate intent to discriminate, the Court is powerless, upon writ of mandamus, to control that discretion. It was so held in *Manger v. Board of Examiners*, 90 Md. 671, where this Court said:

> "The exercise of a discretion, though erroneously, if not corruptly exercised, cannot be reviewed in a petition for mandamus."

To the same effect is *Woods v. Simpson*, 146 Md. 547. This follows from the established principle that mandamus issues only to enforce a clear legal right in the petitioner and a corresponding imperative duty on the part of the respondent. *Frederick County Commissioners v. Fout*, 110 Md. 165; *Curlander v. King Bros.*, 112 Md. 518.

Finally, it is respectfully submitted that even though the Court should find that the examination given the colored children was unfair and a deliberate discrimination in favor of white children similarly situated, petitioner would not be entitled to the relief sought in this petition. The case of *Manger v. Board of Examiners, supra,* is conclusive to that effect. There petitioner, seeking a permit to practice medicine, had been refused on the ground that he had no diploma from a medical school. He thereupon applied for a writ of mandamus directing the Board to issue him a license to practice. This Court held that the absence of a diploma was insufficient ground

for refusing the permit provided petitioner had established to the satisfaction of the examining board that he had been in active practice prior to the passage of the licensing act. This Court, however, refused to grant the writ requested holding that petitioner's sole remedy was an order requiring the board to determine the facts with respect to his previous status as a practitioner. This court said (p. 674):

> "Under our interpretation of the law and according to our view of the facts the appellant was entitled to a permit. If no other reason exists for withholding it than because he has no diploma, then it should not be withheld; but it is for the president of the Board of Examiners, and not for us, as the case is now presented, to pass on the facts alleged in the application. As he has not done this, the appellant is entitled to a mandamus requiring the president to make such an investigation."

III.

It requires little argument to show that the County Board of Education was authorized by state law to provide for separation of the races in the county schools. Since the passage of Chapter 377 of the Laws of 1872, now codified as Section 200 of Article 77 of the Code of Public General Laws (Bagby's 1924 ed.), it has been the uniform practice in this State to segregate white and colored pupils. That section reads as follows:

> "It shall be the duty of the county board of education to establish one or more public schools in each election district for all colored youths, between six and twenty years of age, to which admission shall be free, and which shall be kept open not less than one hundred and sixty (160) actual days or eight

months in each year; provided, that the colored population of any such district shall, in the judgment of the county board of education, warrant the establishment of such a school or schools."

There is authority for the proposition that such power to segregate rests in school boards without express statutory authority. See *Roberts v. City of Boston*, 5 Cush. (Mass.) 198; *State v. Duffy*, 7 Nev. 342; *People v. Gallagher*, 93 N. Y. 438, but in Maryland the statutory authority is clear.

It cannot be argued that the right of segregation under Section 200 is made dependent upon the existence of colored schools. In the first place Section 200 expressly leaves a discretion in the County Board to determine whether the colored population in any district warrants the establishment of such a school. And in the second place, section 48 of Article 77 specifically provides that "Schools on or near the dividing line of two counties shall be free to the children of each county; and the County Board of Education of the respective counties shall have power to provide jointly for the maintenance of said schools."

This places beyond the shadow of a doubt the authority of the Baltimore County Board of Education under the state law to exclude colored pupils from the white schools, and, where the number of qualified colored pupils does not justify the erection and maintenance of a separate school, to provide for their education in the schools of Baltimore City. This is precisely the course adopted by the respondents in this case.

IV.

Appellant contends that the statutes of the State, if construed to permit the exclusion of colored children from the high schools of Baltimore County, deprives her of the equal protection of the laws granted by the Fourteenth Amendment to the Federal Constitution. She relies upon the decision of this Court in *University v. Murray,* 169 Md. 478, where it was held that the failure of the State to provide a law school for colored students, while providing such a school for white, constituted a denial of the equal protection of the laws, and that the remedy was to admit the colored student to the law school maintained for the white students.

It will be observed that in the *Murray Case* no law school was open to colored students *within the State of Maryland.* Furthermore, no sufficient provision was made for the attendance by citizens of Maryland at schools available in other states. The Court in its opinion, after pointing out the inadequacy of the scholarships provided by the Legislature, said:

> "Whether with aid in any amount it is sufficient to send the negroes outside the State for like education, is a question never passed on by the Supreme Court, and we need not discuss it now. No separate school for colored students has been decided upon and an inadequate substitute has been provided."

In the case at bar adequate provision is made for education at the high schools of an adjoining county, to-wit. Baltimore City, of every qualified colored pupil. The testimony shows that the educational opportunities thus

afforded to colored pupils are equal if not better than those afforded to those of the white race. The alleged inconvenience of travel is negligible in view of the fact that transportation is now provided by the Baltimore County Board of Education, and that the high schools are located at points more readily accessible to the majority of colored pupils than a high school located at the county seat would be.

It is respectfully submitted that there is nothing in the Federal Constitution to require the maintenance of schools in any particular district or county. In *Gong Lum v. Rice*, 275 U. S. 76, the Court said (p. 84):

> "We must assume then that there are school districts for colored children in Bolivar County, but that no colored school is within the limits of Rosedale Consolidated High School District. This is not inconsistent with there being, at a place outside of that district and in a different district, a colored school which the plaintiff Martha Lum, may conveniently attend. If so, she is not denied, under the existing school system, the right to attend and enjoy the privileges of a common school education in a colored school. If it were otherwise, the petition should have contained an allegation showing it. Had the petition alleged specifically that there was no colored school in Martha Lum's neighborhood to which she could conveniently go, a different question would have been presented. * * *"

In the case at bar it affirmatively appears from the undisputed testimony that there are high schools available to every qualified colored pupil resident in Baltimore County, and that those high schools are conveniently located. It follows that every requirement of the Federal Constitution is amply gratified.

CONCLUSION.

It is submitted that it clearly appears upon this record that no injustice or inequality of treatment was accorded the appellant. Her failure to pass on two separate occasions the examination required as a matter of ordinary administration by the school authorities disqualified her from attending high school. The record also shows that the provisions made by the Board of Education of Baltimore County for affording high school facilities to colored high school pupils in that County were as convenient, adequate and equal as those afforded to white high school pupils in Baltimore County.

It is respectfully submitted that the order below dismissing the petition should be affirmed.

Respectfully submitted,

WILLIAM L. MARBURY, JR.,

CORNELIUS V. ROE,

WILLIAM L. RAWLS,

Counsel for Appellees.