

4078
199 VA 511

Record No. 4753

PETITION FOR WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

**THEODORE THOMAS DeFEBIO, AN
INFANT, &c., ET AL.,**

v.

**THE COUNTY SCHOOL BOARD OF
FAIRFAX COUNTY, ET AL.,**

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

199 VA 511

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4753

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 10th day of June, 1957.

THEODORE THOMAS DeFEBIO, AN INFANT, &c., ET
AL., Petitioners,

against

THE COUNTY SCHOOL BOARD OF FAIRFAX COUNTY,
ET AL., Respondents.

UPON A PETITION FOR A WRIT OF MANDAMUS.

This day came Theodore Thomas DeFebio and Dominick Nicholas DeFebio, infants under the age of twenty-one years, who sue by Theo T. DeFebio, their mother and next friend, and Theo T. DeFebio, individually and in her own right,

by counsel, and presented to the Court their petition praying that a writ of mandamus do forthwith issue, directed to The County School Board of Fairfax County, W. T. Woodson, Division Superintendent, Melvin B. Landes, Principal of the Mount Vernon High School, Elsie Fletcher, Principal of the Hollin Hall Elementary School, William N. Neff, President of the State Board of Education, Garland Gray, Member of the State Board of Education, Robert Button, Member of the State Board of Education, Leonard G. Muse, Member of the State Board of Education, Mrs. Gladys V. Morton, Member of the State Board of Education, Thomas C. Boushall, Member of the State Board of Education, Mrs. John Galleher, Member of the State Board of Education, and Davis Y. Paschall, Superintendent of Public Instruction, requiring and compelling them to reinstate forthwith the said infant petitioners in the appropriate public schools of Fairfax County, Virginia.

And it appearing to the Court that copies of the notice of application and of said petition have been duly served on the respondents, it is ordered that this cause be docketed.

Also came the respondents, by counsel, and on motion leave is granted to file a demurrer, answer or other appropriate pleadings on or before June 20, 1957, and to file evidence on the issues raised on or before July 10, 1957. It is further ordered that the record be printed; that the petitioners file with the clerk 25 printed copies of their brief on or before August 9, 1957; that the respondents file with the clerk 25 printed copies of their brief on or before September 1, 1957; that the petitioners file with the clerk 25 printed copies of their reply brief on or before September 10, 1957; and this cause is continued.

* * * * *

NOTICE AND MOTION.

* * * * *

Each of you is hereby notified that the plaintiffs, by counsel, will on June 10, 1957, at 9:30 A. M. Eastern Standard Time, or as soon thereafter as counsel may be heard in the courtroom of the Supreme Court of Appeals of Virginia, at Richmond, Virginia, move said Honorable Court for leave to file plaintiff's petition to award to the plaintiffs a writ of mandamus in accordance with the prayer of the petition for

mandamus, a copy of which petition is attached hereto and made a part of this Notice and Motion.

Given under our hands this 22 day of May, 1957.

THEODORE THOMAS DeFEBIO,
an infant under the age of twenty-
one years, who sues by Theo T.
DeFebio, his mother and next
friend.

DOMINICK NICHOLAS DeFEBIO,
an infant under the age of twenty-
one years, who sues by Theo T.
DeFebio, his mother and next
friend.

THEO T. DeFEBIO.

By Counsel
C. DOUGLAS ADAMS, JR.,
ALBERT I. KASSABIAN.

* * * * *

PETITION FOR WRIT OF MANDAMUS.

*To the Honorable Justices of the Supreme Court of Appeals
of Virginia:*

Your petitioners, Theodore Thomas DeFebio and Dominick Nicholas DeFebio, infants under the age of twenty-one years, who sue by Theo T. DeFebio, their mother and next friend, and Theo T. DeFebio, individually and in her own right, respectfully represent as follows:

1. That plaintiffs, Theodore Thomas DeFebio and Dominick Nicholas DeFebio, are minor children, aged fourteen and one-half and nine and one-half years respectively, of Theo T. DeFebio, their natural mother.

2. That since on or about January 19, 1957, your petitioners have been and are now actual *bona fide* residents of and domiciled at 39 1/2 Northdown Road, Wellington Villa, Alexandria, Fairfax County, Virginia.

3. That on or about January 22, 1957, infant plaintiffs, Theodore Thomas DeFebio and Dominick Nicholas DeFebio, were enrolled in the eighth and fourth grades at Mount Vernon High School and Hollin Hall Elementary School respectively, both of which institutions are public schools located in Fairfax County, Virginia.

4. That the enrollment of the infant plaintiffs in said public schools was accepted by the County School Board of Fairfax County, and infant plaintiffs commenced on January 22, 1957, to attend classes in said schools.

5. That in early March, 1957, Theo T. DeFebio received by United States mail a letter dated February 27, 1957, from the County School Board of Fairfax County and signed by W. T. Woodson, Division Superintendent, a copy of which is attached hereto and marked "Exhibit A" relating to the school status of the infant plaintiff, Dominick Nicholas DeFebio, in the light of the requirements of the Pupil Placement Board of the Commonwealth of Virginia created under the Pupil Placement Act, 22-232.1 *et seq.*, Code of Virginia, 1950, as amended.

6. That in early March 1957, Theo T. DeFebio received a letter dated February 27, 1957, from the County School Board of Fairfax County and signed by W. T. Woodson, Division Superintendent, a copy of which is attached hereto and marked "Exhibit B", relating to the school status of the infant plaintiff, Theodore Thomas DeFebio, which letter on information and belief was entrusted to the care of said infant plaintiff, with oral instructions from the principal of said Mount Vernon High School to deliver said letter to Theo T. DeFebio and to relay an invitation to her to come to said school before May 1, 1957, to sign and complete official Application for Placement of Pupil forms, a copy of which is attached hereto and marked "Exhibit C" issued by the Pupil Placement Board of the Commonwealth of Virginia, and said infant plaintiff forthwith delivered said letter and conveyed said instructions to his said mother.

7. That on April 9, 1957, Theo T. DeFebio received by United States mail a letter dated April 5, 1957, and postmarked April 8, 1957, signed by the principal of said Hollin Hall Elementary School, a copy of which is attached hereto and marked "Exhibit D", relating to the school status of the infant plaintiff, Dominick Nicholas DeFebio, in the light of the requirements of the Pupil Placement Board of the Commonwealth of Virginia, created under the Pupil Placement Act, 22-232.1 *et seq.*, Code of Virginia, 1950, as amended.

8. That on April 11, 1957, the principal of said Hollin Hall Elementary School visited the home of the petitioners advising Theo T. DeFebio that infant plaintiff. Dominick Nicholas DeFebio, could not continue to attend said school under rules and regulations, copies of which are attached hereto and marked "Exhibit E", issued by the Pupil Placement Board of the Commonwealth of Virginia, unless said Theo T. De-

Febio signed and completed aforesaid Application for Placement of Pupil.

9. That on April 11, 1957, and on information and belief, infant plaintiff, Dominick Nicholas DeFebio was directed orally by the principal of said Hollin Hall Elementary School not to return thereafter to said school until Theo T. DeFebio signed and completed said Application for Pupil Placement, which direction said infant plaintiff conveyed forthwith to his said mother.

10. That on or about April 12, 1957, and on information and belief, the infant plaintiff, Theodore Thomas DeFebio, was instructed orally by the principal of said Mount Vernon High School to inform said infant's mother that the deadline for her signature and completion of said Application for Placement of Pupil had been advanced from May 1, 1957, to April 18, 1957, and that elementary students whose parents had not signed and completed said Application for Placement of Pupil had been dropped from public school, which instruction and information said infant plaintiff conveyed forthwith to his said mother.

11. That Theo T. DeFebio received by United States mail a letter dated April 18, 1957, and postmarked April 19, 1957, from the Mount Vernon High School signed by Melvin B. Landes, principal, a copy of which is attached hereto and marked "Exhibit F" regarding the school status of the infant plaintiff, Theodore Thomas DeFebio, in the light of the requirements of Pupil Placement Board of the Commonwealth of Virginia created under the Pupil Placement Act, 22-232.1 *et seq.*, Code of Virginia, 1950, as amended.

12. That Theo T. DeFebio received by United States mail a letter dated April 18, 1957, and postmarked April 18, 1957, from the County School Board of Fairfax County signed by George H. Pope, Assistant Superintendent for Administration, a copy of which is attached hereto and marked "Exhibit G" regarding the school status of the said infant plaintiffs, in the light of the requirements of Pupil Placement Board of the Commonwealth of Virginia created under the Pupil Placement Act, 22-232.1 *et seq.*, Code of Virginia, 1950, as amended.

13. That Theo T. DeFebio has never signed nor completed said Applications for Placement of Pupil issued by the Pupil Placement Board of the Commonwealth of Virginia, nor has she ever acknowledged the legal authority of the Pupil Placement Board of the Commonwealth of Virginia to place and assign infant plaintiffs to public schools of Fairfax County, and that Theo T. DeFebio still refuses to do so, having been advised by counsel that there is no legal requirement for her to do so.

14. That solely by reason of the failure and unwillingness of Theo T. DeFebio to sign and complete said official Application for Placement of Pupil, infant plaintiff, Theodore Thomas DeFebio was on or about April 18, 1957, and infant plaintiff, Dominick Nicholas DeFebio was on or about April 11, 1957 unlawfully suspended, expelled and dropped from said public schools of Fairfax County by the defendants, The County School Board of Fairfax County, The Division Superintendent of Schools and by the principals of said respective schools, and that thereafter in violation of law all of the defendants, and each of them, have refused and still refuse to permit infant plaintiffs to attend said public schools without execution and completion by Theo T. DeFebio of said official Application for Placement of Pupil forms, and that on information and belief, such actions were and are being taken at the direction of the Pupil Placement Board of the Commonwealth of Virginia.

15. That the infant plaintiffs are entitled and required under law to attend, and the said plaintiff, Theo T. DeFebio, is entitled and required under law to have said infant plaintiffs attend, the public schools of Fairfax County, regardless of whether or not said Application for Placement of Pupil is signed and completed by the plaintiff, Theo T. DeFebio.

16. That the plaintiff, Theo T. DeFebio, at all times since on or about January 19, 1957, has been ready, willing and able to have said infant plaintiffs attend aforesaid public schools, and said infant plaintiffs at all times since on or about January 19, 1957, have been ready, willing and able to attend said public schools, but that said infant plaintiffs have been unlawfully prevented from so attending solely by reason of the aforesaid unlawful expulsion, suspension, and dropping of said infant plaintiffs from the aforesaid public schools, and by reason of the aforesaid refusal of permission by all and each of the defendants.

17. That the aforesaid public schools attended by said infant plaintiffs have been and are now attended only by white students and that negro students are not enrolled nor in attendance there, and that on information and belief negro students are not permitted by all and each of the defendants to enroll in or attend said public schools, and that your plaintiffs are members of the Caucasian Race.

18. That the plaintiffs have been advised by counsel and therefore aver that such suspension, expulsion and dropping of infant plaintiffs from said public schools by the defendants, The County School Board of Fairfax County, The Division Superintendent of Schools and by the principals of said respective schools, and the said refusal of permission by

all and each of the defendants are arbitrary, capricious, unlawful and void actions in that:

(a) Such action unlawfully deprives the infant plaintiffs of the right to attend, and of the plaintiff, Theo T. DeFebio, of the right to have the infant plaintiffs attend, public schools of Fairfax County, which rights are guaranteed by law.

(b) Such action forces plaintiff infants to violate the Virginia Compulsory School Attendance Law, to-wit: 22-251 *et seq.*, Code of Virginia, 1950, as amended.

(c) Such action purported to have been taken by direction of the said Pupil Placement Board of the Commonwealth of Virginia, is in violation of Sections 130 to 133 inclusive of the Constitution of the Commonwealth of Virginia, in that the authority conferred by the Constitution of the Commonwealth of Virginia for general supervision of the aforesaid public schools is granted to and vested in solely the State Board of Education and that local supervision of the aforesaid public schools under the Constitution of the Commonwealth of Virginia is granted to and vested in solely the County School Board of Fairfax County and not in the Pupil Placement Board of the Commonwealth of Virginia or in any other state agency or official.

(d) The Pupil Placement Act, to-wit: 22-231.1 *et seq.*, Code of Virginia, 1950, as amended, under which infant plaintiffs are being denied the right to a public school education, and under which the plaintiff, Theo T. DeFebio, is being denied the right to have said infant plaintiffs receive a public school education, is invalid under Sections 130 to 133 inclusive of the Constitution of the Commonwealth of Virginia, in that the authority conferred by the Constitution of the Commonwealth of Virginia for general supervision of the aforesaid public schools is granted to and vested in solely the State Board of Education, and that local supervision of the aforesaid public schools under the Constitution of the Commonwealth of Virginia is granted to and vested in solely the County School Board of Fairfax County and not in the Pupil Placement Board of the Commonwealth of Virginia or in any other state agency or official.

(e) The Pupil Placement Act, to-wit: 22-231.1 *et seq.*, Code of Virginia, 1950, as amended, is invalid on its face under the Fourteenth Amendment of the Constitution of the United States and that the application of the said Pupil Placement Act in this case deprives plaintiffs of liberty and property without due process of law and of equal protection of law.

19. That your petitioners have been advised by counsel

and therefore aver that your petitioners are without sufficient and adequate remedy except to file this petition for issuance of a writ of mandamus.

WHEREFORE, your petitioners pray for leave to file this their petition and that a writ of mandamus be issued by this Honorable Court directed to all of the defendants and to each of them compelling said defendants to reinstate forthwith infant plaintiffs in the appropriate public schools of Fairfax County, Virginia.

THEODORE THOMAS DeFEBIO, an
infant under the age of twenty-one
years by Theo A. DeFebio, his mother
and next friend.

DOMINICK NICHOLAS DeFEBIO,
an infant under the age of twenty-
one years by Theo T. DeFebio, his
mother and next friend.

THEO T. DeFEBIO.

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

This day came Theodore Thomas DeFebio and Dominick Nicholas DeFebio, infants under age of twenty-one years, by Theo T. DeFebio, their mother and next friend, and Theo T. DeFebio, individually in her own right, the petitioners named in the foregoing petition, being duly sworn, say that the facts and allegations therein contained are true, except as they are therein stated to be on information and belief, and that, so far as they are therein stated to be on information and belief, are believed to be true.

THEODORE THOMAS DeFEBIO, an
infant under age of twenty-one years
by Theo T. DeFebio, his mother and
DOMINICK NICHOLAS DeFEBIO, an
infant under age of twenty-one years
by Theo T. DeFebio, his mother and
next friend.

THEO T. DeFEBIO.

Taken, sworn to and subscribed before me this 22 day of
May, 1957.

ROBERT E. TAYLOR,
Notary Public.

My Commission Expires April 12th, 1958.

ADAMS & KASSABIAN,
Annandale, Virginia,
Counsel for Petitioners.
C. DOUGLAS ADAMS, Jr.
ALBERT I. KASSABIAN.

“EXHIBIT A”.

Dominick Nicholas DeFabio
(Age 9)

FAIRFAX COUNTY SCHOOL BOARD

Fairfax, Virginia

February 27, 1957

TO: Parents of Recent Enrollees

We are glad to accept the enrollment of your child in our schools and to make a temporary assignment to one of our schools. You see, on December 29, 1956, the power to enroll and place pupils in the public schools of the Commonwealth was taken away from local school boards and the superintendents, and was vested entirely in the Pupil Placement Board of Virginia whose headquarters is in Richmond. On the basis of your application which must be made on official forms available in our schools, the Pupil Placement Board will make permanent assignment of your child. In the interim period while your application is being processed, your child may attend school on a temporary basis.

Please note that an application must be submitted for any pupil in our County who has enrolled or transferred or who will enroll or transfer after December 29, 1956.

Photostatic copies of birth certificates must accompany all applications for pupils who have moved into Virginia and enroll in Virginia schools for the first time. These photostatic copies of the birth certificates will not be returned by the Pupil Placement Board.

Your cooperation will be greatly appreciated.

(s) W. T. WOODSON,
Division Superintendent.

Please plan to come in on April 4th between 9:00 A. M. to 3:00 P. M. to complete and sign the Pupil Placement application.

A photostatic copy of the birth certificate will be required at that time.

“EXHIBIT B”.

FAIRFAX COUNTY SCHOOL BOARD

Fairfax, Virginia

February 27, 1957

TO: Parents of Recent Enrollees

We are glad to accept the enrollment of your child in our schools and to make a temporary assignment to one of our schools. You see, on December 29, 1956, the power to enroll and place pupils in the public schools of the Commonwealth was taken away from local school boards and the superintendents, and was vested entirely in the Pupil Placement Board of Virginia whose headquarters is in Richmond. On the basis of your application which must be made on official forms available in our schools, the Pupil Placement Board will make permanent assignment of your child. In the interim period while your application is being processed, your child may attend school on a temporary basis.

Please note that an application must be submitted for any pupil in our County who has enrolled or transferred or who will enroll or transfer after December 29, 1956.

Photostatic copies of birth certificates must accompany all applications for pupils who have moved into Virginia and enroll in Virginia schools for the first time. These photostatic copies of the birth certificates will not be returned by the Pupil Placement Board.

Your cooperation will be greatly appreciated.

(s) W. T. WOODSON,
Division Superintendent.

“EXHIBIT C

In Triplicate”

School Division (City or County) :

COMMONWEALTH OF VIRGINIA

PUPIL PLACEMENT BOARD

APPLICATION FOR PLACEMENT OF PUPIL

(Note: *A birth certificate or phostatic copy thereof shall be attached to the application of each pupil who has moved to Virginia from another state for whom ap-
plication is made for enrollment in Virginia schools
for the first time.*).

I, the undersigned parent/or legal guardian, or other per-
son having custody of the child named below request that this
child be placed by the Pupil Placement Board of the Common-
wealth of Virginia in the school in the County/or City of
..... which the Board deems most appropriate
in accordance with the provisions of Chapter 70 of the Acts
of the General Assembly (Extra Session 1956), and submit the
following information:

FULL NAME OF CHILD:

ADDRESS:.....

POST OFFICE:

SCHOOL YEAR FOR WHICH ENROLLMENT IS RE-
QUESTED:

NAME OF SCHOOL LAST ATTENDED:

WHEN:

ADDRESS OF SCHOOL: COUNTY/OR CITY:....

YEARS IN SCHOOL: GRADE:

(Exclude year for which this application is made)

BIRTH DATE:

SEX: CONDITION OF HEALTH:

PHYSICAL OR MENTAL HANDICAPS OR DISABILI-
TIES:.....

PARTICULAR APTITUDES:

NAME AND LOCATION OF SCHOOL OR SCHOOLS IN
VIRGINIA IN WHICH ANY OTHER CHILDREN OF
YOURS ARE ENROLLED:

The foregoing is certified on oath or affirmation to be true and complete.

Signed:

Address:

Date:

(FOR USE OF BOARDS ONLY)

INFORMATION AND RECOMMENDATIONS FORM
LOCAL SCHOOL BOARD

If child is entering school for the first time is date of child's birth on application same as on birth certificate?.....

Comments concerning pupil:

Recommendation as to school to which pupil should be assigned:

Principal or

Head Teacher:LOCAL SCHOOL BOARD

By:

(Title)

ACTION BY STATE BOARD

The above-named pupil is hereby assigned to school in the County (City) of.....

.....
For the Pupil Placement Board of the Commonwealth of Virginia

“EXHIBIT D”.

April 5, 1957

Dear Parents of Recent Enrollees:

In accordance with the new Pupil Placement law which went into effect on January 1, 1957, the parents of any child seeking admittance to our school after January 1, 1957, are required to complete and sign a PUPIL PLACEMENT APPLICATION and submit a photostatic copy of the child's birth certificate (if born outside the state of Virginia) to be forwarded to the Pupil Placement Board for action.

Since your child was admitted on a temporary basis pend-

ing completion of the aforementioned requirements, and since the fifteen days of grace allowed by law expired on April 4th, we shall be forced to drop your child from school as of Wednesday, April 10th, unless these requirements are complied with before that date.

Sincerely yours,

(s) ELSIE T. FLETCHER
Principal

“EXHIBIT E.”

To the County and City School Boards and County and City Division Superintendents in the Commonwealth of Virginia.

1. Pursuant to Chapter 70, of the Acts of the General Assembly, Special Session of 1956, the exclusive power to enroll and place pupils in the public schools of this Commonwealth, as well as the determination of school attendance districts, is vested in this Board.

2. In order to discharge its duties in the public interest, this Board will need and asks the cooperation and recommendations of the local school boards and division superintendents in each of the political subdivisions of the State.

3. By Section 4 of the Act it is specifically provided that each school child, who has heretofore attended a public school, and who has not moved from the county, city or town in which he resided while attending such school, shall remain in the same school which he last attended until graduation therefrom unless enrolled, for good cause shown, in a different school by this Board.

4. The pupils, for whom application for enrollment shall be made to this Board, are:

- (a) Those entering school in Virginia for the first time;
- (b) Those who graduate from one school to another within the same school division;
- (c) Those who transfer to another school division; and
- (d) Those who desire to enter a public school after the opening of the session.

Applications must be filed for all pupils coming within the above classifications since the effective date of the Act, December 29, 1956.

5. The present disciplinary powers vested in local school officials are in no way affected by the Pupil Placement Act, and shall continue to be exercised as in the past.

6. You will be sent, under separate cover, a supply of application forms which we estimate you will presently need to have pupils processed and placed by this Board as soon as possible. We leave to your discretion how best to assist the parent, guardian, or other custodian in completing the required application in each individual case, in order to cause as little inconvenience as possible.

7. If the supply of forms sent you is inadequate, please advise us right away how many more you need at the present time, and as soon as possible prior to each new session or new semester hereafter please advise how many additional application forms you will need.

8. Each application for enrollment shall be made in triplicate; and two copies thereof shall be forwarded to this Board, along with your recommendations, as promptly as possible. In making your recommendations, you may do so without legal responsibility, it being the sole responsibility of this Board to place and enroll pupils.

9. A birth certificate or photostatic copy thereof shall be attached to the application of each pupil who has moved to Virginia from another state for whom application is made for enrollment in Virginia schools for the first time.

10. Upon action by this Board on each application for enrollment you will be promptly notified, and each child shall attend the school designated by this Board.

11. Until each pupil is officially enrolled, he may be permitted to attend classes on a temporary basis in accordance with the purposes and intent of the Pupil Placement Act, as expressed in Section 3 thereof.

COMMONWEALTH OF VIRGINIA
PUPIL PLACEMENT BOARD

February 26, 1957
Memo. #2

TO: Division Superintendents of Schools and Local School Boards

FROM: J. W. Bland, Executive Secretary

SUBJECT: Application Blanks

Several questions have arisen concerning the mechanics of completing application blanks for enrollment of pupils. It will facilitate the handling of enrollment applications if the following procedure is adhered to.

1. All applications for enrollment should be mailed to this office direct from the office of the division superintendent or local school board.

2. This office should have from you a letter stating the names and title of those persons authorized by you and your local board to sign on the reverse of the application for the local school board. (Suggest three to five persons.)

3. Please be certain that the information from the local school board and the signature for the local school board is in duplicate (white and blue copies—carbon should be used.)

4. The application must be made in triplicate and signed by the parent, guardian or person having custody of the pupil.

5. The yellow copy of the application is to be retained by the local school.

6. The white and blue copies of the application are to be sent to this office by the division superintendent or local school board.

7. Upon action by the Pupil Placement Board, the blue copy will be returned to the division superintendent or local school board, with action of the Pupil Placement Board noted.

8. In the one instance in which birth certificates are required by the Pupil Placement Board, it is to be desired that you send photostatic copies whenever possible. If the original is sent, it will be returned to the office of the Division Superintendent.

COMMONWEALTH OF VIRGINIA

PUPIL PLACEMENT BOARD

February 26, 1957

Memo #3

TO: Division Superintendents of Schools and Local School Boards

FROM: Pupil Placement Board

SUBJECT: Amendment of Original Instruction 4 (c)

Under Item 4 of the original instructions sent you by this Board, you will please add to 4 (c), which now reads—"Those who transfer to another school division," AND THOSE WHO TRANSFER WITHIN THE SAME SCHOOL DIVISION.

COMMONWEALTH OF VIRGINIA

PUPIL PLACEMENT BOARD

March 5, 1957

Memo #4

To: Division Superintendents of School and Local School
Boards

FROM: J. W. Bland, Executive Secretary

SUBJECT: Information needed for application blanks for
school session 1957-58, and use of authorized stamp.

1. IT IS NECESSARY THAT YOU ADVISE THIS OFFICE IMMEDIATELY OF THE NUMBER OF APPLICATION FOR ENROLLMENT OF PUPIL BLANKS YOU WILL NEED IN YOUR DIVISION FOR ENROLLMENT OF PUPILS IN YOUR SCHOOLS FOR THE SCHOOL SESSION 1957-58.

We hope to place our manufacturing order for these blanks by March 15th therefore, will you please let us have at once an estimate of your needs. We hope to place only one manufacturing order for the school session, so we ask you that you make your request both adequate and conservative.

2. A number of inquiries have come to the Pupil Placement Board asking if a signature stamp may be used by the local school board. The Pupil Placement Board, in its desire to cooperate with school officials, has agreed that such a stamp will be acceptable, if it is a facsimile of the signature of the person authorized by you to sign for your local school board.

March 11, 1957

Memo #5

COMMONWEALTH OF VIRGINIA

PUPIL PLACEMENT BOARD

This Board has had several requests to clarify the situation where an irresponsible parent or other custodian might fail or refuse to execute application forms required by the Pupil Placement Act.

The law specifically provides that there shall be strict compliance with the provisions of the Act. The Board, therefore has adopted the following rules and Regulations which are set forth for the guidance of the local school officials:

“No child, whose parent, guardian, or other custodian refuses to complete and file the required Application for Placement of Pupil, shall be permitted to attend or to continue to attend school until such application shall have been completed and filed.”

“No child, whose parent, guardian, or other custodian fails to complete and file the required Application for Placement of Pupil within fifteen (15) days, shall be permitted to attend or to continue to attend school until such application shall have been completed and filed.”

(s) J. W. BLAND

Executive Secretary

By Direction of the Board.

COMMONWEALTH OF VIRGINIA

PUPIL PLACEMENT BOARD

22 N. 9th St.

Richmond, Va.

April 8, 1957

Memo #6

TO: Division Superintendents

FROM: J. W. Bland, Executive Secretary

SUBJECT: Our new address and telephone number

The Pupil Placement Board will move its offices on Thursday, April 11, 1957, to *22 N. 9th Street, Richmond, Virginia.*

Please be sure this change is cleared with any or your staff having correspondence with us. All mail to be received in Richmond Thursday morning, April 11, 1957, and thereafter, should carry the address *22 N. 9th Street, Richmond, Virginia.*

Our telephone number is Richmond 7-4111, Ext. 2788.

May 21, 1957.

COMMONWEALTH OF VIRGINIA

PUPIL PLACEMENT BOARD

Clarification of Memo #5

In order to avoid any injustice to innocent children due to the failure of a parent to complete and file the required Application for Placement for the school year ending in or prior to June, 1957, a clarification of its Memo #5 is in order.

In cases of wilful refusal the rule of Memo #5 should be strictly adhered to, and, following the correct action of the Fairfax County School Board, the child shall not be permitted to attend or to continue to attend school until the application shall have been completed and filed, without any further directive or action by the Pupil Placement Board.

In cases of misunderstanding or parental neglect, the fifteen (15) day rule may, in some instances, unduly penalize the child. The local school authorities are requested to determine the causes or reasons for the parents' failure or neglect, rendering, where possible, any needed assistance. In cases where a valid excuse for failure is justified by the circumstances, the fifteen (15) day time limit may be extended for a brief additional time in order to secure compliance with the law. Continued failure shall be deemed a wilful refusal and be treated accordingly.

Cases reported to the Pupil Placement Board of failure or refusal to complete and file the required applications will be referred back to the local school authorities for action in accordance with the clear intent of the Pupil Placement Act and regulations adopted pursuant thereto.

It should be emphasized that registrations for the school year commencing in September are now under way throughout the State. Accordingly, ample time is available for all parents to comply with the law prior to the new term; and commencing with the new term, no pupil shall be allowed to attend school in Virginia until there has been a strict compliance with the requirements of the Pupil Placement Act.

“EXHIBIT F.”

MOUNT VERNON HIGH SCHOOL
A Fairfax County School
3900 Richmond Highway
ALEXANDRIA, VIRGINIA

April 18, 1957.

Mr. Frank De Febio
39 1/2 Northdown Rd.
Wellington Villa
Alexandria, Virginia

Dear Mr. De Febio:

You have failed to fill out the Student Placement Application required of all students who have enrolled in school since December 31, 1956. This request was sent you by letter entrusted in the custody of your child. If you have come from out of the state you were requested to attach a photostatic copy of your child's birth certificate to the application. If you have transferred from another Virginia area the application is all that is needed.

Please come to my office Tuesday morning April 23rd in order that your child may continue in school. Otherwise I shall be compelled to drop your son from school.

Sincerely yours,

(s) MELVIN B. LANDES
Principal.

MBL:em
CC: Mr. Pope

"EXHIBIT G."

Board
Lory, Chairman
Turner Hudgins
Clyde W. Gleason
Merton S. Parsons

Board
Theodore S. Heriot
Samuel S. Solomon
Robert F. Davis

Office of

FAIRFAX COUNTY SCHOOL BOARD
FAIRFAX, VIRGINIA

W. T. Woodson, Division Superintendent
W. Clement Jacobs, Clerk

CERTIFIED RETURN RECEIPT

April 18, 1957.

Mrs. Theo DeFebio
39 1/ Northdown Road
Wellington Villa
Alexandria, Va.

Dear Mrs. DeFebio:

Reference is made to the dropping of your children from our public schools because of your alleged refusal to complete for each of them the required application for pupil placement. The action precipitated by your refusal to complete the application is based on a regulation of the Pupil Placement Board as follows:

"No child, whose parent, guardian, or other custodian refuses to complete and file the required Application for Placement of Pupil, shall be permitted to attend or to continue to attend school until such application shall have been completed and filed."

The regulation which caused the removal of your children from school will also provide for their reinstatement imme-

diately upon your completion of the required application.

Since you have indicated to the press that you are willing to do anything to get the children back in school, you are hereby invited again to appear at the respective schools on April 23 to complete the forms which you have heretofore refused to execute.

Very truly yours,

(s) GEORGE H. POPE
Asst. Supt. for Administration.

cc: Mrs. Elsie Fletcher
Mr. Melvin B. Landes
Principals

GHP:sc

* * * * *

ANSWER TO PETITION FOR WRIT OF MANDAMUS.

For answer to the petition for writ of mandamus filed herein, the defendants jointly answer and say:

1. The defendants have no knowledge concerning the allegations of Paragraphs 1 and 2 of the petition. Defendants neither admit nor deny said allegations and call for strict proof of the same.

2. For answer to Paragraphs 3 and 4 of the petition, defendants state that infant plaintiffs, Theodore Thomas DeFebio and Dominick Nicholas DeFebio, were permitted by the County School Board of Fairfax County to attend, on a temporary basis subject to official enrollment by the Pupil Placement Board, the Eighth and Fourth grades at Mount Vernon High School and Hollin Hall Elementary School, respectively, both of which institutions are public schools located in Fairfax County, Virginia, and that infant plaintiffs commenced to attend classes in such schools, on a temporary basis, on or about January 22, 1957.

3. The allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the petition are admitted.

4. For answer to Paragraph 14 of the petition, defendants state that because of the failure of Theodore T. DeFebio to execute Application for Placement of Pupil forms prescribed by the Pupil Placement Board, the permission to attend the public schools of Fairfax County on a temporary basis ori-

ginally granted to Theodore Thomas DeFebio and Dominick Nicholas DeFebio was terminated on or about April 18, 1957, and April 11, 1957, respectively, in accordance with the rules and regulations of the Pupil Placement Board. Thereafter, in accordance with the rules and regulations of the Pupil Placement Board, the infant plaintiffs were not permitted by the County School Board of Fairfax County to attend said public schools during the remainder of the school term ending June 14, 1957, because of the continued failure of Theo. T. DeFebio to execute Application for Placement of Pupil forms prescribed by the Pupil Placement Board.

5. The allegations of Paragraphs 15 and 16 of the petition are denied.

6. For answer to Paragraph 17 of the petition, defendants admit that the public schools, which infant plaintiffs were permitted to attend on a temporary basis, have been and are now attended only by white students, that Negro students are not now enrolled at such schools, and that plaintiffs are members of the Caucasian race. Defendants deny that Negro students are prohibited by defendants from attending said public schools.

7. The allegations of Paragraph 18 of the petition are denied.

8. Defendants deny each and every allegation of the petition not herein expressly admitted.

Now having fully answered, defendants pray to be hence dismissed with their costs in this behalf expended.

JOHN C. WOOD

Counsel for The County School Board
of Fairfax County, the Division Super-
intendent of Fairfax County and the
Principals of Mount Vernon High
School and Hollin Hall Elementary
School, Fairfax County, Virginia

J. LINDSAY ALMOND, JR.,
KENNETH C. PATTY

R. D. McILWAINE, III

Counsel for the President and Members
of the State Board of Education and
the Superintendent of Public Instruc-
tion.

JOHN C. WOOD
Ford Building
Fairfax, Virginia

J. LINDSAY ALMOND, JR.,
Attorney General of Virginia

KENNETH C. PATTY
R. D. McILWAINE, III
Assistant Attorneys General
Supreme Court Building
Richmond 19, Virginia

I hereby certify that copies of this pleading were mailed to
Albert I. Kassabian and C. Douglas Adams, Jr., Annandale,
Virginia, Counsel for Plaintiffs, this June 20, 1957.

R. D. McILWAINE, III
Assistant Attorney General.

* * * * *

Please take notice that the deposition of Theo T. DeFebio
will be taken at the office of Adams and Kassabian, Annan-
dale, Virginia on Friday, July 12, 1957 at 3:00 o'clock p. m.
Eastern Daylight Saving Time on matters in issue disclosed
by plaintiff's Petition for Writ of Mandamus and Defend-
ants' Answer filed in this case.

ALBERT I. KASSABIAN
Adams and Kassabian
Counsel for Plaintiffs.

I certify that on July 5, 1957, I mailed a copy of the fore-
going Notice and Motion to the named counsel of record of
the defendants.

ALBERT I. KASSABIAN.

The deposition of THEO T. DEFEBIO was taken by and
before Frances G. Webb, Notary Public in and for the State
of Virginia at Large, in the law offices of Adams and Kassa-
bian, Annandale, Virginia, on Friday, July 12, 1957, com-
mencing at 3:00 o'clock p. m.

Present: Albert I. Kassabian, Esq., on behalf of the plain-
tiffs;

Adelard L. Brault, Esq., on behalf of the Defendants.

Theo T. DeFebio.

PROCEEDINGS.

Thereupon

THEO T. DEFEBIO

was called as a witness in her own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Kassabian:

Q. Please state your name.

A. Theo T. DeFebio.

Q. Are you also known as Theo Thomas DeFebio?

A. Yes, I am.

Q. What was your maiden name?

A. Theo Thomas.

Q. Are you one of the Plaintiffs in the case of DeFebio, et al., v. The County School Board of Fairfax County?

A. Yes, sir, I am.

Q. Mrs. DeFebio, I show you two documents. I ask you to identify them.

A. One of them is a photostatic copy of a certificate of live birth of Dominick Nicholas DeFebio, and the other is a notification of birth registration for Theodore Thomas DeFebio.

Mr. Kassabian: I would like to present these in evidence, the birth certificate of Dominick Nicholas DeFebio as Exhibit H, and the notification of birth registration of Theodore Thomas DeFebio as Exhibit I.

(Said documents were marked "Plaintiffs' Exhibit H and I," respectively.)

By Mr. Kassabian:

Q. Are you the natural mother of Theodore Thomas DeFebio and Dominick Nicholas DeFebio?

A. Yes, I am.

Q. How old is Theodore?

A. He is 14½.

Q. How old is Dominick?

A. He is 9½.

Theo T. DeFebio.

Q. I direct your attention to January 19, 1957, and ask you where you resided on that date.

A. On that date I resided at 39½ Northdown Road, Wellington Villa, Fairfax County.

Q. Is that in the State of Virginia?

A. Yes, Virginia.

Q. Have you resided continuously at that address since that date?

A. Yes, I have.

Q. Do you know what day the last public school term ended in Fairfax County?

A. It ended on June 14.

Q. Did your children continuously and physically reside with you at the Wellington Villa address from January 19, 1957, until some time after June 14, 1957?

A. Yes, they did.

Q. During that period, who if anyone had sole and absolute physical control and custody of your children?

A. I did.

Q. During that period, who if anyone solely made all decisions regarding the welfare of your children?

A. I did.

Q. During that period, who if anyone supported your children and solely assumed and discharged the obligation and responsibility for their care and upbringing?

A. I did.

Q. During that period, did your children reside anywhere except at the Wellington Villa address?

A. No.

Q. Did you reside anywhere except at the Wellington Villa address?

A. No.

Q. Did you sign a lease for the Wellington Villa residence?

A. Yes.

Q. When did you sign that lease?

A. I signed that on January 19.

Q. Is that lease still in existence?

A. Yes, it is.

Q. When does the lease for the Wellington Villa premises expire?

A. It expires on July 19, 1958.

Q. Will you describe the physical premises that you rent?

Theo T. DeFebio.

Mr. Brault: I note an objection here on the basis that that question is immaterial and irrelevant to the issues.

(Discussion off the record.)

By Mr. Kassabian:

Q. Describe the rooms in the house.

A. It is a one-floor cottage in which we have two bedrooms, one large bedroom which I use with the baby, the crib is in there, and a small bedroom where the boys have a double bunk, a shell collection and what not, porch and kitchen, a large play room and a bathroom, small furnace.

Q. Who resides with you at the Wellington Villa residence?

A. The children; no one else.

Q. Are you the sole source of support and maintenance for your children?

A. Yes.

Q. Is it your intention to live permanently and indefinitely with your children in Fairfax County, Virginia?

A. Yes.

Q. Where are your children now? Where are they physically now?

A. They are vacationing on the beach.

Q. When did they leave for summer vacation?

A. I took them to the beach on June 17.

Q. Will they return and commence living with you at the Wellington Villa address after their summer vacation?

A. Yes.

Q. When did you enroll your children in the public schools of Fairfax County?

A. I enrolled them on January 22.

Q. At that time, were you told or notified that their enrollment would be on a temporary basis?

A. No, I was not.

Q. When were you first notified that the enrollment of your children was on a temporary basis?

A. In a letter from Mr. Woodson which was dated February 27 and which I received the early part of March.

Q. Have you been offered an opportunity to sign the official pupil placement form of the Pupil Placement Board of Virginia?

A. Yes, I have.

Q. Have you signed such an application?

Theo T. DeFebio.

A. No, I have not.

Q. Did there come a time when your children were expelled from the public schools of Fairfax County?

A. Yes.

Q. When was Theodore expelled?

A. He was expelled on April 18, 1957.

Q. When was Dominick expelled?

A. The week before, on April 11.

Q. What reason was given you for their expulsion?

A. I was told they were being expelled because I did not sign the pupil placement order.

Q. Do you mean the pupil placement form?

A. That is right.

Q. Have either of your children attended the public schools of Fairfax County since the date of their expulsion?

A. No, they have not.

Q. Upon commencement of the new school term in September, do you intend that your children attend the public schools of Fairfax County?

A. Yes, I did.

Q. Do they desire to attend such schools?

A. Yes, they do.

Q. Will they return from their summer vacation in time to attend the public schools of Fairfax County in September?

A. Yes, they will.

Q. Since January 19, 1957, have you been ready, willing and able, except for the necessity of completing the official pupil placement form, to have your children attend the public schools of Fairfax County?

A. Yes, I have.

Q. Since January 19, 1957, have your children been ready, willing and able, except for the requirement that you complete the pupil placement form, to attend the public schools of Fairfax County?

A. Yes, they have.

Q. Since the dates of their expulsion, have your two children been receiving any educational instruction whatsoever?

A. Nothing except what I could give them myself.

Q. Why have you not enrolled your children in private schools or hired tutors for them?

A. Did you say have I? I have not, no.

Q. Why have you not?

A. I cannot afford it.

Mr. Kassabian: I have no further questions.

Mr. Brault: I have no questions.

(Whereupon, at 3:30 o'clock p. m. this hearing was concluded.)

State of Virginia,

County of Fairfax, to-wit:

I, the undersigned Notary Public in and for the County of Fairfax, State of Virginia, whose commission expires on the 7th day of October, 1960, do hereby certify that the foregoing witness was duly sworn by me at the time, place and for the purpose set forth in the caption hereto; that I took the foregoing testimony, and that the foregoing record is a true copy and transcript of her said testimony, her signature hereto being waived.

Given under my hand this 13th day of July, 1957.

FRANCES G. WEBB

(Seal)

Notary Public as aforesaid.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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