

THE STATE OF IOWA---SS.

THE STATE OF IOWA, to-----  
the District Court for the County of Muscatine-----

WHEREAS, the Supreme Court of said State being lately certified of the record and proceedings in a certain cause which was in the District Court for the County of Muscatine, and State aforesaid, wherein Susan B. Clark plaintiff, and The Ind. Dist of Muscatine defendant in which said cause, judgment was rendered against the said Defendant, from which judgment so rendered, the said Defendant appealed to the said Supreme Court, and the said Court having duly examined the record and proceedings aforesaid in the premises at the Capitol, in Des Moines, in said State, on the 14<sup>th</sup> day of June, 1868, did affirm the judgment aforesaid, as rendered in the Court below.

THEREFORE, You are hereby commanded that with the speed which of right, and according to law you may, you proceed in the same manner as if no-----

appeal had been taken up and prosecuted in this Court, any thing in the record or proceedings aforesaid, heretofore certified to the contrary notwithstanding.



WITNESS, L. Gunderman-----  
Clerk of the Supreme Court, with the Seal of said Court  
hereunto affixed at Des Moines, this 18<sup>th</sup>  
day of July A. D. 1868.  
L. Gunderman  
Clerk of the Supreme Court.

MUSCATINE FILE

Susan B Black

<sup>vs</sup>  
Ind. Dist. of Muscatine  
Procedendo

Filed Aug 12 1868  
John W Jayne vs  
Ezra H Jayne  
vs

Muscatine

to law you may, you proceed in the same manner as if no

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aforesaid, heretofore certified to the contrary notwithstanding.



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L. Gunderman  
Clerk of the Supreme Court.

MUSCATINE FILE

Susant Clark  
 by her next friends  
 Alexander Clark } In the District Court  
 for Muscatine County

vs  
 The Board of Directors  
 of the Independent Dis-  
 trict Township of the  
 City of Muscatine } Answer

1 Come the said defendants and for an-  
 swer to the petition of Plaintiff, admit  
 that they are charged with the duty of  
 maintaining public schools in the terri-  
 tory embraced in the said District town-  
 ship, for the education of youth resident  
 therein between the ages of five and twenty one  
 years, and they say that in the performance  
 of their said duty, they have always maintained  
 public schools, in the said District Township,  
 for the proper education of the different  
 classes of youth therein,

2 Further answering these defendants say  
 that the plaintiff is of negro extraction, and  
 belongs to the race known and designated  
 in the United States as the colored race, that  
 since the organization of the present system  
 of public education in the State of Iowa,  
 in the said district township, separate and  
 distinct schools have been established and

maintained for the education of the colored youth of both sexes, that they have now and had when the said petition was filed and the said plaintiff presented herself for admission at the said grammar school to become a pupil thereof, a good and comfortable school building, with good and proper furniture, and a competent and well instructed teacher, for the colored children of said district township, that the said plaintiff had up to the time she applied for admission to the said grammar school, been a pupil in the school so established and maintained for the instruction of the colored children of said District Township, and further aversing these defendants say, that before the institution of this suit they proposed to the said Alexander Clark the father and natural guardian of the said plaintiff, to create in the said school for colored children, a grammar class for the instruction in grammar of the said plaintiff, and such other children of color as might desire to study grammar, and to that end to put in charge of said school a teacher fully qualified to instruct in all the branches of education, commonly and properly taught in grammar

~~school, and the teacher there was not  
having charge of said school at present, and  
the requisite educational attainments, and  
these defendants deny that the said plaintiff~~

schools, should the teacher there and now  
having charge of the same be wanting in  
the requisite educational attainments, and  
these defendants deny that the said plain-  
tiff is deprived of the free common schools  
privileges provided by the constitution and  
laws of this state for the instruction of  
its youth, and they deny that she has  
been greatly or at all damaged as alleged,

3 Further answering these defendants say  
that the number of scholars attending  
said school for colored children does not,  
in general average, exceed the number of  
fifteen, while in the other schools, and  
particularly in the said grammar school  
some of the classes therein average ~~two~~  
<sup>not less than fifty</sup>  
~~hundred~~ scholars, and the average of  
all the classes greatly exceeds that of  
the whole number of scholars attending said  
colored school.

4 Further answering the defendants say  
that by the school laws of said state,  
they are authorized and empowered to  
have as many schools in the said district  
township as they may deem proper, and  
that public sentiment in said district  
township, being opposed to the intermingling  
white and colored children in the same

schools and the best interests of both  
races requiring them to be educated in  
schools separate and distinct from each  
other, under the power aforesaid to establish  
additional schools, and with the view of  
making said schools of more general ef-  
ficacy and utility to all concerned, the  
said school for colored children was estab-  
lished a number of years ago, and has  
since its said establishment, been main-  
tained and kept up, and attended by  
the colored children resident in said  
District Township, therefore they are just  
in it.

Wm. Brannan  
Atty for Depts

The State of Iowa }  
Muscatine County } ss

E. H. F. Obermann

President of the said board of Directors  
do solemnly swear that I have read the  
following answer read, and know the  
contents thereof, and that the matters  
and things therein stated are true, as I  
truly believe

K. F. Obermann

Subscribed and sworn to before me  
a notary Public in and for said county

Witness my hand and notarial  
seal this 15<sup>th</sup> day of October  
AD 1867

The State of Iowa } In the District Court  
Muscatine County } of said County,

Susan B. Clark  
by her next friend  
Alexander Clark

Petition

The Board of Directors  
of the Independent  
District Townships of the  
City of Muscatine.

Mandamus.

Your Petitioner, Susan B. Clark,  
who acts by her next friend, Alexander  
Clark, respectfully states and shows to  
the Court: -

1 That she is an infant of the age  
of twelve years, - that the said Alex-  
-ander Clark is her father and natural  
guardian, that he is a resident of the City  
of Muscatine, in the County of Muscatine  
State of Iowa, and a freeholder and taxpayer  
in said City, - that Your Petitioner is also  
a resident of the said City of Muscatine, -  
that she was born in said City, and has all  
her life lived therein,

And Your Petitioner states that the said

City of Muscatine, with adjoining and contiguous territory, constitutes an Independent School District, organized & existing under the Common School Law of the State of Iowa, and known and designated as the Independent District Township of the City of Muscatine, —

That the Board of Directors of said School District, who are made defendants hereto, are invested by law with the power of establishing, maintaining and controlling the Public Schools within said District, —  
That it is the duty of said Board of Directors, a duty resulting from their said office & trust, the performance of which is especially enjoined by the Law, to provide and maintain public schools within said District for the education of all the youth between the ages of five and twenty one years, residing therein, and to admit into said schools all of said youth, as pupils, & to admit therein Your Petitioner, she being, as herein before set forth, a resident of said District, & over five and less than twenty one years of age, and Your Petitioner is of right and by law entitled to the privilege of attending said public schools, — of receiving instruction therein, and of participating in



7  
the benefits and advantages thereof,

And Your Petitioner shows and charges that the said Board of Directors, have established and do maintain public and common schools within and for said school district, under and by virtue of the Common School Law aforesaid, and that Your Petitioner is entitled to admittance therein & has in nowise forfeited said right, as a pupil, & that the said Board of Directors, in violation of law & of the duty incumbent upon them as such Board, wrongfully and unlawfully refuse to permit her to attend said schools, though admittance thereto has been by her duly demanded.

Your Petitioner further states that the said Board of Directors, have established and do maintain several public & common schools under the common school law of the State, within said school district, — that the same are situated and conducted in different localities within said district to accommodate the wants and convenience of the

resident youth therein, — that among  
the said schools is one designated and  
classified by said Board as Grammar  
School No. 2, — that your petitioner  
resides in the neighborhood of said  
Grammar School No. 2, & within that  
portion of said district from which  
resident youth, of the requisite age  
aforesaid, attend said school, & that  
she is duly qualified for admission into  
said Grammar School as a pupil, & of  
right & by law should be so admitted, — and  
it is the duty of said Board, resulting  
from their said office and trust, &  
specially enjoined upon them by law, to  
admit your petitioner into said school  
as a pupil. That on the tenth day of  
September A.D. 1867 — the said Grammar  
School No. 2, being then in session, —  
your petitioner presented herself at said  
school at a reasonable and proper hour,  
& demanded to be received therein as a  
scholar, under the provisions of the  
common school law aforesaid; and  
the defendant, the said Board of Directors,  
there and there refused to admit and re-  
ceive her as a pupil in said school, &  
unjustly and illegally excluded her there —

from,

And your Petitioner, by reason of the  
aforesaid unlawful and wrongful  
acts and doings of the said Board of  
Directors is deprived of the free common  
school privileges provided by the con-  
-stitution and laws of this State for the  
instruction of all the youth thereof, and  
she is thereby greatly damaged; and she  
is without a plain, speedy and adequate  
remedy for said wrong and injury in  
the ordinary course of the law.

She therefore prays that a  
writ of mandamus may issue from  
this Honorable Court, directed to the  
Defendants. The Board of Directors of  
the Independent District Township of the  
City of Muscatine, commanding them,  
the said Board, to admit your Petitioner  
into said Grammar School No 2, or any other  
public school of said District which by  
reason of her age, learning & place of resi-  
-dence she is entitled to enter, as a pupil;  
-there to pursue the studies taught in such  
school, & to receive instruction from the  
teachers thereof, in like manner as  
other youth of said District, and

that respondents be adjudged to pay  
the costs of this proceeding.

Richard Harskaddon  
Att'y for Petitioner

I, Alexander Clark, being duly sworn  
do say that I am the justice & natural  
guardian of Susan B. Clark, the infant  
Plff in the above entitled cause, who  
sues in my name & by me as her next  
friend - that I have read the foregoing  
petition read and know the contents  
thereof, - that I am personally cognizant  
of the matters therein set forth - and  
the allegations in the said petition con-  
tained are true as I truly believe,

Alexander Clark

Sworn to and subscribed by the said  
Alexander Clark before me & in my  
presence, this 3<sup>rd</sup> day of ~~September~~ <sup>October</sup>  
AD 1867. Witness my hand & Notarial  
Seal,

J. Cars Haddon  
Notary Public



967

Lillian P. Clark  
by her next friend  
Duncan + Clark

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The Board of Directors  
of the Independent  
District Township  
of the City of Muscatine

Petition,  
Mandamus

Filed Oct. 9/67  
D. W. Sawyer  
By Henry Sawyer dep.

Richard Lusk  
for P. G. G.

Susan B. Clark  
 by her next friend  
 Alexander Clark

In the District Court  
 of said County,

The Board of Directors  
 of the District Sp. of  
 the City of Muscatine

vs  
 Defendant,

Now comes the said Plaintiff  
 by her attorneys Richmond Carskaddon  
 and appearing to seek relief from  
 of the said Defendants as is contained  
 in the several Third & Fourth Counts on  
 decisions thereof, for reason that it  
 appears on the face of the same that  
 they do not state facts sufficient to  
 constitute a defense to Plaintiff's  
 action. The Plaintiff assigns the following  
 grounds of assignment, to wit:

1 The facts alleged in said 2<sup>d</sup>, 3<sup>d</sup> & 4<sup>th</sup>  
 counts are insufficient, because  
 the Defendants have no authority to  
 compel or require the Plaintiff to  
 attend a School that is maintained  
 especially for the colored youth of said  
 District, & none other.

2

The Defendants have no warrants in law for the maintenance of such separate & exclusive school.

3

The Defendants have no legal right to exclude the Plaintiff from said Grammar School No. 2 on account of her color.

4

The Defendants have no legal right to make the color of the pupil a test of the right of admission to any public school of said District.

5

The facts alleged in said 3<sup>d</sup> Count are insufficient, because it appears from said answer that the sects have the power, & it is their duty to provide sufficient schools for the proper instruction of all the youth of said District; and -

6

The argument of inconvenience, is no answer to the requirements of the law.

7

The matters alleged in said 4<sup>th</sup> Count are insufficient, because "public

"sentiment" cannot prevail over the legal right of the Plaintiff; nor can Defts justify their denial of such right by pleading such "sentiment".

8.

The custom in said 4th Count alleged is not immemorial; and is obnoxious to the law.

Wherefore Petff prays Judgment  
do

Richmond Carstensen  
Atty for Petff