

the positive duty is enjoined of maintaining these separate schools under the same general regulations as to management, usefulness and efficiency. Virginia Code, sec. 680. All teachers are required to hold teaching certificates in accordance with the rules of certification of the State Board of Education. Virginia Code, ch. 33, sec. 660 and ch. 35, sec. 786. White and Negro teachers must meet the same requirements to receive teachers certificates from the Board of Education and upon qualifying are issued identical certificates.

The allegations of the complaint as to discrimination, which are denied in the answer, but which must be taken as true on the motion to dismiss, are as follows:

"11. Defendants over a long period of years have consistently pursued and maintained and are now pursuing and maintaining the policy, custom, and usage of paying Negro teachers and principals in the public schools of Norfolk less salary than white teachers and principals in said public school system possessing the same professional qualifications, certificates and experience, exercising the same duties and performing the same services as Negro teachers and principals. Such discrimination is being practiced against the plaintiffs and all other Negro teachers and principals in Norfolk, Virginia, and is based solely upon their race or color.

"12. The plaintiff Alston and all of the members of the plaintiff association and all other Negro teachers and principals in public schools in the City of Norfolk are teachers by profession and are specially trained for their calling. By rules, regulations, practice, usage and custom of the Commonwealth acting by and through the defendants as its agents and agencies, the plaintiff Alston and all of the members of the plaintiff association and all other Negro teachers and principals in the City of Norfolk are being denied the equal protection of the laws in that solely by reason of their race, and color they are being denied compensation from public funds for their services as teachers equal to the compensation provided from public funds for and being paid to white teachers with equal qualifications and experience for equivalent services pursuant to rules, regulations, custom and practice of the Commonwealth acting by and through its agents and agencies, the School Board of the City of Norfolk and the Superintendent of Schools of Norfolk, Virginia.

"13. Plaintiff, Melvin O. Alston, has been employed as a regular male teacher by the defendants since September, 1935, and is