

1650 ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS

ited." Because the primary responsibility for desegregating staff rests with the school board, the Court afforded the school board an opportunity to make its own proposal to the Court on faculty desegregation. But the Court admonished the school board that it must make definite and substantial progress. The Court stated:

Several principles must be observed by the board. Token assignments will not suffice. The elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date. The plan must contain well defined procedures which will be put into effect on definite dates. The board will be allowed ninety days to submit amendments to its plan dealing with staff employment and assignment practices.

The district courts have also emphasized recently the important role that teacher desegregation plays in making free choice plans effective. For example in *Kier v. County School Board of Augusta County, Virginia*, 249 F. Supp 239, 245-246 (W.D. Va., Jan. 5, 1966) the court stated:

The defendants, by the segregation of teachers, continue to maintain three clearly-delineated Negro schools. "[T]he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a 'colored school' just as certainly as if the words were printed across its entrance in six inch letters." . . .

Freedom of choice, in other words, does not mean a choice between a clearly delineated "Negro school" (having an all-Negro faculty and staff and a "white school" (with all-white faculty and staff). School authorities who have heretofore operated dual school systems for Negroes and whites must assume the duty of eliminating the effects of dualism before a freedom of choice plan can be superimposed upon the pre-existing situation and approved as a final plan of desegregation. It is not enough to open the previously all-white school to Negro students who desire to go there while all-Negro schools continue to be maintained as such. Inevitably, Negro children will be encouraged to remain in "their school," built for Negroes and maintained for Negroes with all-Negro teachers and administrative personnel. This encouragement may be subtle but it is none the less discriminatory. The duty rests with the School Board to overcome the discrimination of the past and the long established image of the "Negro school" can be overcome under freedom of choice only by the presence of an integrated faculty. (Citation omitted).

Some have argued that Section 604 of the Civil Rights Act of 1964 bars the Office of Education from taking any action with regard to teacher desegregation. Section 604 provides:

Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

The Senate added Section 604 to the Act to satisfy the objection, stated in the House Minority Report (House Report No. 914, 88th Congress, First Session, p. 69), that under section 601, a person, such as a farmer or a banker, could be barred from Federal agricultural or banking programs if he hired only persons of one particular race. It had not been the purpose of Title VI to reach discrimination against persons who are not the intended beneficiaries of a particular Federal assistance program. The Attorney General explained the administration's position in a letter, dated April 29, 1964, to Senator Cooper, which the Senator inserted in the Congressional Record.

Question. Would section 602 cover an employer who receives funds under a Federal program, and who discriminates in his employment practice?

Answer. Generally, no. Title VI is limited in application to instances of discrimination against the beneficiaries of Federal assistance programs, as the language of section 601 clearly indicates. Where, however, employees are the intended beneficiaries of a program, title VI would apply. Thus, for example, creation of job opportunities is one of the major purposes of the accelerated public works program. Hence construction employees would be