Obviously, a school system which has adopted a free choice desegregation plan, but which is making little or no progress in the elimination of its dual school system, is not satisfying its constitutional obligation, as defined by the decisions of the Federal courts, to desegregate its schools. Just as obviously, the Commissioner would not be satisfying his obligation under Title VI and the Regulation if he were to determine that such a plan is adequate to carry out the purposes of Title VI. In several opinions, the courts have expressed the view that in some circumstance, free choice plans may not be an effective means of desegregating schools. The courts have stated that if experience shows that a plan is ineffective, the plan should be modified to correct whatever problems may exist.

Thus in the *El Dorado* case, the court stated:

> Even though the "freedom of choice" has been recognized by the H.E.W. regulations as one method of achieving integration and also has been recognized and approved by some court decisions, it is still only in the experimental stage and it has not yet been demonstrated that such a method will fully implement the decision of Brown and subsequent cases and the legislative declaration of [Section 601] of the Civil Rights Act of 1964. Both decisional and statutory law positively and affirmatively call for school districts set upon a racially nondiscriminatory basis. The "freedom of choice" plan is treated in the Bradley dissent, supra, as "only an interim measure, the adequacy of which is unknown." However, since this method could prove practical in achieving the goal of a nonsegregated school system, it should be allowed to demonstrate its efficacy to afford the constitutional guarantees which plaintiffs are entitled to as a matter of right. We, therefore, find that the "freedom of choice" plan is a permissible method at this stage. (352 F. 2d at pages 20–21)

And in the *Greensville County* case, the court declared that a freedom of choice plan may be invalid. The pertinent part of the opinion states:

> This circuit has recognized that local authorities should be accorded considerable discretion in charting a route to a constitutionally adequate school system. Freedom of choice plans are not in themselves invalid. They may, however, be invalid because the "freedom of choice" is illusory. The plan must be tested not only by the manner in which it operates to provide opportunities for a desegregated education. In this respect operation under the plan may show that the transportation policy or the capacity of the schools severely limits freedom of choice, although provisions concerning these phases are valid on their face. This plan, just as the Richmond plan approved in *Bradley*, is subject to review and modification in the light of its operation.

It is clear therefore that the effectiveness of a free choice plan must be considered by the Commissioner in determining whether a school system is in compliance with Title VI. The percentages stated in the guidelines do not provide a rigid rule for the degree of progress required of each school district. They do, however, provide a guide to the Office of Education and the school district as to what, in general, might be considered reasonable progress. In this same section, there is an indication of what might be done in the event there is a substantial deviation from these expectations.

VII

In conclusion, the decisions of the Federal courts establish that local school officials who have in the past maintained separate schools for Negro and white children are under a constitutional compulsion to provide a single desegregated school system for all children. The responsibilities which school officials who are desegregating their school systems voluntarily must assume in order to qualify for Federal assistance may not, if the purposes of Title VI are to be carried out, be any less than the responsibilities imposed on school officials by the courts in recent school desegregation decisions. The guidelines were issued to inform school officials of what those responsibilities are and are in accord with those decisions. If school systems assuming a lesser degree of responsibility were permitted to receive Federal assistance, the purposes of Title VI would be thwarted.

STATEMENT OF HAROLD HOWE II, U.S. COMMISSIONER OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and members of the committee, in 1954, more than a decade ago, the Supreme Court declared segregated public schools to be unconstitutional. The Court concluded that segregated education is inherently unequal, and that "in the field of public education the doctrine of separate but equal has no place."