

1660 ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS

ployees as beneficiaries (i.e., their employment being the benefit) from discrimination with respect to practices applied to them.

This is demonstrated by the express language which makes section 604 inapplicable "where a primary objective of the Federal financial assistance is to provide employment." Moreover, the legislative history indicates that the Congressional concern which led to section 604 related to situations where the employment could not be identified with possible discrimination against beneficiaries of the programs receiving Federal financial assistance.⁵

The principal thrust of title VI is to eliminate discrimination against the beneficiaries of Federal financial assistance, other than as employees, as set out in section 601. The Civil Rights Act of 1964 is highly remedial legislation.⁶ Where provisos and exceptions such as section 604 are susceptible to alternative constructions, they should be read so as to avoid defeating the primary purpose of the Act.⁷

Where, as the decisions cited above indicate, an employment practice operates not only as a discrimination upon the students on the ground of race, color, or national origin but also as a restriction upon their exercise of free choice, section 604 does not limit the Commissioner's authority to act as described above any more than it limits his authority to object to a desegregation plan should a school adopt an employment practice of denying promotions to teachers who fail to discourage Negro students from choosing white schools.

It is, therefore, clear that section 604 does not limit the Commissioner's authority to prevent discrimination against students, even where the discrimination is a result of staff employment practices.

3. If the Commissioner concludes that further steps would be ineffective or fail to remedy the defects in the operation of a free choice plan, may he require that the school system elect a different type of desegregation plan than free choice?

Under section 80.4(c), the Commissioner has a responsibility to require changes in a desegregation plan if he determines that the plan is not adequate to accomplish the purposes of title VI and the Regulation. If he determines that the situation in a given school system is such that a free choice plan will not be adequate he has no option but to require, for continued compliance, a type of plan which he can determine will be adequate.

U.S. SENATE.

Washington, D.C., April 5, 1966.

HON. HAROLD HOWE II,
Commissioner of Education,
Department of Health, Education, and Welfare, Washington, D.C.

DEAR DR. HOWE: Enclosed for your consideration is a letter dated April 1, addressed to me by Mr. Leland Stratton, President of the Board of Education of the Public Schools in Stuttgart, Arkansas. I have received similar letters from the School District in Texarkana, Arkansas, and the Board of Education in Arkansas City, Arkansas. I have also reviewed your revised statement of policies for school desegregation plans and the several auxiliary documents which participating school systems are required to sign, publish, or mail to families of students in the system.

In order that I may respond to these letters, I would appreciate receiving from you: (1) a discussion of the ways in which the new guidelines may be different from the guidelines followed by these school systems in 1965; (2) an explanation of the reasons for and the authority for these changes; and (3) your specific comments upon the numbered assertions contained in the letter addressed

⁵ Cf. Minority Report in House Report No. 914, p. 69 (88th Cong., 1st Sess.) with 110 Cong. Rec., pp. 6545, 12720, 12714.

⁶ "... Congress, as well as the two Presidents who recommended the legislation, clearly intended to eradicate an unhappy chapter in our history." *Hamm v. City of Rock Hill*, 379 U.S. 306, 315 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964). See also House Report No. 914, 88th Cong., 1st Sess., p. 18; Id., Part 2, p. 2: "But this bill can and will commit our Nation to the elimination of many of the worst manifestations of racial prejudice."

⁷ *Miller v. Robertson*, 266 U.S. 243, 248 (1924); Cf. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954); *Interstate Gas Co. v. Power Commission*, 331 U.S. 682, 691 (1947); *United States v. Seaboard*, 285 U.S. 518 (1932). See memorandum, June 10, 1965, Laurence Davis to General Counsel, "Civil Rights Act; Dismissal of Negro schoolteachers."