

and factual basis for finding the Tate County desegregation plan not adequate in the light of this provision, and in view of the fact that 19 Negro students were to attend formerly all-white schools this year under the free choice procedures implemented there.

The answer to this question is necessarily based on the conclusions given above in response to the first question. The quoted phrase in the definition of "desegregation" in Title IV comes from one of the amendments Senator Humphrey was discussing when he explained that the bill was not intended to require action to correct the fortuitous racial imbalance found in the neighborhood schools of such districts as Gary, Indiana.

With respect to de jure segregated districts, the Commissioner of Education is legally authorized to determine the adequacy of voluntary desegregation plans "to accomplish the purposes of the Act" as a condition for the extension of Federal financial assistance. This authority is conferred by § 80.4(c)(2) of this Department's Regulation (45 CFR Part 80) issued as required by § 602 of the Act, by the Secretary with the approval of the President. The Regulation, and its special provision exempting the dual-structure school districts in the Nation, such as Tate County, from the immediate impact of otherwise directly applicable nondiscrimination requirements, are both discussed below in connection with other questions raised by the Senator.

Assuming it to be correct that the definition of "desegregation" in Title IV was intended to pervade Title VI, an assumption contrary to the express working of the definition itself, nothing contrary to that provision was involved in the advice given by letter to the Tate County school officials last fall that their free choice desegregation plan, as it has operated thus far, cannot "reasonably be considered adequate to accomplish the purposes of the Civil Rights Act." The fact is that the 19 Negro students attending formerly all-white schools this year under the free choice plan constitute less than 1% of the 2,489 Negro students enrolled in the system. In *Davis v. Board of School Commissioners of Mobile County*, 364 F. 2d 896 (5th Cir. 1966), Mobile's desegregation plan was held to fall short of legal requirements in several respects. "Principal among these," said the Fifth Circuit, "is the fact that even as to those grades which, under the plan, have actually become 'desegregated' there is no true substance in the alleged desegregation." 364 F. 2d at 901. Only 39 Negro students, less than two-tenths of one per cent of the total, had been attending the otherwise all-white schools.

There is thus an ample factual and legal basis for a finding under the Title VI Regulation that the Tate County plan has not been operating adequately in terms of student desegregation. In this connection, however, Senator Stennis further asks what evidence there can be of discrimination in the administration of Tate's free choice plan, referring to the "unknown motives" of all students who chose "to remain at their accustomed schools." This part of the question also has key legal aspects.

The Tate County School System continues to maintain virtually unchanged the segregated faculties of the dual school structure. Only two of 144 staff members are serving in desegregated assignments full-time, with part-time desegregated assignments no more significant. Otherwise, the indicia of the dual school structure remain virtually unaffected under the administration of Tate County's desegregation plan. There has been no effective assumption by the local officials of their constitutional responsibility to eliminate illegal segregation.

However valid a free choice plan may be in the abstract, the choice of schools cannot be said to be truly free as long as the school system continues to designate its various schools as actually intended for students of one race or the other by the maintenance of completely or almost completely segregated faculties, contrary to constitutional requirements.

In considering the continuing discriminatory impact on students under a free choice plan resulting from the school district's failure to make progress in faculty desegregation, the Court of Appeals for the Eighth Circuit has held:

The age old distinction of "white schools" and "Negro schools" must be erased. The continuation of such distinctions only perpetrates [sic] inequality of educational opportunity and places in jeopardy the effective operation of the entire "freedom of choice" type plan. *Clark v. Board of Education of the Little Rock School District*, Civil Action No. 18,368 (8th Cir. December 15, 1966) (Slip opinion, p. 14).