By the time the Civil Rights Act was being debated nine years later, the courts were beginning to require positive steps toward reallocation of staff as a part of school desegregation plans, where this had not already been achieved voluntarily. Senator Humphrey cited one such case, *Braxton* v. *Board of Public Instruction of Duval County*, 326 F. 2d 616 (5th Cir. 1964) in commenting on the effect of Title VI on public schools:

> [T]he Commissioner might also be justified in requiring elimination of racial discrimination in employment or assignment of teachers, at least where such discrimination affected the educational opportunities of children. 110 Cong. Rec. 6545 (1964).

This was prior to the inclusion of § 604 in the bill. When it came to be discussed, Senator Humphrey stated that § 604 "is in line with the provisions of Section 602 [which effectuates the policy of § 601] and serves to spell out more precisely the declared scope of coverage of the Title." 110 Cong. Rec. 12720. Elsewhere in the same speech he stated, "We have made no changes of substance in Title VI." 110 Cong. Rec. 12714. It seems clear, then, that § 604 was not intended to exempt school districts from meeting requirements for faculty desegregation, as such desegregation bears on the rights of students, in demonstrating eligibility for continued Federal financial assistance under the nondiscrimination requirements of § 601.

4. LACK OF PRESIDENTIAL APPROVAL UNDER § 602 OF THE SCHOOL DESEGREGATION GUIDELINES

The fourth area of concern expressed in the Senator's letter relates to the validity of the Statement of Policies or "guidelines" for school desegregation plans under Title VI, issued by the Office of Education. Senator Stennis expresses the view that under § 602 of the Act, the guidelines are not valid without specific Presidential approval.

Each Federal department and agency is required by § 602 to effectuate the nondiscrimination policy of § 601 by issuing "rules, regulations, or orders of general applicability," which, it is specified, will not become effective "unless and until approved by the President." This Department's Regulation was issued as required by § 602 with the approval of the President, and it became Part 80 of Title 45, Code of Federal Regulations. This is the regulation of general applicability contemplated by § 602. It sets forth, among other things, substantive nondiscrimination requirements in § 80.3 and prescribes methods of compliance with these requirements in § 80.4, all to demonstrate eligibility for Federal financial assistance.

Under § 80.4 a system of pre-grant assurances of nondiscrimination is set up. This arrangement was designed, among other things, to obviate the need that would probably otherwise arise for a pre-grant review of the practices of an applicant for any class of assistance available from the Department. Such a system of assurances is in accordance with Congressional understanding of suitable rule-making by Federal agencies under § 602. See the statements by Senator Pastore at 110 Cong. Rec. 7059 (1964) and Senator Ribicoff, id. at 7066.

Under the Regulation, the typical method of assuring compliance with the requirements of § 80.3 is set out in § 80.4(a). An assurance of full and immediate compliance with § 80.3 is clearly contemplated, and the vast majority of all applicants for assistance from this Department have appropriately filed such assurances, including over 23,000 public school districts throughout the Nation. Such assurances are almost always provided by filing HEW Form 441, issued for the purpose by the responsible Department officials, including the Commissioner of Education, in accordance with § 80.4(a).

In preparing the Regulation, however, it was recognized that a small minority of public school districts, less than 10% of the Nation's total, were not in a position to file the standard assurance of full and immediate compliance with the nondiscrimination requirements under the Act. These are the districts that have not eliminated the racial discrimination resulting from operating a dual structure of schools for students of different races. At the time the Act was passed, such districts were found almost exclusively in only 17 States, and constituted less than half the total number of school districts even in those States.

Although it was realized that these relatively few school systems could not meet the generally applicable nondiscrimination requirements under the Act, it was the Congressional understanding that they would nevertheless be eligible for Federal assistances "if reasonable steps were being taken in good faith to end