

have under the Act to deal with problems of fortuitous de facto racial isolation. Under the Act and Regulation, however, the Commissioner has authority for his requirement that all school districts provide reports on the racial composition of their schools, with respect to both students and faculty, and there is likewise authority for the program to secure the elimination of any practices found in single-structure districts under which students are subjected to discrimination prohibited by the Act.

But with regard to purely de facto segregation, even the courts are not in agreement as to the requirements under the Constitution in such cases. As the discussion above shows, the *Bell* case holds that a school board has no duty to desegregate as long as it did not deliberately bring about segregation in the first place. A number of other cases, however, hold squarely to the contrary. See especially *Barksdale v. Springfield School Committee*, 237 F.Supp. 543 (D. Mass. 1965), vacated 348 F.2d 261 (1st Cir. 1965). See also Wright, "Public School Desegregation: Legal Remedies for De Facto Segregation," 40 N.Y.U. L. Rev. 285 (1965) and Fiss, "Racial Imbalance in the Public Schools: The Constitutional Concepts," 78 Harv. L. Rev. 564 (1965).

The same considerations apply to the Senator's question with respect to transportation. The particular provision of the guidelines he quotes is from §181.51, which is intended to inhibit any limitations on free choice that might arise from lack of transportation in a district undergoing desegregation to eliminate the dual structure of schools. To apply such a policy in a single-structure bi-racial district would pre-suppose first that the district had adopted, or could and should be required to adopt, an open enrollment policy backed by a transportation program to support it. There is nothing definitive in constitutional, statutory or case law that would require such policies, and there is considerable authority to the effect that a school district cannot be required to adopt them. It has been held, however, that school boards do not lack the authority to adopt such policies on their own initiative, and some State statutes require them to do so. In any event, single-structure districts do not have the dual bus systems commonly found in those districts still operating substantially under the dual structure, where some students are often bussed away from their neighborhoods or past nearby schools to more distant segregated schools.

Senator Stennis goes on to consider certain provisions of both the 1965 and 1966 guidelines, and concludes that they "constitute a discriminatory application of the law." He cites a statement by Senator Pastore commenting on the rules and regulations to be promulgated pursuant to §602, in which Senator Pastore said such rules must be the same for Rhode Island as for Mississippi. 110 Cong. Rec. 7059 (1964).

Senator Stennis here questions those provisions of the original and revised guidelines relating to the filing of full and immediate assurances of compliance. The Senator is concerned because he believes these provisions to mean that school districts in the South were not or are no longer permitted to file HEW Form 441, the assurance of compliance provided under §80.4(a) of the Regulation to effectuate the non-discrimination requirements of §80.3.

Such is not the case. Almost 2,800 districts in the 17 Southern and Border States filed 441 assurance forms in 1965 which were accepted as the proper basis for extending Federal assistance. A fair number of these, although not a majority, were bi-racial districts that had previously completely eliminated all characteristics of the dual school structure. They have since been joined by some 200 other districts, which implemented desegregation plans in 1965-66 or 1966-67 that brought about the complete elimination of the indicia of the dual school structure. This is the ultimate goal and purpose of all acceptable desegregation plans, and the Office of Education should continue to encourage and assist school districts to achieve this goal expeditiously.

Both the original and revised guidelines constitute statements of policy on voluntary school desegregation plans. Accordingly, only brief reference is made in the beginning of each (Part III of the 1965 guidelines and §181.5 of the 1966 guidelines) to school systems without the dual structure. While these references may thus have led to some confusion, the full policies and requirements respecting regular assurances of compliance are set out in the Regulation, and in explanatory material issued concerning Form 441.

If these policies and requirements are understood, it is hard to see how the Title VI Regulation can be considered less than "broad in scope" or in any other way out of conformity with the understanding expressed in Senator Pastore's