

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS 1623

Again, may I urge you to transmit this memorandum to local educational agencies in your State and to establish appropriate procedures for them to follow with respect to future Title I applications and amendments to applications. Please let us know how many copies you need for this purpose.

I would appreciate hearing from you concerning any problems you may have in implementing these provisions in your State.

MEMORANDUM FROM MR. LOUIS J. MCGUINNESS TO MISS CAROL HERZMAN—TITLE I ESEA (OFFICE OF EDUCATION), WHICH LIST, BY STATE, THE NUMBER OF PRE-SCHOOL PROGRAMS CONDUCTED WITH TITLE I FUNDS

We apparently do not have the kind of data in DCE which will satisfy the Perkins Committee request. About the best we can do is provide them with the results of the 1966 summer Title I survey covering all LEA's with 1200 students or more (these LEA's have 89% of the public school children). This survey obtained information on the number of preschool programs and kindergarten programs utilizing Title I funds last summer. We have extracted out this information on the States that would be involved and it is attached to this memo.

I discussed the segregation problem with Mr. David Seeley today and with some of his top staff—they can be of only slight help to us. They lack data on this subject just as we do. As you know, we have published two different guideline memoranda on the subject of desegregation for the purpose of attempting to force integration in Title I summer programs. Copies of these two memoranda are attached. I have also discussed the segregation problem with both Al White and Paul Miller and they too lack precise data on segregation in Title I programs for their respective States. In effect, we have to consider a program in compliance if the Equal Educational Opportunity office declares a given LEA in compliance. Practically speaking, we are forced to rely on public complaints, which have been very few.

Regarding Item #3, the purported shift from OEO Head Start funding to ESEA funding—this is again an area where our data are inadequate. We do not know anything about this with any degree of certainty. It may be possible for the Committee to gather this information from OEO sources. It may also be possible for us to gather "shift" data from State Title I coordinators.

MEMORANDUM

MARCH 23, 1967.

To: Carol Herzman, Program Officer.

From: Louis McGuinness, Assistant Chief, Program Development Branch.

The following table, containing information extracted from a U.S. Office of Education survey sent to 6400 school districts with an enrollment of at least 1200 students (such school districts serving 89% of the nation's public school pupils), shows the number of school districts in the South who reported having Title I summer school programs serving prekindergarten and kindergarten children.

INFORMATION ON THE AMOUNT OF FUNDS AVAILABLE FOR THE ADMINISTRATION OF TITLE VI FOR SCHOOL DESEGREGATION FOR EACH OF THE LAST THREE FISCAL YEARS

1. Dollar amount for Titles VI and IV, salaries and expenses :

Office of Education (equal educational opportunities program)

	1966	1967	1968 request
Title VI.....	\$109,000	\$3,434,000	\$5,534,000
Title IV.....	1,134,000	1,493,000	1,900,000
Total.....	1,243,000	4,927,000	7,434,000

2. Number of Civil Rights positions prior to end of fiscal year 1966 :

Title VI: 70 (Office of Education, Title VI Unit).

Title IV: 90.

SUMMARY OF THE BASIS AND GENERAL CONTENT OF THE ECONOMIC
OPPORTUNITY AMENDMENTS OF 1967*General*

The Economic Opportunity Amendments of 1967 consist of a section authorizing fiscal year 1968 appropriations for various Economic Opportunity Act programs, and three titles. Only title I includes amendments to the Economic Opportunity Act itself. Title II would establish a program to aid in the provision of summer camp opportunities for disadvantaged children, pursuant to a recommendation of the President in his recent Message on Children and Youth. Title III would provide certain criminal sanctions to cover cases of embezzlement, willful misapplication, theft or kickbacks involving financial assistance funds under the Economic Opportunity Act.

Authorizations

Section 2 of the bill would authorize appropriation of \$2.06 billion for programs under the Economic Opportunity Act for fiscal year 1968, including \$874 million for carrying out the Job Corps and work-training programs under title I of the Act, \$1.022 billion for community action programs under title II, \$47 million for the rural loan, and migrant and seasonal farm worker programs under title III, \$70 million for work-experience programs under title V, \$16 million for administration and coordination activities under title VI, and \$31 million for VISTA and volunteer programs under title VIII.

Amendments to the Economic Opportunity Act

Title I includes a large number of amendments to the Economic Opportunity Act. These are sufficiently numerous and comprehensive that—partly for technical reasons and partly for greater clarity—major parts of the Act, including Job Corps and Community Action, have been rewritten.

Although the amendments are substantial both in number and in anticipated over-all impact, they would not change the fundamental character of existing programs. To the contrary, they are predicated on the view that those programs are—and have proved themselves to be—sound and effective in basic concept. Yet no one would pretend that, today, the several programs are simply an extension of what they were in the beginning. They have, to some extent, developed along unanticipated paths: they have encountered some unforeseen problems.

Policies once tentative, but of major importance, have been tested. And the experience, not only of the Office of Economic Opportunity, but of the State and local agencies, and many private groups that have participated in these programs is now sufficient to permit decisions governing long-run program direction that were not possible three years ago. Cumulatively, the adjustments suggested by these considerations add up to a law which will be in some respects less useful than the present Act for the processes of trying, testing and learning. But it will be a law which, while still retaining flexibility for needed innovation, is better suited to the complexities of effective and efficient administration.

Many of the amendments are technical. Some, such as provisions defining the structure and powers of community action boards,¹ are designed to deal with specific problems peculiar to a particular program. There are, however, several features which recur repeatedly. Among these are—

1. *A better focusing of programs on the goal of helping people to help themselves to become self-sufficient.*—The Economic Opportunity Act represents a national commitment to the elimination of poverty. The needs of the poor are, however, so great and so extensive that it is frequently difficult to maintain a focus upon the causes of poverty as distinguished from its symptoms. Yet for Economic Opportunity Act programs that focus is critical. The bill undertakes to sharpen this focus in a number of ways. For example—

(a) It contains a new employment program designed to reach thousands of unemployed or underemployed slum residents many of whom are at best only marginally employable, and to provide them, for the first time, with the kind of intensive help and support needed to enable them to secure and hold the substantial number of meaningful jobs that today exist or can be made available in many urban areas.²

¹ New title II (sec. 103 of the bill), sec. 211.

² New title I-B (sec. 102 of the bill), sec. 123.

(b) It specifically directs the complex of activities represented by community action to one over-all objective—the promotion of full family and individual self-sufficiency.³

(c) It expands the concept of the migrant and seasonal agricultural worker program, currently stated in terms of assistance in meeting housing, sanitation, education and day care needs, to include the assistance required to help these workers and their families cope with technological changes which are cutting deeper and deeper into even their present inadequate livelihood.⁴

(d) It revises the formula in the present law relating to the treatment under the welfare laws of persons in training or work-training, so as to provide—and test—a new system of incentives under which public assistance recipients would be encouraged not only to work but to push their earnings up to the point where they will get out of poverty.⁵

2. *Strengthening of fiscal and administrative controls and standards.*—As Economic Opportunity Act programs mature, and as agencies responsible for those programs gain operating experience, they should be expected to meet increasingly high standards of efficiency and technical competence.

This objective holds true of all programs under the Act. The problems involved are, however, probably most complex in the case of community action. These local programs may include a wide range of projects and activities; they may involve numerous participating agencies; the community action agency itself is likely to be relatively new; and there are manifest difficulties in developing personnel systems which maintain necessary merit features without curtailing job opportunities for poor people who commonly lack the formal education and training required to satisfy traditional job entrance and promotion requirements. Yet for all these complications, it is clear that if community action agencies are to perform effectively, and measure up to their responsibilities, they must aim for administrative standards which are not only adequate but if possible distinctly above those generally acceptable in the community.

The bill includes a substantial number of amendments which are basically designed to improve or tighten administrative standards consistent with the needs and growing technical capabilities of the several programs. These range from specific evaluation requirements which the bill would attach to the Job Corps, work-training, and community action and migrant programs,⁶ to limitations on Job Corps enrollee allowances and the addition to VISTA and the newly authorized part-time volunteer program of safeguards to assure that fees are not charged for volunteer services and that volunteers do not displace employed workers.⁷

In the case of community action, the bill includes an expanded audit and fiscal responsibility provision which would require annual operating audits, as well as the preliminary audits now prescribed; provide for the handling of audit disallowances; and require specific controls over the rate of local agency expenditures.⁸ The bill sets forth evaluation requirements, already mentioned above, which cover agency efficiency as well as program effectiveness, and which contemplate appointment of committees which could be composed of business and professional men to advise agencies having particular problems.⁹ And it expands and focuses existing program criteria so as to establish for each community action agency a specific obligation to achieve and adhere to standards of organization, management and administration that will meet the objective of providing assistance efficiently and free of any taint of partisan political bias or personal and family favoritism. This obligation would be implemented through rules governing a variety of specific potential problem areas, including staff accountability; salaries, salary increases, travel and per diem allowance and other employee benefits; hiring, retention and promotion standards; personal and financial conflicts of interest; and partisan political activities.¹⁰

³ New title II (sec. 103 of the bill), sec. 201.

⁴ New title III-B (sec. 104 (c) of the bill), secs. 311 and 312.

⁵ New title VII (sec. 106 of the bill).

⁶ New title I-A (sec. 101 of the bill), sec. 113(a); new title I-B (sec. 102 of the bill), sec. 130; new title II (sec. 103 of the bill), secs. 215 and 222(d); new title III-B (sec. 104 (c) of the bill), sec. 314.

⁷ New title I-A (sec. 101 of the bill), sec. 109; new title VIII (sec. 107 of the bill), sec. 834. See also the criminal provisions in title III of the bill.

⁸ New title II (sec. 103 of the bill), sec. 243 (c) and (d).

⁹ New title II (sec. 103 of the bill), sec. 215.

¹⁰ New title II (sec. 103 of the bill), sec. 214.

It should be noted that, in addition to provisions which directly prescribe administrative standards, the bill includes a variety of features which should help in eliminating red tape, bolstering administrative resources, particularly in rural areas, or otherwise facilitating greater efficiency in operations. Some of these are described below in connection with amendments relating to the delineation of program purposes, State participation, increased private involvement, and improved coordination.

3. *A clearer delineation of specific program objectives.*—For all its apparent generality, the Economic Opportunity Act is in fact a complex enactment establishing a number of major programs which are themselves complex—complex in what they seek to do and in the number and variety of problems with which they must deal. There has been—inevitably—debate over the precise paths these programs should follow. This is not undesirable to the extent it involves shaping a program to the realities of what *can* be done as opposed to theoretical and untested notions of what should be done. But unnecessary debate can confuse needlessly, impair effectiveness, result in undue delays and contribute to a kind of inefficiency which defies even the best organization chart.

A clearer spelling out of purposes can help minimize this kind of problem. As in the case of improved administration, the problem of program purpose is probably most obvious in the case of community action. For a good local community action program must involve not just one but a number of essential elements: it cannot be all this or that; it must maintain a balance. This is a characteristic easily lost sight of by people seeking, not unnaturally, easy or simple—and sometimes flatly inconsistent—solutions to very complicated problems. One of the objectives of the amendments is to make this characteristic—the need for balance—explicit in the law and, by so doing, to help local agencies to develop programs that will reflect with increasing precision all that the community action concept requires.¹¹

But the spelling out or refinement of purposes or basic program standards is not confined to the community action provisions of the bill. Many parts of the amendments, including for example Job Corps provisions specifying more precisely the group to be served and establishing criteria and objectives for center programs and center community relations,¹² would be similarly characterized. They speak to and are designed to reflect programs which have now moved away from initial experimentation and are acquiring a structure which requires more attention to securing the maximum results from established policies than to what those policies should be.

4. *A greater emphasis on coordination as a means of assisting State and local agencies to overcome specific, practical barriers to more efficient operation.*—The better coordination of all anti-poverty programs has been a basic objective of the Economic Opportunity Act. It is, however, probably too easy to view coordination as something which requires only a few, simple decisions by one or more Federal officials from which all kinds of good and desirable things follow with little additional effort. In practice, coordination is much more apt to involve continuing attention to a lot of hard details, generally uninteresting in themselves, but cumulatively capable of creating real barriers to efficient and cooperative efforts. These barriers are sometimes best seen—as their consequences may be most keenly felt—not by Federal agencies but by people at the State and local level who have ultimate responsibility for translating Federal laws and regulations into measurable and meaningful results.

The coordination and information center provisions of the bill are designed to give greater emphasis to a pragmatic approach that focuses upon the hard, if sometimes grimy, details, and upon the operating problems encountered by State and local agencies in trying to do things a little more effectively and efficiently in the midst of a complicated network of laws, rules, conditions, guidelines and instructions.¹³

In addition—

(a) The Work-training provisions of the bill are designed to make it easier for localities to construct programs that pull together different authorities now scattered in different parts of the Act, without having to secure separate grants or contracts covering the different activities which a project fully responsive to local needs and opportunities may require.¹⁴

¹¹ New title II (sec. 103 of the bill), sec. 201; also, sec. 212(b) of that title.

¹² New title I-A (sec. 101 of the bill), secs. 103, 105, 108(a) and 111.

¹³ New title VI-B (sec. 105(e) of the bill).

¹⁴ New title I-B (sec. 102 of the bill), sec. 122.

(b) The bill contains a provision under which Federal agencies, pursuant to Presidential regulations, may waive and eliminate some of the maze of potentially inconsistent technical requirements with which a local agency may now be saddled when it seeks to put together a single project combining assistance from different Federal sources.¹⁵

(c) The community action provisions of the bill include a specific provision designed to lay the basis for joint action by Federal agencies in helping local agencies engaged in community action programs to overcome problems arising out of diverse Federal requirements and to make longer range plans than are now generally possible.¹⁶

5. *An expanded role for States and State agencies.*—In the development of Federal grant-in-aid programs, there has been a tendency to observe relatively rigid categories: some types of assistance are given only to the States, with no direct dealings between Federal and local agencies; other assistance, to an increasing degree, has been granted directly to local agencies, with no State involvement. Some recent legislation has tended to suggest a more flexible and potentially creative approach. The present Economic Opportunity Act, with its provision for Federally assisted State technical assistance agencies to help local communities develop and administer programs, provides an example of this latter approach.

The bill undertakes to build upon this relatively small but significant base for a cooperative Federal-State-local relationship. It thus contains a number of provisions—particularly in community action—designed to expand the use of State resources and capabilities. These include specific provision for State-operated community action programs serving rural and smaller communities, for State agency operation of community action special purpose programs, for Federal-State evaluation projects, and for joint Federal-State funding of specific projects or programs as a means of promoting the better coordination in the use of Federal community action and State funds.¹⁷ The bill also is designed to make it possible for State technical assistance agencies to play a broader role at the State level than the law now contemplates.¹⁸ Further, it contains provisions designed to afford States a more explicit role in the Job Corps¹⁹ and to invite their help in Federal coordination efforts.²⁰

6. *An expansion of programs in rural areas.*—The bill contains a number of provisions designed to stimulate, facilitate and support the expansion of programs in rural areas. This is one of the objectives sought to be attained through the greater participation of States and State agencies, as described above. An expansion of rural areas programs is also one of the major uses to be made of the additional fiscal year 1968 funds which the bill would authorize—a need which is particularly crucial in view of the impact of reductions in funding for the current year on communities which had not started or only just initiated programs.

The bill further contains provisions designed to focus existing community action authorities more effectively on rural problems; and to encourage the development of joint or common community action projects between urban and rural communities.²¹

It seeks to channel technical assistance efforts under the several work-training programs so that they will be particularly helpful to rural communities in developing meaningful projects taking full advantage of the more flexible authority the bill would provide.²² It would, in addition, provide for an assistant director of the Office of Economic Opportunity who would be charged with responsibility for seeing that rural problems are taken into account in all programs and for developing new programs, procedures and approaches wherever necessary.²³

7. *An increase in opportunities for, and efforts to secure, private individual and organization participation.*—A striking—and in its scope, novel—characteristic of the Economic Opportunity Act is its reliance upon private as well as public effort and resources. The Act reflects, in this respect, two facts: the problem of

¹⁵ New title II (sec. 103 of the bill), sec. 241 (b).

¹⁶ New title II (sec. 103 of the bill), sec. 241 (a).

¹⁷ New title II (sec. 103 of the bill), secs. 213, 222 (b), 222 (d), and 241 (c).

¹⁸ New title II (sec. 103 of the bill), sec. 231.

¹⁹ New title I-A (sec. 101 of the bill), sec. 115.

²⁰ New title II (sec. 103 of the bill), sec. 231; new title VI-B (sec. 105 (e) of the bill), sec. 632 (2).

²¹ New title II (sec. 103 of the bill), sec. 240.

²² New title I-B (sec. 102 of the bill), sec. 128.

²³ Sec. 105 (a) of the bill.

poverty is so large and pressing that its solution requires resources well beyond what public agencies alone can command; and, in the economy of this nation, people who ultimately escape poverty and gain self-sufficiency will do so in most cases through employment which only the private sector can provide.

The bill seeks to provide a basis for expanding private participation still further in a way that takes account of both of these facts. It would, for example, authorize a new urban employment program, specifically designed to operate with an unusual measure of private employer cooperation.²¹ It would also expand the possibilities for including on-the-job training elements involving private employers in other work-training programs.²² In the case of community action, it would specifically recognize the necessity for involving private business, labor and professional groups, not just through community action agency board membership, but also through projects using the capabilities of these groups in activities to help the poor obtain jobs or to make managerial and technical expertise more readily available to neighborhood groups.²³

Finally, the bill contemplates a large increase in private individual citizen participation—in connection with Head Start and child development programs and in a variety of other activities where there is a critical need for the talents and energies of dedicated people. It would, for this purpose, authorize a new part-time volunteer program designed to extend to many thousands of people, young and old alike, opportunities for meaningful and rewarding service in helping the poor to help themselves—opportunities which VISTA, with its requirement for full-time service, can today offer only to a relative few.²⁴

ADMINISTRATION SENDS TO CONGRESS TIGHTENED AND STRENGTHENED ECONOMIC OPPORTUNITY ACT OF 1967

A revised and strengthened antipoverty program for Fiscal Year 1968 is proposed in the Economic Opportunity Act of 1967, submitted to Congress by the Office of Economic Opportunity today.

In effect, a "new" bill has been presented to the Congress. It would:

Establish precise procedures and standards to assure fiscal and administrative controls over all programs, including locally administered community action programs. These include requirements for audits, regulations over the rate of local agency expenditures, evaluation reports, and employment standards.

Establish safeguards against the use of Federal funds for illegal picketing or demonstrations, and against participation by antipoverty employees in any form of direct action in violation of the law, or in partisan political activity.

Expand participation of states in the War on Poverty through expanded use of state agency resources. This includes provision for state-operated community action programs serving rural and smaller communities, and a broader role for state technical assistance agencies. States will be given expanded opportunities for participation in Job Corps, including operation or administration of state-operated programs which carry out the general purposes of Job Corps.

Increase involvement of the chief, locally-elected officials, and business, labor, religious and other private organizations, and individuals.

Establish a new placement system for the Job Corps to provide maximum employment opportunities for enrollees.

Declare as ineligible for Job Corps persons with a record of violent antisocial behavior and require enforcement of standards of Job Corps conduct that give Job Corps Center Directors authority to take appropriate disciplinary action, including dismissal.

Define new Job Corps practices requiring establishment of relationships between the Centers and surrounding communities, including community advisory councils, which will give communities a new voice in center operations.

Tighten regional assignment provisions so that enrollees will go to centers nearest their homes—thus further reducing enrollee costs.

²¹ New title I-B (sec. 102 of the bill), sec. 123.

²² New title I-B (sec. 102 of the bill), sec. 122.

²³ New title II (sec. 103 of the bill), secs. 201(5), 211(a), 212(b)(5).

²⁴ New title VIII (sec. 107 of the bill), sec. 820.

Expand programs in rural areas under direction of a new assistant director charged with implementing all types of antipoverty programs in rural regions.

Draw together diverse work training authorities to make it possible for communities to tailor projects to local needs without the red tape of multiple applications.

Define and strengthen the coordinating authority of the Director of the Office of Economic Opportunity and the Economic Opportunity Council over all antipoverty programs.

The proposed bill requests authorizations adequate to fund many local community action programs which had to be curtailed by last year's Congressional cuts in appropriations.

The proposed \$2.06 billion bill is based on experience gained in two and a half years of antipoverty administration. Amendments and new titles are recommended that will capitalize on the hard lessons learned in this time.

The legislation specifies areas that will be strengthened, spelling them out with exact guidelines and requirements, and codifies areas where the record shows achievement and progress.

The Office of Economic Opportunity, which necessarily reached out and tried many new avenues when the War on Poverty was launched in November, 1964, has, in general, redrawn and redefined its lines of attack according to practical successes attained.

The thrust of the proposed legislation underscores the paramount purpose of the antipoverty effort—that is, making productive citizens and fully participating citizens of all who now live in poverty. Those in poverty total about 32 million men, women, and children, or approximately 10 million family units.

COMMUNITY ACTION

Community action program amendments are aimed at taking all steps possible to help the poor obtain knowledge and skills which are needed to become self-sufficient.

The present provision that one-third of the governing boards of community action agencies must be representatives of the poor is retained. Added are requirements that community action agencies—the locally organized and locally administered antipoverty units—provide an important role for public officials, as well as for representatives of business, labor and other private community leadership groups.

The amendments would expand the means of state participation in community action programs, giving a wider role to state technical assistance agencies and providing that state agencies operate or serve as a conduit of funds for specific programs.

Local governing boards of community action agencies will be required to have effective control over all basic programs, planning, budget and personnel policies. Minimum functions are prescribed for CAAs, and requirements are added for annual operating audits, and administrative and personnel standards are tightened.

There is a provision for appointing committees of local business and professional men to advise the local community agencies. Standards are set for evaluating the effectiveness of the CAA operation.

Methods are described to cut red tape and eliminate duplication where several federal and state agencies are involved in a single project.

WORK AND TRAINING PROGRAMS

Work and Training Program amendments include a new employment program to reach thousands of unemployed or underemployed slum residents. For the first time, it will provide these people—many of them now only marginally employable at best—with intensive assistance needed to get and hold the jobs which exist in urban areas.

The amendment further create a new manpower package which includes Neighborhood Youth Corps and Kennedy-Javits authorities, plus a consolidated Nelson-Scheuer program. They make it possible for communities to deal with one single Federal agency in developing projects that pull together the resources of several Federal programs.

These programs, carried out with assistance from other Federal agencies, would be coordinated by the community action agencies.

On-the-job training with private profit-making employers may be included in projects.

JOB CORPS

The proposed Act spells out provisions for the Job Corps program on which the present law is silent or has only a general provision.

The new legislation details that the program is designed to assist low-income, disadvantaged youth in intensive residential programs, while at the same time contributing to the development of resources and the development and spread of techniques for working with such young people.

Eligibility criteria are amplified, including a provision that the program is designed for young people with the capabilities and aspirations needed to benefit from the program.

Procedures for screening applicants and the placement of youth completing training are spelled out for the first time in the 1967 amendments, based on the experience gained in the first two years of the program.

The sections on screening clearly prohibit selecting a youth for the program unless he can participate successfully in group activities, is not likely to engage in activities disruptive to the center's program for others or its relationships with surrounding communities.

The proposed Act requires arrangement of assistance to youth completing training, in finding employment, returning to school, or undertaking other activities with career potential.

VISTA

VISTA amendments provide for the recently-launched Citizens Corps, which expects to recruit between 50,000 and 100,000 part-time volunteers to work in antipoverty projects in their communities. They also establish as a permanent part of VISTA the demonstration program under which volunteers serve as VISTA Associates during the summer months. More than 2,000 will be recruited for this summer, compared with 500 last year.

There are provisions requiring that all support for volunteers be provided at the lowest possible cost, that volunteers not be used to displace employed workers, and that no agency using volunteers may be paid for the services which they perform.

SUMMER CAMP PROGRAM

The legislation proposes a Summer Camp Program for underprivileged children, under the supervision of OEO in partnership with state and local governments and non-profit organizations. With the funds authorized, the federal government would provide facilities on Federal lands and, in agreement with state and local authorities, on lands under their jurisdiction. It would also make these lands available to public and non-profit organizations which could sponsor children from low-income families and areas.

The legislation contemplates a large increase in private individual citizen participation, in connection with Head Start and child development projects and other activities where there is a need for the abilities of dedicated people.

MATERIAL ON SCHOOL DESEGREGATION POLICIES OF DHEW OFFICE OF EDUCATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

TITLE VI—CIVIL RIGHTS ACT OF 1964 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the

President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

[From the Federal Register, Dec. 4, 1964]

TITLE 45—PUBLIC WELFARE

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 80—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subtitle A 45 CFR is hereby amended by adding the following new Part 80:

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| Sec. | Purpose. |
| 80.1 | Application of this part. |
| 80.2 | Discrimination prohibited. |
| 80.3 | Assurances required. |
| 80.4 | Illustrative applications. |
| 80.5 | Compliance information. |
| 80.6 | Conduct of investigations. |
| 80.7 | Procedure for effecting compliance. |
| 80.8 | Hearings. |
| 80.9 | Decisions and notices. |
| 80.10 | Judicial review. |
| 80.11 | Effect on other regulations; forms and instructions. |
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AUTHORITY: The provisions of this Part 80 are issued under sec. 602, 78 Stat. 252, and the laws referred to in Appendix A.

§ 80.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin,

be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health, Education, and Welfare.

§ 80.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 80.3. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 80.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market. The following programs under existing laws have one of the above objectives as a primary objective:

(a) Department projects under the Public Works Acceleration Act, Public Law 87-658.

(b) Community work and training programs under title IV of the Social Security Act, 42 U.S.C. 609.

(c) Work-study program under the Vocational Education Act of 1963, P.L. 88-210, sec. 13.

(d) Programs listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(e) Establishment of sheltered workshops under the Vocational Rehabilitation Act, 29 U.S.C. 32-34.

The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11114.

(d) *Indian Health and Cuban Refugee programs.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 80.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of surplus real property shall be inserted in the instrument effecting the transfer of any such surplus land, together with any improvements located thereon, and shall consist of (i) a condition coupled with a right to be reserved to the Department to revert title to the property in the event of breach of such nondiscrimination condition during the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, and (ii) a covenant running with the land for the same period. In the event a transferee of surplus real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under subparagraph (1) of this paragraph will be corrected.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the Commissioner may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of

a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 80.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the major programs of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In grant programs which support the provision of health or welfare services, discrimination in the selection or eligibility of individuals to receive the services and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the grantee under the program or, if the grantee is a State, by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 80.3(e).

(b) In the Federally-affected area programs (P.L. 815 and P.L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in programs for more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(d) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(e) In grant programs to assist in the construction of facilities for the provision of health, educational or welfare services assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In the case of hospital construction grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the hospital, and will apply to the entire facility for which, or for a part of which the grant is made, and to facilities operated in connection therewith. In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(f) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(g) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast

services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(h) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishment of the objectives of the Federal assistance program as respects individuals of a particular race, color, or national origin.

§ 80.6 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 80.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 80.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 80.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 80.4.* If an applicant fails or refuses to furnish an assurance required under § 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 80.10(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 80.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 80.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1)

fix a date not less than 20 days after the date or such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 80.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 80.10.

§ 80.10 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such excep-

tions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 80.9(a) a decision shall be made by the responsible departmental official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision of a responsible Department official (other than the Secretary) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

§ 80.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 80.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and regulations issued thereunder, (2) the "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education, and Welfare, and of Labor, 28 F.R. 734, or (3) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 80.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations.

§ 80.13 Definitions.

As used in this part—

(a) The term "Department" means the Department of Health, Education, and Welfare, and includes each of its operating agencies and other organizational units.

(b) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(c) The term "responsible Department official" with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department who by law or by delegation has the principal responsibility within the Department for the administration of the law extending such assistance.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

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(i) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

Effective date. This part shall become effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

Dated : November 27, 1964.

[SEAL]

ANTHONY J. CELEBREZZE,
Secretary of Health, Education, and Welfare.

Approved : December 3, 1964.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS PART APPLIES

Part 1. *Programs other than State-administered continuing programs.*

1. Experimental hospital facilities (sec. 624, Public Health Service Act, 42 U.S.C. 291n).
2. Health research facilities (title VII, part A, Public Health Service Act, 42 U.S.C. 292-292j).
3. Teaching facilities for medical, dental, and other health personnel (title VII, part B, Public Health Service Act, 42 U.S.C. 293-293h; secs. 801-804, Public Health Service Act, 42 U.S.C. 296-296a-c).
4. Mental retardation research facilities (title VII, part D, Public Health Service Act, 42 U.S.C. 295-295e).
5. University affiliated mental retardation facilities (part B, Mental Retardation Facilities Construction Act, 42 U.S.C. 2661-2665).
6. Heart disease laboratories and related facilities for patient care (sec. 412(d), Public Health Service Act, 42 U.S.C. 287a(d)).
7. Municipal sewage treatment works (sec. 6, Federal Water Pollution Control Act, 33 U.S.C. 466e).
8. Loans for acquisition of science, mathematics, and foreign language equipment (title III, National Defense Education Act, 20 U.S.C. 445).
9. Construction of facilities for institutions of higher education (Higher Education Facilities Act, 20 U.S.C. 701-757).
10. School construction in Federally-affected areas (20 U.S.C. 631-645).
11. Educational television broadcasting facilities (47 U.S.C. 390-397).
12. Surplus real and related personal property disposal (40 U.S.C. 484(k)).
13. George Washington University Hospital construction (76 Stat. 83, P.L. 87-460, May 31, 1962).
14. Loan service of captioned films for the deaf (42 U.S.C. 2491-2494).
15. Residential vocational education schools (20 U.S.C. 357).
16. Department projects under the Public Works Acceleration Act (P.L. 87-658).
17. Research projects, including conferences, communication activities and primate or other center grants (secs. 301, 303, 308, 624, Public Health Service Act, 42 U.S.C. 241, 242a, 242f, 291n; sec. 4, Federal Water Pollution Control Act, 33 U.S.C. 466c; sec. 3, Clean Air Act, 42 U.S.C. 1857b).
18. General research support (sec. 301(d), Public Health Service Act, 42 U.S.C. 241).
19. Community health studies and demonstrations (sec. 316, Public Health Act, 42 U.S.C. 247a).
20. Mental health demonstrations and administrative studies (sec. 303(a)(2), Public Health Service Act, 42 U.S.C. 242a).
21. Migratory workers health services (sec. 310, Public Health Service Act, 76 Stat. 592, P.L. 87-692, Sept. 25, 1962).
22. Intensive vaccination projects (sec. 317, Public Health Service Act, 42 U.S.C. 247b).
23. Tuberculosis and venereal disease control projects (current appropriation Act, P.L. 88-605).
24. Air pollution demonstration and survey projects and control programs (secs. 3 and 4, Clean Air Act, 42 U.S.C. 1857b, 1857c).

25. Water pollution demonstration grants (sec. 4(a)(2), Federal Water Pollution Control Act, 33 U.S.C. 466e).

26. Health research training projects and fellowship grants (secs. 301, 433, Public Health Service Act, 42 U.S.C. 241, 289c).

27. Categorical (heart, cancer, air pollution, etc.) grants for training, traineeships or fellowships (secs. 303, 433, etc., Public Health Service Act, 42 U.S.C. 242a, 289c, etc.; sec. 3, Clean Air Act, 42 U.S.C. 1857; sec. 4, Federal Water Pollution Control Act, 33 U.S.C. 466e).

28. Advanced professional nurse traineeships, improvement in nurse training and partial reimbursement to diploma schools of nursing (secs. 805, 806, 821, Public Health Service Act, 42 U.S.C. 296d, 296e, 297).

29. Grants to institutions for traineeships for professional public health personnel (sec. 306, Public Health Service Act, 42 U.S.C. 242d).

30. Grants to schools for specialized training in public health (sec. 309, Public Health Service Act, 242g).

31. Grants for special vocational rehabilitation projects (sec. 4, Vocational Rehabilitation Act, 29 U.S.C. 34).

32. Experimental, pilot or demonstration projects to promote the objectives of title I, IV, X, XIV, or XVI of the Social Security Act (sec. 1115, Social Security Act, 42 U.S.C. 1315).

33. Social security and welfare cooperative research or demonstration projects (sec. 1110, Social Security Act, 42 U.S.C. 1310).

34. Child welfare research, training or demonstration projects (sec. 526, Social Security Act, 42 U.S.C. 726).

35. Research projects relating to maternal and child health services and crippled children's services (sec. 532, Social Security Act, 42 U.S.C. 729a).

36. Maternal and child health special project grants to institutions of higher learning (sec. 502(b), Social Security Act, 42 U.S.C. 702(b)).

37. Maternity and infant care special project grants to local health agencies (sec. 531, Social Security Act, 42 U.S.C. 726).

38. Special project grants to institutions of higher learning for crippled children's services (sec. 512(b), Social Security Act, 42 U.S.C. 712(b)).

39. Demonstration and evaluation projects and training of personnel in the field of juvenile delinquency (Juvenile Delinquency and Youth Offenses Control Act of 1961 (42 U.S.C. 2541, et. seq.)).

40. Cooperative educational research (20 U.S.C. 331-332).

41. Language research (title VI, National Defense Education Act, 20 U.S.C. 512).

42. Research in new educational media (title VII, National Defense Education Act, 20 U.S.C. 541-542).

43. Research, training, and demonstration projects under Vocational Education Act of 1963 (sec. 4(c), 20 U.S.C. 35c(c)).

44. Grants for research and demonstration projects in education of handicapped children (20 U.S.C. 618).

45. Training grants for welfare personnel (sec. 705, Social Security Act, 42 U.S.C. 906).

46. Allowances to institutions training graduate fellows or other trainees (title IV, National Defense Education Act, 20 U.S.C. 461-465; sec. 4, Vocational Rehabilitation Act, 29 U.S.C. 34; secs. 301, 433, etc., Public Health Service Act, 42 U.S.C. 241, 289(c), etc.; sec. 3, Clean Air Act, 42 U.S.C. 1857b; sec. 4, Federal Water Pollution Control Act, 33 U.S.C. 466c).

47. Grants for teaching and the training of teachers for the education of handicapped children (20 U.S.C. 611-617).

48. Training persons in the use of films for the deaf (42 U.S.C. 2493(b)(4)).

49. Training for teachers of the deaf (20 U.S.C. 671-676).

50. Research in the use of educational and training films for the deaf (42 U.S.C. 2493(a)).

51. Operation and maintenance of schools in Federally-affected areas (20 U.S.C. 236-244).

52. Grants for teacher training and employment of specialists in desegregation problems (sec. 405, Civil Rights Act of 1964, P.L. 88-352).

53. Issuance to agencies or organizations of rent-free permits for operation, on Federal property in the custody of the Department, of vending stands for the blind, credit unions, Federal employee associations, etc. (Randolph-Sheppard Vending Stand Act, 20 U.S.C. 107-107f; 45 CFR Part 20; sec. 25, Federal Credit Union Act, 12 U.S.C. 1770; etc.)

54. Higher education student loan program (title II, National Defense Education Act, U.S.C. 421-429).

55. Health professions school student loan program (title VII, Part C, Public Health Service Act, 42 U.S.C. 294; sec. 822-828, Public Health Service Act, 42 U.S.C. 297 a-g).

56. Land-grant college aid (7 U.S.C. 301-329).

57. Language and area centers (title VI, National Defense Education Act, 20 U.S.C. 511-513).

58. American Printing House for the Blind (20 U.S.C. 101-105).

59. Future Farmers of America (36 U.S.C. 271-291) and similar programs.

60. Science Clubs (20 U.S.C. 2 (note)).

61. Howard University (20 U.S.C. 121-131).

62. Gallaudet College (31 D.C. Code, Ch. 10).

63. Hawaii leprosy payments (sec. 331, Public Health Service Act, 42 U.S.C. 255).

64. Grants to schools of public health for provision of comprehensive training and specialized services and assistance (sec. 314(c), Public Health Service Act, 42 U.S.C. 246(c)).

65. Grants to agencies and organizations under Cuban Refugee program (22 U.S.C. 2601(b) (4)).

66. Grants for construction of hospitals serving Indians (P.L. 85-151, 42 U.S.C. 2005).

67. Indian Sanitation Facilities (P.L. 86-121, 42 U.S.C. 2004a).

68. Areawide planning of health facilities (sec. 318, Public Health Service Act, 42 U.S.C. 247c).

69. Training institutes under sec. 511 of the National Defense Education Act of 1958, as amended (20 U.S.C. 491) and under title XI of such Act as added by P.L. 88-665 (20 U.S.C. 591-592).

Part 2. *State-administered continuing programs.*

1. Grants to States for control of venereal disease, tuberculosis, and for public health services (heart, cancer, mental health, radiological health, etc.) (sec. 314, Public Health Service Act (42 U.S.C. 246), and current appropriation act).

2. Grants to States for water pollution control (sec. 5, Federal Water Pollution Control Act, 33 U.S.C. 466d).

3. Grants to States for vocational rehabilitation services (sec. 2, Vocational Rehabilitation Act, 29 U.S.C. 32).

4. Grants to States for projects to extend and improve vocational rehabilitation services (sec. 3, Vocational Rehabilitation Act, 29 U.S.C. 33).

5. Designation of State licensing agency for blind operators of vending stands (Randolph-Sheppard Vending Stand Act, 20 U.S.C. 107-107f).

6. Grants to States for old-age assistance and medical assistance for the aged (title I, Social Security Act, 42 U.S.C. 301-306).

7. Grants to States for aid and services to needy families with children (title IV, Social Security Act, 42 U.S.C. 601-609).

8. Grants to States for aid to the blind (title X, Social Security Act, 42 U.S.C. 1201-1206).

9. Grants to States for aid to the permanently and totally disabled (title XIV, Social Security Act, 42 U.S.C. 1351-1355).

10. Grants to States for aid to the aged, blind or disabled or for such aid and medical assistance for the aged (title XVI, Social Security Act, 42 U.S.C. 1381-1385).

11. Grants to States for maternal and child health services (title V, part 1, Social Security Act, 42 U.S.C. 701-705).

12. Grants to States for services for crippled children (title V, part 2, Social Security Act, 42 U.S.C. 711-715).

13. Grants to States for special projects for maternity and infant care (sec. 531, Social Security Act, 42 U.S.C. 729).

14. Grants to States for child welfare services (title V, part 3, Social Security Act, 42 U.S.C. 721-725, 727, 728).

15. Grants to States for public library services and construction (20 U.S.C. sec. 351-358; P.L. 88-269).

16. Grants to States for strengthening science, mathematics, and modern foreign language instruction (title III, National Defense Education Act, 20 U.S.C. 441-444).

17. Grants to States for guidance, counseling and testing of students (title V-A, National Defense Education Act, 20 U.S.C. 481-484).

18. Grants to States for educational statistics services (sec. 1009, National Defense Education Act, 20 U.S.C. 589).

19. Surplus personal property disposal donations for health and educational purposes through State agencies (40 U.S.C. 484(j)).

20. Grants to States for hospital and medical facilities (title VI, Public Health Service Act, 42 U.S.C. 291-291z).

21. Grants to States for community mental health centers construction (Community Mental Health Centers Act, 42 U.S.C. 2681-2688).

22. Grants to States for vocational education (Smith-Hughes Act, 20 U.S.C. 11-15, 16-28; George-Barden Act, 20 U.S.C. 15i-15q, 15aa-15jj, 15aaa-15ggg; Supplementary Acts, 20 U.S.C. 30-34).

23. Grants to States for mental retardation facilities (Part C, Mental Retardation Facilities Construction Act, 42 U.S.C. 2671-2677).

24. Arrangements with State vocational education agencies for training under the Area Redevelopment Act and the Manpower Development and Training Act of 1962 (42 U.S.C. 2513(c), 2601, 2602).

25. Grants to States for comprehensive planning for mental retardation (title XVII, Social Security Act, 42 U.S.C. 1391-1394).

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AUTHORITY FOR THE 1966 SCHOOL DESEGREGATION GUIDELINES

I

Title VI of the Civil Rights Act of 1964 requires the absence of discrimination against persons on the ground of race as a condition for the receipt of Federal financial assistance. Section 601 of the Act states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602 of the Act directs each department which extends Federal assistance to issue regulations to carry out the provisions of Section 601. Section 602 of the Act states in part:

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of Section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President . . .

As required by Section 602, the Department of Health, Education, and Welfare has issued its Regulation. It was approved by the President on December 3, 1964, and on December 4, 1964, published in the Federal Register. (29 Federal Register 16298; 45 C.F.R., Subtitle A, part 80)

Section 80.4 of that Regulation provides that recipients of Federal assistance shall submit an assurance that its program will be conducted without discrimination based on race. Section 80.4(a) states in part:

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, . . . and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this Regulation.

Under this provision, applicants can qualify for Federal financial assistance only if all racial discrimination in their programs is eliminated.

Under the Regulation, however, an exception is made for elementary and secondary school systems because of the special problems in desegregation which they present. They may qualify for Federal assistance if they submit to the U.S. Commissioner of Education a plan for desegregation which the Commissioner determines to be adequate to accomplish the purpose of Title VI. The relevant part of the Regulation (Section 80.4(c)) states:

(c) *Elementary and Secondary schools.* The requirements of paragraph (a) . . . of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system . . . (2) submits a plan for the desegregation of such school or school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Act and this Regulation and provides reasonable assurance that it will carry out such plan; . . .

In order to inform school officials of the standards which a desegregation plan must meet in order to be determined adequate by the Commissioner, the Commissioner has issued school desegregation guidelines. The first guidelines, (General Statement of Policies under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools) were issued in April 1965. Revised guidelines were issued in March 1966 (Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964).

The standards for desegregation plans stated in the guidelines follow closely the provisions of Federal court decisions ordering the desegregation of separate schools maintained for Negro and white children.

II

Many persons, including some school superintendents and school board members, have an erroneous view of the connection between the requirement of Title VI, as explained in the guidelines, and the law as stated in the school desegregation cases decided by the Federal courts. These persons argue that Title VI, by its terms, applies only to discrimination, but not to desegregation, which, according to this view, is a different matter. Accordingly they insist that they may properly maintain separate schools for whites and Negroes, with all-white and all-Negro faculties, as long as any requests by Negro children for admission to a white school are granted. They maintain that any provisions of the guidelines which require further desegregation are a usurpation of power by the Office of Education. These persons also argue that the guidelines are improper because they make no provision for the particular conditions and opinions which may be found in individual school districts. They believe that school officials should be able to shape their desegregation plans so as to be more in accord with the sentiments of their community.

These views, which are incorrect, have been the source of much of the misunderstanding about the propriety of the guidelines, and the responsibility of every school system to establish one system of schools for all its children.

III

Title VI was proposed to the Congress as part of the Civil Rights Act because Federally supported programs and activities, such as schools and hospitals, were still being run on a segregated basis, in defiance of the Supreme Court holding that "separate but equal" facilities were unconstitutional. In the debates on Title VI in both the House and Senate, the chief spokesmen for Title VI made it clear that Title VI applied to programs and activities which were unconstitutionally segregated. In the House debate on February 7, 1964, Representative Celler, Chairman of the Judiciary Committee, and the manager of the bill in the House stated:

In general, it seems rather anomalous that the Federal Government should aid and abet discrimination on the basis of race, color or national origin by granting money and other kinds of financial aid. It seems rather shocking, moreover, that while we have on the one hand the 14th amendment, which is supposed to do away with discrimination since it provides for equal protection of the laws, on the other hand, we have the Federal Government aiding and abetting those who persist in practicing racial discrimination.

It is for these reasons that we bring forth title VI. The enactment of title VI, will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions. (110 Congressional Record, Part 2, 2467)

On April 7, 1964, Senator Pastore, principal spokesman in the Senate for Title VI, said much the same thing in the Senate debate.

Speaking of congressional debate, I should now like to consider a number of objections which have been offered to title VI.

In the House, a concerted attack was made on title VI as "punitive" or "vindictive." These charges are undeserved. These characterizations appear to result from the belief that title VI is intended to deny the South the benefit of social-welfare programs—that it would punish entire States for any act of discrimination committed within them. This argument merely befores the issues. It ignores both the purposes of title VI and all of the limitations that have carefully been written into its language.

As is clear, the purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination. In many instances, the practices of segregation and discrimination, which title VI seeks to end, are unconstitutional.

This is clearly so wherever Federal funds go to a State agency which engages in racial discrimination. It may also be so where Federal funds go to support private, segregated institutions, as the decision in the Simkins case teaches. In all cases, racial discrimination is contrary to the national policy and to the moral sensibilities of the people of this Nation. Thus, title VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and our public policy. (110 Congressional Record, Part 6, 7062)

Against this background, it is clear that it would be a gross violation of the Congressional intent to interpret Title VI to permit practices declared unconstitutional by the United States courts.

IV

The landmark school desegregation case, *Brown v. Board of Education* 347 U.S. 483 (1954) established the principle that the maintenance of separate schools for children of different races is unconstitutional. After discussing the importance of education today and the role of state and local government in providing education, the court reached the question of whether or not segregation of children on the basis of race deprived the minority group children of equal educational opportunities. The court concluded that it did, stating:

To separate [Negro grade and high school children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone . . .

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. (347 U.S. at pages 494-495)

The Supreme Court then heard further arguments on the implementation of its decision and in its second opinion, one year later, left no doubt that it equated segregation in schools with discrimination. The court stated that the first *Brown* decision declared:

. . . the fundamental principle that racial discrimination in public education is unconstitutional . . . All provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. (349 U.S. at page 298)

The court held that there must be a prompt start in the elimination of separate schools and that the burden of justifying any delays in complying with the law was upon the school system.

These principles have been reaffirmed in a number of recent Federal court decisions. For example, in a January 1966 decision of the United States Court of Appeals for the Fifth Circuit concerning the Jackson, Mississippi school system, (*Singleton v. Jackson Municipal School District*, 355 F. 2d 865, 869 (C.A. 5th, Jan. 26, 1966)), the Court stated:

The Constitution forbids unconstitutional state action in the form of segregated facilities, including segregated public schools. School authorities, therefore, are under the constitutional compulsion of furnishing a single integrated school system. Administrative problems may justify an orderly transitional period during which the system may be desegregated several grades at a time . . .

This has been the law since *Brown v. Board of Education*. Misunderstanding of this principle is perhaps due to the popularity of an over-simplified dictum that the Constitution "does not require integration." (Citation omitted)

And in *Kemp v. Beasley*, 352 F. 2d 14, 21 (C.A. 8th, 1965), a case concerning the desegregation of the El Dorado, Arkansas schools, the school board argued in support of its plan that "as long as the Negro is not required to attend the Negro school, his constitutional rights have not been violated." The Court stated that it could not "accept the position advanced by the Board," pointing out that it was "logically inconsistent with Brown and subsequent decisional law on this subject."

A similar idea is stated in *Brown v. County School Board of Frederick County, Virginia*, 245 F. Supp. 549, 560 (W.D. Va., 1965)

The ideal to which a freedom of choice plan must ultimately aspire, as well as any other desegregation plan, is that school boards will operate "schools," not "Negro schools" or "white schools."

The recent Federal decisions also show that the courts are looking with increasing disfavor on delay in school desegregation. In *Bradley v. School Board of City of Richmond*, 382 U.S. 103, 105 (1965) the Supreme Court declared that: "... more than a decade has passed since we directed desegregation of public school facilities "with all deliberate speed." Delays in desegregation of school systems are no longer tolerable. (Citation omitted)

And in an earlier opinion (June 22, 1965) in the *Jackson, Mississippi* case (348 F. 2d 729 (C.A. 5th, 1965)), the Fifth Circuit stated:

The time has come for footdragging public school boards to move with celerity toward desegregation. Since May 17, 1954, public school boards throughout the country have known that they must desegregate their schools. And as the law moved with rising tempo to meet changing conditions, school boards might have foreseen that further delays would pile up rather than spread their nettlesome problems. This Court has urged school authorities to grasp the nettle now. We have put them on notice that, "the rule has become: the later the start, the shorter the time allowed for transition. (Footnotes omitted) (348 F. 2d at page 730)

In the second *Brown* decision in 1955, the Supreme Court made it clear that Federal district courts may take local problems and conditions into account when framing school desegregation decrees, except that opposition to desegregation may not be a ground for delay. The Court declared:

But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them. (349 U.S. at page 300)

The principle has been reaffirmed by the Federal courts, most recently in the 1965 *El Dorado, Arkansas* and *Jackson, Mississippi* cases. In the *El Dorado* case the court stated:

The first basic issue to be determined is whether or not the plan is moving forward with appropriate speed. We feel it is not. It is our opinion that the Board has not affirmatively performed its duty to provide a system of non-segregated schools as required by the Equal Protection Clause of the Fourteenth Amendment with "good faith compliance at the earliest practicable date" and with "all deliberate speed" as required by the second *Brown* decision.

The Supreme Court in refusing to countenance delay in the Little Rock, Arkansas school desegregation matter because of tension, bedlam, chaos, and turmoil in the schools, in *Cooper v. Aaron* over seven years ago used the following significant language:

* * * * * Of course, in many locations obedience to the duty of desegregation would require immediate general admission of Negro children, otherwise qualified as students for their appropriate classes, at particular schools. On the other hand, a District Court, after analysis of the relevant factors (which of course, excludes hostility to racial desegregation) might conclude that justification existed for not requiring the present nonsegregated admission of all qualified Negro children. In such circumstances, however, the courts should scrutinize the program of the school authorities to make sure that they had developed arrangements pointed toward the earliest practicable completion of desegregation, and had taken appropriate steps to put their program into effective operation. It was made plain that delay of any guise in order to deny the constitutional rights of Negro children could not be countenanced and that only a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools

could constitute good faith compliance. (Emphasis added by Eighth Circuit; citation omitted) (325 F.2d at page 19.)

The recent decisions cited above, which develop the principles of the 1954 and 1955 Brown decisions, show that the courts consider that the maintenance of separate schools for Negroes is discriminatory. Merely admitting to white schools those Negroes who may request to attend them does not change the separate character of schools maintained primarily for Negroes and whites. These principles are developed further in the decisions cited below in the discussion of faculty desegregation and effectiveness of free choice plans.

V

With regard to faculty desegregation, the 1966 guidelines state that the racial composition of faculties must be considered in determining whether students are subject to discrimination, and require that except to the extent necessary to correct past discriminatory assignments, race may not be a factor in teacher assignments, that qualified teachers may not be dismissed on the basis of race, and that school systems must make significant progress in 1966-67 in eliminating past discriminatory assignments.

Section 181.13 provides as follows:

181.13 Faculty and Staff

(a) *Desegregation of Staff.* The racial composition of the professional staff of a school system, and of the schools in the system, must be considered in determining whether students are subjected to discrimination in educational programs. Each school system is responsible for correcting the effects of all past discriminatory practices in the assignment of teachers and other professional staff.

(b) *New Assignments.* Race, color, or national origin may not be a factor in the hiring or assignment to schools or within schools of teachers and other professional staff, including student teachers and staff serving two or more schools, except to correct the effects of past discriminatory assignments.

(c) *Dismissals.* Teachers and other professional staff may not be dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race, color, or national origin. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system may be filled through recruitment from outside the system unless the school officials can show that no such displaced staff member is qualified to fill the vacancy. If as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system must be evaluated in selecting the staff members to be released.

(d) *Past Assignments.* The pattern of assignment of teachers and other professional staff among the various schools of a system may not be such that schools are identifiable as intended for students of a particular race, color, or national origin, or such that teachers or other professional staff of a particular race are concentrated in those schools where all, or the majority of, the students are of that race. Each school system has a positive duty to make staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns. Staff desegregation for the 1966-67 school year must include significant progress beyond what was accomplished for the 1965-66 school year in the desegregation of teachers assigned to schools on a regular full-time basis. Patterns of staff assignment to initiate staff desegregation might include, for example: (1) Some desegregation of professional staff in each school in the system, (2) the assignment of a significant portion of the professional staff of each race to particular schools in the system where their race is a minority and where special staff training programs are established to help with the process of staff desegregation, (3) the assignment of a significant portion of the staff on a desegregated basis to those schools in which the student body is desegregated, (4) the reassignment of the staff of schools being closed to other schools in the system where their race is a minority, or (5) an alternative pattern of assignment which will make comparable progress in bringing about staff desegregation successfully.

Obviously, it is impossible to desegregate schools without desegregating teachers. In *Bradley v. Board of Education of City of Richmond*, 382 U.S. 103 (1965)

and *Rogers v. Paul*, 382 U.S. 198 (1965) (Ft. Smith, Ark.), both recent cases in which the lower courts had refused to permit inquiry into the question of teacher assignments by race, the Supreme Court ruled that Negro children have a right to bring before the court charges of discriminatory staff assignments. It remanded both cases to the trial courts for prompt evidentiary hearings on the issue of teacher segregation. In the *Richmond* case the Supreme Court declared:

There is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of desegregation plans is entirely speculative. (382 U.S. at page 105)

And in the *Fort Smith* case the Supreme Court declared:

Two theories would give students not yet in desegregated grades sufficient interest to challenge racial allocation of faculty: (1) that racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils; and (2) that it renders inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades. See *Bradley v. School Board*, *supra*. Petitioners plainly had standing to challenge racial allocation of faculty under the first theory and thus they were improperly denied a hearing on this issue. (382 U.S. at page 200)

The Courts of Appeals have also ruled on teacher desegregation.

In the *El Dorado* case, the Eighth Circuit declared:

The Court recognizes the validity of the plaintiffs' complaint regarding the Board's failure to integrate the teaching staff. Such discrimination is proscribed by Brown and also the Civil Rights Act of 1964 and the regulations promulgated thereunder. . . . The District Court retains jurisdiction of this matter and with its equity powers may issue any order or orders necessary to bring into being a reasonable nondiscriminatory policy of employment of teachers without regard to race. (352 F. 2d at pages 22-23)

Similarly in the *Jackson, Mississippi* case the Fifth circuit held that it was essential that the Jackson desegregation plan:

. . . provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators, and other personnel. (335 F. 2d at 870)

The District Courts likewise have ruled on teacher desegregation. In *Carr v. Montgomery County Board of Education*, Civil Action No. 2072-N (M.D. Ala., March 22, 1966) the court directed the Montgomery County, Alabama school system to execute a desegregation plan in which the teacher desegregation provisions closely follow the 1966 guidelines in several respects. The school system was ordered to report to the Court by June 15 "the planned assignments of professional staff to each school for the next school year by race and grade, or when appropriate, by subject taught or position held . . ." The desegregation plan ordered by the Court further provided:

Race or color will henceforth not be a factor in the hiring, assignment, re-assignment, promotion, demotion, or dismissal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.

In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred . . .

Similar orders on faculty desegregation were issued in March 1966 in the *Mason and Bullock County, Alabama* school desegregation cases.

The fact that a district has a high proportion of Negroes has not deterred courts from ordering faculty desegregation. In January, 1966, the District Court issued its decision in *Wright v. County School Board of Greensville County, Virginia*, Civil Action No. 4263 (E.D. Va., Jan. 27, 1966). Greensville is a Southside, Virginia school district with 2700 Negro and 1800 white students. The district's desegregation plan had been accepted by the U.S. Commissioner of Education, but the court found that the plan's faculty desegregation provision was "too lim-

ited." Because the primary responsibility for desegregating staff rests with the school board, the Court afforded the school board an opportunity to make its own proposal to the Court on faculty desegregation. But the Court admonished the school board that it must make definite and substantial progress. The Court stated:

Several principles must be observed by the board. Token assignments will not suffice. The elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date. The plan must contain well defined procedures which will be put into effect on definite dates. The board will be allowed ninety days to submit amendments to its plan dealing with staff employment and assignment practices.

The district courts have also emphasized recently the important role that teacher desegregation plays in making free choice plans effective. For example in *Kier v. County School Board of Augusta County, Virginia*, 249 F. Supp 239, 245-246 (W.D. Va., Jan. 5, 1966) the court stated:

The defendants, by the segregation of teachers, continue to maintain three clearly-delineated Negro schools. "[T]he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a 'colored school' just as certainly as if the words were printed across its entrance in six inch letters." . . .

Freedom of choice, in other words, does not mean a choice between a clearly delineated "Negro school" (having an all-Negro faculty and staff and a "white school" (with all-white faculty and staff). School authorities who have heretofore operated dual school systems for Negroes and whites must assume the duty of eliminating the effects of dualism before a freedom of choice plan can be superimposed upon the pre-existing situation and approved as a final plan of desegregation. It is not enough to open the previously all-white school to Negro students who desire to go there while all-Negro schools continue to be maintained as such. Inevitably, Negro children will be encouraged to remain in "their school," built for Negroes and maintained for Negroes with all-Negro teachers and administrative personnel. This encouragement may be subtle but it is none the less discriminatory. The duty rests with the School Board to overcome the discrimination of the past and the long established image of the "Negro school" can be overcome under freedom of choice only by the presence of an integrated faculty. (Citation omitted).

Some have argued that Section 604 of the Civil Rights Act of 1964 bars the Office of Education from taking any action with regard to teacher desegregation. Section 604 provides:

Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

The Senate added Section 604 to the Act to satisfy the objection, stated in the House Minority Report (House Report No. 914, 88th Congress, First Session, p. 69), that under section 601, a person, such as a farmer or a banker, could be barred from Federal agricultural or banking programs if he hired only persons of one particular race. It had not been the purpose of Title VI to reach discrimination against persons who are not the intended beneficiaries of a particular Federal assistance program. The Attorney General explained the administrator's position in a letter, dated April 29, 1964, to Senator Cooper, which the Senator inserted in the Congressional Record.

Question. Would section 602 cover an employer who receives funds under a Federal program, and who discriminates in his employment practice?

Answer. Generally, no. Title VI is limited in application to instances of discrimination against the beneficiaries of Federal assistance programs, as the language of section 601 clearly indicates. Where, however, employees are the intended beneficiaries of a program, title VI would apply. Thus, for example, creation of job opportunities is one of the major purposes of the accelerated public works program. Hence construction employees would be

deemed beneficiaries of such a program, and section 602 would require the administering agency to take action to prohibit racial discrimination against them in such a program. On the other hand, the Agricultural Adjustment Act and acreage allotment payments under it is a commodity program having nothing to do with farm employment. Farm employees are not beneficiaries of that program, and section 602 would not authorize any action to require recipients of acreage allotments to refrain from racial discrimination in employment. (110 Congressional Record, Part 8, 10076)

In order that there be no doubt about the effect of Title VI on persons who discriminate against employees who are not the intended beneficiaries of Federal programs, the Senate added section 604 to the Civil Rights Act. But in agreeing to section 604, the Senate did not condone discrimination against the intended beneficiaries of Federal assistance programs, just because such discrimination might be linked to an employment practice of a recipient of the Federal funds. For example, section 604 certainly would not bar the Commissioner from taking appropriate action in the case of a school district which adopted the employment practice of dismissing white teachers who refused to discriminate against Negro children in their classrooms. The purpose of the Commissioner's action in such a matter would not be to protect the employment of teachers, but to protect the child, who is the intended beneficiary of Federal assistance to education, from discrimination induced by the employment practice of his teacher's employer.

Usually, the beneficiaries of Federal educational assistance programs are students, although under some programs, teachers and other persons may also be beneficiaries. A common form of discrimination against beneficiary students is the hiring, assignment, and dismissal of their teachers on the basis of the teacher's race. For the reasons discussed above, the Commissioner has authority under Title VI to protect students who are beneficiaries of Federal programs in education from this form of discrimination.

This conclusion is reinforced by an additional consideration. Under a canon of statutory construction, long recognized by the courts, when construing highly remedial legislation, such as Title VI of the Civil Rights Act of 1964, an exception to the general purpose of an act such as section 604, should be read in accordance with its particular purpose, and not in a manner which defeats the overall purpose of the act. In the case of Title VI, that purpose, of course, is the protection of the intended beneficiaries of Federal assistance from discrimination by recipients of Federal funds.

One of the main reasons for the enactment of Title VI was the failure of so many school boards and their communities to assume, at a local level, their responsibility under the Constitution to desegregate their schools. It is a matter of common sense, as well as law, that schools cannot be desegregated without desegregating teachers. It would be anomalous if section 604, which was added to the Act for a limited purpose, were to be construed to thwart one of the main purposes of Title VI.

VI

With regard to effectiveness of free choice plans, the 1966 guidelines provide, in effect, that in the absence of reasons to the contrary, the Commissioner will accept free choice plans for 1966-67. But if such plans are not effective, the Commissioner may require school officials to take such action as may be necessary to make the plans effective, or may require the adoption of a different type of plan. The relevant Section provides:

181.54 Requirements for Effectiveness of Free Choice Plans

A free choice plan tends to place the burden of desegregation on Negro or other minority group students and their parents. Even when school authorities undertake good faith efforts to assure its fair operation, the very nature of a free choice plan and the effect of longstanding community attitudes often tend to preclude or inhibit the exercise of a truly free choice by or for minority group students.

For these reasons, the Commissioner will scrutinize with special care the operation of voluntary plans of desegregation in school systems which have adopted free choice plans.

In determining whether a free choice plan is operating fairly and effectively, so as to materially further the orderly achievement of desegregation, the Commissioner will take into account such factors as community support for the plan, the efforts of the school system to eliminate the identifiability of schools

on the basis of race, color, or national origin by virtue of the composition of staff or other factors, and the progress actually made in eliminating past discrimination and segregation.

The single most substantial indication as to whether a free choice plan is actually working to eliminate the dual school structure is the extent to which Negro or other minority group students have in fact transferred from segregated schools. Thus, when substantial desegregation actually occurs under a free choice plan, there is strong evidence that the plan is operating effectively and fairly, and is currently acceptable as a means of meeting legal requirements. Conversely, where a free choice plan results in little or no actual desegregation, or where, having already produced some degree of desegregation, it does not result in substantial progress, there is reason to believe that the plan is not operating effectively and may not be an appropriate or acceptable method of meeting constitutional and statutory requirements.

As a general matter, for the 1966-67 school year the Commissioner will, in the absence of other evidence to the contrary, assume that a free choice plan is a viable and effective means of completing initial stages of desegregation in school systems in which a substantial percentage of the students have in fact been transferred from segregated schools. Where a small degree of desegregation has been achieved and, on the basis of the free choice registration held in the spring of 1966, it appears that there will not be a substantial increase in desegregation for the 1966-67 school year, the Commissioner will review the working of the plan and will normally require school officials to take additional actions as a prerequisite to continued use of a free choice plan, even as an interim device.

In districts with a sizable percentage of Negro or other minority group students, the Commissioner will, in general, be guided by the following criteria in scheduling free choice plans for review:

(1) If a significant percentage of the students, such as 8 percent or 9 percent, transferred from segregated schools for the 1965-66 school year, total transfers on the order of at least twice that percentage would normally be expected.

(2) If a smaller percentage of the students, such as 4 percent or 5 percent, transferred from segregated schools for the 1965-66 school year, a substantial increase in transfers would normally be expected, such as would bring the total to at least triple the percentage for the 1965-66 school year.

(3) If a lower percentage of students transferred for the 1965-66 school year, then the rate of increase in total transfers for the 1966-67 school year would normally be expected to be proportionately greater than under (2) above.

(4) If no students transferred from segregated schools under a free choice plan for the 1965-66 school year, then a very substantial start would normally be expected, to enable such a school system to catch up as quickly as possible with systems which started earlier. If a school system in these circumstances is unable to make such a start for the 1966-67 school year under a free choice plan, it will normally be required to adopt a different type of plan.

Where there is substantial deviation from these expectations, and the Commissioner concludes, on the basis of the choices actually made and other available evidence, that the plan is not operating fairly, or is not effective to meet constitutional and statutory requirements, he will require the school system to take additional steps to further desegregation.

Such additional steps may include, for example, reopening of the choice period, additional meetings with parents and civic groups, further arrangements with State or local officials to limit opportunities for intimidation, and other further community preparation. Where schools are still identifiable on the basis of staff composition as intended for students of a particular race, color, or national origin, such steps must in any such case include substantial further changes in staffing patterns to eliminate such identifiability.

If the Commissioner concludes that such steps would be ineffective, or if they fail to remedy the defects in the operation of any free choice plan, he may require the school system to adopt a different type of desegregation plan.

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 *Greenville 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."

In the following term the Court did not direct that the schools be desegregated forthwith, but rather with "all deliberate speed."

Ten years later, many schools were still being operated on a segregated basis. It was in this context that in July 1964 Congress enacted Title VI of the Civil Rights Act of 1964. That Title expressly requires all Federal agencies, including the Department of Health, Education, and Welfare, to assure that no person be subjected to discrimination under any program or activity receiving Federal financial assistance. This law obliges the Department to withhold Federal funds from any school system that continues to maintain a segregated school. It was in order to discharge this responsibility that we issued the Guidelines and established the appropriate administrative machinery for enforcing them.

The school desegregation guidelines were issued by the Office of Education to provide an objective basis for carrying out our obligations under Title VI of the Civil Rights Act of 1964. Not only did local school districts request consistent guides to assist them in undertaking their obligations, but the Office of Education required a policy statement to assist in administration of a large program. The fundamental principles of the guidelines are based upon the Civil Rights Act of 1964 and upon court decisions. The courts have said, for example: that faculty desegregation is a necessary element of school desegregation; that free-choice plans must work fairly; and that school boards have an obligation to work affirmatively to achieve desegregation. The guidelines articulate the basic principles already enunciated by the courts and the way they apply to the broad administrative responsibility of the Office of Education.

As a brief summary we would call attention to the following points:

1. The guidelines were developed to meet the needs of the schools for a statement concerning their obligations under Title VI of the Civil Rights Act. The primary purpose of the guidelines and of our administration of Title VI is to help school districts to stay in compliance so that Federal funds may flow to the benefit of school children.

2. Our own attorneys in the Department of Health, Education, and Welfare and those in the Justice Department were asked to examine the guidelines prior to their issuance in March 1966 to determine whether they are consistent with Title VI. These attorneys have agreed that the guidelines are consistent with Title VI and follow the Federal Court rulings.

3. The Courts have pointed out that as long as school staffs are still assigned on a segregated basis the existence of the Negro school and the white school as separate parts of a dual school system cannot be overcome.

4. The guidelines do not mention and do not require "racial balance" or the correction of racial "imbalance." Nor have we in the administration of our obligations under Title VI sought to establish "racial balance." They deal only with desegregation plans designed to eliminate the dual school systems for whites and Negroes, systems being operated in violation of the 1954 Supreme Court Ruling.

In response to questions which have arisen over the past few months concerning the legality, the purpose, and the operation of the 1966 School Desegregation Guidelines, we prepared a special statement which the Secretary of Health, Education, and Welfare, John Gardner, sent on April 9, 1966, as a letter to Congressmen and Governors.

What the letter said was this:

"We have received a number of inquiries about our revised school desegregation guidelines, some of which reflect a misunderstanding of their purpose and intent. You will probably have received similar inquiries, so I think it might be useful to restate the purpose, background, and meaning of the revised guidelines.

"For the same reason, I have asked U.S. Commissioner of Education Harold Howe II and senior members of his staff to meet with State and local school officials to make clear the purpose and nature of these revised guidelines.

"The Courts and the Congress have spoken clearly on the basic issues of the desegregation of public schools. The Supreme Court decided that question twelve years ago. Since then Congress has plainly established in law that pupils may not be assigned to schools on the basis of their race or color. Title VI of the Civil Rights Act of 1964 expressly requires the Executive Branch to insure that funds for federally assisted programs, including education, must not be used to support discrimination or segregation.

"This Department, like all other executive agencies, is required by Title VI not to use Federal funds to perpetuate racial segregation. We have found that uniform rules contained in guidelines issued by the Commissioner of Education are the best method of dealing with both the operational problems of school districts and our own responsibilities under the law.

"The first school guidelines were issued in April, 1965, and they were not widely questioned. There was a widespread effort by school districts to comply. In many areas, school desegregation began for the first time smoothly and without incident. In other areas, desegregation, already begun, progressed substantially.

"From the experience under the original guidelines, we learned that effective desegregation depends on determination by local communities. The guidelines did not ask school districts formerly segregated to desegregate overnight. They recognized that the remedy to be fashioned should take into account administrative problems. Thus, they asked that a substantial beginning be made; and this was done. All but 300 of the more than 2,000 affected school districts agreed to desegregate all 12 grades by the fall of 1966, a full year ahead of the 1967 target contemplated by the original guidelines and required by the Courts. Only 79 chose not to comply.

"The legal principle, defined by the Courts, is that desegregation must progress, and that as it proceeds in a particular school district, administrative problems offer progressively less justification for delay. During 1965 and this year, the Courts repeatedly announced requirements which put school districts further along the road toward desegregation than did the original guidelines. This was a foreseeable and inevitable result, since the guidelines were of general applicability while Courts fashioned their orders on a case-by-case basis.

"From the issuance of revised Court orders it became clear that school districts not operating under Court orders could and should make more progress this year toward desegregation than was required by the original guidelines. In light of this fact and of our experience with problems under free choice plans for compliance, we revised the guidelines.

"One aspect of the revised guidelines about which there has been some inquiry is faculty desegregation. Courts have held that meaningful desegregation cannot occur so long as segregation of faculty members persists. The 1965 guidelines pointed toward faculty desegregation by asking school boards to hold desegregated staff meetings and to plan further steps the ensuing year. The 1966 guidelines, following the decisions of Courts, provide for desegregation of the faculty to begin.

"The guidelines do not, as some have assumed, require the instantaneous desegregation of the faculty in every school building in every district. Nor do they prescribe rigid means. They provide considerable flexibility as to how a district might undertake faculty desegregation. What the guidelines do require is that a reasonable beginning be made and that reasonable progress be achieved beyond what was achieved last year. We believe that, with determination and good faith, these goals can be attained.

"The second area of concern involves the percentages mentioned in the guidelines. Some have contended that this portion of the guidelines imposes a formula of 'racial balance.' The contention misconceives the purpose of the percentages.

"The prevailing method of desegregation is what is called the 'free choice' plan. Under such a plan, students select their schools instead of being assigned to them on a geographic basis. Courts have expressly conditioned their approval of such plans on affirmative action by school boards to insure that 'free choice' actually exists. It is our responsibility to review such plans to insure that the choice is, in fact, free and to indicate to school districts what procedures should be used to assure true freedom of choice.

"In seeking appropriate criteria to guide us in review of free choice plans, we have adopted the objective criteria applied by the Courts in similar situations. One such criterion is the distribution of students by race in the various schools of a system after the students have made their choices. If substantial numbers of Negro children choose and go to previously all-white schools, the choice system is clearly operating freely. If few or none choose to do so in a community where there has been a pattern of segregation, then it is appropriate that the free choice plan be reviewed and other factors considered to determine whether the system is operating freely.

"With more than 2000 separate districts to consider, such percentages are thus an administrative guide which helps us to determine those districts requiring further review. Such review in turn will determine whether or not the freedom of choice plan is in fact working fairly.

"If the purposes of the guidelines and their relationship to the decision of the Courts and the laws of the Congress are understood, I believe our general aim also will be clear. It is to assist local officials to comply with the law in good faith and to enable us to fulfill our responsibilities in administering Title VI.

"Sincerely,

JOHN W. GARDNER, *Secretary.*"

Mr. Chairman, there are just two additional topics I would like to mention. The first has to do with Office of Education administration of its obligations under Title VI of the Civil Rights Act. In this connection we would make the following points:

1. The purpose of our administrative activities is to help school districts to get into compliance and avoid any issue of loss of funds.

2. As of September 26, there were 37 school districts which had lost all Federal funds because of failure to submit an acceptable desegregation plan. There are an additional 73 districts which have been cited for hearings and which may lose their funds if the rulings of Federal examiners go against them. Approximately 2,000 school districts, which formerly maintained dual school systems, are receiving funds as the result of using the compliance procedures.

3. We have attempted to focus the attention of our small staff on those districts which have had the greatest problems with making their free-choice plans operate effectively. We have deferred the award of new funds to some 70 of these districts, but they continue to receive money for programs already approved. This deferral of funds follows a procedure established by the Attorney General.

Secondly, I would like to mention that we have received substantial help in our school desegregation efforts from State and local officials. The State of Florida provides an example. Two years ago, less than 3 percent of all Florida Negro children attended school with whites. Last year, the percentage had risen almost 10 percent, and it is estimated that this year it will reach close to 20 percent. Such a significant increase is due in no small part to the acceptance by the State educational agency of a constructive role in eliminating Florida's dual system of schools as rapidly as possible.

Wherever possible, the Office of Education tries to decentralize administrative responsibility for desegregation so that those who make the initial decisions are in close contact with local school officials. We also seek to strengthen the capabilities of existing State and local educational agencies for providing assistance and leadership. A Title IV grant has been made to the Florida educational agency to establish a full-time unit of 10 people, working at the State level, to help local schools with desegregation problems. Similar units have now also been established in other Southern and border States—Georgia, Tennessee, Delaware, and Maryland.

Finally let me say that any school district that is not in compliance with the provisions of the Civil Rights Act seems to us to represent a defeat. It means failure on our part and failure on the part of those responsible for the schools. Our failure arises from our inability to be of sufficient help in achieving voluntary compliance. The failure of the schools arises from some combination of local conditions that threatens the opportunities of all children to receive the best possible education. We are seeking always to be fair and just. Our legal responsibility is clear—to adhere to the procedures and policies established in the Civil Rights Act of 1964 and supported by the decisions of the Federal courts.

MEMORANDUM

MARCH 7, 1966.

To: Harold Howe II, Commissioner of Education.

From: Alanson W. Willcox, General Counsel.

Subject: Title VI—Civil Rights Act—Revised Statement of Policies for Desegregation Plans—Test for Performance.

This relates to your request for my opinion on the validity of a test of effectiveness to determine the need for a change in a school system's freedom of choice desegregation plan. The test would be based upon the percentage of Negro

students who were in fact transferred from segregated schools. The percentage of transfers expected would vary as outlined in the Statement of Policies, dependent upon the rate of transfers in previous years.

"Where there is substantial deviation from these expectations, and the Commissioner concludes, on the basis of the choices actually made and other available evidence, that the plan is not operating fairly, or is not effective to meet constitutional and statutory requirements, he will require the school system to take additional steps to further desegregation.

"Such additional steps may include, for example, reopening of the choice period, additional meetings with parents and civic groups, further arrangements with State or local officials to limit opportunities for intimidation, and other further community preparation. Where schools are still identifiable on the basis of staff composition as intended for students of a particular race, color, or national origin, *such steps must in any such case include substantial further changes in staffing patterns to eliminate such identifiability.*

"If the Commissioner concludes that such steps would be ineffective, or if they fail to remedy the defects in the operation of any free choice plan, he may require the school system to adopt a different type of desegregation plan." [Italic added.]

The Commissioner's authority in this area stems from the HEW Regulation to effectuate title VI of the Civil Rights Act of 1964 (45 CFR Part 80). Under section 80.4(a) of that Regulation and pursuant to requirements under section 80.4(b), an assurance of compliance, which has been standardized within the Department as HEW Form 441, is required of each local school system as a condition to the extension of Federal financial assistance.

Section 80.4(c), however, provides an alternative to the provision of such an assurance if the school system submit a final desegregation order of a Federal Court or "a plan for the desegregation of such school or school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Act and this Regulation, and [if the school system] provides reasonable assurance that it will carry out such plan: in any case of continuing Federal financial assistance the Commissioner may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this regulation."

Three questions are presented as discussed below.

1. *May the Commissioner determine the adequacy of a plan solely on the basis of results achieved as measured by the percentage of students who transfer from segregated schools and without regard to whether the school system acted to prevent transfer?*

In the years immediately following the second *Brown* decision¹ there were many assertions that so long as a school system with racially segregated schools did not prevent Negro students from transferring to other schools, the students were not deprived of their Constitutional rights. In short, it was not the maintenance of a dual school system, but the prohibition against the Negro students' attending the schools attended by whites which constituted discrimination.²

Whether this was ever generally considered good law is immaterial for our purposes here, because clearly it is not the rule followed by the courts today. It now is well recognized that the discriminatory effects of almost a century of compulsory segregation and the many years of involuntary servitude which preceded that, are not overcome by allowing Negro students to attend the formerly all white schools while the school system continues to maintain schools intended for students of a particular race, color, or national origin. In *Singleton v. Jackson Municipal Separate School District* 348 F.2d 729, 730, note 5 (C.A. 5, 1965) the Court stated:

"In retrospect, the second *Brown* opinion clearly imposes on public school authorities the duty to provide an integrated school system. Judge Parker's well known dictum ('The Constitution, in other words, does not require integration. It merely forbids discrimination.') in *Briggs v. Elliott*, E.D.S.C. 1955, 132 F. Supp. 766, 777, should be laid to rest. It is inconsistent with *Brown* and the latter development of decisional and statutory law in the area of civil rights."

¹ *Brown v. Board of Education*, 349 U.S. 294 (1955).

² See *Briggs v. Elliott*, 132 F. Supp. 776, 777 (E.D. S.C., 1955); *Acery v. Wichita Falls Ind. School Dist.*, 241 F. 2d 230 (C.A. 5th, 1957); *cert. den.* 353 U.S. 938 (1957); *Boston v. Ripp*, 285 F. 2d 43 (C.A. 5th, 1960).

More recently that same Court had occasion to note:*

"The Constitution forbids unconstitutional state action in the form of segregated facilities, including segregated public schools. School authorities, therefore, are under the constitutional compulsion of furnishing a single, integrated school system."

The concurring portion of an opinion of Judges Sobeloff and Bell in *Bradley v. Board of City of Richmond*⁴ stated in part:

"Affirmative action means more than telling those who have long been deprived of freedom of educational opportunity, 'You now have a choice.' In many instances the choice will not be meaningful unless the administrators are willing to bestow extra effort and expense to bring the deprived pupils up to the level where they can avail themselves of the choice in fact as well as in theory. A court before approving a plan, must scrutinize it in detail to satisfy itself that the assumptions upon which the plan is predicated are actually present. The district judge must determine whether the means exist for the exercise of a choice that is truly free and not merely pro forma. This may involve, considering, for example, the availability of transportation, the opportunity to participate on equal terms in the life of the school after the pupil's arrival, and any other circumstances that may be pertinent." Other courts also have recognized the obligation of the school system to do more than refrain from interfering with transfers. In *Wright v. County School Board of Greensville County*. — F. Supp. — (E.D., Va.; (January 27, 1966) the Court stated:

"... 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 its provisions, but 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."

Similar holdings are contained in: *Dowell v. School Board of Oklahoma City, Okla.*, 244 F. Supp. 971 (W.D. Okla., 1965); *Bell v. School Board of Staunton, Va.*, —, F. Supp. — (W.D. Va., Jan. 5, 1966) and *Kier v. School Board of County of Augusta*, —, F. Supp. — (W.D. Va., Jan. 5, 1966).

In *Dore v. Parham*, 282 F. 2d 256 (1960), the Court of Appeals for the Eighth Circuit recognized the obligation of a school district "to disestablish a system of imposed segregation".

2. *May the Commissioner require in every such case of ineffectiveness that the school system make substantial further changes in staffing patterns of the schools to eliminate identifiability of schools as intended for students of a particular race?*

That the identifiability of a school as intended for Negro students is a restriction upon the right of free choice and inconsistent with a valid desegregation plan, can scarcely be denied. Whether a school is so designated by the use of clear words to that effect or whether it is so identified through other indicia including staff assignments, the school system has not met its responsibility to eliminate dual school arrangements, as already described in this memorandum.

"The defendants by the segregation of teachers, continue to maintain three clearly-delineated Negro schools. '[T]he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a "colored school" just as certainly as if the words were printed across its entrance in six-inch letters'. *Brown v. County School Board*, 245 F. Supp. 549, 560 (W.D. Va. 1965)" *Kier v. School Board of County of Augusta, supra*.

Moreover, for some time cases have indicated that in the consideration of particular plans for desegregation, some involving zoning and other choice, the

* *Singleton v. Jackson Municipal Separate School District*, — F. —, (C.A. 5th, Jan. 26, 1966). The Court did recognize that administrative problems may justify an orderly transition period during which the desegregation may take place, but even so, it held that this transition may not prevent any individual child, even though in a grade not yet reached by the desegregation plan, from exercising his right to transfer.

⁴ 345 F. 2d 310, 323, (C.A. 4th, 1965). Reversed on other grounds, — U.S. —, 15 L. Ed. 2d 187, 86 S. Ct. 224 (1965).

court should consider the possible effect of "assignment of teachers by race not as seeking to protect rights of such teachers, but as a claim that continued assigning of teaching personnel on a racial basis impairs the students' rights to an education free from any consideration of race." *Mapp v. Board of Education, City of Chattanooga, Tenn.*, 319 F. 2d 571, 576 (C.A., 6th 1963); *Northcross v. Board of Education, City of Memphis, Tenn.*, 333 F. 2d 661 (C.A. 6th, 1964); *Jackson v. School Board, City of Lynchburg, Va.*, 321 F. 2d 230 (C.A. 4th, 1964); *Augustus v. Board of Public Instruction, Escambia County, Fla.*, 306 F. 2d 862, (C.A. 5th 1962); *Board of Public Instruction of Duval County, Fla. v. Braxton*, 326 F. 2d 616, 620 (C.A. 5th, 1964); *Christmas v. Board of Education of Hartford County, Maryland*, 231 F. Supp. 331 (D.C., D.Md., 1964); *Dowell v. School Board of Oklahoma City, Okla.*, *supra*; *Bell v. School Board of City of Staunton, Va.*, *supra*; and *Kier v. School Board of County of Augusta*, *supra*. In the Oklahoma City case the court said (at 978):

"... where the cessation of assignment and transfer policies based solely on race is insufficient to bring about more than token change in the segregated system, the Board must devise affirmative action reasonably purposed to effectuate the desegregation goal. This is not new law."

Recently the Court of Appeals for the Fifth Circuit stated that it is "essential that the plan provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators and other personnel." *Singleton v. Jackson Municipal Separate School District* (Jan. 26, 1966), *supra*, note 3.

In *Bradley v. School Board, City of Richmond*, *supra*, note 4, the United States Supreme Court vacated a lower court's order, saying, "There is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans is entirely speculative."

The fact that schools remain identifiable as intended for Negro students because of the staffing pattern and the further fact that there is not effective desegregation in the actual operation of the free choice plan, provide a reasonable justification for the Commissioner to hold that the objectives of title VI and the Regulation cannot be achieved unless the racial identification of the schools is removed.

The importance of prompt steps to wipe out such identification is underscored by the difficulty of having a choice period or of otherwise reassigning children after the school year has commenced. The relatively short period which intervenes between the choice period and the time when final plans should be made for the operation of schools for the coming year, argues for more prompt action than complicated factual evaluations permit. Staff reassignment to remove the identifiability of schools on a racial basis should not be foreclosed even if the school system should assert that other steps might secure results. In fact, if the school system knew of actions which could have been taken to secure better results, it should already have taken them.

It should be recognized that changes required in a plan including those addressed to the removal of the identifiability of schools on a racial basis, would not always substantially affect assignments for the school year for which the poor performance is indicated. The objective of a desegregation plan is the total elimination of the dual school system, however, and the test of performance is significant, not only as measuring what will happen in 1966-7, but also as a gauge of progress toward the final objective. If less than the expected showing is made for the coming school year, there is every reason to insist on steps calculated to speed up the process thereafter, and to set the stage for freer choices for the succeeding school year.

In expressing the foregoing views, I am cognizant that section 604 of the Civil Rights Act of 1964, provides that nothing in title VI "shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer. . . ." That section, in my opinion, does not preclude the action referred to above.

Even if we assume that the assignment of teachers by the public school system is an "employment practice", section 604 does not preclude action based upon the need to prevent discrimination against students as beneficiaries of the Federal aid as distinguished from actions taken for the sole purpose of protecting em-

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 be 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, 12729, 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. Scharton*, 285 U.S. 518 (1932). See memorandum, June 10, 1965, Laurence Davis to General Counsel, "Civil Rights Act; Dismissal of Negro schoolteachers."

to me by Mr. Stratton. Your prompt attention to this request will be appreciated.
Sincerely yours,

J. W. FULBRIGHT.

STUTTGART PUBLIC SCHOOLS,
Stuttgart, Ark., April 1, 1966.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

SIR: School administrators and board members are disturbed over the "Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964" which has just been handed to us.

1. It changes our plan of desegregation which we accepted last year and which we have kept in good faith after approval from the Department of Health, Education and Welfare.

2. The revised orders violate the Civil Rights Act of 1964 in requiring racial balance in schools and goes much further than Congress intended.

3. The changes demanded have come to us after obligations and contracts with teachers have been made and compliance with them will force the administration and school board to renege on contracts and commitments already made to teachers and pupils.

4. The policies force the use of certain language, which is not the will of the school authorities, in notices to parents and advertisement in the paper and requires that the school adopt it in toto. When official freedom of expression is denied, the time is not far away when personal freedom of expression also will be denied.

5. The time schedule for advertisement and registration of pupils cannot be met because of the late notice to the schools.

6. The severity of the changes will create antagonism among teachers, pupils, and patrons and, hence, will cause serious problems in administration of the schools.

7. It destroys all confidence on the part of those who have thus far worked to meet the law with courage and sincerity because we find that we cannot trust the authorities who approved our original plan.

8. It leaves the feeling that the Civil Rights leaders are using a club to force their will and show no respect for our rights or opinions. There can be no enthusiastic attempt on the part of administrators or board members to comply with such orders and the entire school system will suffer.

9. It places financial strain on schools to advertise, send letters, and employ additional clerical assistance to get letters to patrons.

10. It makes no provision for local traditions and opinions but assumes that all situations can be handled in the same manner. There are some 150 or more schools in Arkansas that have none or few negroes while some have as much as 60% negro.

11. It imposes a tyranny over our schools which affects the lives of all our people and destroys their faith in our government.

12. We feel that we should be allowed to continue with the three year plan which was approved by the Commissioner of Education and which the schools and its patrons have accepted. Continual and more stringent regulations will but lead to resentment and possible rebellion.

We enclose with this letter the following documents:

1. The Form 441-B we are now required to sign for participation in Federal Funds. The revised statement of policies for school desegregation plans of March, 1966. The mandatory texts of notices, letters, and choice forms prescribed by the Commissioner of Education for use with school desegregation plans of March, 1966.

2. Guide Lines for school desegregation dated March 1, 1966.

3. Photostatic copy of clipping from Gazette of April 1, 1966.

Last week a team of advisors was sent into the State by the Office of Education of the Department of Health, Education and Welfare. This team met with the School Superintendents and School Board Members from throughout the State at Little Rock on March 23, 1966. The attitude of this team, to say the least, was arbitrary on racial balancing, without regard to academic standards

and qualifications. The team consisted of the following persons from the office of Dr. David Seeley, U.S. Office of Education:

Mr. John Hope

Mr. John Hodgson

Miss Caren Kareger

Our purpose in writing you and telephoning you as we have is with the hope that we can stir the Arkansas Delegation in Congress to do whatever it can to persuade the Department of Health, Education and Welfare to modify its policies so as to permit us to work out our desegregation problems within the three years set by that Department without annual or more frequent departmental interference of the type displayed in these new regulations.

The Civil Rights people have been pouring the pressure on the Department. These regulations under the guise of "Guidelines" are a result of that pressure. It is high time organized pressure from the opposite direction be applied to this department. We may be uninformed, but we feel that no organized pressure has yet developed in Congress (and that is where it should come from since this is a usurpation of Congressional authority even more so than of ours) to counteract the pressures brought by the radical Civil Rights people.

We are asking that the Arkansas Delegation in Congress, if necessary, assume leadership and initiative in developing a movement on the Congressional level directed at the Office of Commissioner of Education to keep its regulations within bounds.

May we enlist your leadership and assistance in this effort? We make this request notwithstanding we may vote to file a compliance report under the new "Guidelines". Our acceptance will in no manner right the wrongs created by these regulations.

We realize that the Department may seek to deny this district Federal Funds and may seek to impose other sanctions against us for this expression of opinion. We feel so strongly about the issue that we are willing to take that risk.

Very truly yours,

LELAND STRATTON.

MAY 24, 1966.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: This is in response to your letters of April 5 and 26 regarding the 1966 school desegregation guidelines and Title VI of the Civil Rights Act of 1964. In your first letter you sent on to us a letter to you from Mr. Leland Stratton, President of the Board of Education in Stuttgart, Arkansas, and requested that I (1) discuss the differences between the 1965 and 1966 school desegregation guidelines; (2) explain the reasons and authority for the changes; and (3) comment specifically upon the numbered assertions in Mr. Stratton's letter. In the second letter you stated that Arkansas has made a conscientious start in the desegregation of its schools, pointed out that elected school officials have to be able to lead their constituents if desegregation is to be orderly, and expressed the hope that I could assure you that in the administration of the guidelines, due regard will be paid to the differences among the various school districts of Arkansas.

I believe that Secretary Gardner's letter of April 9 provided at least a partial answer to your questions, but because of the breadth and importance of the issues raised in your letter, a more detailed answer to your questions seems desirable. Because your second request raises legal questions, I asked my staff to prepare a special memorandum on the authority for the guidelines, and in particular on the provisions respecting faculty desegregation and the effectiveness of free choice plans, both of which are matters of much concern to school officials affected. A copy of this memorandum and other materials which I believe will give useful background information are enclosed.

Much of the concern about the 1966 guidelines, arises from a belief held by key provisions mentioned above in particular, arises from a belief held by many that it is constitutional to maintain a system of separate schools for Negro and white children, with separate Negro and white faculties, as long as any Negro child who so wishes may attend a white school. As you know, of course, this belief is erroneous. The decisions of the Supreme Court and the

lower Federal courts discussed in the enclosed memorandum make it clear that the maintenance of a dual system of schools for children of different races is unconstitutional, and that it is the duty of local school officials to establish a single system of schools for all children, white and Negro. The decisions also make it clear that desegregation necessarily includes faculty desegregation and that delay in desegregating schools is no longer tolerable.

As your second letter points out, Arkansas has made a start in the desegregation of its schools. Last fall, some school systems in Arkansas completely desegregated their schools and most others started desegregation in accordance with the 1965 guideline. Most of these school systems agreed to assign students to particular schools on the basis of the choices made by pupils' parents. Most districts agreed to start faculty desegregation by holding joint faculty meetings and in-service training programs on a desegregated basis. Working under the 1965 guidelines, many school systems made significant progress. In these systems, a significant proportion of Negro children entered desegregated schools and school officials made preparations for teacher desegregation. But other school systems made less progress, and some made no progress at all.

In some instances, progress was thwarted by the attitude of school personnel, both Negro and white, who made it clear that Negro children should choose to stay in "their" Negro schools. In other instances Negroes believed that if they chose white schools for their children, they would incur the displeasure of the white community, and perhaps suffer economic injury. Such beliefs may, in many cases, be incorrect, but they are nevertheless very real to the Negro parents who hold them. Even in communities where desegregation is well accepted, Negroes who have been taught all their lives that Negro children belong in "their" Negro schools are reluctant to send their children "over there to the other school." It has been our experience that problems such as these can be overcome only by extensive preparatory work in the Negro and white communities. When such work has not been done, there has been little progress.

But whatever the problems encountered by the school systems which have made little or no progress, the law is clear—school systems with a dual school structure must proceed expeditiously in converting to a single, unsegregated school system. This is a local responsibility. Hence, the 1966 guidelines reflect the expectation, supported by the law, that school systems in carrying out their responsibility to desegregate their schools will be able to progress significantly further in the 1966-67 school year than they did in 1965-66. The differences between the 1965 and the 1966 guidelines are not differences in principle. They differ only in placing more emphasis on performance, requiring that progress be made in 1966-67 beyond what was achieved in 1965-66, when schools were starting desegregation.

Of the specific differences between the 1965 and 1966 guidelines, perhaps the most important concern teacher desegregation. But first of all, it is important to note that the 1965 guidelines also required that "all desegregation plans shall provide for the desegregation of faculty and staff" and that steps shall be taken to eliminate past segregated assignments. The impression that the faculty desegregation requirements are new arises from the fact that school districts beginning desegregation were permitted, during the first year, to prepare their staff for desegregation by joint faculty meetings and in-service training programs (Section V-E-4 of the 1965 guidelines). The 1966 guidelines define the objective of faculty desegregation in greater detail than did the 1965 guidelines. The pattern of teacher assignments to schools "may not be such that schools are identifiable as intended for students of a particular race." Moreover, the 1966 guidelines indicate that there must be actual progress in teacher desegregation. "Staff desegregation for the 1966-67 school year must include significant progress beyond what was accomplished for the 1965-66 school year in the desegregation of teachers assigned to schools on a regular full-time basis." The guidelines give several examples of what school systems might do in 1966-67 for staff desegregation. One example is "some desegregation of professional staff in each school." There is, however, no requirement that there be any particular pattern or proportion of staff desegregation. Each district is free to proceed as best suits its situation, as long as the progress is real. The enclosed memorandum shows that the staff desegregation provisions are in accord with the decisions of the Federal courts.

Another important difference between the 1965 and 1966 guidelines appears in

the section concerning the acceptability of free choice plans. Last year the guidelines provided (Section V-D) that:

The responsibility to eliminate segregation rests with school authorities and is not satisfied by rules and practices which shift the burden of removing discrimination to the class or classes of persons previously discriminated against. Desegregation of a school system may, however, be initiated by a "free choice" plan [that assigns pupils in accordance with the standards of the 1965 guidelines.]

The 1966 guidelines continue to accept free choice as a means of undertaking desegregation (Section 181.11). But the 1966 guidelines place greater emphasis on the responsibility of school officials to obtain community support so that their free choice plans will be an effective means of desegregation (Section 181.54). They provide that if the choices made will lead to only a small degree of desegregation in 1966-67, usually the second year of desegregation, the U.S. Commissioner of Education may review the plan to determine whether it is an effective means of meeting the school system's obligation to desegregate. On the basis of all the information gathered in such a review, the Commissioner may take up with the school system further steps that it should take in order that there will be reasonable progress in 1966-67 toward establishing a single desegregated system of schools. In order to give school officials a guide to the standards the Commissioner would use in scheduling plans for review, the section states, in percentage terms, the performance that would normally be expected in several situations. Here again, this section reflects the expectation that where local officials implement their plans responsibly, reasonable progress will be made in desegregating schools, but does not set down any rigid requirements of what that progress must be. Each school system's situation will be reviewed according to the facts applicable to it. These guideline provisions, as the enclosed memorandum shows, are in accordance with the court decisions that school systems must move forward in desegregation.

The 1966 guidelines contain several provisions which were not in the 1965 guidelines. For example, Section 181.42 provides that a high school student's own choice of school will be binding if his parents do not choose a different school within the choice period. This provision should make free choice plans a more effective means of carrying out the responsibility to establish a single system of schools. There are cases where parents are reluctant to choose a desegregated school for their children but may not object if the child makes his own choice of a desegregated school. In February and March, a Federal district court in Alabama included a similar provision in several court ordered plans.

Section 181.14 provides that a student attending school on a desegregated basis for the first time may not be disqualified from athletics and other activities because he is a transfer student. He may, of course, be disqualified for some other reason, such as failing grades at his previous school. In many school systems, students who transfer voluntarily are subject to a one year waiting period before they can play football, but students who are transferred by school authorities in, for example, a school consolidation, are under no such a limitation. Because changes in assignment under a free choice plan are made primarily to satisfy the obligation of the school system to desegregate its schools, rather than because of the transfer desires of the student, such transfers should be treated in the same manner as any other officially arranged transfer. In any case, a waiting period would discourage students under a free choice plan from changing schools and would make free choice plans less effective. This provision is supported by the Oklahoma City school desegregation decision handed down last September, which provided that each student transferring under that desegregation plan

shall have all the rights of the school [to which he transfers] academic programs, and athletic programs notwithstanding any rules to the contrary, inasmuch as the law of desegregation supersedes any rules requiring residence and time.

Section 181.15 provides that if the facilities at a school established and still maintained for students of a particular race are inferior to those generally available in the school system, the school should be closed and the students assigned to other schools. We have found that in 1966 there are places in the United States where Negro students are still segregated in one and two rooms schools, with little heat and no running water, while white children living in the same locality attend modern brick schools equipped with the latest teaching aids.

Such Negro schools do not even meet the "separate but equal" standard developed in the years following *Plessy v. Ferguson*, 163 U.S. 537 (1896). The reason and authority for this provision are obvious. In the Lowndes, Bullock, Macon and Montgomery County, Alabama school desegregation cases decided in February and March, 1966 the U.S. District Court ordered the closing of 65 such small, inadequate schools.

A final difference between the 1965 and 1966 guidelines is found in the various forms issued with the 1966 guidelines. The 1965 guidelines described in general terms the contents of the notices school systems with free choice plans would use to inform parents of their opportunity to exercise a choice of school. Each school was expected to write its own notices and include them with the plan sent to the Commissioner. Because a great many of these notices were inadequate for their purpose, much time had to be spent last summer in helping to prepare proper notices for many individual plans. The acceptance and implementation of plans for the 1965-66 school year was delayed, and so was the assignment of students to schools. As the result of this experience, it seemed desirable to issue with the 1966 guidelines appropriate texts for school officials to use in their notices, even though not everyone would agree with any particular wording.

There are, of course, other differences between the 1965 and 1966 guidelines, but because they do not seem to be controversial, there is no need to labor them here.

With regard to Mr. Stratton's twelve assertions, I will quote them in groups and follow with my comment.

1. It changes our plan of desegregation which we accepted last year and which we have kept in good faith after approval from the Department of Health, Education, and Welfare.

7. It destroys all confidence on the part of those who have thus far worked to meet the law with courage and sincerity because we find that we cannot trust the authorities who approved our original plan.

12. We feel that we should be allowed to continue with the three year plan which was approved by the Commissioner of Education and which the schools and its patrons have accepted. Continual and more stringent regulations will but lead to resentment and possible rebellion.

Comment. The 1965 guidelines and the letter accepting this school district's plan stated plainly that changes in the guidelines and the district's plan might be necessary from time to time. But no changes of substance in this district's plan are required by the 1966 guidelines, if the plan is an effective means of desegregation in the district. The plan in this particular case provided for the desegregation of 8 grades in 1966-67 and 12 grades in 1967-68. There is no requirement in the new guidelines that this time schedule be changed. In accordance with the 1965 guidelines the plan provides for joint faculty meetings and in-service training programs as "a first step toward integration of faculty." The 1966 guidelines require that a second step be taken in 1966-67. Apart from the expectation that this school system make further progress under its plan in 1966-67 toward the desegregation of its students and teachers, the only changes to its plan required by the 1966 guidelines relate to matters of procedure and form, such as the uniform texts of the letters and notices, the reason for which was explained above.

With regard to the possibility of "rebellion," I have commented below in connection with item 6.

2. The revised orders violate the Civil Rights Act of 1964 in requiring racial balance in schools and goes much further than Congress intended.

Comment. The concern here arises from the percentages in § 181.54. These percentages have been misinterpreted by some as requiring "racial balance," or a particular percentage of Negro children in schools with white children. As I stated in the discussion of § 18.54 above, the percentages are in the guidelines to give school officials some guidance as to a reasonable degree of progress that might normally be expected under free choice plans. Depending on the circumstances, failure to make the indicated progress might, or might not, mean that school officials should take further steps or change their plan so that there will be progress. The guidelines do require that reasonable progress be made, but nowhere do they require that there be any particular proportion of Negroes and whites in any particular school. The "correction of racial imbalance" is a phrase referring to the busing of children from neighborhood schools which have not been officially segregated, but which, because of residential patterns, are "racially imbalanced." The guidelines do not deal with this situation at all.

3. The changes demanded have come to us after obligations and contracts with teachers have been made and compliance with them will force the administration and school board to renege on contracts and commitments already made to teachers and pupils.

Comment: I regret that it was not possible to issue the guidelines until March 7. It appeared desirable, however, to consult a great many persons within and without the Government, including many State and local school officials, during the preparation of the guidelines. Arranging the consultations and making use of the advice given us took longer than was anticipated. Nevertheless, the fact that the guidelines were under revision was widely reported in the press, and chief State school officers were kept informed. The provisions of last year's guidelines and our statements while the guidelines were under revision were such that responsible school officials should have been preparing for further progress in teacher desegregation next fall.

4. The policies force the use of certain language, which is not the will of the school authorities, in notices to parents and advertisement in the paper and requires that the school adopt it in toto. When official freedom of expression is denied, the time is not far away when personal freedom of expression also will be denied.

Comment: As I explained above, our experience last summer demonstrated the advantages both to local school officials and to the Office of Education of providing acceptable notices and forms ahead of time and on a uniform basis.

5. The time schedule for advertisement and registration of pupils cannot be met because of the late notice to the schools.

Comment: The choice period required by the guidelines could start as late as April 1, 25 days after the guidelines were issued. Section 181.62 states that if a required procedure is not feasible, the Commissioner may accept an alternative if he determines it will accomplish the same purpose. Late starts have been permitted when there is a good reason for them.

6. The severity of the changes will create antagonism among teachers, pupils, and patrons and, hence, will cause serious problems in administration of the schools.

8. It leaves the feeling that the Civil Rights leaders are using a club to force their will and show no respect for our rights or opinions. There can be no enthusiastic attempt on the part of administrators or board members to comply with such orders and the entire school system will suffer.

10. It makes no provision for local traditions and opinions but assumes that all situations can be handled in the same manner. There are some 150 or more schools in Arkansas that have none or few Negroes while some have as much as 60% Negro.

11. It imposes a tyranny over our schools which affects the lives of all our people and destroys their faith in our government.

Comment: I am, of course, well aware that there are those who doubt the wisdom of the school desegregation decisions, and the Civil Rights Act of 1964. I am also aware, that in some places, providing leadership so that pupils, parents, teachers and the community will accept desegregation is a most difficult task. But, as the enclosed memorandum points out, it is the law that desegregation must proceed expeditiously. Furthermore, it has been our experience that attitudes often change faster than would appear possible beforehand, and that with determined and resourceful leadership, school systems can make significant changes in a short period of time, to the benefit of all concerned. The guidelines provide for flexibility and by no means require precipitous change where local conditions require otherwise. Where local officials assume responsibility locally to bring about the change in a planned and orderly fashion there has seldom been trouble. The complaints of Federal interference and predictions of disorder usually come from communities that have not assumed local responsibility for desegregation.

Needless to say, to the extent of our resources, we will work with school officials to help make desegregation a success. I believe most school officials are aware that under Title IV of the Civil Rights Act of 1964, the Office of Education has consultants available who can provide school officials with on the spot advice about desegregation. It can also arrange for institutes and in-service training programs which will help school personnel deal effectively with the problems of desegregation. We have found that these programs can be very useful in overcoming the problems to which Mr. Stratton refers.

9. It places financial strain on schools to advertise, send letters, and employ additional clerical assistance to get letters to patrons.

Comment: We are aware that the cost of printing, and sending out notices has to be met from lean budgets. But if a desegregation plan is to be effective it is essential that parents be given direct and individual notice of the plan and how it affects them. Furthermore, it should be noted that far more than the cost of the one mailing is still being spent, even today, on bussing and other arrangements made to preserve segregation.

In closing, I can assure you that there will be no doubt of the compliance with Title VI of Arkansas school systems which are proceeding with reasonable speed to establish a single system of schools. We will have to work closely with those districts which are making less progress and we will, of course, take into account their particular problems. If there is any assistance we can give to you and your staff in working with such school districts I hope you will call upon us.

Sincerely,

HAROLD HOWE II,
U.S. Commissioner of Education.

April 25, 1966.

To: Chief State School Officers.

From: Harold Howe II, U.S. Commissioner of Education.

Subject: Special Civil Rights Compliance Problems in Summer Programs under Title I of the Elementary and Secondary Education Act.

All school districts operating summer preschool and other summer programs should be reminded that all such programs must be operated on a nondiscriminatory basis. School districts operating under desegregation plans should refer to § 181.14(b)(4) of the revised desegregation Guidelines which provides that:

All special educational programs, such as preschool, summer school and adult education, and any educational program newly instituted, must be conducted without segregation or any other form of discrimination. Free choice desegregation procedures normally cannot be applied to such programs.

For those school districts working under school desegregation plans for their regular school program, summer projects provide an opportunity for helping the community with the transition and helping the staff prepare for faculty desegregation during the coming school year. The way in which summer programs are used for this purpose can demonstrate the good faith of a school district in carrying out its desegregation plan.

Summer projects approved under Title I by the State educational agency either before or after the issuance of the revised desegregation Guidelines are subject to the same nondiscrimination requirements. Your agency must make special efforts to make sure that such projects are not begun on a segregated basis, in order to avoid the possible necessity of discontinuing or reorganizing the project after it has begun.

If a school district plans to conduct the same or similar activities at more than one location an evaluation must be made to determine whether this separation is justified on some basis other than the maintenance of segregation.

In making this evaluation the State educational agency should consider the racial composition of the teaching staff, whether the school at each location is thought of by the public as being for white or Negro children and whether the activities could be conducted at one location where members of both races would feel free to attend.

Another way of stating these requirements is that summer projects under Title I of P.L. 89-10 and Head Start programs under OEO will operate along parallel lines with respect to civil rights compliance.

While an area for a summer project may need to be selected on the basis of the number of children from low-income families currently attending a particular school, all of the children residing in the area surrounding that school should be considered for participation in the project according to their needs without regard to race, color, or national origin. Such a project normally should not be conducted at a school identified as a Negro school if there is another school not so identified within the project area or reasonably close to it.

It should be emphasized that the foregoing principles apply to the selection of school facilities, children, and staff for preschool projects.

The State educational agency should attempt to secure a proper revision of any summer project that is likely to be operated on a discriminatory basis. Failing that, it is the responsibility of the State agency to notify the Commissioner of Education in order that he may determine the action to be taken under Title VI of the Civil Rights Act.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
July 1, 1966.

MEMORANDUM

To: Chief State School Officers.

From: Harold Howe II, U.S. Commissioner of Education.

Subject: Responsibilities of State Education Agencies in Assuring Compliance for State Approved Projects.

Recently a number of State departments of education have raised questions concerning their responsibility for assuring compliance with the nondiscrimination requirements of the Civil Rights Act of 1964. Several State systems have objected that their agencies are not enforcement agencies and have no responsibility to assure that federally assisted programs funded through their agency are in compliance with the Act.

I feel that it is most important that State agencies be reminded of their responsibilities in this area. The intent of Congress in enacting Title VI was that no further Federal assistance should be provided for programs in which there is discrimination on the basis of race, color, or national origin. Since, in many Federal education programs, the Congress has also prescribed that much of the educational leadership and administrative responsibility for the program shall be borne by the State departments of education, it is evident that State educational agencies have an important responsibility for carrying out the non-discrimination policies now written into all of these programs.

Each State educational agency has filed with the Office of Education a Statement of Compliance giving its assurance that it will fulfill these responsibilities as a condition for the receipt of Federal financial assistance through the Office of Education and outlining the methods of administration to be used by the State department of education in carrying them out. Each agency has set out, among other things, the methods it will use to "Review periodically the practices of the State agency, school districts, and other agencies participating in these programs, to ascertain and assure that these practices are in conformity with the Regulation and the Statement of Compliance." The instructions accompanying the Statement of Compliance forms, issued December 1964, stated that "While it is recognized that some discriminatory practices may occur in school districts and other agencies which are not within the control of the State agency, the methods of administration must describe the efforts that the State agency will make to effect compliance (such as advice and consultation), and must provide that where such efforts fail, the U.S. Commissioner of Education will be so advised." Such methods must also provide for the evaluation of compliance, for taking timely action to correct discriminatory practices found to exist, and for keeping the Office of Education informed regarding the disposition of complaints.

Failure of the States to carry out these responsibilities violates the intention of Congress to maintain the decentralization of educational responsibility in the States and local school districts. It invites Federal action where it may not be needed. It furthermore constitutes a violation of Title VI of the Civil Rights Act which could jeopardize the continued participation of the entire State in federally assisted programs.

The recent examples which have given rise to these questions of State responsibility have come up under the summer programs financed through Title I of the Elementary and Secondary Education Act. My memorandum of April 25 called attention to the importance of State educational agencies reviewing summer projects to make sure that they would be operated on a nondiscriminatory basis. Some State departments of education have informed local school districts of the April 25 memorandum and have undertaken to review all projects to assure compliance. Others have not done so. We are now receiving complaints of segregated summer programs conducted in violation of Title VI. There is particular concern about those school districts which have purposely switched the funding of their summer preschool programs from the Office of Economic Opportunity to the Elementary and Secondary Act in the hope of avoiding the non-discrimination requirement.

We are now planning visits to some of these programs to review these charges. I hope that if any such visit is required in your State you will assign a staff member to work with our staff in remedying any noncompliance. If we cannot count upon State agency responsibility in this matter we will have to review the status of compliance of the State educational agency with its Statement of Compliance.

I am sorry to say that we have heard of some instances in which local school districts have canceled their summer programs rather than comply with the nondiscrimination requirements. I hope that the strongest leadership can be exercised from the State level to prevent local school districts from taking such action. Already we have received strong pleas from local groups for the Federal Government to finance directly programs to help disadvantaged youngsters where local school authorities have abdicated their responsibility for using the available funds for the purpose intended by the Congress. I am sure you feel that direct Federal funding or operation of such programs is not desired by most people, but you should recognize that failure of local school districts to take responsible action will certainly increase the pressure for such an alternative.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

OFFICE OF EDUCATION,

Washington, D.C., August 9, 1966.

HON. AUSTIN R. MEADOWS,
Superintendent of Education,
State Department of Education,
Montgomery, Ala.

DEAR SUPERINTENDENT MEADOWS: Each day we are faced with more evidence that children from poor homes and from our racial minorities are being doomed to continued poverty and educational deprivation. As you no doubt know from your own personal and professional experience, schools transmit a climate of expectation and self-esteem to students through their enrolment mix and institutional traditions. The child's perception of his school's place in the educational and community structure apparently contributes to his relationship to school and society. There is a general tendency for children to shape their lives after the models visible in their environment. Attendance at a school which reflects economic and racial segregation is much more than an academic experience related to the traditional acquisition of knowledge and skills—it helps to establish low expectations for the future.

A recent study, *Equality of Educational Opportunity*, casts new light on the educational problems of poor children and on the inequities of segregated education. I enclose a copy. I would like to mention also that some people have seen Title I of the Elementary and Secondary Education Act as allowing the continuance of concentrations of poor and segregated children. I do not believe this is true, and I am sending you this letter to suggest ways to prevent the development of such a problem.

Title I of the Elementary and Secondary Education Act of 1965 (ESEA), was designed by Congress to meet the needs of educationally deprived children who live in attendance areas where there are "high concentrations of children from low-income families." Many of these areas are actually segregated housing areas and the children suffer both from impoverished home backgrounds and from isolation from the community at large. If they are to break away from poverty they must overcome their educational deficiencies and develop the social skills they need in order to function effectively in the larger community. A Title I program that does not consider these objectives probably deserves significant reconsideration.

As in all Title I programs, the programs in segregated areas should be devised so as to concentrate the expenditure of Title I funds to a sufficient degree to bring about significant improvements in the behavior of the *most* educationally deprived children. It is not necessary, however, that the children selected for participation in Title I activities receive these services in schools in the low-income areas in which they reside. The development of special educational assistance for them at locations outside their immediate attendance areas is encouraged provided such assistance is specifically designed to meet their special educational needs and the location offers special advantages, such as opportunities for learning in a widely representative social environment.

When such efforts are made we would also invite applicants to include a limited number of children from the area where special Title I assistance is

to be located and to select such children on the basis of their needs for the same type of assistance. In some cases, this type of arrangement may require the development of cooperative projects between districts.

Applicants should not reasonably expect, however, to be able to provide effective special assistance for a child in the "most educationally deprived" category merely by transporting him to another school. The child will need other special assistance, and the Title I project should seek to provide for it.

The arrangements for activities and services to be provided under Title I have been delegated to local educational agencies. You are closer to many of the problems than we in Washington, and can work more immediately to make our schools a training ground for leaders and citizens in a free and open society. May I suggest, however, that your office, which is charged with the responsibility and has the authority to determine whether a local project is approvable, exercise leadership in the development of effective programs for educationally deprived children living in low-income areas characterized by segregation.

Sincerely yours,

HAROLD HOWE II.
U.S. Commissioner of Education.

AUGUST 17, 1966.

To: State Title I Coordinators, ESEA.

From: John F. Hughes, Director, Division of Compensatory Education.

Subject: Distinguishing "new" and "continuing" activities for Title I applicant's whose funds have been deferred pending compliance with Civil Rights Guidelines.

Your office may approve applications from local educational agencies with approved desegregation plans provided (a) that such plans have been amended by filing of a form HEW 441-B, and (b) that the State educational agency has not been notified to defer any grants for "new" programs pending the resolution of certain civil rights compliance questions. If a local educational agency has not filed an HEW 441-B or if your agency has been notified to defer any commitments of Federal funds or for new activities then only "continuing" Title I activities may be approved as long as the applicant remains in a deferral status.

For purposes of identifying proposals for "continuing" Title I projects the following definition should be applied:

A proposal for a "continuing" activity is one which would extend a 1965-1966 Title I project activity into FY 1966-1967 and would attempt to achieve similar objectives through similar means (same categories of personnel, equipment, and facilities) without any increase in the size and scope of that activity. The activity, if it is to be classified as "continuing," may not serve substantially more children nor involve the employment of more staff personnel than were actually served and employed the previous year.

You should defer any proposed increase in the scope of such an activity until the applicant's compliance has been assured and grant final approval as a "continuing" activity only to that portion of the applicant's proposal which is within the scope of last year's activity. All other activities, including construction and purchases of equipment and textbooks, are classified as "new" activities and may not be considered for approval until the applicant's compliance has been assured.

Your office should not approve a 1966-1967 project proposal, however, merely because it would continue a 1965-1966 project activity. Each such proposal should be approved only after a review of all available pertinent information including evaluative information available on the previous year's project to determine whether the current project is likely to be successful in meeting the needs of educationally disadvantaged children and is otherwise approvable under Title I.

MEMORANDUM

NOVEMBER 29, 1966.

To: The Secretary.

From: Alanson W. Willcox, General Counsel.

Subject: Review of Legal Authority for the 1966 School Desegregation Guidelines.

Pursuant to your recent request, I have reviewed the legal authority for the Revised Statement of Policies for School Desegregation Plans (the "Guidelines") and my earlier advice to you concerning the legal authority for it.

I have completed this review, and I unhesitatingly reaffirm my advice that the 1966 Guidelines are fully consistent with and supported by Title VI of the Civil Rights Act of 1964 and the decisions of Federal courts.

In addition to the analysis of court decisions in my memorandum of March 7, 1966, to Commissioner Howe, the pertinent decisions are discussed in a statement entitled "Authority for the 1966 School Desegregation Guidelines." That statement served as an attachment to a letter of May 24, 1966, from Commissioner Howe to Senator Fulbright. More recently the Courts of Appeals for the Fourth and Fifth Circuits have handed down decisions in *Wheeler v. Durham City Board of Education* (No. 10,460, C.A. 4th, July 5, 1966) and *Davis v. Board of School Commissioners of Mobile County* (No. 22,759, C.A. 5th, August 16, 1966). These reaffirm principles upon which the Guidelines are based, particularly the fact that teacher desegregation is an essential part of the desegregation plans. Further, in the *Mobile* case, the Court pointed out as one of the principal legal defects in the plan there under review "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. Less than two-tenths of one percent of the Negro children in the system are attending white schools."

The Deputy Attorney General recently submitted to Congressman Howard W. Smith, Chairman of the House Rules Committee, a letter requested by him regarding faculty desegregation. The Chairman had asked whether this Department has authority, under title VI of the Civil Rights Act of 1964, to require a school district maintaining a dual school system to desegregate its faculty as a necessary part of desegregating its school system. The Department of Justice responded with a letter dated October 4, 1966, and an attachment citing numerous judicial decisions in which the courts had required school districts, as a part of school desegregation plans, to cease hiring and assigning faculty on the basis of race and in many cases to assign teachers for the express purpose of overcoming the effects of past discrimination. The letter concluded with the following sentence: "For the foregoing reasons we conclude that section 601 [of the Civil Rights Act of 1964] applies to the desegregation of faculty and staff of school systems that have been racially segregated, and that section 604 [of the Civil Rights Act of 1964] does not preclude such application."

It should be noted, on the other hand, that the Report of the Senate Committee on Appropriations (pp. 71 and 72, Report No. 1631, 89th Cong., 2d Sess.) questioned whether the Guidelines are consistent with legislative intent on the ground that they allegedly require assignment of pupils in order to overcome racial imbalance. The Committee apparently felt that the definition of "desegregation" in section 401(b) of the Act, and the provision of section 407(a) which provides that "nothing herein shall empower any court or official to require the transportation of students to overcome racial imbalance," were intended to be applicable to actions under title VI and that the Guidelines required action to overcome such imbalance.

We are satisfied that the Guidelines do not require action "to overcome racial imbalance." It should be noted, however, that section 402 specifies that the definitions it contains are "[a]s used in this title" [IV], and also that title VI does not contain the defined word "desegregation" or the word "desegregate." It is therefore difficult to conceive of a court holding that, as a legal matter, the title IV definition is controlling in title VI. Moreover, the context of the quoted language in section 407(a) indicates that it concerns only desegregation actions brought by the Attorney General, and not the refusal or termination of Federal financial assistance under title VI. The Senate Appropriations Committee Report, however, is based upon statements made by Senator Humphrey in response to questions asked by Senator Byrd of West Virginia.

Some time ago my staff prepared a statement showing that an examination of the colloquy in context demonstrates that Senator Humphrey was not referring to requirements applicable to school districts which have been maintaining dual school structures, but only to what would be imposed in *de facto* situations which courts have held not to violate the constitutional rights of students. In fact, Senator Humphrey emphasized that the provision in question simply embodied the substance of *Bell v. School City of Gary*, 324 F. 2d 209 (C.A. 7th, (1963), cert. den. 377 U.S. 924). (110 Cong. Rec. 12715-12717, June 4, 1964)

The Guidelines are consistent with Senator Humphrey's explanation because he made clear at that time that the amendment did not prevent action "for the

purpose of preventing denial of equal protection of the laws," [i.e., a violation of the children's rights under the Fourteenth Amendment]. (110 Cong. Rec. 12714, June 4, 1964)

The Guidelines do not require more for the continuance of Federal assistance than a plan looking toward the elimination of the dual school system as required by the Fourteenth Amendment. These requirements are discussed in my memorandum of March 7, 1966, and the attachment to Commissioner Howe's letter of May 24, 1966, to Senator Fulbright.

The performance provisions of which the Senate Appropriation Committee report is critical do no more than follow constitutional requirements. They provide that for the school year 1966-67 a school district may comply with title VI through operation of a choice plan under which schools continue to be maintained for Negroes. But if in practice such plans are not making progress toward the elimination of the dual school system, the Commissioner may require that the school officials take further action to make progress or may require a different type of plan such as geographic zoning (45 C.F.R. 181.54). Where a school district assigns children to schools on the basis of non-gerrymandered geographic zoning, the effectiveness test referred to above does not apply.

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 of Education 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.

The percentages stated in the Guidelines do not provide a rigid rule for the degree of progress required to each school district. They do, however, provide a guide to the Office of Education in determining whether or not a free choice plan should be scheduled for review and a guide to 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.

Any school district which believes it is being asked to do more than the law requires has full recourse to an administrative proceeding and a thirty-day notification to Congressional committees before a termination of Federal assistance (sec. 602, Civil Rights Act of 1964). Moreover, if it believes the termination to exceed the Commissioner's authority under the law, it is entitled to judicial review as provided in section 603.

In short, 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.** At no time did the Congress intend in title IV or elsewhere in the Civil Rights Act of 1964 that any school child receive less than his full measure of constitutional protection. The responsibility 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.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington.

HONORABLE CARL HAYDEN,
Chairman, Senate Appropriations Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: In the Committee on Appropriations Report No. 1631, dated September 22, 1966, the Committee recommended that I reexamine the 1966 Statement of Policies for School Desegregation to see whether they conformed with the intent of Title VI of the Civil Rights Act of 1964.

I wish to report that the legality of the policies has again been carefully reviewed both by our own General Counsel and the Acting Attorney General. This review has included both the legislative history of the Civil Rights Act of 1964

and the recent decisions of the courts. It is the considered judgment of both these officers that the original legal opinions on the policies continue to be valid and that the policies are legal, fair, reasonable and appropriate to carry out the letter and the spirit of Title VI. I have enclosed a memorandum prepared by our General Counsel which details the legality of those provisions about which questions have most frequently been raised. We have also been advised that the U.S. Court of Appeals for the Fifth Circuit has issued an opinion further validating the legality of the School Guidelines. You may be sure that we will continue to develop our policies consistent with the final rulings of the courts.

Last year we learned that the publication of the school desegregation policies late in the school year placed a heavy burden on school systems. This year, we have therefore determined to make no significant changes in the desegregation policies issued in March 1966 and to distribute them at this time to the schools. Immediate distribution assures that school systems will have the necessary time for appropriate planning which will insure continued progress in this area.

I have also examined and reviewed complaints which go to the manner in which the guidelines have been interpreted and administered by Office of Education staff. I am convinced that most of the complaints originated because of disagreement with the Department's policy rather than because of failure to carry out these policies properly. Nevertheless, I have asked Commissioner Howe to examine with care the instances in which these complaints occurred and to correct administrative procedures where such action is warranted.

Sincerely,

JOHN W. GARDNER, *Secretary.*

MEMORANDUM FOR SCHOOL DISTRICTS OPERATING UNDER FREE CHOICE
DESEGREGATION PLANS

We believe it will help school districts this year if they are more fully informed of the procedures the Office of Education will use in reviewing the operation of "free choice" desegregation plans.

GENERAL PROCEDURE

Each school district with a plan is required to file with the Office of Education by April 15 a report of its anticipated staff and student assignments for next fall. School districts using free choice plans should file the report of their anticipated student assignments within 15 days of the end of the choice period. As soon as we receive the report we will make a preliminary determination of the probable compliance status of the district.

Generally speaking those districts operating under free choice plans which meet the criteria set out below will receive a letter indicating that on the basis of the progress reported they appear to be in compliance with the Act and will require no further review this year. If we later receive information indicating less progress than anticipated or other compliance problems, then a review which looks at all aspects of the desegregation plan may be necessary.

CRITERIA FOR EXEMPTION FROM REVIEW ON THE BASIS OF SPRING REPORTS

Student desegregation

For progress in student desegregation beyond what has been achieved in 1966-67, the criteria for preliminary review are those already set out in Section 181.54 of the guidelines.

It should be noted that the guideline percentages apply only in cases where there is a "sizeable percentage of Negro students." In many districts with a small percentage (e.g., less than 15%-20%) of Negro students more substantial progress in eliminating the dual system than that indicated in Section 181.54 would be expected.

Staff desegregation

Last year school districts requesting a rough guide to expected progress were told that the equivalent of one classroom teacher assigned on a desegregated basis in each school normally would be adequate evidence of a sufficient start on staff desegregation, so that no review would be required. For the coming school year double that degree of progress and staff desegregation in both formerly white and Negro schools would be expected to assure that a plan is oper-

ating effectively. It should be recognized, again, that this can only be a very rough measure. For instance, in districts with a few large schools more progress would be expected, and in districts with a great many small schools less might be expected.

Other factors

Other factors that will be considered in making preliminary reviews include: existence of complaints affecting free operation of the plan, existence of small, inadequate segregated schools and other evidence of unequal programs, evidence of building programs which would perpetuate the dual system, and discriminatory transfers in or out of the districts. Factors which might indicate adequate progress despite failure to meet the student and staff criteria above might include such consideration as the special difficulties presented in school districts where there is a very high percentage of Negro enrollment in the schools (such as 70% or 80% or more).

Districts requiring review

Districts which do not meet the above criteria on the basis of their April 15 reports will be considered to require further review because of probable compliance problems. These will be divided into two groups: (a) those districts whose performance falls substantially below the criteria listed above and (b) those districts coming closer to the above criteria but still requiring review.

Each district in these two groups will be notified of its status, and those in category (a) above will be visited for a review on a priority basis. Districts in category (b) will not be visited immediately and should review their own plans carefully and take every possible step to improve their progress before school opens in the fall. Review of these districts is likely to fall during the school year, and adjustments to achieve compliance are always more of a problem while school is in session.

Summer programs

In addition to the operation of their regular desegregation plans, school districts should be alert to the requirement that their special summer programs cannot be operated on a segregated basis. State officials have responsibility for reviewing carefully the proposals for these programs to make certain that ineligible projects are not approved. A bulletin about the requirements for summer programs is attached.

HAROLD HOWE II,
U.S. Commissioner of Education.

MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS

CIVIL RIGHTS COMPLIANCE IN SUMMER PROGRAMS OPERATED UNDER TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED

I want to remind you that procedures instituted in 1966 governing civil rights compliance in Title I summer programs remain in effect for projects undertaken by local educational agencies in the summer of 1967. The revised Title VI desegregation guidelines, issued on January 1, 1967, repeat the 1966 provision (§ 181.14(b)(4)):

All special educational programs, such as preschool, summer school and adult education, and any educational program newly instituted, must be conducted without segregation or any other form of discrimination. Free choice desegregation procedures normally may not be applied to such programs.

More detailed explanation of the responsibilities of State agencies for enforcing this provision are contained in my memoranda of April 25, 1966, and July 1, 1966, on this topic. I urge you to review these documents, as they clearly spell out your responsibilities for assuring that summer programs are operated in a totally desegregated fashion.

The Office of Education attaches great importance to the effective implementation of these procedures. I hope you will remind the local educational agencies in your State of these requirements. In reviewing and approving applications for summer projects, you are requested to review thoroughly with the applicant the procedures that it will follow to assure that the program will be fully desegregated. If projects have already been approved, they should be reviewed

again to assure that this requirement is being met. We hope that a careful review at this time will help avoid the necessity of discontinuing or restructuring a project after it has begun.

Title I staff will visit selected State agencies this spring to review with State Title I Coordinators the procedures your agency is following. In the meantime, I hope you will call upon us if we can be of assistance in clarifying any relevant matters.

HAROLD HOWE II,
U.S. Commissioner of Education.
FEBRUARY 27, 1967.

To: Chief State School Officers, State Title I Coordinators.

From: Harold Howe II, U.S. Commissioner of Education.

Subject: Use of Title I funds in local school districts undergoing desegregation or in racially segregated attendance areas.

In its report issued on January 31 the National Advisory Council on the Education of Disadvantaged Children made the following comment and recommendation:

"As racial desegregation of schools progresses, reports made to the Council indicate that insufficient planning results in some impoverished Negro children being cut off from the benefits of important programs that may exist in their former segregated schools. . . . A major new area for vigilance and administrative care is that of insuring that special educational services follow the eligible child who is transferred under a school desegregation program."

The purpose of this memorandum is to provide (1) the following statement of policy: *no child who would otherwise participate in a Title I activity or service is to be denied such participation because of his exercise of the right to enroll in another school* and (2) guidance for the implementation of this policy.

In this connection your attention is called to my memoranda of April 25, 1966, on summer programs and of July 1, 1966, on the responsibilities of State educational agencies for compliance with the Civil Rights Act. Your attention is also called to my letter to you dated August 9, 1966, concerning the use of Title I funds for children living in racially segregated attendance areas.

Questions have been raised by Title I Coordinators concerning the location of Title I services when children are attending schools under a freedom-of-choice, open enrollment, or other plan designed to bring about desegregation. We realize that with the implementation of such plans local educational agencies may need some special guidance in determining the children who will participate in the Title I program. We ask that you advise all Title I applicants in your State as follows:

1. The revised Title I regulations differ from the previous regulations in two important respects regarding project areas:

- (a) It is no longer permissible to designate as project areas attendance areas with less than average concentrations of children from low-income families.

- (b) The regulations specifically state that projects shall be located where the children can best be served.

2. The purpose of the "attendance area" requirement in Title I is to identify the "target population" from which the children with special needs are to be selected. The children in the target population include all children

- (a) who are attending a particular public school which has a high concentration of children from low-income families (see item 4), (b) who had been attending that school, or (c) who would be attending that school if they were not attending a private school or another public school under a freedom-of-choice, open enrollment, or other plan designed to bring about desegregation.

3. Educationally deprived children from this group should be selected for participation on the basis of the priority of their needs. Appropriate activities and services designed to meet those needs should be provided at locations where the children can best be served which, in most cases, are the schools they now attend.

4. The degree of concentration of children from low-income families for the purpose of determining eligible attendance areas or "target populations" may be *estimated*, if better data are not available, on the basis of the number or percentage of children from low-income families actually attending each of the schools being operated by the applicant local educational agency.

5. The only basis on which Title I services may be offered in schools enrolling children most of whom are not in the "target population" (see item 2) is that those services are designed for and will be serving primarily educationally deprived children selected from that population. Other children who have needs which can be met through such a project may participate in it but the number of such children must be limited so as not to dilute the effectiveness of the project for the children for whom it was designed.

6. The types of services that would be appropriate under these circumstances include special health, nutritional and social services; guidance and counseling; and remedial programs. In applying such services, consideration should be given to the special needs of the children in their new school environment. The types of services that on the surface would not be acceptable would include such activities as field trips for large numbers of children, general cultural enrichment activities, construction, and the installation of equipment.

Again, may I urge you to transmit this memorandum to local educational agencies in your State and to establish appropriate procedures for them to follow with respect to future Title I applications and amendments to applications. Please let us know how many copies you need for this purpose.

I would appreciate hearing from you concerning any problems you may have in implementing these provision in your State.

FEBRUARY 27, 1967.

Hon. JOHN STENNIS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STENNIS: I am sending you herewith a rather lengthy memorandum of law from this Department's Office of General Counsel, concerning the many points you raised some weeks ago about the policies and practices of the Office of Education for school desegregation under Title VI of the Civil Rights Act of 1964. I have already written you concerning the status of the Tate County School District, about which you inquired in particular, but in accordance with your request the legal memorandum answers your questions both in general terms and with specific reference to Tate County where appropriate. The lawyers have sought to provide comments on every point you raised.

I understand that Mr. Barus of the Office of General Counsel and Mr. Cresswell of your staff discussed the memorandum requested at various points. Among other things, we understood from these discussions that you would prefer that the memorandum await the official wording of the *Jefferson County* decision of the Fifth Circuit Court of Appeals, handed down in late December.

By the time the printed opinion in this case was available, a motion for rehearing by the full court had been filed. The enclosed memorandum accordingly reflects the position of the Department as to school desegregation requirements under Title VI that was arrived at prior to the *Jefferson County* decision, although other recent decisions are noted.

I hope the memorandum will be helpful and informative.

Sincerely yours,

HAROLD HOWE II,
U.S. Commissioner of Education.
February 24, 1967.

To: Harold Howe II, U.S. Commissioner of Education.

From: Edwin Yourman, Assistant General Counsel, Education Division, Office of General Counsel, DHEW.

Subject: Points Raised by Senator Stennis Concerning School Desegregation Policies under Title VI of the Civil Rights Act of 1964.

This memorandum is provided in response to your request for analysis and comment on the several points raised by Senator Stennis in his letter to you of October 21, 1966, concerning the legal validity of the school desegregation policies of the Office of Education under Title VI of the Civil Rights Act of 1964.

In your preliminary reply to Senator Stennis giving information on the Tate County School District, about which he inquired, you advised the Senator that you had requested a memorandum from the Office of General Counsel in view of the legal nature of the bulk of his questions. Since that time we have had several telephone conversations with the Senator's office concerning the work

at hand. When in December the Fifth Circuit Court of Appeals announced its opinion in *United States v. Jefferson County*, (Civil Action No. 23345, December 29, 1966), the Senator's office agreed that it would be appropriate to include references to that decision in our memorandum. The corrected and printed version of the court's opinion did not become available, however, until almost three weeks later. By that time a motion for rehearing by the full court had been filed by the school boards concerned, which motion has now been granted.

Although the present rehearing of this case makes it inappropriate to cite it as definitively controlling authority, we have not found it necessary to revise the analysis of the law we developed prior to the motion for rehearing, and indeed prior to the release of the *Jefferson County* decision itself. This is because our analysis is based primarily on previously issued leading decisions and other key authority. Accordingly, it seems appropriate to transmit this memorandum without awaiting any further court decision. We have taken up the various points in the order raised by Senator Stennis.

1. THE PURPOSE OF TITLE VI AS CONSTRUED IN THE LIGHT OF COMMENTS ON "RACIAL BALANCE" BY SENATOR HUMPHREY

In discussing proposed amendments to the then pending bill, Senator Humphrey, as floor manager for the bill, made various comments to the effect that it was not intended to require "racial balance" in schools. Senator Stennis quotes some of these comments on page 2 of his letter, and expresses concern that the policy they reflect may not be being observed in the Office of Education.

The court decision Senator Humphrey referred to in the quoted remarks was handed down in a case dealing with the alleged racial separation of children in the public schools of Gary, Indiana. *Bell v. School City of Gary*, 213 F. Supp. 819 (N.D. Ind. 1963), aff'd 324 F. 2d 209 (7th Cir. 1963), cert. den. 377 U.S. 924 (1964). The issue there was whether the school board could be required to bus children away from neighborhood schools where they were racially isolated, or to redraw the school attendance zones, so as to correct the racial imbalance. The court found that the school zones were based on reasonable non-racial criteria and held that because the school board had therefore not deliberately segregated the schools, it had no affirmative duty to desegregate them.

It is clear from Senator Humphrey's comments on this case quoted by Senator Stennis that racial balance or imbalance in schools was being discussed in connection with the bill only in the context of de facto segregation, where racial separation in the schools results fortuitously from housing patterns and geographic factors. In the quoted remarks, Senator Humphrey indicated that the bill was not designed to require the "busing of children to achieve racial balance," and that "natural factors such as density of population, and the distance that students would have to travel" would be considered legitimate factors in determining school attendance zones. 110 Cong. Rec. 12717 (1964). Nothing in the policies of the Office of Education under the Act has been contrary to this understanding of its purpose.

Nowhere in these remarks of Senator Humphrey's, nor elsewhere in the legislative history of the Act, is there any indication that the question of racial balance was considered to arise at all in the case of school districts where students have been assigned to schools on a racial basis, rather than on the basis of natural factors. In such cases, it seems clear that in order to end racial discrimination as required by Title VI it is necessary to eliminate in an orderly way the dual structure of schools based on race, in those districts where this work has not yet been completed. In fact, although Title VI applies to all kinds of discrimination based on race, color, or national origin in any institution or program receiving Federal assistance, it is clear that the continued operation of the dual school structure, held unconstitutional in *Brown v. Board of Education*, 347 U.S. 483 (1954), was one of the major reasons Congress felt that Title VI was necessary.

2. THE EFFECT OF THE DEFINITION OF "DESEGREGATION" IN SECTION 401 (b) OF THE ACT

Senator Stennis next refers to the definition of the word "desegregation" provided in Title IV of the Act, which includes a provision that the term as used in Title IV "shall not mean the assignment of students to public schools in order to overcome racial imbalance." The Senator inquires as to the legal

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).

It is true that in the *Clark* case the court denied the plaintiffs' request that continuation of the free choice plan be ruled unconstitutional on the ground of inadequate progress in student desegregation. The court noted that the free choice method "has been tentatively accepted by this and other courts as well as the Department of Health, Education, and Welfare . . ." but added that this is not to say free choice "may not be cast aside by the courts" if it does not result in meeting constitutional requirements (slip opinion, p. 5). The court indicated it would not rely conclusively on statistics showing the degree of student desegregation, for "the mere presence of statistics indicating absence of total integration does not render an otherwise proper plan unconstitutional" (slip opinion, p. 8). The court found that the number of Negro students in formerly all-white schools had more than doubled, from 621 in 1965 to 1,360 in 1966, or 19% of the total, and ruled that this constituted adequate progress as far as student desegregation was concerned.

The advice given the Tate County district as to the inadequacy of its plan seems entirely consistent with the reasoning and holding in the *Davis* and *Clark* cases. Tate was not asked to abandon free choice or reach any fixed degree of student desegregation, but only advised that further steps must be worked out to make more adequate progress. In the meantime, there remains virtually unaffected the racial discrimination inherent in the dual school structure.

3. THE RELEVANCE OF FACULTY ASSIGNMENTS IN DETERMINING COMPLIANCE WITH TITLE VI

Senator Stennis next discusses § 604 of the Act, which prohibits action under Title VI "with respect to any employment practice . . . except where the primary objective of the Federal financial assistance is to provide employment." He also refers to a provision of Title VII of the Act. In the administration of that Title, under § 703(j), no preferential treatment may be required of any employer because of any racial "imbalance" in the makeup of his staff as compared with the racial makeup of the population in his community or its available work force. The Senator concludes that under these provisions the racial composition of a school system's faculty has no bearing on its compliance with Title VI, and asks what other legal authority there can be for considering the assignment of teachers and staff.

By the terms of Title VII itself (§ 701(b)), the employees of a school system are excluded from the reach of the requirements of Title VII for nondiscriminatory employment practices. Accordingly, no provision of Title VII respecting racial discrimination or racial imbalance in employment, whether permissive or prohibitive, can have any application to a school district's faculty members.

If it were possible to maintain segregated faculties without a racially discriminatory impact on students, § 604 might be held to preclude any consideration of faculty assignments under Title VI. Providing for the employment of teachers is not the primary objective of any class of Federal financial assistance extended to school districts, and so the exception within § 604 does not apply. The primary objective of all assistance to schools is to benefit the students in the system, not the teachers. Therefore § 604, if it could be taken by itself, might be construed to preclude consideration of the faculty assignment practices of school districts.

But § 604 cannot be read apart from the general nondiscrimination policy enunciated in § 601. When read as part of Title VI, § 604 can only have the very restrictive meaning considered above if it is assumed that maintaining segregated faculties has no discriminatory impact on students. But the students, as the primary beneficiaries of Federal assistance to school districts, must be protected from racial discrimination if the basic purpose of Title VI, as expressed in § 601, is to be carried out. And the courts have repeatedly held that the racial allocation of staff must be considered in determining whether pupils are subjected to discrimination in the schools.

Several of the key court decisions to this effect are mentioned on pages 9 and 10 of the Senator's letter. These and other cases on faculty desegregation are referred to below in commenting on additional points in this connection raised by the Senator on those pages. It should be sufficient here for the purpose of clarification of the present question to state that the problem of reallocating staff was one of the reasons mentioned twelve years ago by the Supreme Court for permitting the desegregation process to take place over a period of time. *Brown v. Board of Education*, 349 U.S. 294, 301 (1955).

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 assistance "if reasonable steps were being taken in good faith to end

unconstitutional segregation." See Senator Humphrey's statement at 110 Cong. Rec. 6545-6546 (1964). Accordingly, provision was made in the generally applicable Regulation whereby the nondiscrimination requirements of § 80.3 would be deemed satisfied for such districts as became subject to final court orders of desegregation (now about 200) and those that submitted adequate voluntary desegregation plans (about 1750 voluntary plans are now in effect, although not all are considered to be operating adequately).

Under § 80.4(c) of the Regulation, the Secretary, with the approval of the President, assigned the responsibility for evaluating school districts' desegregation plans to the Commissioner of Education. Under § 80.4(c)(2), the Commissioner is empowered and required to review voluntary plans to determine and redetermine whether they are "adequate to accomplish the purposes of the Act." The wisdom of this arrangement was early acknowledged by the Fifth Circuit. In *Singleton v. Jackson Municipal Separate School District*, 348 F.2d 729, 731 (5th Cir. 1965) the court said, "... [T]he United States Office of Education is better qualified than the courts and is the more appropriate federal body to weigh administrative difficulties inherent in school desegregation plans."

Under § 80.12(b) of the Regulation, the Commissioner is also directed, as responsible Department official, to issue to interested persons "forms and detailed instructions and procedures" for effectuating the Regulation, which provision is quoted by Senator Stennis. Pursuant to this provision, and mindful of his responsibilities under § 80.4(c)(2), the Commissioner issued, shortly after the Regulation became effective, a leaflet with the (short) title "Instructions to School Districts Regarding Compliance with Title VI." This document explained the form of assurance of full and immediate compliance expected from the great majority of all districts, but it also set out, for the guidance of the relatively few districts involved, the general criteria the Commissioner would apply in making determinations as to the adequacy of voluntary desegregation plans under § 80.4(c)(2).

School officials in most of those districts not in a position to assure full and immediate compliance felt the need for more detailed guidance, however, in formulating desegregation plans that would be considered adequate. This need led first to the circulation of an unofficial memorandum on school desegregation law by an outside expert, and then, in April of 1965, to the issue of the Commissioner's own "General Statement of Policies" for school desegregation plans, which became known as the "guidelines."

The publication of the guidelines assisted many districts to draw up acceptable plans, but many others asked for still further guidance. The Commissioner then circulated two complete model desegregation plans, substantially ready for signature by individual districts. One model plan was based on free choice of schools and the other on the adoption of a single set of nonracial attendance zones. Both were in conformance with the applicable policies of the guidelines. These plans were adopted by a number of districts and promptly accepted by the Commissioner. Altogether some 1950 voluntary plans were accepted under the Regulation for the 1965-66 school year as "adequate to accomplish the purposes of the Act."

In reviewing the results of the first year of operation of these plans, it was found that in many districts with voluntary plans little or no progress in desegregation had been made. It became apparent that all plans would have to be modified in some respects for the following school year. The Commissioner consulted over a period of months on the various problem areas with State and local school officials, outside experts on school desegregation law, and attorneys of this Department and of the Justice Department.

This thorough review led ultimately to the issue of the "Revised Statement of Policies," or revised guidelines, for the guidance of school districts in amending their desegregation plans so that they might be considered adequate for the 1966-67 school year. A simplified amending process was arranged, so that school districts could assure their compliance with the policies and procedures of the revised guidelines by filing a printed form, HEW Form 441-B.

The revised guidelines include or improve on most of the provisions of the previous model plans, and provide indications of the general order of progress normally expected in both student and staff desegregation for plans to continue to be considered adequate. No fixed quotas or standards for progress are imposed, however, as study of the various provisions shows. The revised guidelines also reflect changed judicial standards for desegregation plans as expressed in more recent court decisions.

It is this document, the revised guidelines, which Senator Stennis believes legally invalid because not approved by the President under § 602 of the Act. As the above analysis of their origin and application shows, the guidelines are not "rules, regulations, or orders" within the meaning of § 602. The guidelines are a statement of policies which the Commissioner has issued to fulfill his responsibilities, under the Presidentially-approved Regulation, to assist dual-structure districts in formulating steps to remain eligible for Federal financial assistance. This policy statement reflects the factors the Commissioner considers in making the determinations as to the adequacy of voluntary plans which it is his duty to make under the Presidentially-approved Regulation.

The guidelines then, are not intended to be and do not constitute a rule, regulation, or order as these terms are used in § 602 of the Act. There is thus no requirement for Presidential approval. The guidelines constitute a statement of policies issued pursuant to § 80.12(b) and in connection with § 80.4(c)(2) of the generally applicable and Presidentially-approved Regulation.

From the debate in the House on the amendment requiring Presidential approval of regulations under Title VI, it is clear that only rules, regulations or orders of general applicability were intended to be subject to Presidential approval. See the colloquy between Congressman Lindsay, Congressman Smith of Virginia, and Congressman Poff at 110 Cong. Rec. 2499-2500 (1964). Congressman Lindsay concluded this exchange by stating, "If it is not a rule, regulation, or order of general applicability, I would assume that the President would not have to put his approval on it." And Senator Humphrey had stated that it was "wise to leave the agencies a good deal of discretion" in operating under Title VI. See 110 Cong. Rec. 6545 (1964).

An understanding is indicated here that implementing documents of lesser stature than such rules, regulations and orders would be issued, and that such documents would not require Presidential approval. As is shown above, documents of this nature, e.g., "forms and detailed instructions and procedures" such as the guidelines, are specifically authorized by § 80.12(b) of the Presidentially-approved Title VI Regulation.

Senator Stennis indicates on page 5 of his letter a belief that the provisions of § 80.3 of the Regulation are less "extreme" than the guidelines, and he feels that § 80.3 cannot "support" the guidelines, which are "directly contrary" to the Regulation.

The guidelines do not stem from § 80.3 at all. They are issued under § 80.4(c)(2) to have the effect of shielding those districts still in the process of desegregation from the immediate impact of the requirements for complete non-discrimination set out in § 80.3, including those provisions quoted in the Senator's letter.

Section 80.3 contemplates the complete absence of racial discrimination, including that resulting from operating a dual school structure. The guidelines afford those districts unable immediately to comply with § 80.3 (that is, unable to eliminate completely the dual school structure overnight) a period of transition from the racial discrimination of the dual structure of schools to a single system of schools for all students. The guidelines thus cannot properly be considered more "extreme" than or "directly contrary" to the Regulation. Section 80.3 is in no way intended to "support" the guidelines. A school system operating under a plan conforming to the policies of the guidelines would probably fall far short of compliance with § 80.3. To put it another way, if a school system is in full compliance with § 80.3, it is in a position to file a Form 441 assurance, and does not need to operate under a plan leading toward such compliance.

The Senator further states that the guidelines "require" the assignment of pupils "on the basis of race" in order to "achieve a certain percentage of integration," while the statute and Regulation "require that no distinctions based on race be made" in Federally assisted programs.

The guidelines do not require the assignment of any particular student, or group of students, or number of students, to any particular school or schools, or to any type of types of schools. There is only one requirement in this connection for a determination of adequacy of a plan by the Commissioner under § 80.4(c)(2) of the Regulation, which requirement is reflected in the guidelines. This requirement is that the racial basis of the assignment of students must be completely ended, and that the several schools among which students may choose, or to which they may be assigned by the district must be rendered no longer identifiable as being intended for students of a particular race, especially on the basis of the composition of the faculty.

This requirement reflects the view, expressed in the quotation given above from the *Clark* case, and in other cases referred to below, that neither the Constitution nor Title VI is satisfied by extending students a "free" choice between a school with a segregated Negro faculty and a school with a segregated white faculty. Beyond this, however, there is no other requirement respecting student assignments. There does remain the expectation under a free choice plan that as the choice is made increasingly free, by steps toward the desegregation of faculty and other means, the choice procedures will result in significant increases in student desegregation. If such does not occur, a complete review of the operation of the plan may lead to a determination that the plan is not operating adequately to accomplish the purposes of the Act, and that further steps to make more adequate progress are called for.

A study of the guidelines, particularly of § 181.54, shows that the relative percentage examples of the order of progress in student desegregation that "would normally be expected" are provided to show the "criteria" by which the Commissioner "will, in general, be guided" in the process of "scheduling free choice plans for review." There are no fixed percentage requirements, but only some rough yardsticks for assessing the general extent of progress.

Moreover, the general requirement is not that assignments be made on the basis of race, but that the making of such assignments be ended, along with the racial identifiability of the schools. There are, of course, situations in which race must be taken into account in order to meet constitutional and statutory nondiscrimination requirements, such as when faculty assignments and reassignments are being planned to correct the effects of past discriminatory assignments. The Fourth Circuit has held

When school authorities, recognizing the historic fact that existing conditions are based on a design to segregate the races, act to undo these illegal conditions—especially conditions that have been judicially condemned—their effort is not to be frustrated on the ground that race is not a permissible consideration. This is not the "consideration of race" which the Constitution discourages. *Wanner v. County School Board of Arlington County*, 357 F.2d 452, 454 (4th Cir. 1966).

Further in his discussion of the validity of the guidelines, Senator Stennis asks why the guidelines are not applied "uniformly throughout the country." He wonders what "unique problems would be encountered in requiring school districts beyond the South to submit the same reports and meet the same percentages of integration," and why a quoted portion of one of the provisions of the guidelines respecting transportation could not similarly be applied across the country.

To the extent that dual-structure districts are found throughout the country, the guidelines generally apply, although in the one case encountered thus far outside the South, much more rapid elimination of the dual system was agreed upon than that provided for by the guidelines. But within the 17 Southern and Border States the guidelines are now applicable to only about 1,750 districts of roughly 5000*. An attempt to apply the guidelines to the many bi-racial districts, in those same States, which have completely eliminated the dual school structure, and to the thousands of bi-racial districts in other States which never have had a dual structure, would raise serious problems indeed.

In almost all such districts, so far as is presently known, whatever segregation is now found in the schools usually results from housing patterns, population density and the natural or other topographic factors influencing the drawing of school attendance zones. While the guidelines do not require any fixed percentage of student desegregation, contrary to the Senator's understanding, if the Commissioner were to apply to a single-structure district, North or South, even the rough measures for gauging desegregation progress in dual-structure districts that the guidelines provide, this would not be consistent with the intent of Congress. The statements by Senator Humphrey referred to above and the provisions of section 407(a) of the Act combine to cast serious doubt as to the scope of the authority Congress intended the executive and judiciary branches to

*Some 200 of those districts filing voluntary plans in 1965-66 have since completed the transition to a single system of schools for all students, and are considered in compliance with § 80.3 of the Regulation. In Delaware and Kentucky, the dual school system has been virtually eliminated this year, and very substantial steps toward this goal were taken in Maryland, Tennessee and Oklahoma. A number of districts in other Southern States have taken such steps.

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

quoted remarks. The assurance provisions do apply equally to Mississippi as to Rhode Island. When a school district in Mississippi eliminates all characteristics of the unconstitutional dual structure of schools, as at least one or two in Mississippi appear to have done thus far, and as a number of districts in neighboring States have done, then such district will be subject to the same policies and requirements as the 3,000-odd single-structure districts in the South and the 20,000 or more such districts elsewhere in the Nation. And where dual-structure districts are still found, North or South, each is afforded a period of transition to reach the stage when it can be fully in compliance with §601 of the Act and §80.3 of the Regulation, and may properly file a Form 441 assurance to replace its plan. This arrangement does not constitute a discriminatory application of the law, nor does it involve applying the Act differently in different parts of the country, as the Senator suggests.

5. GENERAL DEGREE OF PROGRESS IN STUDENT AND STAFF DESEGREGATION THAT WOULD BE CONSIDERED ADEQUATE TO ACCOMPLISH THE PURPOSES OF THE ACT

Senator Stennis next raises a series of questions concerning the principles on which a determination as to the adequacy of a plan is based. His questions concern not only such principles as are applicable to the particular situation in Tate County but also those principles commonly applied in other cases.

The Senator indicates that his questions in this connection arise in part because of statements made in the letter of September 16, 1966 to Superintendent Walker of the Tate County School District. The pertinent sentences in this letter, parts of which are quoted in the Senator's letter, are as follows:

On the basis of these anticipated faculty and student assignments reported by you, we do not believe that your desegregation plan, as it has operated thus far, can reasonably be considered adequate to accomplish the purposes of the Civil Rights Act. . . . Your school board should consider what additional steps it could take in order to make adequate progress in both student and staff desegregation for 1966-67.

As the Senator is aware, a number of other school districts in Mississippi and other States received similar letters. These districts had generally reached only the same small degree of progress in student and staff desegregation as Tate County.

To understand the reasons for reaching the conclusion that such small progress is not adequate for 1966-67, the basic purpose of every acceptable desegregation plan under Title VI must be borne in mind. The purpose of each such plan is to bring about the transition from the unconstitutional dual structure of schools for students of different races to a single system of unsegregated schools for all students. Such a plan is not intended to operate indefinitely, because its basic function is only to prescribe the policies and procedures used in the assignment and reassignment to schools of both students and faculty during the transitional period.

With these facts in mind, it can readily be seen that for a plan to be considered operating adequately it must result in significant progress from one school year to the next in both student and staff desegregation. These policies and expectations are reflected in the various provisions of the guidelines. But the guidelines do not, contrary to the Senator's understanding, "establish certain graduated quotas of integration, expressed in terms of percentage transfers, which must be met."

As pointed out above, the transfer percentages given in the guidelines are provided, as the exact wording of §181.54 shows, as examples of the "criteria" by which "the Commissioner will, in general be guided" in "scheduling free choice plans for review." A plan is likely to be scheduled for review on the basis of inadequate progress in student desegregation, and the district thereafter required to take additional steps, one of which might be to reopen the choice period and to provide additional faculty desegregation, only if there is "substantial deviation" from the general order of progress that "would normally be expected" under the percentage examples. Moreover, before requiring that additional steps be taken, the Commissioner will consider not only the choices actually made but "other available evidence" tending to show that the plan is or is not operating fairly or effectively. Such other evidence would include, as the third paragraph of §181.54 indicates,

. . . such factors as community support for the plan, the efforts of the school system to eliminate the identifiability of schools on the basis of race,

color, or national origin by virtue of the composition of staff or other factors, and the progress actually made in eliminating past discrimination and segregation.

No action has been taken by the General Counsel toward the termination of Federal financial assistance to the Tate County Schools. The files show that the Tate plan has not at this time been scheduled for review. The small size of the staff, and the fact that a number of other districts have made even less progress than Tate, have thus far made it not feasible to do more than advise this district that its progress is not considered adequate, and that it should on its own initiative take additional steps to make further progress in both student and staff desegregation. It is believed, however, that the Office of Education will schedule Tate County's plan for a full review in the near future.

The Senator's question as to what progress in faculty desegregation would be considered adequate for 1966-67 can best be answered by reference to § 181.13 of the guidelines. Several alternative patterns of staff assignments are provided in subsection (d), as examples of what adequate steps to initiate staff desegregation might include. From these examples, as the Office of General Counsel and the Office of Education have explained to the school officials concerned, there emerges a general minimum rule-of-thumb. This is that school districts are generally expected to arrange for at least such a number of present or new professional personnel to serve in desegregated situations, in one or more schools, as would roughly equal the number of schools in the system.

The appropriateness of § 181.13 of the guidelines is reflected in the *Clark* case referred to above. The court held that the desegregation of the staff should have begun "many years ago", and that "accelerated and positive action" is now required. Such action, the court ruled, must include not only implementing nondiscriminatory hiring, assignment, transfer and dismissal practices, but also "all additional positive commitments necessary to bring about some measure of racial balance in the staffs of the individual schools in the very near future." (Slip opinion, p.13, 14.) This decision reflects substantially the same principles as those of the guidelines, except that the guidelines do not require any form of "racial balance", either of students or staff, as a thoughtful reading will reveal.

As applied to a nine-school system like Tate County, the rule-of-thumb minimum for 1966-67 would call for a total of eight or nine staff members serving in desegregated situations. The school system reported anticipated desegregated assignments with a full-time equivalent of at most four staff members, including only two on a full-time basis. Additional desegregated assignments for four or five more staff members would normally be considered to constitute adequate progress in faculty desegregation for 1966-67 for a system like Tate under the minimum rule-of-thumb, but the rule-of-thumb figures would be weighed with all other relevant factors in making a definite determination as to the adequacy of progress under the desegregation plan.

Senator Stennis has further specific questions in this connection. He asks, "What percentage of integration effectively desegregates a school? What ratio of white students to colored students must be achieved in order that the school may be considered desegregated, and what is the authority for this ratio?" Review of a desegregation plan focuses primarily on the desegregation of the school system rather than the situation at any particular school or schools within it. And no racial ratio of students within a single school is required or even considered significant; the important question is the general degree of progress in the transfer of students from segregated schools in the entire system.

Because in most districts with free choice plans white students have not chosen to attend schools originally established for the segregated use of Negro students, the method of gauging progress must presently involve considering the extent to which Negro students have transferred to the schools formerly operated exclusively for white students. Accordingly, in response to the Senator's next question, the number of white students remaining in formerly all-white schools now attended by one or more Negro students is not considered particularly significant in terms of progress in student desegregation, at least not where such Negro students constitute a small minority of the students in the schools.

In the case of Tate County, the files show that the Office of Education has appropriately considered the degree to which Negro students have transferred from segregated schools to formerly all-white schools, but has properly not

considered the percentage of desegregation resulting at any individual school, and has not considered significant the extent to which white students in the system have been joined by a small minority of Negro students in the various schools originally established for white students only.

The percentage of Negro students in Tate County having transferred remains less than one percent. The percentage examples provided in the guidelines suggest that had this figure been ten percent, or eight percent, or perhaps even six percent, such would have been considered adequate progress in student desegregation for 1966-67, depending on all other relevant factors, including at least to some extent the progress made in faculty desegregation. The percentage examples merely reflect the degree of progress generally achieved in various districts where free choice procedures have proved effective in bringing about the elimination of the dual structure of schools. Such has not been the case in Tate County.

The Senator further asks, "If a school to which all applicants are freely admitted without regard to race is not considered desegregated, then how exactly is a desegregated school defined and identified?" Again, it is the desegregation of the school system that is most crucial, rather than the particular situations at the individual schools. A school system is considered desegregated if attendance at its schools is no longer based directly or indirectly on race. At present, where free choice results in significant progress in the desegregation of the system from one school year to the next, when viewed against the background of the percentage examples provided in the guidelines, then such progress is considered adequate, in the process of transition to a single unsegregated school system, to constitute a basis for the continued extension of Federal financial assistance.

If one is to focus on the schools individually, however, a measure of progress can be reached in terms of the desegregation of the faculty. If in the particular community the staff of a given school were composed of such a group of white and Negro teachers and staff members as left the school no longer identifiable as having been originally established for students of a particular race, then the most conspicuous badge of the illegal dual school structure would have been eliminated. The school system would be considered to have ended the discrimination affecting students at that school that arose from segregated faculty assignments, and to have taken the most significant step toward the full desegregation of the school under its free choice plan. Based on the reports the Tate County officials have submitted, no single school in the Tate County system could be considered to have lost its racial identifiability to any significant degree.

6. POINTS RAISED IN CONNECTION WITH THE DEPARTMENT'S LEGAL MEMORANDUM OF MAY 20, 1966, ON THE AUTHORITY FOR THE GUIDELINES

The remainder of Senator Stennis' letter is devoted to consideration of a number of other legal questions and analysis of court cases in connection with the legal basis for the guidelines, with particular reference to the cases cited in the Department's memorandum of May 20, 1966 entitled "Authority for the 1966 School Desegregation Guidelines." This section of this memorandum takes up these remaining points in the order raised by the Senator, although some of them have been covered to such a degree in discussions above as should make reference thereto sufficient.

The Senator's first point with respect to the May 20 memorandum is that the cases cited therein as supporting the guidelines were decided when the 1965 guidelines were in effect, not the revised guidelines to which the memorandum relates, and these guidelines, he believes, are "altogether different" from those of 1965.

The May 20 memorandum does not quote language from any case directly commenting on the guidelines at all, original or revised. As the Senator indicates, no case directly supporting the revised guidelines could be decided before they were issued. There are, however, several cases which made highly favorable comments on the 1965 guidelines, and decisions have been handed down in other cases since the May 20 memorandum with similar comments on the revised guidelines.

On the 1965 guidelines, see the following comments in these cases: "We attach great weight . . ." *Singleton v. Jackson Municipal Separate School District*, 348

F.2d 729, 731 (5th Cir. 1965); "The applicable standard . . ." *Price v. Denison Independent School District*, 348 F.2d 1010, 1014 (5th Cir. 1965); ". . . only minimum standards . . . we doubt that they would ever be too high." *Singleton v. Jackson Municipal Separate School District*, 355 F.2d 865, 869 (5th Cir. 1966); ". . . must be heavily relied upon" *Kemp v. Beasley*, 352 F.2d 14, (8th Cir. 1965); ". . . entitled to serious judicial deference" *Smith v. Board of Education of Morriton*, 365 F.2d 770, 780 (8th Cir. 1966). The Court of Appeals for the Fourth Circuit has not yet considered the guidelines, but district courts in that circuit have done so. See *Kier v. County School Board of Augusta County*, 249 F. Supp. 239 (W.D. Va. 1966), and *Wright v. County School Board of Greensville County*, 252 F. Supp. 378 (E.D. Va. 1966).

Not as many decisions have yet considered the 1966 guidelines. However, in addition to the *Jefferson County* case, mentioned at the beginning of this memorandum, which decision upholds all aspects of the revised guidelines, they have also received favorable comment twice in *Miller v. Clarendon County School District No. 2*, Civil Action No. 8752 (D. S.C. April 21, 1966 and June 14, 1966). Moreover, in both the *Davis* case (Mobile) mentioned above and the *Smith* case just cited, the revised guidelines were referred to in a favorable context, although not specifically commented on.

In any event, the 1966 guidelines cannot properly be considered "altogether different" from the original version. The 1965 guidelines clearly convey that (1) the purpose of any desegregation plan is to bring about the elimination of the dual structure of schools, (2) free choice plans are expected to promote the elimination of segregation, and (3) faculty desegregation must include both nonracial assignments of new personnel and reassignments of present personnel. The revised guidelines basically amplify these points, provide improved procedures, and give examples of what would be considered adequate progress in desegregation for 1966-67.

It is true, of course, as Senator Stennis next points out, that in none of the cases passing on the guidelines have they been directly in issue in terms of their legal validity or whether any particular requirement thereunder was proper for the Office of Education to impose. The only exception to date is the *Jefferson County* case, in which a rehearing en banc is presently pending. But it is also true that in no case of which the Office of General Counsel is aware have the guidelines been considered illegal, invalid, or inappropriate.

The guidelines are presently being challenged more or less directly in suits pending before various United States District Courts in Alabama, Arkansas, Florida, Georgia, Mississippi, and South Carolina. In none of these cases has even a preliminary decision on the guidelines been reached. However, the Office of General Counsel has assured school districts that if their particular district court or circuit court should hold in a final, unappealed decision, or if the Supreme Court should hold, that the Office of Education is without authority to impose a provision of the guidelines, then the Office of Education would of course not seek to enforce that provision.

The Senator states that in each school desegregation case there were one or more individuals actively asserting that they had been denied admission at a particular school because of their race. He indicates that in cases where no one applies for admission to a school, the school should not be considered "guilty" by an unverified assumption of discrimination.

It is correct that many school desegregation cases originated because of the denial by school boards of Negro students' requests for admission to white schools. It would not be correct to assume that in subsequent hearings, appeals or decisions in such cases, or in cases more recently brought, that this is the only issue. These cases are class action, and the individual plaintiff typically ask for and are granted class relief in the form of a desegregation plan, or an updated desegregation plan, or an order closing certain small segregated schools, or an order directing the desegregation of faculty, transportation or activities.

The guidelines are drawn from and reflect such decisions. See, for example, *United States v. Lowndes County Board of Education*, Civil Action No. 2328-N (M.D. Ala. February 10, 1966). In that case, the parties having stipulated as to the facts, the court ordered 24 small schools closed, a new school opened on a nonsegregated basis, and a desegregation plan implemented containing provisions and procedures similar to those included in the revised guidelines (which were issued a month later), including provisions for the desegregation of

faculty, transportation and activities. This case was brought by the Attorney General pursuant to Title IV of the Act, upon written complaint from an aggrieved parent of a student in the system seeking relief.

One of the major purposes of the fund termination provisions of Title VI was to bring about voluntary compliance with the requirements of the Constitution as interpreted and applied by the courts. See the general statements by Congressman Celler, at 110 Cong. Rec. 2467 (1964), and by Senator Pastore, *id.* at p. 7062. With respect to public schools, it was obviously intended to encourage the voluntary desegregation of illegal dual school systems without the necessity of hundreds of additional court cases being brought by individuals, or by the Attorney General under Title IV. The Office of Education would therefore be failing to carry out the intent of Congress if it did not seek to have a full blown voluntary desegregation plan implemented in each dual-structure district. There is no indication in the legislative history of the Act that the Congress intended Federal funds to flow unconditionally to each dual-structure school district unless and until a Negro student applied for admission to a white school and was turned down.

Senator Stennis next refers to the *Singleton* (1966) decision and to *Kemp* as upholding free choice plans. As the quotations he gives show, free choice is considered permissible "at this stage in history" or "at this stage." But it would be incorrect to believe that it follows that a free choice plan will always meet constitutional requirements. As the quotation from the *Clark* case given above shows, free choice is only "tentatively accepted", and may be "cast aside by the courts" if it does not meet such requirements.

The guidelines reflect the same view. Free choice is acceptable if it works to bring about reasonable progress in student desegregation from one school year to the next, but even then, because free choice is intended only to bring about a transition, it is not expected to be used indefinitely. In the sentence following that in which the court in *Singleton* said that free choice is acceptable at this stage, it is stated, "In the long run, it is hardly possible that schools will be administered on any such haphazard basis." 355 F.2d at 871.

Senator Stennis next quotes from the majority opinion of the Fourth Circuit in *Bradley v. School Board of the City of Richmond*, 345 F.2d 310, 316 (4th Cir. 1965) to the effect that "a general intermixture of the races in the schools" is not required under the Constitution. It is believed that this quotation means no more than that "racial balance" in the schools may not be required. This language is interpreted by some, however, to mean that if no Negro student applies under free choice to attend a white school, and the schools remain totally segregated, the Constitution is nevertheless satisfied because the choice was offered. If this interpretation was intended, then it is in conflict with key statements of both the Fifth and Eighth Circuits.

In the 1966 *Singleton* decision, the Fifth Circuit said:

The Constitution forbids unconstitutional state action in the form of segregated facilities, including segregated public schools. School authorities, therefore, are under the constitutional compulsion of furnishing a single integrated school system. Administrative problems may justify an orderly transitional period during which the system may be desegregated several grades at a time.

This has been the law since *Brown v. Board of Education*. Misunderstanding of this principle is perhaps due to the popularity of an oversimplified dictum that the Constitution "does not require integration." 355 F.2d at 869.

In the *Kemp* case, the school board argued that as long as Negro students were not required to attend Negro schools their constitutional rights were not violated. The Eighth Circuit stated that it could not "accept the position advanced by the Board", and pointed out that it was "logically inconsistent with *Brown* and subsequent decisional law on this subject." 352 F.2d at 21.

Senator Stennis also quotes from *Goss v. Board of Education*, 373 U.S. 683 (1963). In that case, the Supreme Court ruled out a provision in a desegregation plan based on nonracial attendance zones. Under this provision, a student had been permitted to transfer from his neighborhood school, if students of his race were in a minority there, to attend a school where students of his race constituted a majority. This so-called "minority to majority" transfer rule had been typically used by white students to transfer out of nearby schools attended predominantly by Negro students, so that they might cross town to predom-

inantly or exclusively white schools. The court held that such a provision was contrary to the Constitution, but it indicated that if the transfers were made available to all without regard to race, and not limited by the racial composition of the schools transferred to or from, then the Constitution would be satisfied.

This case is authority for that type of desegregation plan which establishes a single set of nonracial attendance zones for each school, on the basis of which all students are assigned subject to a right of free transfer at the student's option. The *Goss* decision did not consider at all the adequacy of a free choice plan, with student assignments utterly dependent on choice, under which little or no student desegregation is achieved.

The *Singleton*, *Kemp*, *Bradley* and *Goss* cases, then, when reviewed in the light of the circumstances, are such that the provisions of the guidelines respecting the effectiveness of free choice plans are not contrary to these authorities, as the Senator suggests is the case. Moreover, the provisions of § 181.54 of the guidelines quoted on page 9 of this letter, concerning progress under free choice plans, and even the percentage examples themselves, are clearly reflected in the rulings of the Fifth and Eighth Circuits in the *Davis* and *Clark* cases. In *Davis*, less than one percent desegregation of Negro students led to a revised plan. In *Clark*, a plan was upheld under which the desegregation of Negro students had doubled to reach 19 percent.

Moreover, the further provisions of the guidelines quoted by the Senator, authorizing a majority to minority transfer preference, are not contrary to the *Goss* case. In that case the court struck down a plan provision which inhibited desegregation, the minority to majority transfer preference. The quoted provisions of the guidelines, from §§ 181.33(b) and 181.49, authorize school districts in their discretion to enhance the process of desegregation by the opposite type of preference. If it be objected that such policies would improperly involve consideration of race, as the Senator suggests, then the holding of the Fourth Circuit in the *Wanner* case quoted earlier in this memorandum is appropriate. A majority to minority transfer preference is not the type of consideration of race which the Constitution precludes, because the purpose of considering race in such cases would be to help correct the effects of past unconstitutional racial discrimination. See *Dowell v. School Board of Oklahoma City*, 219 F. Supp. 427 (W.D. Okla. 1963), 244 F. Supp. 971 (W.D. Okla. 1965), which was recently affirmed by the Tenth Circuit in its decision in Civil Action No. 8523, January 23, 1967. In this leading case, the school system was ordered to provide a majority to minority transfer preference.

Senator Stennis concludes his letter with a series of further questions concerning the validity of the policies of the Office of Education for faculty desegregation under the Act, stemming from his review of the May 20th memorandum, the cases cited therein, and other decisions cited by the Senator.

The Senator first states that the Supreme Court has itself not yet ordered faculty desegregation implemented, but only held that plaintiffs in school desegregation cases are "entitled to a hearing on the question of the relation between faculty assignments and the adequacy of the desegregation plans." It is true that in reversing the refusal of the Fourth Circuit to consider faculty assignments in the *Bradley* case, the Supreme Court stated that:

There is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of desegregation plans is entirely speculative. 382 U.S. 103, 105 (1965).

But in *Rogers v. Paul*, 382 U.S. 198 (1965), the other case cited by the Senator in this connection, the court was more direct in a decision handed down the same day as *Bradley*:

Two theories would give students not yet in desegregated grades sufficient interest to challenge racial allocation of faculty: (1) that racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils; and (2) that it renders inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades. (382 U.S. at page 200).

The court then referred to the *Bradley* case and held that the plaintiffs here (who were students in grades not yet reached by the plan) had standing to challenge racial allocation of faculty under the first theory, and that they were improperly denied a hearing on this issue.

These cases have been widely cited as authority for requiring prompt steps toward the desegregation of faculty. *Wheeler v. Durham City Board of Edu-*

cation, 363 F.2d 738 (4th Cir. 1966), is typical of such cases. In *Wheeler*, the Fourth Circuit, after noting that the evidentiary hearing called for by *Bradley* had been held in the district court, had this to say about the *Bradley* decision:

We read the decision as authority for the proposition that removal of race considerations from faculty selection and allocation is, *as a matter of law, an inseparable and indispensable command, within the abolition of pupil segregation in public schools* as pronounced in *Brown v. Board of Education* [italic added] (363 F.2d at 740).

In no case, it appears, has an evidentiary hearing been held under *Bradley* which resulted in a finding that the racial allocation of faculty does not subject students to discrimination. In fact, in many cases the courts, seemingly seeing the conclusion of discrimination as inescapable, have apparently not found hearings on the question necessary in order to require steps implemented to desegregate faculty, but consider this required "as a matter of law." If this is so, it must be that defendant school boards have not demanded such hearings in order to fight or delay faculty desegregation orders.

From the decisions in *Singleton*, *Kemp*, *Wright*, and *Kier* cases, for example, the cases next referred to by Senator Stennis, which are all cited above, it is not clear that such hearings were held. But the Senator refers to these cases, which were among those cited in the May 20 memorandum, primarily to point out that they are all cases in which the courts "exercised their inherent powers of equity" in enforcing constitutional provisions. The Senator's position is that a Federal administrator, such as the Commissioner of Education, has no inherent powers of equity, and "must find the authority for all his acts and orders in the statute which he administers."

This position is generally sound. But the Commissioner does find authority in Title VI for his acts in formulating faculty desegregation policies to be applied in determining eligibility for Federal financial assistance. In reviewing progress in faculty desegregation, and finding that some districts are making adequate progress and others are not, the Commissioner may be acting somewhat akin to a district court exercising equity powers in applying constitutional standards to determine faculty desegregation requirements in particular cases. To the extent that this is so, it is because the Commissioner must exercise this kind of discretion under § 80.4(c) (2) of the Presidentially-approved Regulation issued by the Department as required by § 602 of the Act.

If the Commissioner lacked discretion somewhat analogous to that of the courts in such cases, then he could not consider any desegregation plan to constitute a basis for extending Federal financial assistance under § 601. He would be obliged to move to terminate assistance to all dual-structure districts that did not succeed in eliminating the dual-structure indicia virtually overnight. Only the requirements of § 80.3 could be applied, and no gradualism would be available under § 80.4(c) (2). It is clear that if there is to be any gradualism, then some appropriate officer must have the power to evaluate the gradual progress it produces.

Otherwise the intent of the Congress would be defeated. Senator Humphrey stated as follows:

The Commissioner of Education would be warranted in relying on any existing plans of desegregation *which appeared adequate and effective* . . .

It is not expected that funds would be cut off *so long as reasonable steps were being taken in good faith to end unconstitutional segregation*. [Italic added] 110 Cong. Rec. 6545 (1964).

Later in the same speech he said, "Depending on the circumstances, Federal courts have approved plans of progressive desegregation . . ." id. at 6546. The inference is plain that he would expect the Commissioner's actions under Title VI to depend on the circumstances in each case, to determine whether a district had a "plan of progressive desegregation" which was "adequate and effective," and whether "reasonable steps were being taken" under it "to end unconstitutional segregation."

Like all administrative actions, the Commissioner's must be reasonable and not capricious. In the context both of the practical situation and of Senator Humphrey's statements, it would have been unreasonable for the Commissioner to disregard the evolving body of judicial opinion in this area. That this body of opinion is in fact faithfully reflected in the policies of the guidelines, and in the actions taken under their provisions, is supported, it is believed, by the cases cited and analysis provided in this memorandum.

It should be added that a number of key decisions involving consideration of faculty desegregation were handed down before either the 1966 or the 1965 guidelines were prepared, some of them even before the passage of the Act. See *Mapp v. Board of Education, City of Chattanooga*, 319 F. 2d 571 (6th Cir. 1963); *Northcross v. Board of Education, City of Memphis*, 33 F. 2d 661 (6th Cir. 1964); *Jackson v. School Board, City of Lynchburg*, 321 F. 2d 230 (4th Cir. 1964); *Augustus v. Board of Public Instruction, Escambia County*, 306 F. 2d 862 (5th Cir. 1962); *Braxton v. Board of Public Instruction of Duval County*, 326 F. 2d 616 (5th Cir. 1964); and *Christmas v. Board of Instruction of Harford County*, 231 F. Supp. 331 (D.C. Md. 1964). This listing is not exhaustive.

Among the more significant of the decisions handed down since the May 20 memorandum that concerns faculty desegregation are the *Clark* and *Dowell* decisions in the Eighth and Tenth Circuits. In both cases the school districts were ordered to bring about the elimination of the racial identifiability of schools arising from the racial composition of their faculties, on the same principles as those expressed in the guidelines. A district court in the Sixth Circuit has just followed these same principles and ordered a series of specific steps promptly implemented to bring about the transfers and new assignments of personnel necessary to eliminate the racial identifiability of schools. See *Robinson v. Shelby County Board of Education*, Civil Action No. 4916 (W.D. Tenn. January 19, 1967).

Senator Stennis' final concern in this connection is that the May 20 memorandum cites only a letter from the Attorney General to Senator Cooper as authority for "flying in the face of the plain language of Section 604" of the Act by requiring steps toward faculty desegregation in each plan.

The letter in question appears at 110 Cong. Rec. 10076 (1964). In it the Attorney General explained that § 602 would generally not cover an employer (not "employee;" the Senator's letter has what is apparently a typographical error here) receiving Federal aid who discriminates in his employment practices. In order to make this clear, the Senate added § 604 to the bill.

The limited application of this provision has been pointed out in an earlier portion of this memorandum. The exception it provides was intended to cover situations where those subjected to discrimination are not the beneficiaries of the Federal assistance involved. Such is the example cited in the Attorney General's letter, where the farmer need not adhere to nondiscrimination policies in employing farm hands because they are not the beneficiaries of the Federal assistance extended to the farmer.

It is true that the Attorney General did not specifically refer to school faculties as presenting a different case, as the Senator notes, probably because no one had thought of exempting school systems from requirements to eliminate the subjection of students to discrimination that is inherent in maintaining segregated faculties.* Nothing has been found in any portion of the legislative history of Title VI, including § 604, which shows that any part of the intent of Congress was to authorize Federal assistance to school districts that failed to comply with such requirements for faculty desegregation. If it had been intended to reverse an understanding already arrived at, and to carve out a major exception from the broad nondiscrimination purposes of § 601, surely some explicit statement to that effect would have been made. For prior to the addition of § 604, it was the clear understanding that the Commissioner would be justified in requiring elimination of racial allocation of faculty where it affected educational opportunities of students, as the courts hold it does. See Senator Humphrey's statement to this effect at 110 Cong. Rec. 6545 (1964), in which he cited the *Braxton* case referred to above. No contrary statement appears anywhere else. In this connection, see Hearings, Committee on Rules, House of Representatives, on H.R. 7152, 88th Congress, 2d Sess. (1964), pages 94, 226.

But the Senator's position is that no question of statutory construction arises, because "there is no ambiguity in Section 604." He points out that § 604 begins with the phrase "Nothing contained in this Title shall be construed to authorize action . . . with respect to any employment practice . . ."

The heart of Title VI, which is set out in § 601, reads in pertinent part, "No person . . . shall on the ground of race . . . be subjected to discrimination . . ."

*When the Attorney General was specifically asked for his formal opinion on this question, he provided a thorough analysis in Mr. Clark's letter of October 4, 1966, to Chairman Smith of the House Rules Committee, in which it is concluded that the Commissioner of Education is not only authorized but required under Title VI to prescribe faculty desegregation provisions in voluntary desegregation plans.

The pattern of assignment of teachers to school can seriously subject students to discrimination on the ground of race, such as in a case where teachers with Class "A" teaching certificates were assigned only to white or predominantly white schools. The discrimination affecting Negro students in all-Negro schools that would result from such a policy would obviously be contrary to § 601. Even if the provision later added by § 604 were considered to be not internally ambiguous, in spite of its broad but undefined term "employment practice," this provision is certainly in conflict with § 601. To read the two provisions harmoniously, the pertinent legislative history must be consulted.

Accordingly, § 604 can only be understood by reference to the Attorney General's letter and other relevant portions of the legislative history of § 604 discussed above. And § 601 must be read in the light of the statements made prior to the addition of § 604, and at the time it was introduced, showing that § 601 had been expressly understood to extend to the racial allocation of faculty in the public schools affecting educational opportunities of students, and that the later amendments were not considered to make changes of substance in Title VI. See the discussion on page 6 above.

In cases such as this, the well-settled principles of statutory construction apply. Where there is ambiguity in a statute, especially in highly remedial legislation such as the Civil Rights Act, a limiting proviso like § 604 must be read in such a way as to avoid defeating the primary purpose of the Act. *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. Scharton*, 285 U.S. 518 (1932).

The only court that has so far specifically considered the applicability of § 604 is the Fifth Circuit in the *Jefferson County* case (now being reheard). The conclusion reached in the December 29, 1966 opinion was the same as in this memorandum. No court has reached the Senator's conclusion.

MARCH 2, 1967.

HON. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR LONG: During the course of Secretary Gardner's testimony before your Committee on February 23, 1967, you raised the question whether the Supreme Court's decision in the *Brown* case requires the desegregation of a public school faculty in which teachers have previously been assigned on a racial basis as part of a dual racial public school system. You asked that this Department furnish the Committee a memorandum discussing the case law in this area. The case law, I believe, clearly imposes on public school authorities the affirmative, constitutional duty to desegregate their faculties so that the rights of pupils to the "equal protection of the laws" under the Fourteenth Amendment will no longer be denied.

In 1954 the Supreme Court of the United States declared that the segregation of public school students according to race violates the Fourteenth Amendment. *Brown v. Board of Education*, 347 U.S. 483 (1954). A year later, the Court, in determining how judicial relief could best be fashioned, mentioned the problem of reallocating staff as one of the reasons for permitting the desegregation process to proceed with "all deliberate speed." *Brown v. Board of Education*, 349 U.S. 294, 301 (1955).

Two cases decided by the Supreme Court in late 1965 indicate that school boards may no longer postpone the responsibility owed their students of desegregating faculty. In *Bradley v. School Board of Richmond, Virginia*, 382 U.S. 103 (1965), the Court took the view that faculty segregation had a direct impact on a desegregation plan, and that it was improper for the trial court to approve a desegregation plan without inquiring into the matter of faculty segregation. In reaching this conclusion the Court, in a unanimous opinion, commented that "there is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans is entirely speculative." And in ruling that there should be no further delay in a hearing on the question of faculty desegregation, the Court further emphasized that "delays in desegregation of school systems are no longer tolerable." 382 U.S. at 105.

In *Rogers v. Paul*, 382 U.S. 198 (1965), the Supreme Court extended the undelayed right to challenge teacher segregation to students who had not yet

themselves been affected by the School Board's gradual desegregation plan. The Court stated (382 U.S. at 200) :

Two theories would give students not yet in desegregated grades sufficient interest to challenge racial allocation of faculty: (1) that racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils; and (2) that it renders inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades.

Relying on the *Bradley* case, the Court of Appeals for the Fifth Circuit, the circuit covering the states of Alabama, Florida, Georgia, Louisiana, Mississippi and Texas, ruled in January 1966, in a suit also brought by Negro students, that it was "essential" that the plan of desegregation for Jackson, Mississippi "provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators, and other personnel." *Singleton v. Jackson Municipal Separate School District*, 335 F. 2d 865, 870. And in a case decided in August 1966, the same Court ruled that the plan of desegregation for Mobile, Alabama "must be modified in order that there be an end to the present policy of hiring and assigning teachers according to race by the time the last of the schools are fully desegregated for the school year 1967-68." *Davis v. Board of School Commissioners of Mobile County*, 364 F. 2d 896, 904.

The Courts of Appeals for the Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia and West Virginia), the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota) and the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming) have similarly held. In a suit brought by pupils in Durham, North Carolina, the Court stated :

We read the [*Bradley*] decision as authority for the proposition that removal of race considerations from faculty selection and allocation is, as a matter of law, an inseparable and indispensable command within the abolition of pupil segregation in public schools as pronounced in *Brown v. Board of Education*, *supra*, 347 U.S. 483. Hence no proof of the relationship between faculty allocation and pupil assignment was required here. The only factual issue is whether race was a factor entering into the employment and placement of teachers.

Wheeler v. Durham City Board of Education, 363 F. 2d 738, 740 (C.A. 4, 1966). The Court in *Wheeler* went on to require (at p. 741) :

Vacant teacher positions in the future . . . should be opened to all applicants, and each filled by the best qualified applicant regardless of race. Moreover, the order should encourage transfers at the next session by present members of the faculty to schools in which pupils are wholly or predominantly of a race other than such teacher's. A number of the faculty members have expressed a willingness to do so. Combined with the employment of new teachers regardless of race, this procedure will, within a reasonable time, effect the desegregation of the faculty.

Chambers v. Hendersonville Board of Education, 364 F. 2d 189 (C.A. 4, 1966), involved the problem of Negro teachers who lost their jobs when an all Negro school was abolished. The School Board treated them as new applicants. The Court held that this was discriminatory and invalid under the Fourteenth Amendment, stating (at p. 192) :

First, the mandate of *Brown v. Board of Education*, 347 U.S. 483 (1954), forbids the consideration of race in faculty selection just as it forbids it in pupil placement. See *Wheeler v. Durham City Board of Education*, 346 F. 2d 768, 773 (4 Cir. 1965). Thus the reduction in the number of Negro pupils did not justify a corresponding reduction in the number of Negro teachers. *Franklin v. County Board of Giles County*, 360 F. 2d 325 (4 Cir. 1966). Second, the Negro school teachers were public employees who could not be discriminated against on account of their race with respect to their retention in the system. *Johnson v. Branch*, 364 F. 2d 177 (4 Cir. 1966), and cases therein cited. . . .

In a suit brought by pupils in El Dorado, Arkansas, the Eighth Circuit Court of Appeals recognized "the validity of the plaintiffs' complaint regarding the [School] Board's failure to integrate the teaching staff. Such discrimination is proscribed by *Brown* and also the Civil Rights Act of 1964 and the regulations promulgated thereunder." *Kemp v. Beasley*, 352 F. 2d 14, 22 (1965). The Court elaborated on this theme in *Smith v. Board of Education of Morrilton*, 365, F. 2d 770, 778 (1966) :

It is our firm conclusion that the reach of the *Brown* decisions, although they specifically concerned only pupil discrimination, clearly extends to the proscription of the employment and assignment of public school teachers on a racial basis. Cf. *United Public Workers v. Mitchell*, 330 U.S. 75, 100 (1947); *Wieman v. Updegraff*, 344 U.S. 183, 191-192 (1952). See *Colorado Anti Discrimination Comm'n v. Continental Air Lines, Inc.*, 372 U.S. 714, 721 (1963). This is particularly evident from the Supreme Court's positive indications that nondiscriminatory allocation of faculty is indispensable to the validity of a desegregation plan. *Bradley v. School Board of the City of Richmond*, supra; *Rogers v. Paul*, supra. This court has already said, "Such discrimination [failure to integrate the teaching staff] is proscribed by *Brown* and also the Civil Rights Act of 1964 and the regulations promulgated thereunder." *Kemp v. Beasley*, supra, p. 22 of 352 F.2d.

In a recent decision of the Eighth Circuit, *Clark v. Board of Education of Little Rock School District*, No. 18, 368 (December 15, 1966), the Court required of the Little Rock, Arkansas School Board (slip op., p. 15) a "positive program aimed at ending in the near future the segregation of the teaching and operating staff." The Court stated (slip op., p. 13):

We agree that faculty segregation encourages pupil segregation and is detrimental to achieving a constitutionally required non-racially operated school system. It is clear that the Board may not continue to operate a segregated teaching staff. *Bradley v. School Board of City of Richmond*, 382 U.S. 103 (1965). . . . It is also clear that the time for delay is past. The desegregation of the teaching staff should have begun many years ago. At this point the Board is going to have to take accelerated and positive action to end discriminatory practices in staff assignment and recruitment.

The Court then proceeded to outline the essential ingredients which such "action" must include (pp. 13-14):

First, . . . future employment, assignment, transfer, and discharge of teachers must be free from racial consideration. Two, should the desegregation process cause the closing of schools employing individuals predominately of one race, the displaced personnel should, at the very minimum, be absorbed into vacancies appearing in the system. *Smith v. Board of Education of Morriston School District*, No. 32, supra. Third, whenever possible, requests of individual staff members to transfer into minority situations should be honored by the Board. Finally, we believe the Board make all additional positive commitments necessary to bring about some measure of racial balance in the staffs of the individual schools in the very near future. The age old distinction of "white schools" and "Negro schools" must be erased. The continuation of such distinctions only perpetuates inequality of educational opportunity and places in jeopardy the effective future operation of the entire "freedom of choice" type plan.

In a suit brought by pupils in Oklahoma City, Oklahoma, the Court of Appeals for the Tenth Circuit recently affirmed a lower court order requiring that by 1970 "there should be the same percentage of non-white teachers in each school as there now is in the system." *Board of Education of Oklahoma City Public Schools, Independent District No. 89 v. Dowell*, No. 8523 (January 23, 1967), slip op., p. 22, affirming, 244 F. Supp. 971, 977-978 (W.D. Okla. 1965). The District Court had stated (p. 978) that such a requirement provided "for stability in school faculties during the integration process. . . . keying the change to personnel turnover figures indicating that approximately 15% of the total faculty is replaced each year." Although the evidence showed that there was no difference in the quality of performance between the white and non-white personnel in the school system, the Court of Appeals held (p. 22) that where "integration of personnel exists only in schools having both white and non-white pupils, with no non-white personnel employed in the central administration section of the system", there is "racial discrimination in the assignment of teachers and other personnel." Relying on the Supreme Court's decisions in *Bradley* and *Rogers*, the Court stated (p. 22) that "[t]he [lower court] order to desegregate faculty is certainly a necessary initial step in the effort to cure the evil of racial segregation in the school system."

Numerous district courts, in applying the law as elucidated by the Supreme Court and the courts of appeal of their various circuits, have entered orders in school desegregation cases requiring the desegregation of faculty and staff. In entering such orders, a few of the district courts have also set forth their reasons in memorandum opinions. One such opinion was issued by the United

States District Court for the Eastern District of Virginia in refusing to approve a plan submitted by the School Board of Greensville County, Virginia, on the ground that the plan must, but failed, to include a provision for the employment and assignment of staff on a nonracial basis. *Wright v. County Board of Greensville County, Virginia*, 252 F. Supp. 378 (E.D. Va. 1966). In holding that a faculty desegregation provision approved by the Commissioner of Education was not sufficient, the court stated (at 384) :

The primary responsibility for the selection of means to achieve employment and assignment of staff on a nonracial basis rests with the school board. . . . Several principles must be observed by the board. Token assignments will not suffice. The elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date. The plan must contain well defined procedures which will be put into effect on definite dates. The board will be allowed ninety days to submit amendments to its plan dealing with staff employment and assignment practices.

The United States District Court for the Western District of Virginia, in providing for similar relief in the case of *Brown v. County School Board of Frederick County*, 245 F. Supp. 549, 560 (1965), said :

[T]he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a "colored school" just as certainly as if the words were printed across its entrance in six-inch letters.

See also *Kier v. County School Board of Augusta County*, 249 F. Supp. 239, 247 (W.D. Va. 1966).

The cases which I have reviewed establish, in my judgment, the constitutional duty of school authorities to disestablish imposed racial segregation of faculties and recognize that this obligation emanates from the principles enunciated in the *Brown* decision.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

[From the Atlanta Constitution, Mar. 10, 1967]

SCHOOLS GET A YEAR'S GRACE

(By Eugene Patterson)

While remaining firm, the U.S. Office of Education is embarking on a more conciliatory approach to encourage desegregation of lagging Georgia schools. For one thing, letters to state departments of education are in the works, inviting the states to assume more responsibilities in effecting the guidelines. Federal funds will be offered to finance increased state activity.

Of more immediate significance, however, will be a notification that one Georgia county is about to get from Washington. This decision, which has already been made, will signal a major adjustment in fund cutoff policy by the Office of Education.

The Georgia county in question still has segregated schools. New federal funds have been withheld from it during the current school year, pending a permanent fund cutoff hearing scheduled to be held shortly. Many Georgia counties are in this shape, so they will be interested to know what is about to happen.

In return for a firm commitment volunteered by the county school system that it will undertake significant desegregation beginning next September, the Office of Education is postponing the fund cutoff hearing until next September, and is additionally releasing to the schools all of the federal funds that have been withheld from them this year.

In short, a school system that has been cited as not obeying the law up to now, but which decides to comply during the next school year, may retrieve the current year's funds it has lost and delay its fund cutoff hearing by simply spelling out its intentions for the future.

The intentions will have to be spelled out; the Office of Education is not accepting vague promises. The county whose funds are about to be restored laid down a detailed plan for student and faculty desegregation, affecting some 10 per cent of its Negro students.

But the significance of the new federal decision lies in its show of conciliation. Counties that have done nothing to comply with the guidelines heretofore are not to be consigned ruthlessly to the outer darkness; if they want to come back into

the light they'll be welcomed and helped to catch up with the other school systems, with their past lag written off.

The emphasis has thus been turned more decisively to encouraging compliance rather than terminating funds. Those reluctant schools that choose to do that which they have not yet done are offered financial forgiveness for their past omissions.

Justice department lawsuits impend for the outright defiant, of course, so that ultimately they will be desegregated by court order if not by the Office of Education's new encouragement.

But the new policy of conciliation in place of punishment offers a way out of the woods for those Georgia school systems wishing to take it.

(Reference to following material appears on page 375, Part I:)

PITTSBURGH PUBLIC SCHOOLS,
Pittsburgh, Pa., April 13, 1967.

MR. JACK REED,

Education and Labor Committee Council, Rayburn Building,
Washington, D.C.

DEAR MR. REED: I believe that you inquired of this office as to the effect of federal programs under the Elementary and Secondary Education Act Title I which are being extended to nonpublic schools. I think you referred to "31" programs, citing testimony before a Congressional Committee as to the origin of this quotation.

I do not believe that I stated that 31 programs were extended to the nonpublic schools, but rather than we have about 31 ESEA programs in Pittsburgh, a number of which are extended to the nonpublic schools.

Enclosed is a tabulation and description of these programs with those asterisked being the ones which we extend to Parochial Schools.

Sincerely,

S. P. MARLAND, JR.

ESEA TITLE I

Communication skills ^{1 2}	\$438, 140
Pattern drills	12, 298
Instructional leadership	171, 579
Team teaching	591, 964
Team teaching educable and retarded	10, 084
Transition rooms	269, 100
Time for team leaders	154, 000
Safety education ²	12, 630
Reduction class size—Kindergarten	66, 421
Music instruction ^{1 2}	186, 610
Secondary counselors	104, 360
Elementary counselors ^{1 2}	129, 460
Home-school visitors ^{1 2}	104, 179
Employment supervisors ²	27, 180
Adapted physical education	151, 350
Psychologists	51, 050
Eye-glasses ²	10, 000
Speech and hearing mobile units ^{1 2}	90, 450
Administration ²	189, 899
Evaluation ²	208, 800
Lunchroom aids (3)	3, 877
Library Aids ^{1 2}	77, 118
Teachers—Unwed mothers ^{1 2}	30, 800
Demountables	208, 000
Educational camping ^{1 2 3}	25, 000
Assistant teacher, preprimary (2 months)	42, 768
Family related education (2 months) ²	5, 540
Saturday workshops	5, 984
Nongraded planning ²	7, 950
Television	49, 950
Total	3, 436, 541

¹ Projects carried out on non-public-school premises.

² Denotes non public-school involvement.

³ Beyond regular schoolday hours.

NOTE.—No non-public-school personnel.

PROGRAMS UNDER TITLE 1, ESEA, WHICH ARE SHARED WITH NON-PUBLIC SCHOOLS

COMMUNICATION SKILLS

The Communication Skills Program provides remedial reading, writing, and speaking as well as a program of enrichment. The teachers, employed by the Pittsburgh Public Schools under Title 1 ESEA, go into the parochial schools to teach effective communication. Approximately sixty teachers are involved in this assault on language problems and other stumbling blocks in the realm of communication.

SAFETY EDUCATION

This program will provide for an expansion of the safety education staff by two and also provide for the initial purchase of important safety equipment which can be used as effective teaching devices. Among the specific duties of the expanded staff in certified Title 1 ESEA schools will be: (1) to make distance checks; (2) to conduct traffic safety survey of all schools—need for cross walks, lady guards; etc.; (3) to inspect bus routes; (4) to supervise school safety patrol operations; (5) to be responsible for accident reports; (6) to help teachers in charge of driver club programs in high schools; (7) to conduct fire drills in the schools and pre-school centers; (8) work with City Bureau of Fire Prevention on Junior Fire Patrol Programs.

MUSIC INSTRUCTION

This is a plan to provide free instrumental music instruction for talented elementary school pupils in public and non-public schools. This music project will provide instrumental music instruction for students from grades 1 to 8 in identified areas of the city. The children in these underprivileged areas will have the opportunity for cultural growth through the study of a musical instrument.

ELEMENTARY COUNSELORS

This program sets forth ten elementary counselors who will work with guidance and counseling services in the elementary public and non-public schools. This will be a concentrated effort because typically the disadvantaged child needs to be helped with his total development: educationally, socially, and emotionally.

SECONDARY COUNSELORS

This program sets forth eight secondary counselors who will work with guidance and counseling services in the secondary public and non-public schools. This will be a concentrated effort because typically the disadvantaged child needs to be helped with his total development: educationally, socially, and emotionally.

HOME AND SCHOOL VISITORS

Because of the acute shortage of professionally trained home and school visitors, this project selects ten outstanding individuals and trains them part-time for certification, and utilizes them the majority of their time as "Home and School Visitors" to work with disadvantaged youngsters in the public and non-public schools.

EMPLOYMENT SUPERVISORS

Pittsburgh, for three years, has demonstrated the worth of providing job placement services particularly for graduates and drop-outs who, on their own, are not successful in finding suitable employment. Present economic conditions offer an opportune time for establishing positive relationships with employers in the Pittsburgh community. Two additional placement officers are assigned to areas of social and cultural deprivation to arrange employment for graduates and drop-outs.

PSYCHOLOGISTS

The implementation of this program will enable the psychological staff to more nearly meet the demands for increased service in Title 1 ESEA Programs, particularly in elementary schools, and to make possible some services for parochial school pupils.

EYEGLASSES

Eyeglasses will be provided for needy children who do not receive them from Public Welfare but who fit Title 1 ESEA criteria.

SPEECH, HEARING, AND VISUAL IMPROVEMENT

The Mobile Speech and Hearing Center will be designed to meet the special educational needs of pupils with speech or hearing handicaps from pre-kindergarten through high school. This service is made available to both public and non-public schools.

ADMINISTRATION

The service of the administrative staff under Title 1 ESEA is available to non-public schools and their staff for information, consultation, and implementation of appropriate educational programs.

LIBRARY AIDES

This program will provide library aides on the basis of one-half time in a public school and one-half time in a parochial school in certified Title 1 ESEA areas of the city. The aides are trained to do sub-professional library work in order to free the librarian for better service to the children.

TEACHERS—UNWED MOTHERS

The basic purpose of this program is to enable pregnant school age girls to complete their high school education and graduate. This service is available to public and non-public school students.

EDUCATIONAL CAMPING

Educational camping is a three day outdoor educational experience for sixth-grade pupils in Title 1 ESEA public and non-public schools. This program provides an outdoor laboratory for the "incubation" of pupil skills.

ASSISTANT TEACHERS—PRE-PRIMARY

Assistant teachers are hired to lend supportive service to teachers in the pre-primary program. This service is made available to both public and non-public school youngsters in Title 1 ESEA areas of the city.

FAMILY RELATED EDUCATION

Family Related Education provides classes for adults whose interest cannot be met by the standard evening school program. In order to help culturally deprived children to develop their potential, Family Related Education seeks to provide more educational and cultural opportunities for the parents and adults in the communities where these children live. This service is made available to parents of public and non-public school pupils in Title 1 ESEA areas of the city.

TELEVISION

Television programs will provide structural linguistics instruction to junior and senior high school pupils in public and non-public schools in Title 1 ESEA areas. The regular classroom work is supplemented by two daily television programs, "News 66 and Structural Linguistics." The program is made available to non-public school pupils through the use of television sets on loan for this specific purpose.

THE SCHOOL DISTRICT OF PHILADELPHIA,
BOARD OF EDUCATION,
April 10, 1967.

HON. CARL D. PERKINS,
Chairman, House Education and Labor Committee, House of Representatives,
Washington, D.C.

DEAR MR. PERKINS: We deeply appreciate the opportunity afforded our Superintendent, Dr. C. Taylor Whittier, of appearing before the Committee a few weeks ago. The enclosure, "Federal Funding Needs, School District of Philadel-

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phia, Pennsylvania" is a follow-up to that appearance to further acquaint you with Philadelphia's needs, plans and hopes.

Big cities find that local revenue sources can no longer meet the increasing costs of public education. With respect to programs using Title I money, Philadelphia will need \$14,000,000 in additional funds just to stand still. Another \$10,000,000 will also be needed to implement new and expanded programs in the basic skills areas.

At the present time, 40% or 108,000 children in Philadelphia's Public schools are classified as educationally disadvantaged. A variety of specialists, materials, supportive services and programmatic approaches to develop new educational, remedial, guidance and psychological service programs are needed to overcome this deprivation. Funds granted on a per pupil basis rather than categorical funds would permit the school district to implement unique and innovative approaches. \$250 per child is the basic allotment that is needed. Approximate cost—\$27,000,000.

Experimentation and innovation are the keys to educational change. In order to implement desirable change, facility renovation and design are necessary components to the development of new and innovative educational programs.

Funds for alterations and improvements and new building construction keyed to innovation and experimentation should receive incentive grants of 25% from the Federal government. These funds will add impetus and will help to develop the types of programs that can be unique and dynamic forces in changing the focus of education.

The teaching of educationally disadvantaged children requires new approaches and special techniques. Teachers of these children must be constantly involved in staff development programs so that they can more adequately fulfill their role in the classroom. In order to do this, massive staff development programs must be implemented. These programs will greatly enhance the instruction these children are receiving and will also provide teachers with needed and necessary teaching skills.

The proposed increases in the 1967-68 budget for the implementation of the Elementary and Secondary Education Act would make it possible for the schools of Philadelphia to build upon the gains made from this source of funds. We strongly urge that the Committee, under your astute leadership, give full support to the increases so as to sustain and increase the forward movement already in motion to provide all children with equality of educational opportunity.

Sincerely yours,

ROBERT L. POINDEXTER,
Deputy Superintendent.

Federal funding needs, School District of Philadelphia, Pa.

Vocational Education Act.....	\$4, 000, 000
Smith-Hughes and George-Barden Acts.....	1, 012, 500
Economic Opportunity Act:	
Title I-B	3, 000, 000
Title II-A	24, 650, 000
Title II-B	960, 000
Manpower Development Training Act.....	2, 000, 000
National Defense Education Act:	
Title III	2, 000, 000
Title V	467, 000
Civil Rights Act.....	500, 000
Educating the atypical child.....	5, 000, 000
National Teachers Corps.....	3, 370, 000
Education Professions Act.....	520, 000
Elementary and Secondary Education Act:	
Title I	25, 000, 000
Title II	3, 000, 000
Title III	4, 000, 000
Total	79, 479, 500

VOCATIONAL EDUCATION ACT

At present, allocations are made on a first-come, first-served basis, according to the State plan.

A minimum of \$3 million is needed for next year. Local effort must be \$1½ million.

As demands on the Operating Budget of the Philadelphia School District increase, the capability for providing matching funds diminishes.

Recommendations

1. Establish allotments on the basis of population and need.
2. Reduce the local contribution factor from 50% to 10%.
3. Include children in special education as eligible recipients and waive the requirement that they must be in grades 9 to 12.
4. The \$3,000,000 needed for next year should be divided as follows:
 \$2,000,000—Trade and Industry Equipment
 750,000—Distributive and Commercial Education
 250,000—Home Economics
5. An additional \$1,000,000 is needed for staff development and for the development of new program manuals.

SMITH-HUGHES AND GEORGE-BARDEN ACTS

The formula should be increased to \$75 per child. Reimbursement should be allotted for children who are presently in Comprehensive High Schools. Students in the Commercial Course should also be included. Approximate cost—\$1,012,500.

ECONOMIC OPPORTUNITY ACT

Title I B—Neighborhood Youth Corps

At present 1600 youths are enrolled in the full-year Work Training Program and 2,500 in the summer program. This program has cut the drop-out rate but does not provide adequately for the great number of potential drop-outs. It is proposed that the program be expanded to enroll 3,000 in-school youth during the school year and summer. Approximate cost—\$3,000,000.

Title II A—Community action programs

1. *Operation Outreach*.—provides remedial reading, tutorial homework help, counseling, and cultural enrichment. It should be doubled in size instead of being phased out. An estimated 20,000 children need this service during after-school and evening hours. Approximate cost—\$1,750,000.

2. *Full Year Head Start Program*.—Currently provides prekindergarten education for 5,500 children between the ages of 3 and 5. There is a need in Philadelphia for a program for at least twice this number—11,000 children. Approximate cost—\$12,500,000.

3. *Summer Head Start Program*.—To maintain the present level of this six-week kindergarten program for 1,500 children would cost \$400,000.

4. *Head Start Follow-up*.—New and innovative approaches to the individualization of instruction must be developed to provide the vehicle for moving disadvantaged children more rapidly into the regular instructional program. Head Start Follow-up will help to maintain the gains achieved in the pre-school program. Cost—\$10,000,000.

Title II B—(Title III ESEA) Adult basic literacy

700 adults each year during the past two years have acquired fundamental reading and writing skills. This program should be expanded to serve 1100 adults. Cost—\$960,000.

MANPOWER DEVELOPMENT AND TRAINING ACT

To maintain the present level and to expand the program to meet increasing needs for training and retraining workers would cost \$2,000,000.

NATIONAL DEFENSE EDUCATION ACT

Title III

Grants under this Title are made on a matching basis. Although additional funds are needed to buy equipment, books and materials in eligible areas, the burden imposed by the 50% contribution makes it difficult for the School District to benefit because of its tight budget. Congress should reduce the contribution to 10% and thus increase the ability of the School District to benefit. To con-

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time to improve Science Laboratories, Instructional Materials Centers and provide funds for eligible materials, the School District needs \$2,000,000.

Title V

To provide a ratio of one counselor to 400 students in our secondary and special schools, the allotments should be increased to \$3.88 per child. Cost—\$467,000.

CIVIL RIGHTS ACT

Title IV

Better insights are provided when teachers and administrators participate in in-service training in inter-group education. Funds under this Title will also be used to foster integration in the schools. Cost—\$500,000.

EDUCATING THE ATYPICAL CHILD

The physically, emotionally and mentally handicapped child requires skills, curriculum and methods of instruction that are unique. Individual attention to the needs of each child is of paramount importance. To do the job so that handicapped children can become productive members of society will require \$5,000,000 next year.

NATIONAL TEACHER CORPS

A change of focus is needed in the prescribed use of corpsmen. Corpsmen would be of greater service if they were permitted to carry a regular teaching load, with intensive supervision, and with adjustments in their schedules to permit time for college course work. At present they can be used only as supplemental personnel. Philadelphia could use 300 interns and 60 team leaders. Approximate cost—\$3,370,000.

EDUCATION PROFESSIONS ACT

Funds for upgrading the instructional and administrative skills of 2,000 staff members next year would cost \$400,000.

Teacher aides have demonstrated their dedication and interest in the disadvantaged children in the inner city schools. Many aides could become competent teachers if funds could be provided for tuition grants. Grants for 200 aides would cost \$120,000.

ELEMENTARY AND SECONDARY EDUCATION ACT

Funds provided in this act impose a real hardship on local school systems because of the restrictive nature of the guidelines. We agree with the general principle that guidelines must be established. However, we feel that these should be broadly stated so that local professional judgment can be the basis for expenditures. Innovation and creativity are stifled because the guidelines are so structured in nature. Programmatic change when needed is impeded because of the necessity of prior approval from the granting agency. It is therefore our view that guidelines broadly stated, giving local educational agencies freedom to use funds as needed but with auditing procedures established so that abuses will be avoided, would be the soundest approach to the expenditure of these funds.

The second limitation of the legislation is the pattern of funding. Appropriation should be made early enough and guaranteed over a period of years, so that sound educational planning and implementation of projects can be undertaken. A fundamental change should be the funding of projects on a program year basis rather than on a fiscal year basis. With these changes in effect, and with the establishment of guidelines that will stay in effect for the life of the legislation, school districts would be able to develop programs that will more nearly meet the needs of disadvantaged children.

Title I

The Iowa Test scores in Reading and Arithmetic for Philadelphia highlighted the need for a massive program to upgrade basic skills. Planning committees are now at work designing new programs to help overcome these deficiencies. In order to fully implement these and other essential programs, \$25,000,000 will be required next year. Early notification of funding is imperative so that programs can be carefully planned, organized and evaluated.

Title II

The Department of Public Instruction, Harrisburg, Penna., has mandated that every school have a library with a minimum of ten titles per child by 1973. An allotment of \$25 per child would help to meet this objective. Approximate cost—\$3,000,000.

Title III

Philadelphia has developed "new linkages" with the community as a result of funds provided by this Title. Community and Magnet Schools are in their infancy. Intensive Learning Centers are in the planning stage. Career Development programs are being studied, and the use of large numbers of volunteers and paraprofessionals is about to become a reality. These and many other innovations will require a grant of \$4,000,000.

GENERAL RECOMMENDATIONS

Big cities find that local revenue sources can no longer meet the increasing costs of public education. Philadelphia, this year, will need \$14,000,000 in additional funds just to stand still. Another \$10,000,000 will also be needed to implement new and expanded programs in the basic skill areas.

At the present time 40% or 108,000 children in Philadelphia's Public Schools are classified as educationally disadvantaged. A variety of specialists, materials, supportive services and programmatic approaches to develop new educational, remedial, guidance and psychological service programs are needed to overcome this deprivation. Funds granted on a per pupil basis rather than categorical funds would permit the school district to implement unique and innovative approaches. \$250 per child is the basic allotment that is needed. Approximate cost—\$27,000,000.

SCHOOL CONSTRUCTION

Experimentation and innovation are the keys to educational change. In order to implement desirable change, facility renovation and design are necessary components to the development of new and innovative educational programs.

Funds for alterations and improvements and new building construction keyed to innovation and experimentation should receive incentive grants of 25% from the Federal government. These funds will add impetus and will help to develop the types of programs that can be unique and dynamic forces in changing the focus of education.

(Reference to following material appears on p. 349.)

STATEMENT OF THOMAS W. CARR, STAFF DIRECTOR, NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

The mission of the National Advisory Council on the Education of Disadvantaged Children is to evaluate the administration and effectiveness of federal education programs for disadvantaged children. Simply stated, the Council attempts to assess what the \$1 billion being spent under Title I is buying in terms of improved education for poor children. The operation of this Council is unusual in several respects:

(1) It is presidentially appointed and is independent of the Office of Education. The Council's reports are made directly to the President and Congress and are not reviewed by a government agency.

(2) No member of the Council is a government official.

(3) The Council has its own small staff and hires consultants who observe federal programs. Consequently, it is not dependent on any outside source for the data that form the basis of the Council reports.

(4) Because of the Council's independence, local school officials are assured that information the Council gathers will not affect their federal grants.

The Council's principal efforts in the past year have involved on-site observations of a sample of Title I and National Teachers Corps projects. Although our sample includes only 3% of the counties eligible for Title I funds, these 101 counties account for almost one-third of the \$1.07 billion appropriated for Title I.

The Council's approach has been to send highly qualified observers to sit in classrooms and talk with children, teachers, and administrators. An interesting side effect of these visits is that most consultants have been warmly received by local educators who have plied them with questions about the promising educational programs they have observed in other parts of the state or nation. The reports, which provide a substantial data base, are then analyzed by the Council and its staff.

Members of the Council here today will report on the Council's findings.

STATEMENT BY DR. RICHARD L. DARLING, DIRECTOR, DEPARTMENT OF INSTRUCTIONAL MATERIALS, MONTGOMERY COUNTY PUBLIC SCHOOLS, MARYLAND, AND PRESIDENT, AMERICAN ASSOCIATION OF SCHOOL LIBRARIANS

My name is Richard L. Darling. I am President of the American Association of School Librarians, a division of the American Library Association (a non-profit, professional organization), and a department of the National Education Association. My present position is Director of Instructional Materials, Montgomery County Public Schools, Rockville, Maryland, and among my responsibilities is the implementation of Title II programs under the Elementary and Secondary Education Act.

I am grateful for the opportunity to submit this statement for the record of hearings of this Committee on the Elementary and Secondary Education Amendments of 1967.

As a representative of the American Library Association and the American Association of School Librarians, I wish to support the bill as a whole which amends and extends the existing legislation.

In connection with this amending legislation, however, there are several serious shortcomings to which we would like to call your attention. One is that, despite the authorization of \$150 million in Title II of the Act for fiscal year 1968, the budget recommendation for fiscal year 1968 is only \$105 million. As you know, Title II has to do with school library resources, textbooks, and other instructional materials. Since even the authorization of \$150 million was thought by those working in the field as woefully inadequate for overcoming the critical gaps existing in this educational area throughout the Nation, it is easy to see the great concern of those persons engaged in this field and aware of this distressing situation. We hope that your Committee will correct this difficulty. We are pleased, however, that the bill provides continuation of the benefits of the Act to Indian children enrolled in Bureau of Indian Affairs schools and children in overseas dependents schools operated by the Department of Defense.

Another matter of apprehension to us is that amendments do not provide for the extension this current year of Title I, Title II, and Title III of the Elementary and Secondary Education Act. It is true that these titles do not expire until June 30, 1968, but if the question of their extension is left until next year, the planners of these programs will be faced with uncertainties and delays. In the case of Title II, for example, should the extension not take place until sometime in 1968, it could well be late in the school year which begins in September 1968 before the library books and instructional materials would be available to the students and teachers who so desperately need them, and should have them without any lapse in time or use.

The ESEA has already accomplished much for the students and teachers of the United States. Since other witnesses have dealt in detail with other titles of the Act, my remarks will be directed mainly toward the effectiveness of Title II—School Library Resources, Textbooks and other Instructional Materials.

In order to get that information, the American Association of School Librarians set up an Ad Hoc Committee for the Implementation of Federal Programs to undertake a national survey. This statement which I am presenting is heavily dependent on the letters and reports from State and local school library supervisors which were sent to this Ad Hoc Committee.

As would be expected with a new program, many school systems experienced minor difficulties at the outset. Most problems related to delays at the Federal and State levels in preparing and approving State plans and regulations. Others resulted from school library staffs being too small to continue effectively former levels of service to students and teachers while completing careful selection of materials to be purchased with Title II funds. To administer this important expanded program efficiently and promptly requires a strong administrative staff,

which does not exist in many school districts which do not have even one trained school librarian. Lack of sufficient administrative staff is also a serious handicap in many large city school systems. Attention should be given to the needs of localities as well as the States. In other school districts the library facilities were inadequate. However, the great bulk of the reports indicate that the problems were minor compared to the great benefits received under the Act.

The State and local supervisors report that implementation of Title II, overall, presented no major problems except in the large metropolitan areas. Selection and purchasing were usually delegated by the States to local public school systems. Delivery on orders were usually reasonably rapid. The schools used a wide variety of recognized selection aids in choosing materials. (The American Association of School Librarians prepared and published a pamphlet, *Selecting Materials for School Libraries; Guidelines for Quality Collections*, in an edition of 175,000 copies for free distribution through the State departments of education, which was used in many schools.) The teachers and librarians selected materials to meet school needs in supporting the instructional program, emphasizing, in many places, materials for slow learners, for advanced students, and for other children with special needs, especially the disadvantaged.

Not even personnel shortages seriously hampered schools in implementing Title II. Eligible schools were able to employ librarians and library clerks with Title I ESEA funds, using the two titles to support each other. In other school systems local funds supplied additional personnel and facilities, a good example of how a federal aid program can encourage greater local effort. Often the schools coordinated Title II and NDEA Title III, purchasing audiovisual materials of instruction with Title II funds, and the necessary audiovisual equipment under NDEA Title III.

Specific examples of improved instructional materials acquired and library programs resulting from Title II furnish more dramatic evidence of the value of this important education legislation. For example, Jefferson County School District, in Colorado, developed an Art and Music Reference Library so that all county teachers would have access to materials which could not be duplicated economically in every school.

In Oklahoma, the Putnam City Schools developed new central libraries in all of its eleven schools by consolidating small existing classroom collections and adding new materials with Title II funds. With local money, the district employed a school library supervisor, and organized the materials so that even those they had before Title II were made more accessible to support the learning needs of boys and girls.

The Chanute, Kansas, Board of Education, hired a library coordinator, one and one-half librarians, and eight part-time library clerks in order to assure effective use of Title II materials in its eight elementary schools. Chanute organized central processing for its school library resources, and developed a union catalog so that all pupils could benefit from the collections.

The Nebraska State Department of Education developed a unique school library demonstration program. Using part of its Title II administrative allocation, Nebraska purchased a mobile unit and stocked it with examples of quality print and non-print instructional materials, equipment for using non-print materials, and library supplies and equipment. They have used their mobile model library throughout the State for in-service education and to encourage local effort in developing school library services.

These reports are representative of the exciting developments in school library services, and are a few examples of what is occurring throughout the Nation under ESEA, but it is still too early for a definitive report on the effects of Title II. However, it is a highly visible program, and one that shows an immediate effect on teaching and learning. In most States, it has had its greatest impact on elementary schools, where the need for school library resources was greatest, with a much smaller portion of the funds under Title II going to secondary schools. It has provided both books and audiovisual materials in order to support instruction with the widest possible range of learning materials. The second year of implementation of this title will, undoubtedly, show even more benefit in improved education.

On behalf of the American Library Association, and especially of the 11,340 members of the American Association of School Librarians, I wish to thank this Committee and the Congress for its farsightedness in enacting such beneficial legislation, and to urge its extension at this time for another five years with increased authorizations to assure a continuing effort to achieve quality education for the boys and girls of the United States through expanded school library resources.

WICHITA PUBLIC SCHOOLS,
UNIFIED SCHOOL DISTRICT No. 259,
Wichita, Kans., January 27, 1967.

HON. CARL D. PERKINS,
*Chairman, Education and Labor Committee, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.*

THE HONORABLE MR. PERKINS: I have read that your committee will soon begin hearings on "Follow-Through"—a program to extend the educational momentum of Head Start Projects through the primary grades.

In my present position I am directing a \$1 million project for disadvantaged youth in the Wichita Public Schools under Title I, P.L. 89-10. I also directed Project Head Start here last summer for 1070 five years olds. We are planning two new Head Start programs—one a summer project for 800 children and the other a twelve month project for 180 four years olds from the most severely deprived families.

In your Committee's deliberations, may I recommend that you give strong consideration to these points:

1. Inasmuch as the large majority of Head Start programs are administered by local school systems, monies designated for Head Start should be added to Title I, P.L. 89-10 amendments and allocations. This change would streamline accounting, auditing and budgeting procedures. Furthermore, it would be possible to develop a more closely integrated program if we had to deal with only one funding agency—U.S. Office of Education.

2. Congress must assume responsibility for funding educational program in advance of the academic year in which these endeavors are to be initiated. Upgrading society through educational innovations is an awesome task in itself without the millstone of belated appropriations that cripple local implementation.

Here are two examples:

- (a) Title I monies were appropriated for 1967 far too late. With the adjustments required by the 1966 amendments, the U.S. Office of Education had to obtain new foundation figures from each state. Although Congress passed a continuing resolution, firm figures were not obtainable. As of this date, our school system still does not have final word on the 1967 appropriation figure and the first semester is *history*. Meanwhile, we have a stock of new Title I projects ready to submit when monies become available. Such delays jeopardize new programs and prohibit effective educational planning.

Fiscal 1968 appropriations should be made in time for State Departments of Public Instruction to allocate the monies available by June 1 at the latest.

- (b) Head Start Programs have been approved only *days* prior to the initiation schedule. Last summer we had eight working days to "tool up" for the project—a task of impossible dimensions. Our regional OEO office has promised approval by February 28. This is a great improvement—if it actually happens.

Concerning the "Follow-Through" legislation soon to be debated, these factors must be considered:

1. The schools need space—classrooms—to permit smaller classes during the crucial period of grade 1 through 3. Some program improvements can be implemented with additional monies for additional teachers, aides, etc., but severe limitations are prevalent in many urban areas due to already over-crowded schools. Construction money is needed.

2. Title I programs, with increased flexibility, can be one of the answers to follow-through projects but only if the limitations discussed above can be overcome. The NEA backed legislative program provides an avenue toward the solution of the disadvantaged pupil problem. I urge you to become acquainted with it and to push for its enactment.

Sincerely,

DONALD E. YOUNGLUND,
Assistant Director, Federal Programs.

RALPH WALDO EMERSON SCHOOL,
Newton Upper Falls, Mass., March 9, 1967.

HON. CARL PERKINS,
*House Office Building,
Washington, D.C.*

DEAR MR. PERKINS: I am teaching the primary grades in the Title I program of the Newton Public School. I am also coordinating the team work of three

reading specialists, a speech therapist, a psychologist, and a social worker. These women are completely dedicated to the task of helping disadvantaged children adjust to an unequal society, help them to function in it effectively and prepare them for a trade later on, so they will become useful members of this society.

Children in fringe areas, where poverty is coexistent with wealth, are much more aware of their deprivation and feel it more acutely than those isolated in Kentucky who have no basis for comparison. Apathy, negativism, withdrawal, criminal tendencies, or belligerence evolve from this awareness.

We are using all facilities available in the City of Newton to help these children. We are communicating with other Title I areas such as Gloucester, Roxbury, and Worcester to compare approaches and gain useful information to improve and expand the program.

This is a program well-started. To discontinue Federal aid would just intensify the negativistic attitude these people have for a society which would reach out to help and then withdraw before *constructive* attitudes and improved learning processes are reached.

I am enclosing the following:

(1) An analysis we have made in Newton of our approaches with disadvantaged children.

(2) A copy of my letter to the Boston Herald replying to their articles, "Are the Rich Getting Richer?"

I have been in the heart of this program for over a year now. Most children and families are responding to the interest we are extending them and are realizing for the first time that someone "cares" what happens to them.

I hope this information is of help to you in evaluating the Title I program.

Sincerely yours,

Mrs. MARY JANE SCOTT.

TITLE I IN NEWTON

A Title I team is comprised of: 1 social worker, 1 psychologist, 1 speech therapist, and reading teachers.

Purpose: to take children who are not reading at grade level, diagnose their difficulties, and help them to learn to read (and enjoy it).

Procedure: *Diagnostic* (and we are really *pin-pointing* problems).

Causes for non-reading are:

1. Slow learners:

Low I.Q.,

Slow starters.

2. Disadvantaged backgrounds:

Too many children in family,

Few cultural advantages (enrichment needed to aid comprehension).

3. Emotional Disturbances:

Blocking learning.

Child uses reading as a weapon of defense.

Child can't concentrate because of preoccupation with deep-set worries.

Speech impaired functionally blocking communication.

4. Organic handicaps:

Speech, organic defects,

Neurological, perceptive, motor difficulties.

How Title I is helping in these four areas

(1) and (2) child immediately taken by remedial reading teachers. Multiple choices of attack used until child responds with interest and success to method best for him.

(3) child given *psychological help* solely if problems are acute or in addition to reading program. (Also therapeutic tutors obtained for a few children to meet their individual special needs).

Speech therapy is given solely or in addition to reading dependent upon the intensity of the defect. Comprehension in reading is dependent upon correct enunciation.

(4) Organic and neurological defects hard to separate from emotional, yet imperative to diagnose to *protect* the child from too many pressures to perform at home and in the classroom.

Problem: to know what to expect in terms of achievement; to find ways to structure special learning situation for these children.

Primary goals of Title I in helping these children

1. Instill a positive attitude that reading is fun.
2. Reshape and improve attitudes towards reading so that it is fun.
3. Improve self image of child.
4. Improve self image of parents.

How Title I is achieving its goals with new creative approach to old programs

1. Enrichment: examples—theatre, summer programs, field trips.
2. Instructional:
 - (a) learning machines—language master, filmstrip projectors, controlled readers, tape recorders, record players
 - (b) Tailor-making the reading approach to child (organic, linguistic, experience charts, letter-play, diary-writing, games)
3. Classes: small or individual
4. Preventative: Parent groups—educating parent on child development and home management and parent-child relationships.

EMERSON SCHOOL, TITLE I

To: The Boston Herald.

Purpose: To defend the use of Federal funds in Title I in Newton.

HERALD STATEMENTS

1. *Title I allocates money according to the number of poor children, not on the basis of quality of education they are receiving*

Answer: Poor children need more than interaction in a classroom of 25-30 children. They become "swallowed-up" in the general pressure to "pass tests," to get on to the next grade. The classroom alone cannot make up for family deprivations. The surge of rural families to the suburbs focuses awareness upon inequalities, points up poverty versus wealth, and leads to deep-seated antagonism. Enrichment and basic re-education must be carried on in small groups and, even, individually.

2. *Breathitt County has \$285.00 per pupil; Newton has \$760.00 per pupil.*

Answer: Breathitt County needs to specifically define the problems and needs of the poor children, fill out the dozens of forms correctly and completely, and ask for funds. Newton did this and received funds, and so could Breathitt County. Also, who is to say that Breathitt County, if given a few more thousands of dollars, would "identify, attract, and aid the more seriously disadvantaged" more than a school system experienced in spending money efficiently and wisely?

3. *"Aids" benefit the entire school*

Answer: A poor child demonstrates his new knowledge on a Title I Language Master to a wealthy child. Who's benefitting?

4. *Disappointing findings! The schools are failing to identify and attract the most seriously disadvantaged children.*

Answer: Apathetic, negative, belligerent, withdrawn children, some with criminal beginnings are being aided by psychologists, social workers, speech therapists, and reading teachers in Newton Title I. To help them adjust to an unequal society, function within it effectively, and to find a trade to help them become useful members in this society is our goal. Group meetings among parents to help them to help themselves and to help their children have been slowly attracting the self-conscious, needy, bewildered adult. Appalling home conditions are not limited to Kentucky!

5. *"Title I children in Newton attend remedial reading classes in carpeted rooms with walls of books."*

Answer: The keys to the remedial situation are the humanity and intelligence of a genuinely interested adult skilled in the selective and varied use of the right materials to meet the child's immediate problems.

Now, my questions to the Herald:

Where do you learn how to become competent in diagnosing disadvantaged children and judging successful means of averting tragedy? My answer is to begin in the fringe areas where poverty coexists with wealth and the inequalities are obvious to everyone. Hire therapists and teachers who care about educational inequalities who will work diligently long and extra hours to help children to cope with a hostile world full of stumbling blocks toward constructive learning. Let these people communicate their ideas to other poverty areas such as Breathitt County to help them "identify and attract their most seriously disadvantaged children." apply for funds and to use these funds efficiently.

BENTON HARBOR PUBLIC SCHOOLS,
Benton Harbor, Mich., March 9, 1967.

HON. CARL D. PERKINS,
House Office Building,
Washington, D.C.

DEAR MR. PERKINS: Many members of the Michigan Association of School Administrators visited Washington during the week of February 27th to learn more about federal legislation and aid and how it affects our schools in Michigan. Many personal contacts were made with our Michigan congressmen to understand their views on federal programs and for the school administrators to express their problems, concerns, and interest in federal programs.

Many of our congressmen suggested we visit the hearings your committee was conducting on the Elementary and Secondary Education Act, which we were able to do on Friday, March 3rd. In your comments to the Superintendent of Pittsburgh, you suggested a personal letter be addressed to you explaining the problems of Title I Projects in our district.

Therefore, we would like to list the following information about the School District of the City of Benton Harbor, Michigan and the operation of federal programs in our district.

1. Our school district covers approximately 56 square miles, total estimated population of 46,000 people, with public school enrollments of 12,000 students K-12 and 1200 parochial students.

2. Approximately 30% of our students are in a Negro minority group.

3. We are a new school district of a little over a year with the consolidation of 17 small units into one.

4. Our economically and educationally deprived students are located in 9 target schools in the district.

5. Last summer our community had nearly a week of nightly rioting in the streets.

6. Our allocation under Title I for 1965-66 was \$304,000. We had the following projects in operation last year:

(a) Employed registered nurses for the school district and supporting health programs.

(b) Employed one counselor.

(c) Conducted an extensive summer and Saturday Physical Education and Recreation Program.

(d) Employed 20 helping teachers to work in target schools.

(e) Developed the Community School Program in two target schools.

(f) Started adult high school credit classes and expanded the Adult Basic Education Program.

(g) Developed pilot junior high typing program in our junior high school.

(h) Conducted an extensive In-Service Program for teachers in our target schools.

(i) Equipped a complete dentist office and employed a dentist and dental hygienist to aid our students.

(j) Developed a series of reading programs in the target schools.

(k) Developed an Instructional Materials Center for the target schools.

(l) Provided musical instruments and a music instruction program for the students.

(m) Conducted a large educational summer school program.

7. The allocation for our district for 1966-67 is estimated at \$256,000.

8. We have had to cut many programs from last year and these cuts have handicapped the operations of our programs in our target schools.

We have many reimbursable programs in our district and feel they are important to its operation. But, it is our basic belief that only one agency should operate the program. For example, the "Headstart" project being administered by the school district and the Community Action Agency.

We truly believe that Title I funds are providing educational opportunities and advantages in our district and should not be cut back but expanded for a district, like ours, who needs to meet the problems of slums, de facto segregation, illiteracy and poverty head on.

We have provided you with a short sketch of our Title I programs and problems and will supply more detail at your request.

Thank you for your interest in the School District of the City of Benton Harbor, Michigan.

Very truly yours,

ALBERT C. JOHNSON, *Superintendent.*

1710 ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS

FLEMINGSBURG, KY.,
March 8, 1967.

Subject: Benefits from ESEA Title I and Title II.

Hon. CARL D. PERKINS,

*House of Representatives, Congress of the United States of America,
Washington, D.C.*

DEAR MR. PERKINS: I would like to thank you for the support that you have given to library legislation and to express the hope that your interest and support will continue.

Both Title I and Title II projects of ESEA have given aid to our library program, and while we may not be a model of achievement, at least we have been able to near the minimum library standards for Elementary Schools as recommended by the American Library Association. Now we no longer have to limit a child to having only one book checked out at a time—because there were not enough books to go around.

We have been able to increase the size of the library from one that would seat 30-35 students to one that can accommodate 50-60. We have also been able to take that long step forward toward becoming a materials center. Instead of just books we can offer both students and faculty filmstrips, posters, pictures, recordings, tapes and a varied number of other non-book materials.

Fleming County is a "library minded" community, and they are pleased to have this service improved.

Sincerely,

WINNIE WRIGHT,
*Librarian, Flemingsburg Elementary School, Flemingsburg Elementary
Library.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 13, 1967.

Hon. CARL PERKINS,

*Chairman, House Education and Labor Committee,
Washington, D.C.*

DEAR MR. CHAIRMAN: I would appreciate it very much if the attached statement by Mr. Bruce Miller, Superintendent of Schools, Riverside Unified School District could be included in the hearings being held by your committee this week. I believe Mr. Miller's statement would make an important contribution to your committee's study of the direction of present federal participation in certain educational programs.

Your consideration will be greatly appreciated.

Kindest regards,

JOHN V. TUNNEY,
Member of Congress.

STATEMENT OF NEED FOR FEDERAL FUNDS, BY BRUCE MILLER, SUPERINTENDENT OF SCHOOLS, RIVERSIDE UNIFIED SCHOOL DISTRICT

I would like, first, to express my appreciation for the opportunity to discuss with you today some of my thoughts about the Federal program, particularly those projects under Title I of PL 89-10.

As a school superintendent, I am concerned over the direction of Federal participation in the support of public education.

There is no question of a need for Federal funds. Public education throughout the country is in serious financial difficulty. The Federal Government can play a vital role in financing schools in a three-way partnership—a partnership composed of Federal, State, and local governments.

But, as a practicing school man, faced with the day-to-day problems of operating a school district, I am greatly concerned over the direction we've been taking, particularly in Title I of PL 89-10—the Elementary and Secondary Education Act.

In discussing some of our concerns and the problems associated with Title I, I will be talking specifically about the Riverside Unified School District. However, these same problems are reflected throughout the State of California, and the schools of our immediate area—Alvord, Corona, Jurupa, Moreno Valley, etc.

Problems

There are two very serious problems with respect to Title I funds.

1. The 15% reduction in Title I our district and many others had to face this year.

(a) Last year Riverside employed 61 people in Title I. This year, because of the reduction, this number was reduced to 43, a net loss of 18 people.

(b) As a result of this reduction, the entire Title I reading program was eliminated at the senior high school level, and 2/5 of the program was eliminated at the junior high level. While the elementary schools were spared as much as possible, they too were affected through a loss of teacher aides and other supporting services which had previously enabled the preparation of special learning materials for each child.

(c) If the 85% level is maintained next year, the loss of 15% over a two-year period will be cumulative. This loss is compounded through the effects of normal inflationary trends.

(d.) We have tied in the Title I funds with the district's program of integration. By next September, Riverside will have totally implemented its Master Plan for School Integration, and will have gone in a two-year period from a district with three de facto segregated schools to one of racial balance among all schools. Throughout this period, we have said that mere physical integration is not enough—accompanying it must be provisions for programs for low-socio-economic youngsters—to provide them with the educational background and incentives that they can compete on more equal terms with the more affluent children with whom they are not integrated. If we fall down in this respect, we threaten the very foundation of the principle of integration. I do not believe we can afford that risk.

2. In addition to the problems related to program, there is an even deeper one related to the indefiniteness of Federal funds—to the point that we don't know how to plan from year to year.

(a.) Sound educational planning is one of the chief requisites of school administration. It is a basic of basics.

(b.) From a planning standpoint, it would be better to have no program at all than to plan on one then have to reduce it.

(c.) The chief difficulty in this respect is personnel. We want good people on our projects—so we place our best staff members in the Federally financed programs—and bring in others to take their places in the rest of the program. Once these people are placed—and the project is reduced—some of the project staff then has to be reabsorbed in the regular program—in turn dislocating those who had been employed to take their place. Thus, it is not only the Federal project which is disrupted, but some aspects of the district's total program.

(d.) The urgent need is to know well in advance (as much as two years would be desirable)—in ample time to make the necessary personnel shifts—to know whether we're going to get 85%, 90%, 100% or less than 85%—for the years ahead. Without this lead time, we are forced into last minute planning. People affected by sudden readjustments become increasingly disenchanted with Federal funds.

The needs

1. I have already pointed out that most schools are in financial trouble. Riverside is no exception. Last year we were forced to trim \$450,000 from our program to balance the budget. Next year, we are faced with another \$700,000 reduction, and have no guarantee of the success of a proposed tax election or of an increase in state funds.

2. In this kind of a climate, the district is in enough of a financial turmoil—without the added problems related to the indefiniteness of Federal funds.

3. The district—and other districts in the state and country—need the Federal projects. Riverside perhaps has a special need because of its integration program. Ours was the first Title I project approved in the State of California. We think we have made wise and judicious use of the funds—and we would propose most earnestly that they be continued—and even expanded.

Recommendations

Having proposed that Federal funds be continued, I would hope that certain conditions could be imposed that would make a significant difference to school people across the country.

1. That we have a greater assurance from year-to-year of the level at which we can plan on Federal funds—whether it is to be 95% or 100% or 50%—it is important to know in order to plan our programs.

2. That school districts know well in advance of what the projected funds will be—again so that planning can be done and the projects can be tied in with the regular program to provide the most effective possible education.

3. That states have a greater degree of flexibility in the distribution of funds.
 - (a.) The present use of rigid formulas causes hardships among districts.
 - (b.) Not all counties and districts use their allocations.
 - (c.) Those unused funds should be transferable to other districts which can use them and which have worthwhile programs.
 - (d.) The states should have the flexibility to make these adjustments as necessary—without having to adhere to rigid formulas.
4. That serious consideration be given to a change of emphasis toward general support to supplement the categorical aid now used as the basis for Federal programs. Such a direction would provide a greater degree of flexibility at the district level and would help districts with their serious educational and financial problems.

OMAHA PUBLIC SCHOOLS,
Omaha, Nebr., February 23, 1967.

HON. CARL D. PERKINS
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN PERKINS: It is my understanding that the House Education and Labor Committee will soon be conducting hearings on the National Teacher Corps. It is, therefore, respectfully requested that this letter be read into the proceedings of the committee hearings. The School District of Omaha along with the University of Omaha has been involved in the National Teacher Corps program during the past year. The trainees have been carefully selected and are outstanding candidates for teaching in central city schools.

Dr. Floyd T. Waterman, director of the University of Omaha NTC Unit, and Dr. Paul J. Turnquist, assistant superintendent in charge of personnel in the Omaha schools, have worked diligently and effectively in making the training phase of this program an outstanding experience for the participants. It is our professional judgment that the NTC program represents an excellent potential source for educators interested in and committed to working with children in the poverty areas of our American cities.

It is our sincere hope that this testimony from the local level will be of some benefit to your committee in supporting the National Teacher Corps program. Without a sufficient supply of interested, dedicated, and professionally competent personnel, many of the federally reimbursed educational programs will not function effectively.

Respectfully yours,

OWEN A. KNUTZEN,
Acting Superintendent of Schools

STATEMENT BY WILLIAM T. LOGAN, JR., COMMISSIONER OF EDUCATION,
STATE OF MAINE

Mr. Chairman and Members of the Committee: My name is William T. Logan, Jr. I am Commissioner of Education for the State of Maine.

The following information is presented regarding the operation of P. L. 89-10, The Elementary and Secondary Education Act, in the State of Maine.

The various titles have provided additional funds for the education of Maine children and have been used to good advantage.

Title I—Education of Children of Low-Income Families

For the fiscal year 1965-1966, 465 projects were approved for a total expenditure of \$3,738,324.50.

The projects by major areas were as follows:

Reading and basic elementary school subjects.....	222
Mathematics, science and social studies.....	20
Pre-school and kindergarten.....	6
Education of the handicapped.....	11
Art, music, health and physical education.....	17
Business education and terminal courses.....	30
Books, supplies and equipment.....	159

Total 465

From the personnel standpoint, 450 teacher aides and 150 teacher assistants were employed.

In the construction and facilities area, 11 projects including 17 portable or mobile classrooms were approved for an expenditure of \$193,334. Within these

projects 37,877 public school pupils and 1342 non-public school pupils were served.

In summary, Title I, ESEA has been effectively administered at the state level without undue interference from the United States Office of Education. Federal guidelines have been adequate and have allowed sufficient flexibility for state administration.

Title II—School Library and Instructional Materials

The State of Maine has made good and full use of Title II funds amounting to \$525,829. The state has served as the agency for distribution of books and instructional materials to eligible non-public schools.

Title III—Supplementary Educational Centers and Service

Maine was allotted \$659,025 under this title for fiscal 1966. Maine school officials worked industriously on these projects and had the distinction of preparing and submitting more projects than many other states. The scope of the projects indicated ingenuity and stressed creative thinking and innovation.

We recommend that the statute be amended to give the State Department of Education authority to approve Title III projects as state officials are in a position to know the needs of local schools and their ability to carry on worthy projects.

Title V—Strengthening Leadership Resources of State Educational Agencies

Maine was allotted \$143,000 for the purpose of strengthening the leadership resources of the Department. In the administration of the title, the state has been given considerable latitude in identifying its needs and designing programs to meet those needs. Projects have included In-service Training For Professional Staff, Employment of a Coordinator of Federal Assistance Programs, A Language Arts Supervisor, Adult Education Supervisor, Coordinator of Teacher Education Programs, and in the Fine Arts field a Supervisor of Music and another for Art. These programs should go a long way to strengthen the services rendered by the Department to local units.

With regard to the proposed amendment to Title V to establish a five-year program of grants to states by the Commissioner of Education for programs of comprehensive, systematic and continuous planning and for evaluation of education at all levels, it is strongly recommended that the State Department of Education be designated in the statute as the agency to be responsible for carrying out or supervising the carrying out of the comprehensive planning and expenditure of funds therefor. It is my opinion that an expenditure of funds under this amendment by the Department of Education could contribute substantially to the improvement of education in this state.

CONGRESS OF THE UNITED STATES,

HOUSE OF REPRESENTATIVES,

Washington, D.C., March 2, 1967.

HON CARL D. PERKINS,
Chairman, Committee on Education and Labor,
House of Representatives,
Washington, D.C.

DEAR CARL: Recently I appeared with several schools from my district in hearings before hearing examiners in which the Department of Education, through its General Counsel, appeared in the position of making a case for "withholding funds." These schools had completely desegregated, in that all students were given complete freedom of choice. Nevertheless, I understand that the hearing officials have in one case and apparently are likely to make a similar finding in others that the Commissioner of Education has the right to withhold funds unless a plan is submitted and effectuated for integration, even if it requires orders of the school district officials and is against the wishes of the student and parents. This appears to me to be in violation of Title 4, Section 401(b) of the Civil Rights Act of 1964.

In connection with these cases I filed the enclosed memorandum brief. One of the main reasons given through the years for opposition to our Federal education programs is that it would lead to complete Federal control of our schools. The hearings in the cases in which I was present clearly show that unless your committee takes action to overrule the Commissioner, that is exactly what will happen.

In that connection I would point out we have every right to presume that the primary purpose of the Department of Education was and is to help education.

Accepting that, it must follow that since funds are essential to education—and federal funds promote education—that the *desire* of the Department should be to find ways to aid, rather than means to *cut off* funds.

I therefore argue this matter in that light—to say that the primary function of the Department of Education is to bring about integration (against the wishes of the people of both or all races) would be to abdicate its whole purpose; yet that is what is being done.

The Department of Education is requiring a pledge *not* to abide by the Civil Rights Act, but by guidelines; which in turn go beyond the Civil Rights Act. by calling for "voluntary" action to propose plans by the local school district and finding fault with each, the Department of Education is forcing or attempting to force assignment to maintain Negro-White ratios—which is prohibited by the Civil Rights Act.

Title 4, Section 401(b), of the Civil Rights Act of 1964, reads as follows:

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or National origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial "imbalance."

Even the revised guidelines prohibit what is being forced, by threat, on a "voluntary" basis:

"Sec. 181.52. Officials Not to Influence Choice

No official, teacher, or employee of the school system may require or request any student or prospective student to submit a choice form during the choice period other than by the prescribed letter, notice, and choice form. After the choice period, the school system must make all reasonable efforts to obtain a completed choice form from any student who has not exercised a choice. *However, at no time may any official, teacher, or employee of the school system, either directly or indirectly, seek to influence any parent, student, or any other person involved, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning choices made by individual students or schools to which they are assigned may not be made public.*"

Abolishing schools or other actions to create racial balance against the wishes of students and parents in the South is the same as requiring *bussing* in the cities of the North.

What the Department of Education seeks to force, "racial balance," must not be one thing in the South and another in the North, merely because the actions to bring it about are different. The use of force is common to both, the end result is the same, and the use of force was prohibited by the Congress.

We must prohibit use of Educational funds to pressure, to interfere with, or otherwise attempt to control or change the operation of local public schools where there is freedom of choice of attendance extended to all students to attend any school in such district.

Should you wish me to, I will be glad to appear in support of our position.

Thanking you for your consideration, I am.

Cordially yours,

JAMIE L. WHITTEN,
Member of Congress.

OMAHA TRIBAL COUNCIL,
Macy, Nebr., March 8, 1967.

HON. CARL D. PERKINS,
House of Representatives,
Congress of the United States, Washington, D.C.

DEAR CONGRESSMAN PERKINS: Enclosed herewith is copy of letter forwarded to Senator Hruska requesting his support in the retention of the National Teachers Corps.

Request that your Committee exert every effort in continuing educational opportunities under this program. Your assistance in this matter is appreciated.

Sincerely yours,

ALFRED W. GILPIN, *Chairman.*

MARCH 8, 1967.

HON. ROMAN L. HRUSKA,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: I take this opportunity to express to you the thoughts of the Omaha Tribal Council regarding the National Teachers Corps. The University of Omaha is sponsoring and educating twenty corps members under the expert leadership of Dr. Floyd T. Waterman, Project Director of the National Teachers Corps in Omaha and Macy. There is emphasis for the first time on

preparing teachers for the disadvantaged or poverty stricken areas. In our opinion, it is extremely important that Congress act now to continue the National Teachers Corps in the Macy Public Schools. At present we are trying to upgrade the general educational opportunities of our children through: (1) A Head Start Program, (2) Extended day classes, and (3) Neighborhood Youth Corps projects. Recently, we have read several accounts as to the importance of follow-up educational programs for the Head Start Program. This is exactly what the Teacher Corps is doing in our elementary school system. Along with this, the Corps members have helped with the extended day classes and with the Neighborhood Youth Corps project. It performs an extremely valuable service that is not offered by any other agency in our community.

We are sure that you are familiar with the course that the Corps has taken, as well as the educational gaps that it hopes to fill. Originally, Congress authorized the Teacher Corps—especially conceived to develop new and better ways to educate poor children—with a nine and one-half million dollar appropriation in 1965. Under this authorization the U.S. Office of Education offered college graduates special training for teaching in school districts of great poverty, and the chance to use part of their time to work toward a masters degree at a nearby university. A double boon—more specially qualified teachers for very poor school districts, and more potentially qualified teachers getting ready to help meet the national deficiency of 100,000 teachers. In competing against such a shortage of teachers, it is inevitable that the schools in poor districts would suffer most and usually end up with the least qualified. These are some of the compelling reasons why the National Teachers Corps has been praised by almost every professional educational group in the country—national, state, and local—as being well conceived, urgently needed, and practical.

From on the scene observations in Macy, we have observed the four corps members at work and are very impressed with their realistic and determinative approach to the problems they have encountered. The impact they have made upon our local educational system has been felt by every person in our community. Their accomplishments far out-weigh the cost of the program to the government.

President Johnson stated in his inaugural address that it would be the duty of the federal administration to promote opportunities for the American Indian which would enhance and expand their participation in American society, or to place them in the "mainstream" of American life. This cannot be considered lightly, and cannot be resolved within two decades. The proposed "Omnibus Bill" which is being prepared for submission to Congress by the Commissioner of Indian Affairs cannot solve the problems of American Indians and we have repeatedly opposed this proposed legislation at various meetings throughout the nation. Recommendations which we submitted to the Commissioner of Indian Affairs stressed the need of education, health, housing and employment on Indian reservations. These recommendations have not been included in the proposed Indian legislation. Education of our youth is the forethought of every Indian tribal council in the nation, and we realize that the President's wishes cannot be carried out until we prepare the present generation for their way in life by proper educational opportunities. The Teachers Corps is just a step in the right direction.

As you are well aware, the National Teachers Corps has been funded only through June, 1967. If after this time the Corps has not received additional appropriations it will be doomed, and Macy will lose a valuable community asset. In view of this, we urgently request that you and your colleagues favorable consider continuation of the National Teachers Corps.

Sincerely yours,

ALFRED W. GILPIN, *Chairman.*

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
Washington, D.C., March 21, 1967.

HON. CARL D. PERKINS,
Chairman of Committee on Education and Labor, U.S. House of Representatives,
Washington, D.C.

DEAR MR. PERKINS: The AAUW would like to be included in the record of the hearings in support of the Elementary and Secondary Education Amendments of 1967. As you and many members of the Committee know from our many appearances before your Committee the AAUW is staunch in its belief in generous funding for the nation's public schools. We believe equally in Federal sharing of financial support.

We continue to support assistance programs for disadvantaged children and the Teacher Corps program. We believe progress already has been made under the Teacher Corps and are of the opinion that under proper funding it could prove increasingly effective. We believe the steps taken in the legislation to clarify local control provisions and to provide for state agency approval will be helpful.

We in AAUW have been concerned for many years that Indian children be given equal educational opportunities and welcome any efforts in that direction. We also wish to express our approval of efforts to assist the education of the handicapped.

It has been the position of the Association for many years that a critical link in the nation's school system was the state agency. Therefore we welcome the attempts to strengthen this link which are to be found in HR 6230.

As we have said to this Committee in other years, in our estimation, one of the most critical problems facing our schools under programs providing Federal assistance is the uncertainty, the inability to program effectively which every school administrator faces each year because he hasn't accurate information about his resources for the coming year. This problem is created, as every member of this Committee knows, by the fact that enactment of authorization and appropriation legislation so often occurs substantially after the beginning of the school year and certainly months after the planning has been done for the school year for which the appropriations are made. We sincerely hope this Committee will find some solution to this problem which we believe to be particularly troublesome at the elementary and secondary school level.

DR. VICTORIA SCHUNK,

Chairman, Legislative Program Committee.

DR. LOIS ROTH,

Area Representative, Education Legislative Program Committee.

SEATTLE PUBLIC SCHOOLS,
Seattle, Wash., March 30, 1967.

HON. CARL D. PERKINS,
Chairman, House Education and Labor Committee,
House Office Building, Washington, D.C.

DEAR MR. PERKINS: The Elementary and Secondary Education Act funds allocated to our school district during the past two years have enabled the community, and the professional staff, to design innovative programs for the children of economically impoverished families.

You may be assured, we have tried to eliminate the deep-rooted causes of the learning disabilities among these children. If the program is continued, some permanent solution may be the result. We urge you and the members of your committee to support a full appropriation for PL 89-10 during 1967-68.

Sincerely yours,

FORBES BOTTOMLY,
Superintendent of Schools.

DEPARTMENT OF EDUCATION,
Lansing, Mich., March 31, 1967.

HON. CARL D. PERKINS,
Chairman, House Committee on Education and Labor,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN PERKINS: I am sorry that I was unable to attend the hearings on the President's Elementary and Secondary Education Bill. I do have some reactions to portions of it which I would like to present for your Committee's consideration.

The President's proposal for a \$44 million appropriation for adult basic education is most important to us in Michigan.

We have had a disconcerting year in which we have had to shorten the hours per week and reduce the weeks per year of adult education available to the people who are enrolled in those programs in Michigan. We have had to do that because in 1966-67 the Congress did not appropriate to the limit of the authorization, even though that limit had to be obtained if the level of programs undertaken in 1965-66 was to be funded.

Adult basic education is one of the cornerstones of our program to help the poor and the deprived. We are spending \$258,000 of State aid, \$757,000 of Federal aid, and \$120,000 of local funds now; and where in 1963 we had only 4,400 enrolled in adult education, today we have 13,000 and tomorrow we can double that with a minimum of recruiting.

Adult basic education combined with MDTA funds or other job placement assistance means a break in the poverty cycle for countless people. It is, in my opinion, sound economics.

I endorse the President's proposal for rapid expansion of the Teacher Corps. I am particularly interested in that portion of the proposal which suggests a relationship between the Teacher Corps and special programs such as Migrant Education. It seems to me that this is an area in which the Congress can innovate. For migrant children one of the most difficult educational tasks is to secure continuity in learning. Compacts between states and between districts within states are useful to that end; but a mobile Teacher Corps which could move with migrants from state to state could be the most useful method to obtain that continuity.

Michigan is proposing in its migrant education program to finance a university program which will train up to fifty teachers who will then be employed by school districts in migrant education. This could become a Teacher Corps effort.

The Teacher Corps offers to altruistic and talented young people an appeal to action. It is this kind of appeal which, in my opinion, encourages able young people to choose a particular career over others. And teaching has not mounted enough of those kind of appeals.

We need the Teacher Corps and many similar kinds of programs to increase the attractiveness of teaching to those who want a career of service in an area of excitement.

I wish to give emphatic support to the President's recommendation for an appropriation to the states for comprehensive planning. The advent of Federal aid for education has confronted the administrators of our schools with a responsibility for assessing the needs of all their students and establishing a set of priorities from which the most urgent tasks can be chosen.

I believe this to be comprehensive planning. And I think it is important that the state, as well as its school districts, undertake such a process. However, a state agency does not have the funds to do this; and Federal aid would be most appropriate and useful to this end.

One of the President's recommendations troubles me considerably. That is the proposal to distribute funds for strengthening state departments of education on a 40% flat grant—60% enrollment ratio. As I understand it, there is a further proposal to merge Title X, NDEA and NDEA Title III Administration funds into this appropriation and, thus, to distribute that money, too, on the same 40-60 basis.

The effect of the President's proposal is to reduce administrative funds available to states with high enrollments. It is a departure, it seems to me, from the customary manner of allotting Federal funds, because it denies the significant relationship which exists between total number of children, volume of programs for these children, and state administrative burden.

The one percent administrative sum for Aid to the Economically Deprived, and the five percent administrative sum for Library Materials Aid are not sufficient for state management of those programs. "Title V" money must be available as a supplement. It should be available, also, for a state's costs to assist in ESEA Supplementary Services programs. It certainly should be available to enable a state to build its own programs to dimensions appropriate to the sheer numbers of pupils in the state.

If it is necessary to recognize the problems of smaller or sparsely-settled states, this could, in my opinion, be done by a separate appropriation which would not come out of the present Title V grant.

I hope that the Committee has had an opportunity to examine the present operation of Title I, ESEA. The inadequacy of appropriations recommended by the President—\$1.2 billion—hardly needs mention to your Committee, which has authorized a program requiring at least \$2.2 billion for 1967-68.

I would like to discuss briefly the allocation formula which is being used to distribute funds to school districts.

1960 Census data and 1965 AFDC data are neither current nor precise enough to describe relative concentrations of poverty as between school districts. Significant inequities creep into the allocations of funds within counties and cause the public to question the distribution of money.

Yet in the information collected by government agencies such as the Internal Revenue Service, there is information on income distribution which can be combined with welfare recipient data and school district pupil count to produce an adequate picture, updated yearly, of the burden which respective school districts bear.

I believe that where one to two billion dollars is involved the Federal Government should accept an obligation to sharpen its distribution technique; and that the Congress should appropriate to the Office of Education, a sum of money which will be used expressly to devise a more accurate and more current indicator of concentrations of poverty.

Finally, I would urge the Committee to consider authorizing the Office of Education to extend the period of encumbrance on administrative funds. Local educational agencies now are authorized to encumber educational grant money to August 30; but funds for state administration must be closed out at the end of the fiscal year. This is an inconsistency. It is particularly troublesome when congressional appropriations are not made until late in the fiscal year. It means, in effect, that the states are drawing upon next year's funds to administer present year programs.

In elementary and secondary education the need today continues to be money, but along with money there is a necessity for hard-headed assessment of the results of the use of that money. I believe it incumbent on the Congress to appropriate the full authorization of 1966; but I believe too, that it is incumbent on each of the states to achieve an assessment of the social benefit of Federal programs. This assessment should enable the Congress and the public to judge what progress has been made; how well we are doing what we have tried to do; how better we can do it.

The most dramatic effect on the Elementary and Secondary Education Act to date has been the evocation of a sense of urgency about the problems of the poor and a readiness to innovate. The task now is to build solidly on that interest.

Sincerely yours,

IRA POLLEY.

(The following editorial was submitted by Congressman Brademas:)

[Life editorials]

AN EDUCATIONAL BARGAIN WORTH KEEPING

While the draft gets plenty of attention in Congress, a small, valuable, but little-known program may die of congressional inattention. It is the National Teacher Corps.

The Teacher Corps serves in the combat areas of American education—in the schools of the slums and the rural poor. In 29 states, its 1,200 corpsmen pay special attention to "culturally deprived" children, whose schooling must provide values and training that their homes do not. Teacher Corps teams—each consisting of a veteran of about five years' experience in slum schools, aided by from three to 10 young teacher interns—go into these schools by invitation only. They work under the close supervision of community school officials, who can fire or transfer them on a day's notice. There are plenty of safeguards, in short, against federal government meddling in local schools.

But because it lacks any effective lobby on Capitol Hill, the Teacher Corps's budget was shrunk to \$7.5 million, which runs out this June. With that modest amount, the corps has been able to reach a quarter of a million children with a variety of unorthodox teaching techniques. Corpsmen make frequent home visits to encourage parents, whose previous dealings with school officials too often have been only to hear complaints. Rock 'n' roll songs may be played in the class with the hope that these often uncommunicative youngsters will learn to express themselves by explaining what they think the lyrics mean. Their reading assignments can be on their special folk heroes, such as prizefighters, and they learn mathematics by computing gas mileage for the hotrods they so admire.

The Teacher Corps interns who conduct such classes are also studying part-time at universities nearby. In two years, with the federal government paying their tuition, they can earn masters' degrees in education. Eighty percent of them have said they want to stay on in slum schools whose greatest problem is a chronic shortage of qualified teachers.

Outside of Congress, the Teacher Corps has won impressive support from the National Education Association and the American Federation of Teachers. Practically every school which has corpsmen this year wants more of them next year. The Teacher Corps needs a supplemental stopgap appropriation of \$12.5 million by the middle of April to set up summer training programs for the 2,400 new interns the Administration has recommended, and an additional \$36.5 million to carry the corps through the full fiscal year. At these prices, it remains the best bargain in the federal education program.