SCHOOL DESEGREGATION

IN THE SOUTHERN AND BORDER STATES

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THE REGION

Freedom-of-choice--popular with most Southern schoolmen as a method of desegregation but also strongly criticized for its "gradualism" --has been granted a reprieve for use again next school year. The new compliance guidelines issued by the U. S. Office of Education for 1967-68 accept free-choice and the principle has been approved by two federal appellate courts.

Under freedom-of-choice plans, students of both races can apply for enrollment in any school in their district where space is available. Although free-choice plans date from the earliest days of desegregation, they have become increasingly popular in recent years with the greater desegregation pressure of the federal courts and the Civil Rights Act of 1964. Southern schoolmen support the use of free-choice plans as the simplest method of ending discriminatory assignments in schools without forcing movement of students. Critics of the free-choice idea complain that it places the burden of desegregation on the Negro parent and student instead of on the school district officials, and that harassment and other pressures, especially in rural communities, deter Negroes from actually having either "freedom" or a "choice."

The new guidelines make this comment on free-choice:

"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 commission will scrutinize with special care the operation of voluntary plans of desegregation in school systems which have adopted free-choice plans."

The Southern Regional Council, a biracial organization with headquarters in Atlanta, has issued a report questioning the "gradualism" of the guidelines and calling for a stronger approach. The report stated that the "guidelines would not have ended dual schools even if perfectly applied and accepted." "Obviously, if 'free choice' is to be effective, it must be genuinely free of intimidation and reprisal," the SRC report said. "Force and violence confront many Negro students entering formerly white schools under freedom-of-choice plans," it reported.

The U. S. commissioner of education, Harold Howe II, has made clear his doubts about the effectiveness of freedom-of-choice. And the new guidelines state in detail the methods and limitations for such plans to be acceptable to USOE. Appearing before a special House judiciary committee in December, Commissioner Howe said that many of the free-choice plans were "illusory."

"Typically, the community atmosphere is such that Negro parents are fearful of choosing a white school for their children," Howe said. He added that he saw free-choice plans as "an interim arrangement which is bringing us toward desegregation but is not the ultimate solution."

The guidelines state that the "single most substantial indication as to whether a free-choice plan is actually working" to eliminate dual schools is how many Negroes actually attend desegregated schools. The regulations for 1967-68 then list, as they did for this year, percentages of desegregated Negroes that will be "criteria" guiding the commissioner in considering free-choice plans. If this year's figure is 8 or 9 per cent, double that amount will be expected next year; and if only 4 or 5 per cent, then a triple amount.

In a recent decision supporting the 1966-67 guidelines, the U. S. Fifth Circuit Court of Appeals, at New Orleans, stated that "in this circuit...Negro students who choose white schools are, as we know from many cases, only Negroes of exceptional initiative and fortitude...The freedom-of-choice situation is illusory." Although the appellate court let stand the use of free-choice plans, it said lower courts should scrutinize closely the plans prevalant in the circuit. The Fifth Circuit decision stated:

"The only school desegregation plan that meets constitutional standards is one that works."

The U. S. Eighth Circuit Court of Appeals, in upholding Little Rock's freedom-of-choice plan, said that its constitutionality "does not necessarily depend upon favorable statistics indicating positive integration of the races." Little Rock had 220 Negroes in schools with whites in 1964-65, and then in the spring of 1965, switched from an attendance-zone plan of desegregation to free-choice. For 1965-66, the district had 621 Negroes in schools with whites, and this year it has 1,360.

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ALABAMA

Legal Action

Lawyers for the state of Alabama, the federal government and the National Association for the Advancement of Colored People were given until Feb. 3 to prepare for oral argument in a case which involved the constitutionality of HEW's guidelines law, Alabama's 1966 "anti-guidelines" law and the question of whether the state should be ordered to desegregate schools and faculty by one statewide directive.

The three-day hearing of testimony ended Dec. 2. Presiding Judge Richard T. Rives said final orders would be handed down in the spring, in case any affected the opening of the 1967-68 school year in the fall.

Sitting on the case were four federal judges, divided into two three-judge panels. Three suits raised these questions:

1) Whether the Department of Health, Education and Welfare's school desegregation guidelines are constitutional. Alabama contends they go beyond the Civil Rights Act of 1964.

2) Whether the state law, passed Sept. 2 at the behest of Gov. George C. Wallace, "voiding" all present guidelines agreements between local systems and HEW and forbidding future agreements, is itself unconstitutional. Plaintiffs contend it is.

3) Whether the state, in passing the anti-guidelines law or in other actions, has violated a 1964 federal order to "promote" desegregation, and thus supported plaintiffs' request for a statewide desegregation order.

4) Whether the state should be enjoined from payment of tuition grants to pupils attending all-white private schools.

The taking of testimony was cut short Dec. 2 because of the bulk of the evidence, including 164 exhibits. Both sides used were instructed to file summaries of witnesses' depositions in 30 days and to file briefs in 20 days. Feb. 3 was set for hearing oral arguments.

The first day of the hearing, Nov. 30, was largely devoted to an examination of State Supt. of Education Austin R. Meadows. (See November report.) After the subsequent examination of several local superintendents, attorney Maury Smith, for the state, said that he wanted to offer the records and statements of all local school systems and plannned to call 70 more superintendents. Their depositions, by agreement, were to be included in the mass of evidence submitted to the court. Some of those who did testify complained of "ridiculous" demands by HEW agents.

Over the objections of plaintiffs, U. S. Sen. Lister Hill of Alabama testified that the federal guidelines are "contradictory" to the intent of the 1964 Civil Rights Act--the principal contention made by the state. Hill was called as a witness by attorneys for Gov. Wallace. Justice department and NAACP lawyers objected, contending that anything the senator might say about the history and intent of the act was already a matter of record.

After a recess, the court ruled that Hill's testimony could not be considered in the litigation dealing with legality of the guidelines and Wallace's anti-guidelines law. But Rives, District Judge Frank M. Johnson of Montgomery and District Judge H. H. Grooms of Birmingham, functioning as one panel, said the senator's remarks would be pertinent in helping them decide whether the governor and other state authorities had violated a 1964 court order, handed down in the Lee vs. Macon case, directing the State Board of Education, Gov. Wallace (not as governor, but as chairman of the state board) and other officials to "promote and encourage" desegregation.

Hill read a report from the Senate subcommittee he heads and which appropriates funds for HEW, in which it was stated:

"This committee questions whether the guidelines contravene and violate the legitimate intent of Congress in the 1964 Civil Rights Act."

Hill told the court that sponsors of the Civil Rights Act assured other members of the Senate before its passage in 1964 that it would not permit busing of pupils to correct racial imbalance. He also said that the Civil Rights Act was intended to prohibit federal interference of school personnel. HEW officials, in the 1966 guidelines, have demanded faculty as well as pupil desegregation.

Eight local superintendents were heard. They were called by the state in an effort to show the court the "pressure" put on local systems by HEW and its agents under the guidelines.

While attorneys for the state asked the superintendents about the alleged federal pressures, attorneys for the justice department and the NAACP asked them about alleged pressure from state officials to refuse to comply with the 1966 guidelines. In general, the witnesses supported the state's charges of bothersome federal pressure while minimizing or denying outright opposite pressure by state authorities.

J. C. Petty, superintendent of Morgan County schools, said his system had carried out the requirements of the 1965 guidelines. He said these requirements included the desegregation of teachers' meetings, training programs and the annual bus drivers' picnic.

Petty said that time and a new building were holding back total desegregation. He said that one official of HEW had agreed to accept a condition of compliance which other superintendents testified they were not allowed. He added, however, that objections by the county school board to the suggested wording of the condition led to it being dropped.

Defense attorney John C. Satterfield of Mississippi, hired by the state, told the court the wording of the condition suggested by the HEW official was the same as that proposed by State School Supt. Austin Meadows.

O. B. Carter, superintendent for Eufaula city schools in Barbour County (Gov. Wallace's home county) testified that his school board had agreed to comply with the 1966 federal school desegregation guidelines and had submitted a freedom-of-choice plan. Carter said he did not remember the governor saying anything about the 1966 guidelines except that they go beyond the 1964 Civil Rights Act.

Carter's testimony was intended to show that the governor had not applied pressure to local school boards. Two superintendents were questioned about statements Wallace made at statewide meetings with educators in September, 1965, and March and June, 1966.. They were asked if Wallace made statements indicating that he would take the matter of local school boards having signed guidelines to the "people" at special called meetings throughout the state. They said they could not recall specific statements, but one said he remembered reading something to the effect in newspapers. He said he could not say for sure if the governor had made such statements.

The governor's attorney contended that Wallace had sought, through the anti-guidelines act and his comments on the guidelines, to prevent local boards from agreeing to anything that exceeds the intent of the 1964 Civil Rights Act.

It has been the governor's contention that the guidelines do exceed the act. His anti-guidelines law is the target of two of the three suits being heard by the two-panel court. The twin requests for nullification of the state act brought the state's counter-action contending that the guidelines themselves are unconstitutional.

Supt. Carter said 58 Negroes in Barbour County now attend previously all-white schools and that teams of white and Negro teachers are used in remedial reading classes for pupils of both races.

Supt. Revis Hall of Anniston said the city school board had signed compliance agreements with both the 1965 and 1966 guidelines and that there are 216 Negro pupils attending schools in the Anniston system. He said the system is currently receiving federal funds but that he understood that any additional funds for new projects had been deferred.

Hall said the state anti-guidelines law had not affected his system.

Supt. James F. Moore Jr. of Muscle Shoals schools said his board refused to sign the compliance agreement because of wording which it felt would give judicial power to HEW.

The state called Albert T. Hamlin, a Negro attorney employed by HEW, in an attempt to show that the guidelines have been invoked in only 17 Southern and border states.

Hamlin said he was not sure of that figure but that the guidelines were designed to apply equally throughout the nation.

ALABAMA HIGHLIGHTS

Four federal judges, functioning as members of two panels, concluded taking testimony in an omnibus school desegregation suit Dec. 2, and ordered lawyers back in court Feb. 3 for oral arguments. U. S. Circuit Court of Appeals Judge Richard T. Rives, who presided, said a decision would not be handed down before spring--but in time, he said, for ample preparation for any changes which might be necessary by the opening of the 1967-68 school year next fall.

A Fifth Circuit Court of Appeals ruling Dec. 29 declaring the end of "tokenism" and embracing the standards of the HEW guidelines, would probably be appealed, according to a lawyer for Bessemer school officials. Bessemer, Jefferson County and Fairfield were the three Alabama systems involved in the case.

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Hugh Maddox, legal advisor to Gov. Wallace, told a Sigma Delta Chi journalism society luncheon group in Montgomery Dec. 23 that the controversy over the school desegregation guidelines would be resolved in 1967. "It's coming to a head next year," Maddox said, "one way or the other."

As one of the lawyers defending the state in the omnibus school suit, Maddox told the group that President Lyndon B. Johnson had never approved the HEW guidelines. Further, Maddox said, HEW is equating racial discrimination with segregation and that the state's position is that segregation is legal as long as it isn't forced.

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Schoolmen

As 21 Alabama school districts faced possible loss of federal aid in hearings scheduled in Washington in late December, State Supt. of Education Austin R. Meadows said:

"There is absolutely no basis for any fund cut-offs or even for any hearings in connection with discrimination in Alabama.

"We have a working freedom-of-choice plan," Meadows said Dec. 22. "This is the plan requested by the federal government in 1965 and agreed to by us at that time.

"We are also in full compliance with Title IV of the 1964 Civil Rights Act. There is absolutely no discrimination against anyone, teacher or pupil.

"Children are welcome to go to any school as long as there is room for them. I have sent the Office of Education letters stating (this) and requested that those letters be admitted in the hearings next week."

Earlier, Dr. Meadows denied charges that the Opelika Board of Education is not in compliance with the federal guidelines. In answer to charges by an Office of Education attorney at a federal hearing, Meadows said the 1966 forms for the systems were forwarded to the agency early in December.

Meadows said the Opelika system is in compliance with the Civil Rights Act of 1964.

Opelika Supt. T. H. Kirby said Dec. 12 that the forms were signed in 1965 "and have been followed religiously ever since." He said he saw no reason to spend money to make a trip to Washington to defend the system.

The three Birmingham area systems of Jefferson County, Fairfield and Bessemer had already been operating under approved plans which call for the desegregation of all grades in the fall of 1967. Most grades have already been desegregated. However, the court's recognition of HEW's guidelines as substantially its own standards would have a significant effect on future desegregation plans.

Gov. Wallace, in his opposition to the guidelines (see "Legal Action") has maintained that school districts would have less desegregation under a court order than by following the guidelines--a theory which was at least cast in doubt by the court's statement that judicial orders could not be used as a refuge for "tokenism."

The decision also undercut Alabama's argument that the law of the land does not require desegregation but merely the absence of discrimination. Additionally, the court's order as it related to faculty desegregation requirements was directly counter to the state's position that this is not required but, on the contrary, is forbidden by the 1964 Civil Rights Act.

Gov. Wallace, State Supt. Meadows and other state officials declined comment until they had a chance to study the ruling.

Attorney Barnes said the decision came as a "complete surprise" to him. He expressed disappointment and was joined in his suggestion that an appeal should be considered by Jefferson County Board of Education attorney Maurice Bishop. Bishop said:

"We will continue the fight for constitutional government with the firm hope and conviction that someday soon all these things must pass.

"I have been informed through press reports that the Fifth Circuit has ordered integration of all schools in the Jefferson County system, Bessemer and Fairfield (Birmingham suburbs) and has extended the infamous 1954 Brown decision to include faculties and other school activities. The decision is reported to hold that the basic right to a freedom of choice no longer exists.

"The Brown decision has caused more trouble, animosity and hatred than any decision ever rendered by any court at any time. The feelings have expanded and increased."

Bishop said he would carry the case to the Supreme Court and to "the great court of last resort--the people."

Fairfield Supt. G. Virgil Nunn's immediate reaction was that he knew nothing of the ruling, but: "We're operating under a court order and we'll continue doing what we are now doing until the court order is lifted."

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Supt. Robert Cunningham of Walker County and Jasper City Supt. Robert Songer testified that no directives came from Alabama officials. They said HEW agents had made "ridiculous" demands in the county (Jasper is a city system in Walker County) and that the government was withholding funds.

Cunningham said his school board signed the HEW compliance form but received demands thereafter from the U. S. Office of Education that the school system be revamped, with the closing of some schools, transfer of pupils, reassignment of teachers and consolidation of city and county systems. A HEW representative visited the county, Cunningham said, and "urged things from us that seemed ridiculous."

Songer read minutes of a city school board meeting indicating that although the board had agreed to cooperate with federal officials the HEW representative's demands and conduct were such that the board decided to take no further action on school desegregation for the current year.

According to testimony of the two Walker superintendents, there are 82 Negroes in previously all-white county schools and six in city schools.

Satterfield handled most of the state's cases. Judges are Rives, Johnson and Grooms, previously mentioned, and Virgil Pittman of Gadsden. All four judges heard all the testimony, but they sat as two three-judge panels considering different phases of the complex litigation.

Assisting Satterfield were Maury Smith, a Montgomery lawyer and Hugh Maddox, legal advisor to Gov. Wallace.

The court gave no more precise indication as to when a final order would be entered than that it would be sometime in the spring.

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What They Say

There were indications in late December that one or more of the three Alabama schools systems involved in the Dec. 29 ruling by the U. S. Fifth Circuit Court of Appeals, on the pattern of future school desegregation, would appeal to the U. S. Supreme Court.

The Alabama systems involved in the case were those of Bessemer, Jefferson County and Fairfield. Reid Barnes, attorney for the Bessemer system, indicated the Fifth Circuit's ruling, which embraced the standards of the HEW guidelines without ruling directly on their constitutionality, would likely be appealed. Barnes said he intended to recommend that the board carry the case to the U. S. Supreme Court.

Barnes said the court's decision put so many restrictions on freedom-of-choice plans for school desegregation as "to firmly destroy them." As an alternative to immediate appeal, Barnes mentioned the possibility of requesting that all judges of the appeals court hear the case instead of the three who ruled Dec. 29.

At the Washington hearing, James A. Devlin, Office of Education attorney, said federal funds should be withheld because Opelika operates a dual system with only token desegregation--36 Negro pupils attending classes with whites with more than 1,700 attending segregated schools. Further, Devlin said, no assurance of compliance had been received for 1966.

Kirby said he did not know what he would do other than "proceed with classes as usual for the 4,800 students in the city."

Some of the systems involved in hearings in December sent representatives but many planned only to file statements. Other than Opelika, systems involved in hearings in December included the city systems of Brewton, Lannett, Linden, Tallassee, Covington and Opp; and the county systems of Clarke, Coosa, Geneva, Henry, Marion, Pickens, Russell, Tallapoosa, Clay, Calhoun, Randolph, Greene, Lee, Lamar, Elmore and Hale.

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Miscellaneous

The Alabama NAACP was reported at the end of December to be considering a challenge to the adoption of state textbooks which contain, the organization said, little or no Negro history.

Dr. John Nixon, president of the state NAACP, said Dec. 29 that his organization was examining books listed for adoption by a state textbook committee and has "already found enough reason for a formal complaint." Dr. Nixon said the complaint would be filed because "readers" for first and second grade children don't "illustrate the multi-racial community we live in" and because Negro history is excluded.

Nixon indicated that the challenge would also protest the exclusion of Negroes from the textbook committee. "We don't know of any Negro who has been consulted in selecting textbooks for our children," he said.

He said a complaint probably would be filed with HEW, "for the record," as well as with the state. Books proposed for adoption by the State Board of Education were selected by a 20-member group which included 16 members from public schools, two from colleges and universities, and two laymen appointed by Gov. Wallace.

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