

**THE STATUS OF FEDERAL
ENFORCEMENT OF SCHOOL DESEGREGATION
IN VIRGINIA - SIX MONTHS LATER**

**A Follow-up Report of the
Virginia State Advisory Committee
to the
United States Commission on Civil Rights**

April 1969

VIRGINIA STATE ADVISORY COMMITTEE
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CRL.2:Sch6/14/969

PREFACE

The United States Commission on Civil Rights

The United States Commission on Civil Rights is an independent agency of the executive branch of the Federal Government created by the Civil Rights Act of 1957. By the terms of that act, as amended by the Civil Rights Acts of 1960 and 1964, the Commission is charged with the following duties: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; maintenance of a national clearinghouse for information respecting denials of the equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

The State Advisory Committees

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105 (c) of the Civil Rights Act of 1957 as amended. The Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Committee; initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied; assist the Commission in matters in which the Commission shall request the assistance of the State Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

This report was submitted to the United States Commission on Civil Rights by the Virginia State Advisory Committee and will be considered by it in making its reports and recommendations to the President and Congress.

INTRODUCTION

Six months ago, in October 1968, the Virginia State Advisory Committee to the U. S. Commission on Civil Rights issued a report which contained an assessment of Federal enforcement activities with respect to school desegregation in Virginia. School districts selected for study in that report included a cross section of those Virginia districts operating under plans approved by the Department of Health, Education, and Welfare (HEW).

The Committee's report, The Federal Role in School Desegregation in Selected Virginia Districts, examined school districts which had completed the job of desegregation under mandate of Federal law, enumerating, in those cases, some of the problems still remaining. It also reported on two Southside Virginia districts where little Federal enforcement of the School Desegregation Guidelines, and therefore little desegregation, had occurred. The report was based on information gathered through a series of investigations and from meetings held in those school districts.

This brief report--six months later--is for the purpose of reviewing the Federal Government's enforcement activities in Virginia since the release of the Committee's report last October. The findings and recommendations contained in that report were shared with the appropriate Federal agencies both in writing and in conferences between agency officials and Committee members. Among the findings of the October report with which this review is concerned are:

- . Where HEW enforcement has been firm and where the Department has insisted upon adherence to its Guidelines, desegregation has been accomplished. Where HEW has adopted a weak enforcement posture, and where it has not required adherence to Guideline standards, there has been little progress toward ending the dual school system.
- . In its past enforcement efforts, the Department has made an invidious distinction between districts with a minority Negro enrollment and those with a majority Negro enrollment. The suspension of enforcement efforts in majority Negro districts resulted in an inequitable application of laws to all citizens.
- . The approval by the Internal Revenue Service of Federal tax benefits for private, segregated schools, contributes to the development of schools which are established to thwart the Federal Government's mandate to eliminate the dual school system in Virginia.

Recommendations contained in the Committee's October report with which this review is concerned include:

- . That the Department of Health, Education, and Welfare require all school districts, regardless of past performance, to end the dual school system by September 1969. The Department should grant no extensions to this target deadline to majority Negro districts in view of its own previous suspension of enforcement.
- . The Department of Justice should file suits to desegregate schools in the then eight Virginia school districts

from which it has received complaints from Negro parents.

- The Internal Revenue Service should grant no tax exempt status or other tax benefits to private, segregated schools.

Against this background, the Virginia State Advisory Committee asks: What has happened in those districts in which the Committee found non-enforcement of the Guidelines?

SIX MONTHS LATER

In Isle of Wight County, where the Committee found substantial non-compliance with the Guidelines, a private suit has been brought against the school board by the NAACP Legal Defense Fund. The court has ordered the school board to end free choice and to devise a plan for the elimination of racially separate schools by September 1969. In line with the Supreme Court's decision in the Green case, school systems may no longer utilize freedom of choice plans where such plans fail to "work now." It is therefore expected that all schools in Isle of Wight County will be fully desegregated by the next school year.

The Committee notes, however, that compliance with the law was accomplished by private law suit, as it has been in many Virginia districts, rather than by Federal enforcement of Title VI of the Civil Rights Act of 1964.

Adjacent to Isle of Wight, in Nansemond County, the picture is by no means the same. Last August, HEW requested the Nansemond County School Board to submit a plan for total desegregation. The board asked for and got a three month extension. Finally in November, the Nansemond County School Board submitted a freedom of choice plan for September 1969. The school system's plan made no provision for terminating school segregation. Segregated bus routes continue to operate. Since November of last year, HEW has refused to take the next step--citing Nansemond County for non-compliance and initiating

termination proceedings. Thus, in the last six months HEW has done nothing to bring about compliance with Title VI in Nansemond County.

The Committee in its report, noted that since 1967, the Department has suspended enforcement in majority Negro districts, including Nansemond and Isle of Wight. That policy was supposedly lifted last summer, and indeed many majority Negro districts in Virginia have submitted desegregation plans acceptable to HEW. But Nansemond County has never voluntarily submitted an acceptable plan, and HEW has refused to cite this district because it has a majority Negro enrollment. The Committee believes that this is an unfair and illegal application of the laws. It is the belief of this Committee that HEW is in violation of its own regulations with respect to Nansemond County. The Department of Justice has also failed to move against recalcitrant school officials in Nansemond County despite the fact that it has had a complaint from parents in its possession for six months. This district represents the complete failure of the Departments of HEW and Justice to enforce Federal school desegregation requirements.

The same set of facts applies to Accomack County, on Virginia's eastern shore. That county school system has refused to submit a plan for total desegregation. Very few children attend desegregated schools. HEW has not initiated termination proceedings against Accomack, and the Justice Department has not filed suit on the basis of a complaint from parents in that district, although the Department has such complaints on file.

The Virginia State Advisory Committee finds, as it did six months ago, that the Federal Government enforces school desegregation in some districts and not in others. Such procedure breeds cynicism about the law in districts where there has been little or no enforcement. It also indicates vacillation on the part of the Government to those who will evade the law. As long as there is any indication that HEW will not enforce the Guidelines, recalcitrant school officials will delay. The Committee feels that if the Secretary of HEW would speak and act unequivocally for firm and consistent enforcement of the law, most school boards would comply.

Virginia can ill afford any further relaxation of Federal enforcement nor can it accept the further postponement, year after school year, of the fulfillment of the constitutional rights of its black children.

Other Districts Where Compliance Has Been Achieved

One of the Committee's central findings last year was that HEW was not enforcing the Guidelines in approximately one-third of Virginia districts operating under an HEW approved plan. Six months later the Committee finds that in most of those districts either a court suit has been filed or HEW has accepted a plan for the complete elimination of racially separate schools by September 1969, or at the latest 1970.

Although not in a position to assess the merits of individual plans accepted by HEW or the situation in those particular districts, the Committee assumes that the Department will hold these districts to their commitment and not permit any further extension of time.

Terminated Districts

Ten districts in Virginia have lost Federal financial assistance for refusal to desegregate. In most of these counties, taxes have been raised to compensate for the loss of Federal money. The burden of additional taxation falls disproportionately on the poor and black citizens. In some of these counties, the majority black population is being deprived of both its constitutional rights and the benefits of Federal education programs by a majority white population in control.

In three of these districts the Justice Department has brought suit under Title IV of the 1964 Civil Rights Act. In five districts the NAACP Legal Defense has brought suit. Two terminated districts--Northampton and Richmond Counties--have not had action filed against them, even though the Department of Justice has petitions on file from parents in both these districts.

Court Orders

Virtually all of the city school systems and 23 county systems are under court order to desegregate. Plaintiffs in those cases have petitioned Federal courts in Virginia to apply the Supreme Court's decision in the Green case. In most instances, Federal judges are ordering these systems to abandon free choice and to rezone and pair schools to accomplish total desegregation.

Tuition Grants and Private Schools

In the course of its investigation last year, the Committee found that the existence of private schools for whites only was a major obstacle to desegregation, especially in rural systems with a large Negro student enrollment. These private academies were supported in part by a State law providing for tuition grants. This State law has now been struck down by Federal courts, thus denying State support to those who seek to avoid desegregated public education.

Two Virginia school districts, Prince Edward and Surrey Counties, have all-Negro public school enrollment, while white children have been attending private schools. The inability to receive partial State support for private schools may mean that white children will return to public schools in large numbers.

Where these private, all-white schools have been established to avoid desegregation, their existence has served to circumvent Federal law. Despite this, the Internal Revenue Service continues to grant Federal tax exemption to such schools. The question of whether tax benefits presently afforded to racially segregated private schools is a violation of Title VI of the Civil Rights Act of 1964 or the Internal Revenue Code of 1954 was first raised by the U. S. Commission on Civil Rights in 1967 in its report, Southern School Desegregation. This Committee recommended in 1968, that the Internal Revenue Service

cease the granting of tax exempt status to such schools. The Staff Director of the U. S. Commission on Civil Rights wrote to the Commissioner of Internal Revenue in August and October of last year citing the situation in Virginia, and asking that the recommendations of the Committee be adopted. The only reply made by IRS to the Commission to date has been that a substantive reply would be made as soon as possible. No such reply had been received by the Commission as late as April 1, 1969.

PROBLEMS REMAINING

The Virginia State Advisory Committee recognizes that much progress has been made in eliminating the dual school system in Virginia in recent years. The last vestige of the days of massive resistance--the State tuition grant law--has been struck down. The private efforts of Negro parents and their lawyers have resulted in substantial victories. Federal enforcement activities, as inadequate as they have sometimes been, have contributed toward this goal.

Despite these successes, crucial problems remain. Among the foremost is that the Department of HEW continues to vacillate and fails to give firm indication that it will enforce the school desegregation Guidelines in every district by fall 1970. HEW is still enforcing its policies discriminatorily, as evidenced by its lack of enforcement in majority Negro districts. Private citizens must continue to bring their complaints of violation of the Constitution and Federal law to court at their own expense, because Federal agencies which are empowered to act in their behalf have largely failed to do so.

Other, more elusive problems remain. These include:

- . The perpetuation of racially segregated schools in Virginia's cities;
- . whether Federal education programs designed to meet the needs of poor children are in fact effectively meeting those needs and not acting as deterrents to desegregation;

- . whether communities are involved in the planning of education programs;
- . racial friction in an ostensibly desegregated school, the existence of segregation within the school, or the failure of school authorities to accomplish the transition to a desegregated school;
- . the unrepresentative composition of appointed school boards in some districts, especially those in which a majority of the residents are Negro;
- . the continued existence in some rural areas of segregated teachers' associations.

CONCLUSIONS AND RECOMMENDATIONS

The Advisory Committee concludes that the Federal role in school desegregation in Virginia has lacked the vigor and consistency demanded by the Civil Rights Act of 1964 and by the 14th amendment to the Constitution. While many basic steps to establish the groundwork for the elimination of the dual school system have been taken, they have been taken haltingly. The "elusive" problems enumerated above have thus far been almost totally ignored, yet they comprise an important aspect of genuine school desegregation.

The Virginia State Advisory Committee to the U. S. Commission on Civil Rights recommends to the Commission, that the Department of Health, Education, and Welfare, the Department of Justice, and the Internal Revenue Service be apprised of this review, and that they be asked to report their intentions with regard to the action they plan to take to enforce the laws and the Constitution of the United States.