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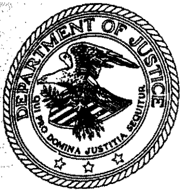

Department of Justice

STATEMENT BY

THE HONORABLE ROBERT H. FINCH

SECRETARY OF THE

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

AND

THE HONORABLE JOHN N. MITCHELL, ATTORNEY GENERAL

EMBARGOED
NOT FOR RELEASE UNTIL
5:00 P.M. E.D.T.
JULY 3, 1969

I. INTRODUCTION

This administration is unequivocally committed to the goal of finally ending racial discrimination in schools, steadily and speedily, in accordance with the law of the land. The new procedures set forth in this statement are designed to achieve that goal in a way that will improve, rather than disrupt, the education of the children concerned.

The time has come to face the facts involved in solving this difficult problem and to strip away the confusion which has too often characterized discussion of this issue. Setting, breaking and resetting unrealistic "deadlines" may give the appearance of great federal activity, but in too many cases it has actually impeded progress.

This Administration does not intend to continue those old procedures that make satisfying headlines in some areas but often hamper progress toward equal, desegregated education.

Our aim is to educate, not to punish; to stimulate real progress, not to strike a pose; to induce compliance rather than compel submission. In the final analysis Congress has enacted the law and buttressed the Constitution, the courts have interpreted the law and the Constitution. This Administration will enforce the law and carry out the mandates of the Constitution.

A great deal of confusion surrounds the "guidelines." The essential problem centers not on the guidelines themselves but on how and when individual school districts are to be brought into compliance with the law.

The "Guidelines" are administrative regulations promulgated by the Department of Health, Education and Welfare, as an administrative interpretation, not a court interpretation, of the law. Frequently, the policies of the Department of Justice, which is involved in law suits, and the Department of Health, Education and Welfare, which is involved in voluntary compliance, have been at variance.

Thus, we are jointly announcing new, coordinated procedures, not new "Guidelines."

In arriving at our decision, we have for five months analyzed the complex legacy that this Administration inherited from its predecessor and have concluded that such a coordinated approach is necessary.

II. THE LAW

Fifteen years have passed since the Supreme Court, in Brown v. Board of Education, declared that racially segregated public schools are inherently unequal, and that officially-imposed segregation is in violation of the Constitution. Fourteen years have passed since the Court, in its second Brown decision, recognized the tenacious and deep-rooted nature of the problems that would have to be overcome, but nevertheless ordered that school authorities should proceed toward full compliance "with all deliberate speed."

Progress toward compliance has been orderly and uneventful in some areas, and marked by bitterness and turmoil in others. Efforts to achieve compliance have been a process of trial and error, occasionally accompanied by unnecessary friction, and sometimes resulting in a temporary--but for those affected, irremediable--sacrifice in the quality of education.

Some friction is inevitable. Some disruption of education is inescapable. Our aim is to achieve full compliance with the law in a manner that provides the most progress with the least disruption and friction.

The implications of the Brown decisions are national in scope. The problem of racially separate schools is a national problem, and

we intend to approach enforcement by coordinated administrative action and court litigation.

III. SEGREGATION BY OFFICIAL POLICY

The most immediate compliance problems are concentrated in those states which, in the past, have maintained racial segregation as official policy. These districts comprise 4477 school districts located primarily in the 17 southern and border states. 2994 have desegregated voluntarily and completely; 333 are in the process of completing desegregation plans; 234 have made an agreement with the Department of Health, Education and Welfare to desegregate at the opening of the 1969-70 school year; under exemption policies established by the previous Administration, 96 have made such an agreement for the opening of the 1970-71 school year.

As a result of action by the Department of Justice or private litigants, 369 districts are under court orders to desegregate. In many of these cases the courts have ordered the districts to seek the assistance of professional educators in HEW's Office of Education pursuant to Title IV.

A total of 121 school districts have been completely cut off from all federal funds because they have refused to desegregate or even negotiate. There are 263 school districts which face the

prospect, during the coming year, of a fund cutoff by HEW or a lawsuit by the Department of Justice.

These remaining districts represent a steadily shrinking core of resistance. In most Southern and border school districts, our citizens have conscientiously confronted the problems of desegregation, and have come into voluntary compliance through the efforts of those who recognize their responsibilities under the law.

IV. SEGREGATION IN FACT

Almost 50 percent of all of our public elementary and secondary students attend schools which are concentrated in the industrial metropolitan areas of the 3 Middle-Atlantic states, the 5 northern midwestern states and the 3 Pacific coast states.

Racial discrimination is prevalent in our industrial metropolitan areas. In terms of national impact, the educational situation in the north, the midwest and the west require immediate and massive attention.

Segregation and discrimination in areas outside the south are generally de facto problems stemming from housing patterns and denial of adequate funds and attention to ghetto schools. But the

result is just as unsatisfactory as the results of the de jure segregation.

We will start a substantial program in those districts where school discrimination exists because of racial patterns in housing. This Administration will insist on non-discrimination, the desegregation of faculties and school activities, and the equalization of expenditures to insure equal educational opportunity.

V. NEW PROCEDURES

In last year's landmark Green case, the Supreme Court noted: "There is no universal answer to the complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance." As recently as this past May, in Montgomery v. Carr, the Court also noted that "in this field the way must always be left open for experimentation."

Accordingly, it is not our purpose here to lay down a single arbitrary date by which the desegregation process should be completed in all districts, or to lay down a single, arbitrary system by which it should be achieved.

A policy requiring all school districts, regardless of the difficulties they face, to complete desegregation by the same terminal date is too rigid to be either workable or equitable. This is reflected in the history of the "guidelines."

After passage of the 1964 Civil Rights Act, an HEW policy statement first interpreted the Act to require affirmative steps to end racial discrimination in all districts within one year of the Act's effective date. When this deadline was not achieved, a new deadline was set for 1967. When this in turn was not met, the deadline was moved to the 1968 school year, or at the latest 1969. This, too, was later modified, administratively, to provide a 1970 deadline for districts with a majority Negro population, or for those in which new construction necessary for desegregation was scheduled for early completion.

Our policy in this area will be as defined in the latest Supreme Court and Circuit Court decisions: that school districts not now in compliance are required to complete the process of desegregation "at the earliest practicable date"; that "the time for mere 'deliberate speed' has run out"; and, in the words of <u>Green</u>, that "the burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work <u>now</u>."

In order to be acceptable, such a plan must ensure complete compliance with the Civil Rights Act of 1964 and the Constitutional mandate.

In general, such a plan must provide for full compliance now--that is, the "terminal date" must be the 1969-70 school year. In some districts there may be sound reasons for some limited delay. In considering whether and how much additional time is justified, we will take into account only bona fide educational and administrative problems. Examples of such problems would be serious shortages of necessary physical facilities, financial resources or faculty. Additional time will be allowed only where those requesting it sustain the heavy factual burden of proving that compliance with the 1969-70 time schedule cannot be achieved; where additional time is allowed, it will be the minimum shown to be necessary.

In accordance with recent decisions which place strict limitations on "freedom of choice," if "freedom of choice" is used in the plan, the school district must demonstrate, on the basis of its record, that this is not a subterfuge for maintaining a dual system, but rather that the plan as a whole genuinely promises to achieve a complete end to racial discrimination at the earliest practicable date. Otherwise, the use of "freedom of choice" in such a plan is not acceptable.

For local and federal authorities alike, school desegregation poses both educational and law enforcement problems. To the extent practicable, on the federal level the law enforcement aspects will be handled by the Department of Justice in judicial proceedings affording due process of law, and the educational aspects will be administered by HEW. Because they are so closely interwoven, these aspects cannot be entirely separated. We intend to use the administrative machinery of HEW in tandem with the stepped-up enforcement activities of Justice, and to draw on HEW for more assistance by professional educators as provided for under Title IV of the 1964 Act. This procedure has these principal aims:

--To minimize the number of cases in which it becomes necessary to employ the particular remedy of a cutoff of federal funds, recognizing that the burden of this cutoff falls nearly always on those the Act was intended to help; the children of the poor and the black.

--To ensure, to the greatest extent possible, that educational quality is maintained while desegregation is achieved and bureaucratic disruption of the educational process is avoided.

The Division of Equal Educational Opportunities in the Office of Education has already shown that its program of advice and

assistance to local school districts can be most helpful in solving the educational problems of the desegregation process. We intend to expand our cooperation with local districts to make certain that the desegregation plans devised are educationally sound, as well as legally adequate.

We are convinced that desegregation will best be achieved in some cases through a selective infusion of federal funds for such needs as school construction, teacher subsidies and remedial education. HEW is launching a study of the needs, the costs, and the ways the federal government can most appropriately share the burden of a system of financial aids and incentives designed to help secure full and prompt compliance. When this study is completed, we intend to recommend the necessary legislation.

We are committed to ending racial discrimination in the nation's schools, carrying out the mandate of the Constitution and the Congress.

We are committed to providing increased assistance by professional educators, and to encouraging greater involvement by local leaders in each community.

We are committed to maintaining quality public education, recognizing that if desegregated schools fail to educate, they fail in their primary purpose.

We are determined that the law of the land will be upheld; and that the federal role in upholding that law, and in providing equal and constantly improving educational opportunities for all, will be firmly exercised with an even hand.