

Comparison: Desegregation Plans
for Local School Systems

1. Nature of the State Superintendent's obligation.

Our proposed decree obliges the State Superintendent to perform two functions with respect to the adoption of desegregation plans of local school systems:

(a) to inform local school systems that they are required to adopt a desegregation plan; and

(b) to report to the Court what action he took in discharge of that obligation and the results of that action; Plaintiffs' proposed decree envisions a much more comprehensive obligation with respect to the adoption of desegregation plans by local systems. It in effect obliges the State Superintendent to:

(a) formulate desegregation plans;

(b) inform the local school systems that they are required to adopt desegregation plans;

(c) take action to coerce the local school system into adopting desegregation plans;

(d) report to the Court what action he took in discharge of the obligation under the preceding paragraphs (a) and (b), and the results of that action.

Thus, under the plaintiffs' proposed decree the State Superintendent is required to do two things that we have not required him to do -- formulate desegregation plans and coerce the local school systems into adopting desegregation plans. These obligations are introduced in the following manner.

The plaintiffs' proposed decree contemplates the State Superintendent formulating desegregation plans in connection with future surveys by the State Department of Education. Paragraph I E(3) in the proposed decree reads:

All surveys hereinafter conducted shall include a plan for the assignment of all students and faculties designed to produce an entirely integrated school system. This plan must in part provide for the placement of all students within the district on an integrated basis. The plan cannot be based solely on freedom of choice.

Paragraph II B(1) incorporates these desegregation plans formulated by the state agency by providing that:

Every school district that has been surveyed pursuant to Paragraph I E shall submit and adopt the comprehensive plan for desegregation included therein.

Obviously such a survey cannot be conducted for all school systems this Spring and thus plaintiffs envision such survey desegregation plans to be formulated by the state agency as the "ultimate plans." Plaintiffs' brief reads:

The comprehensive plan required by Paragraph I E of plaintiffs' proposed decree to be included in every State Department of Education survey will ultimately become the required plan for every district -- a plan devised by Alabama Department of Education experts for the comprehensive, nonracial reorganization of the several districts. */

*/ This sentence seems to indicate that the surveys will adopt a uniform desegregation plan for all the school systems in Alabama. The proposed decree however need not be read as envisioning a single uniform desegregation plan for all local systems.

Plaintiffs rely upon the desegregation plans contained in the Jefferson County opinion and the HEW guidelines only as interim, transitional plans, to be used only until the more comprehensive desegregation plans are formulated in the state surveys.

The proposed decree does not explicitly state that the State Superintendent is to take coercive action against the local school systems that refuse to adopt desegregation plans; nor does it say what such coercive action should consist of. However, there are implications and suggestions within the text of the brief and the proposed decree that such coercive action is required by the State Superintendent. The pertinent portion of the brief reads:

At issue in this proceeding is 'illegal and unconditional support of segregated school systems' (231 F. Supp. 756) by the State of Alabama officials. Plaintiffs' proposed decree require defendants to ensure that state resources shall not be used in a racial discriminatory manner by any local school system.

This theme, looking toward coercive action by the State Superintendent against recalcitrant school systems, reappears in this portion of the proposed decree (Paragraph II C(3)):

A detailed statement of all actions taken by the State Superintendent of Education to effect compliance of districts that fail to submit an acceptable plan, including action by him 'designed to make the distribution of public funds to the various schools throughout the state of Alabama' only to those schools and school systems that have [adopted an acceptable desegregation plan]" (231 F. Supp. 756-757).

2. The school systems included. We have confined the proposed decree regarding the adoption of desegregation plans to 42 school systems in the State; these are the school systems that are neither under court order, nor under a voluntary desegregation plan accepted by HEW, nor at a meaningful stage in litigation (the so-called "uncommitted systems"). Plaintiffs find this limitation on the scope of relief to be meaningless and in footnote 45 of the brief, this limitation is specifically criticized. The criticism is based on the fact that the performance of the school system excluded from our proposed decree is not significantly different from the performance of the school systems included. Accordingly, plaintiffs require the State Superintendent to formulate and obtain a desegregation plan from all the school systems in the State without regard to whether they are under court order requiring desegregation, or whether they have submitted a voluntary desegregation plan to HEW. With respect to the submission of a voluntary plan to HEW, plaintiffs make this comment:

These [presently uncommitted] districts cannot fulfill their obligation to this court by submitting a plan to HEW.

3. Time schedule. Under our proposed decree, three points of time are established regarding the adoption of desegregation plans by local school systems: The desegregation plan should be adopted by the school system within 15 days; the State Superintendent must report to the Court as to the action he has taken and the results of that action within 20 days; and the United States has 30 days within which to submit a report to the Court regarding the adoption of desegregation plans by the 42 local school systems. The time schedule under plaintiffs' proposed decree is somewhat different. First, it prescribes a time within which the State Superintendent is to inform the local school systems that they must adopt a desegregation plan; he must take that action within 5 days. Secondly, the local school systems are given 20 days following the entry of this Court's order

in which to adopt a desegregation plan. (This means that they have about 15 days to adopt the desegregation plan, presuming that the State Superintendent takes no action until the fifth day following the entry of this court's order.) Third, the State Superintendent has 30 days to report to the Court regarding the adoption of plans -- 10 days more than was permitted ^{for the State Superintendent} under our decree but equal to the time we provided for the United States to report under our decree.

4. Distinction between ultimate plans and transitional plans. Under our proposed decree, we spoke only of the adoption of a desegregation plan without regard to whether it would have to be supplanted by another - "ultimate" - plan in the future. In contrast, the plaintiffs proposed decree makes a distinction between an ultimate desegregation plan and transitional desegregation plans. The ultimate desegregation plans are those to be prescribed in the survey by the Department of Education. The transitional are the same plans that we have used in our decree, viz. for school systems adopting freedom of choice plan, the plan in the Jefferson County opinion, and for those adopting a geographic plan, the plan established in the HEW guidelines. (These transitional plans embodied in the Jefferson County opinion and the HEW guidelines are subject to further modifications by plaintiffs, which are discussed below.)

5. Modifications of the Jefferson County and HEW desegregation plans. In our proposed decree we used the freedom of choice plan in the Jefferson County opinion and the geographic plan in the HEW guidelines as models for the plans that must be adopted by the local school system. Plaintiffs proposed decree relies upon these ~~plans as to~~ ^{plans} transitional plans but further requires certain modifications of those plans. The following are the proposed modifications:

(a) Plaintiffs proposed decree requires that the plans must "additionally include recommendations" that are contained in plans formulated under the part of the decree pertaining to school closings and the corrections of deficiencies noted in surveys. Moreover, the decree specifically provides that no school designated to be closed, or having a deficiency to be corrected "may be considered available for choice unless certain specified conditions are met," which conditions are discussed in detail in the part of the decree pertaining to surveys. ?

(b) The proposed decree specifically provides that "every school district must educate all students residing within the district." This provision is designed to prevent transfers out of the school system in order to perpetuate school segregation. The following specific rules are established in this regard:

In no event shall any student be transported to another district unless facilities are not presently available for such students. If facilities are not presently available, the class of students to be transported out of the district shall be based upon age, grade or some other objective criteria. No student shall be transported out of the district based upon race, and no child shall be permitted to choose to attend schools in another district.

A comparable provision would be in some instances incorporated within our proposed decree by references. For school systems adopting a desegregation plan based upon geographic attendance zones, we require that the standards embodied in the pertinent provisions of the HEW guidelines be met. One section (Section 181.16) in the guidelines provides:

No arrangement may be made nor permission granted for students residing in one school system to attend school in another school system in any case (1) where the result would tend to limit desegregation or maintain what is essentially a dual school structure in either system, or (2) where such attendance is not available to all students without regard to race, color, or national origin.

It should be noted, however, that the uniform decree in the Jefferson County opinion, which we relied upon for school systems adopting a freedom of choice plan, does not contain a comparable provision.

(c) Plaintiffs' proposed decree also contains the following provision, which is viewed as an additional requirement to those imposed in the Jefferson County and HEW models:

Any school district commencing operation of a new or expanded school facility during the school year 1967-68 shall ensure that the school cannot be identified by the race of the student body or faculty as a Negro or white school.

6. Reporting provisions. Under our proposed decree the State Superintendent is obliged to submit two types of reports for the school systems in a state that, at the time the report is due, is neither subject to a court order requiring desegregation, nor to a voluntary desegregation plan accepted by HEW. One report to be submitted on October 15 of each year gives the number of students, faculty members and transfers. The other report, which must be submitted by June 1 of each year, has two different requirements depending on whether the school system is operating under freedom of choice or a geographic plan; for a freedom of choice system, this report focuses upon the choice applications, and for a geographic system, this report focuses upon the proposed attendance zones for the coming school year. The plaintiffs' proposed decree differs in several material respects regarding the reporting provisions:

(a) Only one report a year is required and that it must be submitted prior to June 1 of each year.

(b) This report^{nk} must be submitted on June 1 of each year pertains to every school system in the state without regard to whether it is under a court order or has submitted an acceptable plan to HEW.

(c) While plaintiffs asked the State Superintendent to give all the information that is required under our proposed decree, it also asks for additional information. A report submitted prior to June 1 must supply all pertinent information regarding students sent to other districts or received from other districts during the 1966-67 school year and 1967-68 school year; in addition, the proposed decree requires the State Superintendent to submit " a list of each new or expanded school commencing operation during the 1967-68 school year," together with the race, number and basis of assignment of students{(and faculty?).}

(d) Under ~~the~~^{proposed} decree, 20 days from the entry of this court's order the State Superintendent is required to submit a report to the Court informing them of the action he has taken with respect to the obligation relating to the adoption of desegregation plans of local school systems and informing it of the results of this action. Plaintiffs would require, within 30 days from entry of the decree, a similar report. However, that report must also include a copy of every plan submitted, and analyses by the State Superintendent of each plan "indicating in detail any aspects of said plan that fails to meet the standards set forth in the decree," and "a detailed statement of all actions taken by the State Superintendent of Education of effecting compliance of districts that fail to submit an acceptable plan."

7. Role of the United States. Under our proposed decree, we ask the Court to enter an order against the United States directing it to submit a report to the Court within 30 days informing the Court whether any of the 42 named school districts have failed to adopt a satisfactory school desegregation plan within that time. The parallel provision in plaintiffs' proposed decree reads:

Nothing contained herein shall limit the right of the United States, the parties or any other person, to encourage any local school systems within the state to adopt an adequate desegregation plan.