

Section-by-Section Analysis of the "School Desegregation Standards and Assistance Act of 1976"

Title I. Standards and Procedures in School Desegregation Suits

Sec. 101. Purpose; Application

(a) Title I prescribes standards and procedures to govern the award of equitable relief^{1/} in school desegregation suits; that is, suits seeking the elimination of discrimination, on the basis of race, color or national origin, against students in public schools.^{2/} The bill applies to any such suit which is based upon Federal law. Where a lawsuit seeks relief with respect to faculty and staff, as well as students, the bill applies to the extent that the suit relates to students.

The purpose of Title I's provisions is to assure that such relief (1) prevents the occurrence of unlawful discrimination against students in the operation of public schools and (2) remedies, by appropriate means, the effects of such discrimination.

(b) Title I applies to all school desegregation suits based upon Federal law in which relief is awarded after the Act's enactment. The Title thus would apply to the award of additional relief in cases in which there is an existing court-ordered remedy. The Title would not apply, however, to motions to reduce or terminate existing orders

^{1/} The award of declaratory judgments, as well as injunctive and other equitable relief, is within the Title's coverage.

^{2/} "Desegregation" and other pertinent terms are defined in Sec. 102.

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unless the motion was made after the times set out in Sec. 107. If the motion is made before Sec. 107 applies, it would be governed by existing law rather than by Sec. 107's standards.

Sec. 102. Definitions

Subsections 102 (a), (b), (c) and (f), which define respectively "local education agency," "State education agency," "school system" and "State," are self-explanatory.

The definitions of "desegregation" (subsection 102 (d)) and "unlawful discrimination" (subsection 102 (e)) reflect the purpose of the Title, i.e., regulating the award of relief to remedy discrimination against students in the operation of public schools. Thus, within the meaning of the Title, "unlawful discrimination" is

action by a local or State education agency or by any other governmental . . . agency . . . which, in violation of Federal law, discriminates against students on the basis of race, color or national origin in the operation of the schools.

This definition is intended to incorporate the standards of the Constitution and of Federal civil rights laws.

Under Title I, a "desegregation" suit is one seeking (1) the prohibition of "unlawful discrimination" and (2) the elimination of the effects of such discrimination in the operation of public schools.

Subsection 102 (g) provides that "transportation of students" means "the assignment of students . . . in such a manner as to require, directly or indirectly, the transportation of students, in order to alter the distribution of students, by race, color, or national origin, among the schools . . ." An indirect requirement of such transportation would exist, for example, when the assignments were such that it was no longer feasible for certain students to walk to school. Assignment of a student, however, to a school that serves the student's grade level and is nearest or next nearest the student's residence is not covered by the definition, even if the assignment results in transportation of the student to the school.

Sec. 103. Liability

Sec. 103 establishes the basic scheme for relief under Title I against local or State education agencies. It provides, in subsection (a), that relief of the type described in Sec. 104 will be available whenever the court finds that a local or State education agency "has engaged or is engaged in . . . unlawful discrimination."

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Subsection 103 (b) provides that the relief of Sec. 105 will be available when the court finds that "unlawful discrimination" resulted in an increased present degree of concentration, by race, color or national origin, in the student population of any school. In other words, a finding of unlawful discrimination which consisted only of assigning students to classes, within a school, on the basis of race and which had no effect upon other schools, would subject the defendant to relief under Sec. 104, whereas a finding of unlawful discrimination in the drawing of school boundaries, so as to establish one white school and one black school, would subject the defendant to relief under Sec. 105 as well.

The proviso of subsection 103 (b) deals with the matter of relief, under Sec. 102, against a local or State education agency where all or some of the effects that the relief is intended to remedy were caused by the conduct of other governmental agencies or officers. Paragraph 103 (b) (i) states that:

. . . no order under Sec. 102 . . . shall be based in whole or in part on an act or acts by a local, State or Federal agency or officer other than the local or State education agency with jurisdiction over . . . [the schools in question] unless the court further finds, on the basis of evidence other than the effects of such acts alone, that the act or acts were committed for the specific purpose of maintaining, increasing, or controlling the degree of concentration, by race, color, or national origin, in the student population of the schools . . .

In other words, no order to remedy increased concentration, by race, color or national origin, in the student population of any school may be based, wholly or partly, on the conduct of a local, State or Federal agency other than an education agency unless the court finds that the specific purpose of such conduct was to maintain, increase or control the degree of such concentration in student population. Paragraph 103 (b) (i) states that such a finding concerning specific purpose must be based upon evidence "other than the effects of . . . [the conduct on the part of the other agency] alone." Thus, while evidence concerning the effects of the non-school agency's conduct is relevant, such evidence by itself is not sufficient to establish the requisite specific purpose. Other evidence regarding purpose must be provided.

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The second part of the proviso, paragraph 103(b)(ii), states that nothing in Title I is to be construed as establishing a basis for relief against a local or State education agency where such relief is not available on the basis of existing law (i.e., other law existing at the time of the particular lawsuit). If Federal law authorizes relief against school authorities on the basis of discrimination by some other government agency, then the proviso of subsection 103(b) governs the award.

Sec. 104 Relief - Orders prohibiting unlawful acts and eliminating effects generally

This section relates to the award of relief generally to prevent acts of unlawful discrimination by local or State education agencies and to eliminate the effects of such acts. As stated in the proviso, however, sec. 105 is the section applicable to the award of any remedy to eliminate the effects of such discrimination on the present degree of concentration, by race, color or national origin, in student population. Thus, sec. 104 applies to the prevention of all acts of school discrimination and to the elimination of all effects except the effect of concentration, by race, color or national origin, in student population.

Sec. 104 provides that the court may (1) enjoin the continuation or future commission of such discriminatory conduct and (2) provide other relief needed to prevent the occurrence of the discriminatory acts or to eliminate their present effects, other than effects upon the composition, by race or national origin, of student bodies.

Sec. 105 Relief - Orders eliminating the present effects of unlawful acts on concentrations of students

(a) This section becomes applicable when, pursuant to subsection 103(b), the court finds that unlawful discrimination has caused a greater present degree of concentration, by race, color or national origin, than would otherwise have existed in the student population of any of an education agency's schools. (See the discussion of subsection 103(b).) With regard to such discrimination, the court may order against such agency "any appropriate relief to remedy the effects reasonably attributable to such acts." Under subsection 105(a), the court may order such relief -- but only such relief -- as is reasonably necessary to create substantially the same kind of distribution of students, by race, color or national origin, that would have existed had no such discrimination occurred. If feasible, the court's order is to be based upon findings regarding, and is to relate to, the particular schools affected by the discrimination. For example, if the discrimination consisted of artificial alteration of the

boundaries between two schools, which affected and now affects the student population of only those two schools, the relief is to relate only to those schools and is to seek only re-creation of the situation which would now exist had the boundaries been established in a non-discriminatory fashion. In determining what situation would now exist, the court would, of course, take into account shifts in population which have occurred since the alteration of boundaries -- including, but not limited to, such shifts as were the identifiable effect of that unlawful act.

In some cases, it may be impossible to isolate the effects of a discriminatory act upon particular schools, or to use only those schools in re-creating the situation, insofar as concentration of students by race, color or national origin is concerned, which would now exist within the district absent the discriminatory acts. For example, where an identifiable effect of a past discriminatory act was to destroy mixed residential pattern which would otherwise have subsisted, it may not be feasible, by directing relief only at the schools originally affected, in areas which are now no longer integrated, to achieve effective relief. In such cases, the court may direct its relief at patterns of concentration by race, color or national origin within the school district rather than at the particular schools originally affected.

(b) Subsection 105(b) describes the type of findings which must be made by the court before sec. 105 relief may be awarded. The court, after conducting an appropriate hearing, is to make specific findings concerning the degree to which the concentration, by race, color or national origin, in the student population of particular schools affected by unlawful discrimination varies from what it would have been had no such discrimination occurred. For example, a court might find that, but for the discrimination, a school whose student body is presently 60 percent black would have a student body that is 30 percent black. Under subsection 105(b), with regard to that school, the objective of the court's decree would be to achieve a student population which is 30 percent black.

If it is not feasible to make the above findings with regard to particular schools or if it is not feasible to fashion relief limited to the particular schools affected by the discrimination, the court is to make specific findings concerning the degree to which the overall pattern of student concentration, by race, color or national origin, in the school system varies from what it would have been had the unlawful discrimination not occurred. For example, a court might find that, but for the discrimination, the

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district would have had five schools with student bodies approximately 30 percent black; under subsection 105(a), the objective of the court's decree would be to establish a situation in which five such schools exist.

(c) Subsection 105(c) provides that, in any subsection 105(b) hearing, the defendant-education agency shall have the burden of going forward with the evidence. That is, the defendant has the burden of introducing evidence concerning the degree to which the concentration of students, by race, color or national origin, (in particular schools or overall in the school system) is reasonably attributable to factors other than unlawful discrimination on the part of the defendant or another local or State agency. (Subsection 103(b) prescribes the manner in which findings concerning such discrimination are to be made.)

Subsection 105(c) further provides that, if the defendant meets its burden by offering appropriate evidence, the findings required by subsection 105(b) are to be based on conclusions and reasonable inferences from all of the evidence before the court including evidence introduced under sec. 103. Such findings are not to be based on a presumption, drawn from the finding of liability made pursuant to subsection 103(b) or otherwise, that the concentration, by race, color or national origin, in the student population of any particular school or the overall pattern of concentration in the school system is the result of acts of unlawful discrimination.

(d) Subsection 105(d) states that, if any order entered under sec. 105 is based, in whole or in part, on unlawful discrimination by a local or State agency other than an education agency, the court is to state separately in its findings the extent to which the effects found and the relief ordered (pursuant to sec. 105) are based on such discrimination.

(e) Subsection 105(e) exempts from sec. 105's other requirements certain elements of an order entered under sec. 105. Without regard to such other requirements, the court may (1) approve any (otherwise lawful) desegregation plan voluntarily adopted by a local or State education agency or (2) direct institution of a program of voluntary majority-to-minority transfers by students.

Sec. 106. Voluntary action; local control

This section provides that any order entered under sec. 105 is to rely, to the greatest extent practicable and consistent with effective relief, on the voluntary action of school officials, teachers and students. The court is not to remove local or State control of the school system except to the minimum extent necessary to prevent discrimination and eliminate its present effects.

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Sec. 107. Review of orders

(a) Subsection 107(a) deals with review of court-imposed requirements for "transportation of students." (The quoted term is defined in subsection 102(g).) After such a requirement has remained in effect for (1) three years from the date of entry of the pertinent order or (2), in the case of a final order entered before enactment of Title I, three years from the date of enactment, the court, on motion of any party is to review the requirement. The requirement may then continue in effect only if the court makes the findings described in paragraph 107(a)(i) or (a)(ii). The subsection in no way restricts or precludes earlier relief from the requirement.

Under paragraph 107(a)(i), if the court finds that the local or State education agency has failed to comply with that requirement and other provisions of the court's order substantially and in good faith for the three years preceding the filing of the motion, the court may continue the requirement in effect until there have been three consecutive years of such compliance.

Under paragraph 107(a)(ii), even where there have been three consecutive years of substantial, good faith compliance, the court may continue the requirement for transportation of students if it finds (1) that the other provisions of its order and other possible remedies are not adequate to correct the effects of unlawful discrimination, determined in accordance with sec. 105 of this title, and (2) that the requirement remains necessary for that purpose. If the court makes those findings, it may continue the requirement in effect, with or without modification, until the education agency has complied with the requirement substantially and in good faith for two additional consecutive years. The proviso states that, after there has been such compliance for two additional consecutive years, the court may continue the requirement in effect where there are extraordinary circumstances resulting from the failure or delay of other remedial efforts or involving unusually severe residual effects of unlawful acts. In such circumstances the requirement may be continued, as a transitional means of last resort, for specific, limited periods which the courts find essential to allow other remedies to become effective. Absent such extraordinary circumstances, there is to be no further continuation of the requirement for transportation of students. (But see the discussion below of subsection 107(b).)

(b) This subsection relates to situations in which, after the termination of a court-imposed requirement for transportation of students, conduct occurs which may call for reimposing such a requirement.

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Subject to certain limitations, the court may reimpose a requirement for transportation of students if, after termination of the initial requirement of that type, the court finds:

(i) that the local or State education agency, subsequent to the termination, has failed to comply substantially and in good faith with other provisions of the court's order; or

(ii) that an act or acts of unlawful discrimination as defined in sec. 103(b), have occurred since the termination and have caused a greater present degree of concentration, by race, color, or national origin, than would otherwise have existed in normal course . . .

Such a requirement may be reimposed only if the court determines that no other remedy would be sufficient. Moreover, the requirement for transportation of students may be reimposed only to the extent and for such limited time as may be necessary to remedy the effects found, pursuant to sec. 105, to be reasonably attributable to the post-termination conduct found pursuant to paragraph 107(b)(i) or (ii).

Sec. 108. Effect of subsequent shifts in population

This section states that, when an order subject to sec. 107 has been entered and thereafter shifts in housing patterns cause changes in student distribution by race, color or national origin, ordinarily the court is not to require modification of the student-assignment plan to compensate for such changes. The court may require such modification if it finds, pursuant to sec 105 that the changes in student distribution result from discrimination on the part of the local or State education agency or another local or State agency. (Regarding findings of discrimination on the part of agencies of the latter type, see the discussion of subsection 103(b).)

Sec. 109. Intervention

(a) Subsection 109(a) provides that the court is to notify the Attorney General of the United States of any proceeding, to which the United States is not a party, in which the relief sought includes relief covered by sec. 105. This applies whenever sec. 105 is applicable, whether in regard to a new suit, an application for additional relief, or a proceeding necessitated by sec. 107 in a pre-enactment suit. In addition, the court is to advise the Attorney General whenever it believes that an order or an extension of an order requiring the transportation of students in order to alter their distribution by race, color or national origin may be necessary.

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(b) This subsection states that, in any proceeding covered by subsection 109(a), the Attorney General may, in his discretion, intervene as a party. Alternatively, the Attorney General may elect to appear for such special purpose as he deems necessary to facilitate enforcement of Title I. Such special purposes include recommending (1) that a mediator be appointed to assist the court, the parties and the affected community or (2) that a committee of community leaders be appointed to prepare, for the court's consideration, a five-year desegregation plan, with the objective of enabling required assignment and transportation of students to be avoided or minimized during the five-year period and terminated at the end of that period.

Sec. 110. Separability

This section states that, if any provision of Title I or the application of any such provision to any person or circumstance is held invalid, the remainder of the title and the application of such provision to any other person or circumstances is not to be affected thereby.

Title II. The National Community and Education Committee

Sec. 201. Purpose

The purpose of Title II is to create a nonpartisan National Committee composed of citizens with experience in activities relating to the desegregation of schools within a community. The Committee would be available to assist communities that are now engaged, or preparing to engage, in school desegregation in order to help those communities facilitate that process, anticipate and handle difficulties and thereby reduce or avoid public misunderstanding and disorder.

Sec. 202. Establishment of the Committee

Sec. 202 of the bill would establish the Committee in the Executive Branch of the Federal Government. The Committee would be composed of not fewer than fifty nor more than one hundred members. Ten of the members would be appointed by the President and would comprise the executive council of the Committee. The President would also appoint a Chairman and Vice Chairman of the Committee from among the executive council. The remainder of the members would be appointed by the executive council of the Committee. The executive council would establish general operating policies for the Committee and approve all grants made by the Committee. The Committee would be authorized to employ a small professional staff or obtain the services of consultants, but it is expected that the bulk of the activities of the Committee would be carried out by Committee members themselves. For each day spent on the work of the Committee,

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members would be compensated at a rate not to exceed that paid at level IV of the Federal Executive Salary Schedule.

Sec. 203. Functions of the Committee

The primary functions of the Committee are set forth in Sec. 203 of the bill. These functions include (1) consulting with community leaders and local groups to assist them in preparing for the desegregation process in a manner designed to avoid community conflicts, (2) encouraging the formation of local community organizations to help the community plan for desegregation, (3) providing advice and technical assistance in this planning process, (4) consulting with various Federal agencies to determine how those agencies can assist communities in resolving problems arising during the desegregation process, (5) providing informal conciliation services among community groups, and (6) providing grants to assist in the establishment and development of such community organizations.

Sec. 204. Community Grants

Sec. 204 authorizes the Chairman of the Committee, upon approval by the executive council, to make grants to private nonprofit community organizations in order to assist them in the initial stages of activities designed to accomplish the purposes of this Title. Grants could not exceed \$30,000 and would not be available to assist the organization for more than one year. In order to approve a grant to a community organization, the executive council of the Committee would require an applicant to demonstrate that it has adequate financial or other support from the community in order to demonstrate reasonable promise of making substantial progress towards achieving the purpose of this Title.

Sec. 205. Limitations on Activities of the Committee

Sec. 205 sets forth certain limitations on the activities of the Committee. This provision is designed to make clear that it is not the function of the Committee to (1) prepare desegregation plans, (2) provide mediation services under the order of a State or Federal court, (3) investigate or take any other action with respect to alleged violations of law, or (4) participate or assist in any administrative or judicial proceedings under State or Federal law seeking the desegregation of schools.

Sec. 206. Cooperation by Other Departments and Agencies

Sec. 206 of the bill would direct all executive departments and agencies of the United States to cooperate with the Committee and furnish it such information, personnel and other assistance as the Committee may need to carry out

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its functions. This section also requires the Attorney General, the Secretary of Health, Education, and Welfare and the heads of agencies within that Department to administer programs which are designed to assist local educational agencies and communities in planning for and carrying out desegregation of schools in a manner that would further the activities of the Committee.

Sec. 207. Confidentiality

Sec. 207 of the bill provides that members and employees of the Committee may carry out their activities in confidence. The Committee shall not disclose, or be compelled to disclose, any information which it acquires in carrying out its duties if such information was provided to the Committee upon an understanding of such confidentiality.

Sec. 208. Authorization of Appropriations

Sec. 208 authorizes the appropriation of a total of \$4 million for the Committee for the fiscal year ending September 30, 1977, and for each of the two succeeding fiscal years. Of this amount, \$2,000,000 would be authorized for salaries and expenses of the Committee and \$2,000,000 for making grants to community organizations.

Sec. 209. Federal Community Assistance Coordinating Committee

Sec. 209 of the bill would create a Federal Community Assistance Coordinating Council, the purpose of which would be to provide a central point in the Federal government to assist community organizations in determining what types of Federal programs are available for activities within their communities to provide assistance for community relations projects, education programs, and other community-based efforts which would help to reduce or eliminate the misunderstanding and disorder that could be associated with school desegregation. Each Federal agency which administers programs providing such assistance would be represented on the council. These representatives of Federal agencies would be available to assist community organizations in (1) designing projects or activities that show promise of assisting in those efforts, (2) determining which Federal programs would be available for those activities, and (3) completing the necessary application forms and other prerequisites in order to expedite the availability of such Federal assistance. \$250,000 would be authorized to be appropriated for this activity.

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