the Court indicated that the time was running out for full implementation of the *Brown* mandate.[1613]

About this time, "freedom of choice" plans were promulgated under which each child in the school district could choose each year which school he wished to attend, and, subject to space limitations, he could attend that school. These were first approved by the lower courts as acceptable means to implement desegregation, subject to the reservation that they be fairly administered.[1614] Enactment of Title VI of the Civil Rights Act of 1964 and HEW enforcement in a manner as to require effective implementation of affirmative actions to desegregate [1615] led to a change of attitude in the lower courts and the Supreme Court. In *Green v. School Board of New Kent County*,[1616] the Court posited the principle that the only desegregation plan permissible is one which actually results in the abolition of the dual school, and charged school officials with an affirmative obligation to achieve it. School boards must present to the district courts "a plan that promises realistically to work and promises realistically to work *now*," in such a manner as "to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools." [1617] Furthermore, as the Court and lower courts had by then made clear, school desegregation encompassed not only the aboli-

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[1613] The first comment appeared in dictum in a nonschool case, Watson v. City of Memphis, 373 U.S. 526, 530 (1963), and was implied in Goss v. Board of Educ. of City of Knoxville, 373 U.S. 683, 689 (1963). In Bradley v. School Bd. of City of Richmond, 382 U.S. 103, 105 (1965), the Court announced that "[d]elays in desegregating school systems are no longer tolerable." A grade-a-year plan was implicitly disapproved in Calhoun v. Latimer, 377 U.S. 263 (1964), vacating and remanding 321 F.2d 302 (5th Cir. 1963). *See* Singleton v. Jackson Municipal Separate School Dist., 355 F.2d 865 (5th Cir. 1966).

[1614] *E.g.*, Bradley v. School Bd. of City of Richmond, 345 F.2d 310 (4th Cir.), rev'd on other grounds, 382 U.S. 103 (1965); Bowman v. School Bd. of Charles City County, 382 F.2d 326 (4th Cir. 1967).

[1615] Pub. L. 88–352, 78 Stat. 252, 42 U.S.C. §§ 2000d *et seq*. (prohibiting discrimination in federally assisted programs). HEW guidelines were designed to afford guidance to state and local officials in interpretations of the law and were accepted as authoritative by the courts and used. Davis v. Board of School Comm'rs of Mobile County, 364 F.2d 896 (5th Cir. 1966); Kemp v. Beasley, 352 F.2d 14 (8th Cir. 1965).

[1616] 391 U.S. 430 (1968); Raney v. Gould Bd. of Educ., 391 U.S. 443 (1968). These cases had been preceded by a circuit-wide promulgation of similar standards in United States v. Jefferson County Bd. of Educ., 372 F.2d 836 (5th Cir. 1966), *modified and aff'd*, 380 F.2d 385 (5th Cir.) (en banc), *cert. denied*, 389 U.S. 840 (1967).

[1617] *Green*, 391 U.S. at 439, 442 (1968). "*Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Id. at 437–38. The case laid to rest the dictum of Briggs v. Elliott, 132 F. Supp. 776, 777 (E.D.S.C. 1955), that the Constitution "does not require integration" but "merely forbids discrimina-