ing numerous judicial decisions in which the courts had required school districts, as a part of school desegregation plans, to cease hiring and assigning faculty on the basis of race and in many cases to assign teachers for the express purpose of overcoming the effects of past discrimination. The letter concluded with the following sentence: "For the foregoing reasons we conclude that section 601 [of the Civil Rights Act of 1964] applies to the desegregation of faculty and staff of school systems that have been racially segregated, and that section 604 [of the Civil Rights Act of 1964] does not preclude such application."

It should be noted, on the other hand, that the Report of the Senate Committee on Appropriations (pp. 71 and 72, Report No. 1631, 89th Cong., 2d Sess.) questioned whether the Guidelines are consistent with legislative intent on the ground that they allegedly require assignment of pupils in order to overcome racial imbalance. The Committee apparently felt that the definition of "desegregation" in section 401(b) of the Act, and the provision of section 407(a) which provides that "nothing herein shall empower any court or official to require the transportation of students to overcome racial imbalance," were intended to be applicable to actions under title VI and that the Guidelines required action to overcome such imbalance.

We are satisfied that the Guidelines do not require action "to overcome racial imbalance." It should be noted, however, that section 402 specifies that the definitions it contains are "[a]s used in this title" [IV], and also that title VI does not contain the defined word "desegregation" or the word "desegregate." It is therefore difficult to conceive of a court holding that, as a legal matter, the title IV definition is controlling in title VI. Moreover, the context of the quoted language in section 407(a) indicates that it concerns only desegregation actions brought by the Attorney General, and not the refusal or termination of Federal financial assistance under title VI. The Senate Appropriations Committee Report, however, is based upon statements made by Senator Humphrey in response to questions asked by Senator Byrd of West Virginia.

Some time ago my staff prepared a statement showing that an examination of the colloquy in context demonstrates that Senator Humphrey was not referring to requirements applicable to school districts which have been maintaining dual school structures, but only to what would be imposed in *de facto* situations which courts have held not to violate the constitutional rights of students. In fact, Senator Humphrey emphasized that the provision in question simply embodied the substance of *Bell* v. *School City of Gary*, 324 F. 2d 209 (C.A. 7th, 1963), cert. den. 377 U.S. 924). (110 Cong. Rec. 12715–12717, June 4, 1964)

The Guidelines are consistent with Senator Humphrey's explanation because he made clear at that time that the amendment did not prevent action "for the purpose of preventing denial of equal protection of the laws," [i.e., a violation of the children's rights under the Fourteenth Amendment]. (110 Cong. Rec. 12714, June 4, 1964)

The Guidelines do not require more for the continuance of Federal assistance than a plan looking toward the elimination of the dual school system as required by the Fourteenth Amendment. These requirements are discussed in my memorandum of March 7, 1966, and the attachment to Commissioner Howe's letter of May 24, 1966, to Senator Fulbright.

The performance provisions of which the Senate Appropriation Committee report is critical do no more than follow constitutional requirements. They provide that for the school year 1966–67 a school district may comply with title VI through operation of a choice plan under which schools continue to be maintained for Negroes. But if in practice such plans are not making progress toward the elimination of the dual school system, the Commissioner may require that the school officials take further action to make progress or may require a different type of plan such as geographic zoning (45 C.F.R. 181.54). Where a school district assigns children to schools on the basis of non-gerrymandered geographic zoning, the effectiveness test referred to above does not apply.

Obviously, a school system which has adopted a free choice desegregation plan, but which is making little or no progress in the elimination of its dual school system, is not satisfying its constitutional obligation, as defined by the decisions of the Federal courts, to desegregate its schools. Just as obviously, the Commissioner of Education would not be satisfying his obligation under title VI and the Regulation if he were to determine that such a plan is adequate to carry out the purposes of title VI.

The percentages stated in the Guidelines do not provide a rigid rule for the degree of progress required of each school district. They do, however, provide