

1648 ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS

could constitute good faith compliance. (Emphasis added by Eighth Circuit; citation omitted) (325 F. 2d at page 19.)

The recent decisions cited above, which develop the principles of the 1954 and 1955 Brown decisions, show that the courts consider that the maintenance of separate schools for Negroes is discriminatory. Merely admitting to white schools those Negroes who may request to attend them does not change the separate character of schools maintained primarily for Negroes and whites. These principles are developed further in the decisions cited below in the discussion of faculty desegregation and effectiveness of free choice plans.

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With regard to faculty desegregation, the 1966 guidelines state that the racial composition of faculties must be considered in determining whether students are subject to discrimination, and require that except to the extent necessary to correct past discriminatory assignments, race may not be a factor in teacher assignments, that qualified teachers may not be dismissed on the basis of race, and that school systems must make significant progress in 1966-67 in eliminating past discriminatory assignments.

Section 181.13 provides as follows:

181.13 Faculty and Staff

(a) *Desegregation of Staff.* The racial composition of the professional staff of a school system, and of the schools in the system, must be considered in determining whether students are subjected to discrimination in educational programs. Each school system is responsible for correcting the effects of all past discriminatory practices in the assignment of teachers and other professional staff.

(b) *New Assignments.* Race, color, or national origin may not be a factor in the hiring or assignment to schools or within schools of teachers and other professional staff, including student teachers and staff serving two or more schools, except to correct the effects of past discriminatory assignments.

(c) *Dismissals.* Teachers and other professional staff may not be dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race, color, or national origin. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system may be filled through recruitment from outside the system unless the school officials can show that no such displaced staff member is qualified to fill the vacancy. If as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system must be evaluated in selecting the staff members to be released.

(d) *Past Assignments.* The pattern of assignment of teachers and other professional staff among the various schools of a system may not be such that schools are identifiable as intended for students of a particular race, color, or national origin, or such that teachers or other professional staff of a particular race are concentrated in those schools where all, or the majority of, the students are of that race. Each school system has a positive duty to make staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns. Staff desegregation for the 1966-67 school year must include significant progress beyond what was accomplished for the 1965-66 school year in the desegregation of teachers assigned to schools on a regular full-time basis. Patterns of staff assignment to initiate staff desegregation might include, for example: (1) Some desegregation of professional staff in each school in the system. (2) the assignment of a significant portion of the professional staff of each race to particular schools in the system where their race is a minority and where special staff training programs are established to help with the process of staff desegregation. (3) the assignment of a significant portion of the staff on a desegregated basis to those schools in which the student body is desegregated. (4) the reassignment of the staff of schools being closed to other schools in the system where their race is a minority, or (5) an alternative pattern of assignment which will make comparable progress in bringing about staff desegregation successfully.

Obviously, it is impossible to desegregate schools without desegregating teachers. In *Bradley v. Board of Education of City of Richmond*, 382 U.S. 103 (1965)