

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS 1665

Such Negro schools do not even meet the "separate but equal" standard developed in the years following *Plessy v. Ferguson*, 163 U.S. 537 (1896). The reason and authority for this provision are obvious. In the Lowndes, Bullock, Macon and Montgomery County, Alabama school desegregation cases decided in February and March, 1966 the U.S. District Court ordered the closing of 65 such small, inadequate schools.

A final difference between the 1965 and 1966 guidelines is found in the various forms issued with the 1966 guidelines. The 1965 guidelines described in general terms the contents of the notices school systems with free choice plans would use to inform parents of their opportunity to exercise a choice of school. Each school was expected to write its own notices and include them with the plan sent to the Commissioner. Because a great many of these notices were inadequate for their purpose, much time had to be spent last summer in helping to prepare proper notices for many individual plans. The acceptance and implementation of plans for the 1965-66 school year was delayed, and so was the assignment of students to schools. As the result of this experience, it seemed desirable to issue with the 1966 guidelines appropriate texts for school officials to use in their notices, even though not everyone would agree with any particular wording.

There are, of course, other differences between the 1965 and 1966 guidelines, but because they do not seem to be controversial, there is no need to labor them here.

With regard to Mr. Stratton's twelve assertions, I will quote them in groups and follow with my comment.

1. It changes our plan of desegregation which we accepted last year and which we have kept in good faith after approval from the Department of Health, Education, and Welfare.

7. It destroys all confidence on the part of those who have thus far worked to meet the law with courage and sincerity because we find that we cannot trust the authorities who approved our original plan.

12. We feel that we should be allowed to continue with the three year plan which was approved by the Commissioner of Education and which the schools and its patrons have accepted. Continual and more stringent regulations will but lead to resentment and possible rebellion.

Comment. The 1965 guidelines and the letter accepting this school district's plan stated plainly that changes in the guidelines and the district's plan might be necessary from time to time. But no changes of substance in this district's plan are required by the 1966 guidelines, if the plan is an effective means of desegregation in the district. The plan in this particular case provided for the desegregation of 8 grades in 1966-67 and 12 grades in 1967-68. There is no requirement in the new guidelines that this time schedule be changed. In accordance with the 1965 guidelines the plan provides for joint faculty meetings and in-service training programs as "a first step toward integration of faculty." The 1966 guidelines require that a second step be taken in 1966-67. Apart from the expectation that this school system make further progress under its plan in 1966-67 toward the desegregation of its students and teachers, the only changes to its plan required by the 1966 guidelines relate to matters of procedure and form, such as the uniform texts of the letters and notices, the reason for which was explained above.

With regard to the possibility of "rebellion," I have commented below in connection with item 6.

2. The revised orders violate the Civil Rights Act of 1964 in requiring racial balance in schools and goes much further than Congress intended.

Comment. The concern here arises from the percentages in § 181.54. These percentages have been misinterpreted by some as requiring "racial balance," or a particular percentage of Negro children in schools with white children. As I stated in the discussion of § 181.54 above, the percentages are in the guidelines to give school officials some guidance as to a reasonable degree of progress that might normally be expected under free choice plans. Depending on the circumstances, failure to make the indicated progress might, or might not, mean that school officials should take further steps or change their plan so that there will be progress. The guidelines do require that reasonable progress be made, but nowhere do they require that there be any particular proportion of Negroes and whites in any particular school. The "correction of racial imbalance" is a phrase referring to the busing of children from neighborhood schools which have not been officially segregated, but which, because of residential patterns, are "racially imbalanced." The guidelines do not deal with this situation at all.