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 to each school district. They do, however, provide a guide to the Office of Education in determining whether or not a free choice plan should be scheduled for review and a guide to the school district as to what, in general, might be considered reasonable progress. In this same section, there is an indication of what might be done in the event there is a substantial deviation from these expectations.

Any school district which believes it is being asked to do more than the law requires has full recourse to an administrative proceeding and a thirty-day notification to Congressional committees before a termination of Federal assistance (sec. 602, Civil Rights Act of 1964). Moreover, if it believes the termination to exceed the Commissioner's authority under the law, it is entitled to judicial review as provided in section 603.

In short, the decisions of the Federal courts establish that local school officials who have in the past maintained separate schools for Negro and white children are under a constitutional compulsion to provide a single desegregated school system for all children. At no time did the Congress intend in title IV or elsewhere in the Civil Rights Act of 1964 that any school child receive less than his full measure of constitutional protection. The responsibility which school officials who are desegregating their school systems voluntarily must assume in order to qualify for Federal assistance may not, if the purposes of title VI are to be carried out, be any less than the responsibilities imposed on school officials by the courts in recent school desegregation decisions. The Guidelines were issued to inform school officials of what those responsibilities are and are in accord with those decisions. If school systems assuming a lesser degree of responsibility were permitted to receive Federal assistance, the purposes of title VI would be thwarted.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington.

HONORABLE CARL HAYDEN,
Chairman, Senate Appropriations Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: In the Committee on Appropriations Report No. 1631, dated September 22, 1966, the Committee recommended that I reexamine the 1966 Statement of Policies for School Desegregation to see whether they conformed with the intent of Title VI of the Civil Rights Act of 1964.

I wish to report that the legality of the policies has again been carefully reviewed both by our own General Counsel and the Acting Attorney General. This review has included both the legislative history of the Civil Rights Act of 1964