

considered the percentage of desegregation resulting at any individual school, and has not considered significant the extent to which white students in the system have been joined by a small minority of Negro students in the various schools originally established for white students only.

The percentage of Negro students in Tate County having transferred remains less than one percent. The percentage examples provided in the guidelines suggest that had this figure been ten percent, or eight percent, or perhaps even six percent, such would have been considered adequate progress in student desegregation for 1966-67, depending on all other relevant factors, including at least to some extent the progress made in faculty desegregation. The percentage examples merely reflect the degree of progress generally achieved in various districts where free choice procedures have proved effective in bringing about the elimination of the dual structure of schools. Such has not been the case in Tate County.

The Senator further asks, "If a school to which all applicants are freely admitted without regard to race is not considered desegregated, then how exactly is a desegregated school defined and identified?" Again, it is the desegregation of the school system that is most crucial, rather than the particular situations at the individual schools. A school system is considered desegregated if attendance at its schools is no longer based directly or indirectly on race. At present, where free choice results in significant progress in the desegregation of the system from one school year to the next, when viewed against the background of the percentage examples provided in the guidelines, then such progress is considered adequate, in the process of transition to a single unsegregated school system, to constitute a basis for the continued extension of Federal financial assistance.

If one is to focus on the schools individually, however, a measure of progress can be reached in terms of the desegregation of the faculty. If in the particular community the staff of a given school were composed of such a group of white and Negro teachers and staff members as left the school no longer identifiable as having been originally established for students of a particular race, then the most conspicuous badge of the illegal dual school structure would have been eliminated. The school system would be considered to have ended the discrimination affecting students at that school that arose from segregated faculty assignments, and to have taken the most significant step toward the full desegregation of the school under its free choice plan. Based on the reports the Tate County officials have submitted, no single school in the Tate County system could be considered to have lost its racial identifiability to any significant degree.

#### 6. POINTS RAISED IN CONNECTION WITH THE DEPARTMENT'S LEGAL MEMORANDUM OF MAY 20, 1966, ON THE AUTHORITY FOR THE GUIDELINES

The remainder of Senator Stennis' letter is devoted to consideration of a number of other legal questions and analysis of court cases in connection with the legal basis for the guidelines, with particular reference to the cases cited in the Department's memorandum of May 20, 1966 entitled "Authority for the 1966 School Desegregation Guidelines." This section of this memorandum takes up these remaining points in the order raised by the Senator, although some of them have been covered to such a degree in discussions above as should make reference thereto sufficient.

The Senator's first point with respect to the May 20 memorandum is that the cases cited therein as supporting the guidelines were decided when the 1965 guidelines were in effect, not the revised guidelines to which the memorandum relates, and these guidelines, he believes, are "altogether different" from those of 1965.

The May 20 memorandum does not quote language from any case directly commenting on the guidelines at all, original or revised. As the Senator indicates, no case directly supporting the revised guidelines could be decided before they were issued. There are, however, several cases which made highly favorable comments on the 1965 guidelines, and decisions have been handed down in other cases since the May 20 memorandum with similar comments on the revised guidelines.

On the 1965 guidelines, see the following comments in these cases: "We attach great weight . . ." *Singleton v. Jackson Municipal Separate School District*, 348