

1688 ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS

F.2d 729, 731 (5th Cir. 1965); "The applicable standard . . ." *Price v. Denison Independent School District*, 348 F.2d 1010, 1014 (5th Cir. 1965); ". . . only minimum standards . . . we doubt that they would ever to be too high." *Singleton v. Jackson Municipal Separate School District*, 355 F.2d 865, 869 (5th Cir. 1966); ". . . must be heavily relied upon" *Kemp v. Beasley*, 352 F.2d 14, (8th Cir. 1965); ". . . entitled to serious judicial deference" *Smith v. Board of Education of Morriton*, 365 F.2d 770, 780 (8th Cir. 1966). The Court of Appeals for the Fourth Circuit has not yet considered the guidelines, but district courts in that circuit have done so. See *Kier v. County School Board of Augusta County*, 249 F. Supp. 239 (W.D. Va. 1966), and *Wright v. County School Board of Greensville County*, 252 F. Supp. 378 (E.D. Va. 1966).

Not as many decisions have yet considered the 1966 guidelines. However, in addition to the *Jefferson County* case, mentioned at the beginning of this memorandum, which decision upholds all aspects of the revised guidelines, they have also received favorable comment twice in *Miller v. Clarendon County School District No. 2*, Civil Action No. 8752 (D. S.C. April 21, 1966 and June 14, 1966). Moreover, in both the *Davis* case (Mobile) mentioned above and the *Smith* case just cited, the revised guidelines were referred to in a favorable context, although not specifically commented on.

In any event, the 1966 guidelines cannot properly be considered "altogether different" from the original version. The 1965 guidelines clearly convey that (1) the purpose of any desegregation plan is to bring about the elimination of the dual structure of schools, (2) free choice plans are expected to promote the elimination of segregation, and (3) faculty desegregation must include both nonracial assignments of new personnel and reassignments of present personnel. The revised guidelines basically amplify these points, provide improved procedures, and give examples of what would be considered adequate progress in desegregation for 1966-67.

It is true, of course, as Senator Stennis next points out, that in none of the cases passing on the guidelines have they been directly in issue in terms of their legal validity or whether any particular requirement thereunder was proper for the Office of Education to impose. The only exception to date is the *Jefferson County* case, in which a rehearing en banc is presently pending. But it is also true that in no case of which the Office of General Counsel is aware have the guidelines been considered illegal, invalid, or inappropriate.

The guidelines are presently being challenged more or less directly in suits pending before various United States District Courts in Alabama, Arkansas, Florida, Georgia, Mississippi, and South Carolina. In none of these cases has even a preliminary decision on the guidelines been reached. However, the Office of General Counsel has assured school districts that if their particular district court or circuit court should hold in a final, unappealed decision, or if the Supreme Court should hold, that the Office of Education is without authority to impose a provision of the guidelines, then the Office of Education would of course not seek to enforce that provision.

The Senator states that in each school desegregation case there were one or more individuals actively asserting that they had been denied admission at a particular school because of their race. He indicates that in cases where no one applies for admission to a school, the school should not be considered "guilty" by an unverified assumption of discrimination.

It is correct that many school desegregation cases originated because of the denial by school boards of Negro students' requests for admission to white schools. It would not be correct to assume that in subsequent hearings, appeals or decisions in such cases, or in cases more recently brought, that this is the only issue. These cases are class action, and the individual plaintiff typically ask for and are granted class relief in the form of a desegregation plan, or an updated desegregation plan, or an order closing certain small segregated schools, or an order directing the desegregation of faculty, transportation or activities.

The guidelines are drawn from and reflect such decisions. See, for example, *United States v. Lowndes County Board of Education*, Civil Action No. 2328-N (M.D. Ala. February 10, 1966). In that case, the parties having stipulated as to the facts, the court ordered 24 small schools closed, a new school opened on a nonsegregated basis, and a desegregation plan implemented containing provisions and procedures similar to those included in the revised guidelines (which were issued a month later), including provisions for the desegregation of