THIS ARTICLE LISTS GUIDELINES PREPARED BY A CONSULTANT TO THE OFFICE OF EDUCATION TO AID SCHOOL AUTHORITIES IN THE SOUTH TO COMPLY WITH TITLE VI OF THE 1964 CIVIL RIGHTS ACT. THE TITLE REQUIRES COMPLIANCE IN DESEGREGATING THE SCHOOLS AS A PRECONDITION FOR FEDERAL FINANCIAL ASSISTANCE. SCHOOL DISTRICTS MUST CHOOSE EITHER TO (1) SUBMIT THE "FORM 441" ASSURANCE OF COMPLIANCE, (2) PRESENT A PLAN FOR DESEGREGATION, OR (3) FACE COURT ORDERS TO DESEGREGATE. THE GUIDELINES DESCRIBE THE REQUIRED INFORMATION WHICH THE STATES MUST SUBMIT TO THE OFFICE OF EDUCATION--A SUMMARY OF THE PRESENT RACIAL SITUATION IN THE DISTRICT SCHOOLS, TYPES OF DESEGREGATION PLANS, ADMINISTRATIVE PRACTICES AND PUBLIC NOTIFICATION FEATURES OF SUCH PLANS, AND POLICIES ON BUSES AND BUS ROUTES. THEY ALSO DISCUSS THE REQUIREMENTS FOR TEACHER AND STAFF DESEGREGATION AND THE RATE OF DESEGREGATION BY GRADE, AND NOTE THE ACT'S PROVISION FOR CONSULTANTS AND TECHNICAL ASSISTANCE. A SAMPLE OF AN OUTLINE FORM FOR COMPLIANCE INFORMATION IS INCLUDED IN THIS ARTICLE. THIS ARTICLE WAS PUBLISHED IN THE "SATURDAY REVIEW," MARCH 20, 1965. (NH)
Title VI: Southern Education Faces the Facts

The issue posed for Southern schools by Title VI of the 1964 Civil Rights Act is not whether they will desegregate. It is whether they will desegregate with- or without--continuing federal financial assistance. Even if federal aids are discontinued, segregated school districts still face the prospect of private litigation brought on behalf of Negro pupils in the community. And the Civil Rights Act increased the inevitability of desegregation by authorizing the Attorney General to bring suit in the name of the United States.

This memorandum is designed to furnish some guidelines to school authorities seeking compliance with Title VI. It stresses the points with which a desegregation plan must deal, illustrates ways in which particular procedures must be described, and suggests something of the range of choice open to a school district. What it cannot do is guarantee approval by the Commissioner of Education.

According to regulations promulgated by the Department of Health, Education and Welfare to implement the nondiscrimination policy of Title VI, school districts which seek to qualify for future federal aids must select among three courses of action:

1. "Form 441" Assurance of Compliance. This is an unqualified assurance that no discrimination whatever is practiced within the district. The 441 Assurance is largely inapplicable to districts in the seventeen states which in 1954 maintained legally separated Negro and white schools since in only a very few southern school districts have the last vestiges of the dual school system been eradicted. The Office of Education is returning for further information all 441 Assurances it receives from districts not fully desegregated and presumably a plan of desegregation rather than a 441 Assurance will be required in order to comply with requirements of Title VI.

2. Plan for the Desegregation of the School System. The regulations implementing Title VI will allow future approval of federal aids for a district which submits to the Commissioner of Education a suitable plan for removing whatever discrimination remains in the school system. For the great bulk of the biracial school districts of the South the only effective way to continue receiving federal aids lies in submitting a plan of desegregation.

3. Court Order for Desegregation of the School System. The regulations also authorize continuation of aids to districts which are operating under a final order of a court of the United States for the desegregation of the school system. It is crucial to note that the order must be one directing desegregation of the school system; an order merely authorizing admission of a few named individuals, for example, without otherwise providing for desegregation of the system,

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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will not suffice. Despite more than a decade of litigation only a small fraction of the South's biracial districts were acting under court-ordered desegregation plans when the regulations implementing Title VI were promulgated.

The major issues facing desegregating school districts are highlighted below, together with some guidelines to the procedures that may be followed.

In general, it seems clear that no tersely stated or vaguely defined plan will be approved. What must be done in any plan is to spell out enough detail so that there can be general understanding of the situation and problems in the district, of the policies and procedures designed to deal with the problems, and of the district's intentions to carry out the plan in good faith.

On all these points the burden of persuasion is on local school authorities. Each school district's plan must sell itself.

I. Summary Statement of Present Racial Situation in District Schools

All plans for desegregation or final court orders submitted to the U.S. Office of Education for compliance with the Civil Rights Act of 1964 should be accompanied by a summary statement describing the racial picture in the district schools at the time the plan is submitted. As an alternative, the questionnaire on page 78 may be used, with the district adding to the questionnaire whatever further information it believes appropriate.

The reason for this demand is that rational appraisal of any desegregation plan is impossible without a general picture of the circumstances in the district when the plan is submitted. The questionnaire covers the minimum information needed to tell the story. But if the district intends to make use of geographic attendance zones or if busing is to be employed, maps and statistics which show the general racial characteristics of the proposed arrangement are essential.

Lest there be undue concern that too great a burden is imposed by having to supply this much information, it should be understood that precise, up-to-the-minute statistics are not required. The information needed is the kind that knowledgeable school authorities are aware of in general terms. It is enough that what is supplied is what fair-minded school officials believe to be true and what reasonable men would think necessary to know in order to judge a desegregation plan rationally.

II. Types of Desegregation Plans: General Characteristics

Most school desegregation plans evolved since 1954 are based either on geographic attendance zoning or freedom of choice. Some plans combine features of geography and choice and occasionally it has been suggested that pupils should be assigned to schools according to achievement or ability test scores. While in many districts pupils are separated according to achievement, ability or vocational interests for some purposes, no widespread use has been made of these characteristics as the basis of plans for desegregation, though presumably they would suffice if operated in good faith without discrimination based on race.

Because geographic zoning and freedom of choice provide the usual bases for desegregation plans this memorandum concentrates on the features of these two types.

A. Assignment by Geographic Zoning

Throughout the country geographic zoning is the common means for assignment of pupils to schools. In the dual systems of the South prior to 1954, separate (and often overlapping) geographic zones were widely used to assign Negro pupils to Negro schools and white pupils to white schools.

Since desegregation involves doing away with these separate Negro and white schools, the use of geographic zoning to accomplish this result requires the establishment of a unitary rather than dual system of attendance zones. Or put in the form of an example, all elementary schools of the district, whether formerly Negro or white, would have to be zoned on a single map without any overlapping of attendance zones. Plans approved by courts in earlier years introduced unitary zoning on a grade-a-year or other stairstep basis. The questionable status of grade-a-year plans at present should give pause to any serious thought about using them, and any district must weigh carefully the factors discussed in Section VI of this memorandum as to any discriminatory practices preserved after fall 1965.

For many administrative purposes the relative simplicity of geographic zoning gives it evident advantages over assignment based on freedom of choice. It provides a relatively accurate way of forecasting future enrollments and is a direct method for shifting pupil populations to adjust for overcrowding.

Across the South the courts have uniformly held that assignment by attendance zones satisfies constitutional requirements for doing away with dual systems of schools, provided it is not used with the motive of producing racially invidious results. The fact that school authorities have the burden of explaining away circumstantial evidence of discrimination means that care should be taken to zone schools in ways which minimize instances in which suspicions of racial discrimination are likely to be aroused. And this is not an easy task.

The following examples illustrate situations likely to cause trouble: Oddly formed zones raise doubts, particularly where they coincide with racial boundaries between neighborhoods; indeed any zone lines coinciding with racial boundaries call for some explanation. Trouble zones also from creating optional attendance zones in racially mixed neighborhoods; certainly some special explanation is needed for any rule which permits out-of-zone attendance for residents of some but not all school zones.

Plans using geographic zoning should initially assign all pupils to the school in their zone of residence. Whatever transfer policies are available for attending outside the zone of residence should be open to Negroes and whites alike on the same terms and by the same means. The provision, sustained for a time in the courts, for permitting transfers to children who would be in a racial minority within their attendance zone school or classroom, has been struck down as a device to preserve segregation and will not do.

B. Assignment Based on Freedom of Choice

Desegregation plans based on freedom of choice are perhaps no more than transitional devices that ultimately will give way to unitary zoning. In theory, freedom of choice is unobjectionable. The practical difficulty is that the choice open may not in fact be free and school authorities who are considering freedom of choice plans have a special responsibility to assure themselves before adopting them that they can be carried out in good faith. Particularly is this true

(Continued on page 76)

Title VI—Nondiscrimination in Federally Assisted Programs

Section 601 of the Civil Rights Act of 1964 provides that: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

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where ingrained community custom is likely to result in economic reprisals or threats to parents and children.

Recently, Federal courts have directed some districts to install unitary geographic zoning where it was shown that free-3on-of-choice plans adopted earlier failed to affect the dual school pattern. But at present, plans based on freedom of choice appear sufficient to meet the requirements of Title VI, provided pupils are afforded a choice which is free and unfettered by past or present practices. Thus a choice of schools is not free where a pupil is initially assigned to a school on the basis of race and then is provided only a limited right to transfer to another school. For this reason, pupil Assignment Laws, by themselves, do not constitute acceptable plans of desegregation.

Again, a choice is not free where administrative practices within the school system make the exercise of choice a burden by requiring parents either to go through the ordeal of complex forms or discomfiting interviews. It would also be an improper burden to require a pupil to register at a place reserved for his race even though he was subsequently permitted to enroll at a school of his choice; the answer here is that the pupil should be permitted to apply directly to the school he desires to attend.

Somewhat different problems are presented in handling transfers and re-assignments of children already enrolled in school. One reasonable way to handle the matter is to have the necessary forms and instructions distributed by the classroom teachers in the schools the pupils presently attend--provided that neither the teachers nor other school authorities attempt to influence or pressure anyone in the exercise of choices to be made.

School districts which attempt to combine freedom of choice with geographic zoning face special problems. Where freedom of choice furnishes the theoretical basis for assignment, every pupil in the district should have a right to choose either a formerly white or formerly Negro school. If overcrowding results from the choices made, racial considerations cannot be employed to reject those who initially select the school threatened with overcrowding; geographic proximity to the school should then be employed in determining which choices to reject. Where such choices are thus rejected, further opportunity should be provided each parent and child to make another choice which can be carried out effectively. In other words, if freedom of choice is to be adopted, geographic zoning cannot be employed to prevent an effective choice of either a formerly white or formerly Negro school.

In light of the ease and convenience of administering geographic attendance zoning, it may be realistic for many districts to employ a combination which gradually adds unitary zoning to a desegregation plan which initially relied principally on freedom of choice. For example, unitary geographic zoning could be employed for initial assignment and re-assignment commencing with the lower elementary grades, while a policy of freedom of choice is applied to the remaining grades of the system. Over a fairly short period of time the unitary system of zoning would be moved upward through the other grades, supplanting freedom of choice.

In short, freedom of choice plans are probably no more than a transitional device. Districts, in view of this, should give serious thought either to going directly to unitary systems of zoning or to introducing unitary zoning at lower grade levels from the beginning, expecting to move the unitary zoning upward to replace the freedom of choice policy first installed at higher grade levels.

Federal Educational Expenditures

During fiscal year 1964, the federal government spent $331,410,000 for aid to elementary and secondary school programs in the seventeen Southern states. State-by-State expenditures are listed below. If the President's education program, now before Congress, is passed in substantially its present form, these amounts would be approximately doubled.

<table>
<thead>
<tr>
<th>State</th>
<th>Amount (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>229,463</td>
</tr>
<tr>
<td>Arkansas</td>
<td>10,202</td>
</tr>
<tr>
<td>Delaware</td>
<td>2,071</td>
</tr>
<tr>
<td>Florida</td>
<td>27,187</td>
</tr>
<tr>
<td>Georgia</td>
<td>27,872</td>
</tr>
<tr>
<td>Kentucky</td>
<td>17,514</td>
</tr>
<tr>
<td>Louisiana</td>
<td>16,021</td>
</tr>
<tr>
<td>Maryland</td>
<td>24,668</td>
</tr>
<tr>
<td>Mississippi</td>
<td>12,548</td>
</tr>
<tr>
<td>Missouri</td>
<td>17,283</td>
</tr>
<tr>
<td>North Carolina</td>
<td>27,914</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>17,098</td>
</tr>
<tr>
<td>South Carolina</td>
<td>15,802</td>
</tr>
<tr>
<td>Tennessee</td>
<td>19,290</td>
</tr>
<tr>
<td>Texas</td>
<td>44,241</td>
</tr>
<tr>
<td>Virginia</td>
<td>36,147</td>
</tr>
<tr>
<td>West Virginia</td>
<td>5,509</td>
</tr>
</tbody>
</table>

The written instructions to school districts furnished by the Department of Health, Education and Welfare make two points clear. First, there can be no discrimination practiced in desegregated grades as to questions of initial assignment, reassignment or transfer. Second, sufficient advance notice must be given so that parents can understand how the assignment and transfer rules work and can take advantage of them effectively. It is a common reaction among school officials and other local authorities facing their first school desegregation that disaster will follow if public announcement procedures and rules and procedures for making initial assignments and transfers. The answer to this is that the courts have consistently required clear and ample notice to be given--and the consequences have not been disastrous for communities that have made plain their intention to brook no disorder and to see that the rules are given firm and faithful implementation.

A frequent shortcoming of the desegregation plans initially forwarded to the Office of Education has been the failure to set out in any detail either the administrative specifics or the content, timing and manner of providing notice of assignment and transfer rights. Below, for illustrative purposes, are model forms of notice which set out the administrative details for handling four problems common to every system of schools. The models in question were designed for desegregation plans based on freedom of choice and would have to be adapted to fit the particular policy variations within any particular district. Too, the models would have to be altered to be made applicable to desegregation plans grounded on unitary geographic zoning.

The point to be stressed here is that every desegregation plan must deal specifically with providing notice of administrative details respecting initial assignment, reassignment and lateral transfer. Plans which fail to spell out the required policies and forms of notice for these four situations simply cannot be judged and thus no favorable action can be taken on them.

The following examples illustrate one way in which matters of notice, initial assignment, reassignment and transfer may be handled:

A. Pre-Registration of Pupils Planning to Enroll in Lowest Elementary Grades.

(1) Beginning 1965 (a date at least four weeks before pre-registration is to commence) and once a week for three successive weeks the notice below shall be conspicuously pub-
lished in two newspapers having general circulation in the district.

IV. Buses and Bus Routes

Districts which provide busing must make special provision in their plans to
make clear that discriminatory practices are removed. In dual school systems it has
been customary in many instances for separate buses to travel the same
roads, one to pick up Negroes for the Negro school and the other to take
whites to a different school. Again, separate bus routes for Negro and white
schools have operated in some instances to place individual children of either
race under the burden of going to a distant pick-up point for their own
race when a pick-up point for the opposite race was much more convenient.

The Office of the Superintendent will furnish at such times as are appropriate
to the parents or guardians of all other pupils newly enrolling in the schools of
the district the forms and instructions necessary to complete registration and
enrollment at the school of their choice. In the event of over-crowding, preference will be given
without regard to race to those choosing the school who reside closest to it.

These instructions for registration and enrollment at the school of their choice.

b) Annually after 1965, similar
practices will be followed with respect to registering and enrolling pupils for
the first time in the lowest elementary grades.

B. ALL OTHER PUPILS NEWLY ENROLLING IN DISTRICT SCHOOLS.

The Office of the Superintendent will furnish at such times as are appropriate
to the parents or guardians of all other pupils newly enrolling in the schools of
the district the forms and instructions necessary to complete registration and
enrollment at the school of their choice. These instructions for registration and
enrollment of new pupils shall be in writing and shall set forth in detail the
Board of Education policies and procedures for registering and enrolling in the
school of their choice (see form of published notice under Part A above).

C. PUPILS GRADUATING FROM ELEMENTARY AND JUNIOR HIGH SCHOOLS.

The initial assignment of pupils graduating either from elementary or junior
high schools and planning to enroll for the first time in a school at the next
higher level will be handled in the following manner:

All such pupils will be furnished by their classroom teachers on a date fixed
by the Superintendent prior to their graduation the appropriate instructions
and forms on which their parents or guardians may exercise their choice of the
school next to be attended by the pupils. A reasonable time will be provided for returning the form after it has been distributed and the written instructions accompanying the form shall set forth in detail the Board of Education policies permitting a free choice of the school next to be attended (see form of published notice under Part A above). Where no choice is exercised by the parents
or guardians within the time fixed, the pupil will be assigned without regard to race to the next higher school, and the instructions furnished parents and guardians shall so state.

D. LATERAL TRANSFERS BY PUPILS ELIGIBLE TO CONTINUE IN A SCHOOL WHERE CURRENTLY ENROLLED.

Prior to the end of classes for each school year pupils eligible to continue in
the same school will be assigned for the forthcoming year. At a date fixed by the
Superintendent and appropriately in advance of the time that reassignment for the forthcoming year is made, all pupils will be furnished by their classroom teachers with appropriate forms and instructions for use by their parents in exercising their right to apply for a transfer of their child to a school of their choice for the forthcoming year. Such instructions will set forth in detail the Board of Education policies regarding transfers without regard to race for the forthcoming year (see form of published notice under Part A above) and will state that each child will be reassigned to the school currently attended in the event the right of lateral transfer is not exercised within the time fixed in the instructions. The instructions will also provide for lateral transfer at other times of the year under special circumstances as may be fixed by the Superintendent under the Board's direction.

IV. Buses and Bus Routes

Districts which provide busing must make special provision in their plans to
make clear that discriminatory practices are removed. In dual school systems it has
been customary in many instances for separate buses to travel the same
roads, one to pick up Negroes for the Negro school and the other to take
whites to a different school. Again, separate bus routes for Negro and white
schools have operated in some instances to place individual children of either
race under the burden of going to a distant pick-up point for their own
race when a pick-up point for the opposite race was much more convenient.

Such policies and practices, supported with public funds, result in manifest
racial discrimination and if continued can seriously impair the right freely to
choose a school without regard to race. Desegregation plans must accordingly
spel out in detail the present racial character of busing practices, indicate
the steps which will be taken to create unitary systems of busing available to
all pupils without regard to race, and describe the manner in which parents
or guardians and pupils will be given notice of the right to ride buses without
regard to race.

V. Teacher and Staff Desegregation

Desegregation of teachers and professional staffs is ultimately in the picture.
It was characteristic of the legally separated schools that Negro teachers were assigned to Negro schools, white

The problem is one which every district must face and start working on.
Every desegregation plan should reveal awareness of the problem and provide
assurance that steps will be taken to remove racial discrimination in assignment of
Teaching personnel.

VI. Rate of Desegregation: How Many Grades to Desegregate?

It is difficult to advise with certainty concerning the rate at which desegrega-
tion must be completed. For one thing, the courts have ordered a speeding up in

The problem is one which every district must face and start working on.
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assurance that steps will be taken to remove racial discrimination in assignment of
Teaching personnel.
Compliance Information: Nondiscrimination in Federally Assisted Programs

This outline is furnished as an aid in reporting information generally helpful in appraising the sufficiency of plans for desegregation of school districts which seek compliance with the nondiscriminatory policy of Title VI of the Civil Rights Act of 1964. Precise, up-to-the-minute statistics are not required. The information sought is the kind that knowledgeable school authorities are aware of in general terms and approximations will suffice where exact detail is not easily available.

I. Racial Characteristics of School Population

A. By race, what are the approximate school-age populations residing within the geographic boundaries of the school district (including residents who attend public schools outside the district or private school within or without the district)?

<table>
<thead>
<tr>
<th>Race</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>123,456</td>
</tr>
<tr>
<td>Negro</td>
<td>56,789</td>
</tr>
<tr>
<td>Other</td>
<td>34,567</td>
</tr>
</tbody>
</table>

B. How many Negroes presently attend predominantly white schools?

C. How many whites presently attend predominantly Negro schools?

D. By grade level, approximately how many Negro pupils presently attend classes with whites in the public schools of the district (strike out grades not actually taught in district schools)?

<table>
<thead>
<tr>
<th>Grade</th>
<th>White</th>
<th>Negro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kindergarten</td>
<td>123</td>
<td>56</td>
</tr>
<tr>
<td>1st grade</td>
<td>456</td>
<td>78</td>
</tr>
<tr>
<td>2nd grade</td>
<td>345</td>
<td>67</td>
</tr>
<tr>
<td>3rd grade</td>
<td>567</td>
<td>89</td>
</tr>
<tr>
<td>4th grade</td>
<td>789</td>
<td>12</td>
</tr>
</tbody>
</table>

E. How many pupils attend public schools outside the district on a tuition-paid basis?

F. How many pupils residing in the district presently attend private schools on a tuition-grant basis (strike out grades not actually taught in district schools)?

G. Where separate treatment is accorded any other non-white groups besides Negroes, please indicate the general situation on a separately attached sheet.

II. Racial Characteristics of District Schools

A. What is the number of elementary schools (grades [ ] through [ ]) in which the pupils enrolled are: all white; all Negro; integrated; other (describe separately)?

B. What is the number of junior high schools (grades [ ] through [ ]) in which the pupils enrolled are: all white; all Negro; integrated; other (describe separately)?

C. What is the number of high schools (grades [ ] through [ ]) in which the pupils enrolled are: all white; all Negro; integrated; other (describe separately)?

D. Briefly describe on a separately attached sheet the general racial characteristics of the pupil populations in any special schools operated by the district which are not accounted for in the categories set out above.

III. Racial Characteristics of Teaching and Administrative Staffs

A. By race, what is the approximate number of teachers in the district who are: white; Negro; other.

B. By race, what is the approximate number of non-teaching staff members who are: white; Negro; other.

C. How many elementary schools have teaching staffs which are: all white; all Negro; integrated; other (describe separately)?

D. How many junior high schools have teaching staffs which are: all white; all Negro; integrated; other (describe separately)?

E. How many high schools have teaching staffs which are: all white; all Negro; integrated; other (describe separately)?

IV. Maps

Maps, which need not be of professional quality, can be separately furnished where useful or perhaps necessary to demonstrate such things as school location, bus routes. Supply these separately where this is thought desirable to demonstrate particular characteristics of a desegregation plan.

V. School Bus Routes and Practices

Where school buses are supplied for some or all pupils, describe in a general way on a separate sheet the effect which the routes and stops made by the buses have on the racial characteristics of the district's schools.

Date: __________________________ Name of District: __________________________

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It is also true for districts which have yet to take the first step.

Clearly, the surest course is to make the desegregation program available generally to all grades for fall 1965. If less than this is done, desegregation should be installed both from the bottom of the system upward and from the top down. The real question for any district is the extent to which it wishes to risk disapproval of its plan.

VII. Consultants and Technical Assistance

Other provisions of the Civil Rights Act of 1964 make available funds to assist school districts in designing and carrying out plans of desegregation. The U.S. Office of Education currently retains a group of legal consultants who can be called on by school districts who request such assistance. State Departments of Education, in complying with Title VI, agree to provide advice and assistance to local school authorities in working out desegregation problems and the State Departments may arrange ways for providing further guidance through the use of consultants and others. Questions concerning such help should be addressed to the State Departments of Education or to the U.S. Office of Education.

—G. W. Foster, Jr.
Professor of Law,
University of Wisconsin
and Consultant to
U.S. Office of Education.