



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D C. 20202-_____

February 18, 2000

Chancellor Adam W. Herbert
State University System of Florida
325 West Gaines Street
Suite 1514
Tallahassee, Florida 32399-1950

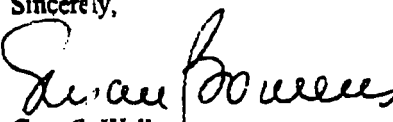
Dear Chancellor Herbert:

It is our understanding that the Board of Regents voted on February 17, 2000, at its meeting in Orlando to adopt the proposed rule changes to the admission procedures to the State University System (SUS). The rule changes implement in part the Governor's One Florida Initiative to eliminate the consideration of race in admissions to the SUS, and implement the Talented 20 and the Profile Assessment Programs.

As I indicated to you in my letter dated January 14, 2000, the Atlanta Office is monitoring the Florida/OCR Partnership Report and Commitments that are intended to expand minority access to higher education and increase the retention and graduation of minority students in the SUS. As stated in my letter, OCR has concerns as to the implementation and potential impact of the Talented 20 and the Profile Assessment Program. I indicated that should the proposed rule changes to the admissions procedures be adopted, OCR would need to meet with you and the Partnership Team to discuss how you propose to ensure that the goals of the Partnership Commitments would be met at the undergraduate and graduate level, particularly in light of the Board's recent decision. Our discussion will necessarily include, but not be limited to: (1) the impact of the 19 course credit requirement for college admission on minority students; (2) plans for ensuring access for minority students to the flagship institution in Florida; and, (3) graduate and professional school admissions.

I am proposing that we meet within the next two weeks on this matter. My staff and I are available on the following dates: February 29, March 1 or 2. Please let me know whether your schedule can accommodate such a meeting on these dates. We can of course meet in your office or will be agreeable to hosting a meeting here in Atlanta. I look forward to hearing from you. You may reach me at (404) 562-6350.

Sincerely,

for 
Gary S. Walker
Director
Atlanta Office for Civil Rights
Southern Division

cc: Regina Sofer
Carol Licko



United States Department of Education Office of the General Counsel

Telephone: (202) 401-6000

Facsimile: (202) 205-2689

Fax Transmission Cover Sheet

To: Maria Echaveste / Peter Rundlet From: Judy Winston
Fax: 456-1907 456-5053 Pages: 9 (Including cover)
Phone: _____ Date: 2/7/00
Re: _____ CC: _____
☒ Urgent ☐ As Requested ☐ FYI ☐ Please Comment/Reply

Note/Comments:

To: Andy
From: MARIA

FYI

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Chancellor Adam W. Herbert
State University System of Florida
325 West Gaines Street
Suite 1514
Tallahassee, Florida 32399-1950

Dear Chancellor Herbert:

I am writing to share with you a February 7, 2000 letter sent by Secretary Richard Riley to Chairperson Mary Berry of the U.S. Commission on Civil Rights. The enclosed letter addresses some confusion in press accounts about the Department of Education's views regarding Governor Jeb Bush's Executive Order 99-281 and his One Florida Education Plan.

Secretary Riley and I do not believe that there is any misunderstanding between this Department and your office on the issues discussed in Secretary Riley's letter. However, we wanted to be sure that you received a copy of the letter in which the Secretary states unequivocally that the Department neither approved nor endorsed the Governor's Plan to eliminate affirmative action. The Department's Office for Civil Rights will continue to work with your office to address these and other issues to ensure that the goals of our Civil Rights Partnership Commitments and Agreement are fulfilled.

You should feel free to share Secretary's Riley's letter with others, especially if you think it would help to dispel any continuing misperception regarding our position on this matter.

Sincerely,

Judith A. Winston

Enclosure



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

February 7, 2000

Dr. Mary Frances Berry
Chairperson
United States Commission on Civil Rights
624 Ninth Street, NW
Washington, DC 20425

Dear Dr. Berry:

In response to your request, I am writing to address any confusion that may have arisen about the Department of Education's views regarding Governor Jeb Bush's Executive Order 99-281, and his One Florida Education Plan (the Governor's Plan). The Governor's Plan, in part, recommends that the Board of Regents implement a policy to prohibit the use of racial and gender set-asides, preferences or quotas in admission to all Florida higher education institutions.

Let me assure you that the Department has not endorsed or approved the Governor's Plan. To the contrary, this Department continues to support strongly the use of appropriately tailored affirmative action programs under the Constitution, Title VI of the 1964 Civil Rights Act and Title IX of the Education Amendments of 1972. Such affirmative action programs are educationally sound and vital tools for remedying the effects of prior discrimination and for fostering the educational benefits of diversity at educational institutions. Our position on this issue is consistent with the President's policy of "mending, not ending" affirmative action and is supported by applicable law including the Supreme Court's 1978 decision in Bakke v. Regents of the University of California.

I regret that some individuals and press accounts have misread and misinterpreted the January 14, 2000 letter from the Office for Civil Rights to Florida Chancellor Adam Herbert. That letter provided preliminary feedback, at the Chancellor's request, regarding the narrow issue of whether the Governor's Plan conflicts with Florida's existing obligations under its Civil Rights Partnership Commitments and Agreement (the Agreement) with the Office for Civil Rights. The Agreement was developed to help Florida meet its duty to eliminate the vestiges of prior segregation in its higher education system as required by the Supreme Court in U.S. v. Fordice. As the letter indicates, the Office for Civil Rights' preliminary assessment is that the Plan can be reconciled with the Partnership Commitments; however, there remain important areas of concern that need to be addressed by the State. For example, the Governor's Plan is currently silent as to whether students eligible for admission would be admitted to Florida's flagship universities and how the Plan will affect admissions at Florida's graduate schools. These concerns are important to me and to the Department, and I can assure you that the Office for Civil Rights will continue to monitor and work with the State to address these and other issues to ensure that the goals of the Agreement are fulfilled.

Page 2 - Dr. Mary Frances Berry

Because the January 14 letter addresses the narrow issue of the consistency of the Governor's Plan with the Agreement, the letter did not address the Governor's policy decision to end affirmative action. Therefore, as I indicated above, the letter should not be misinterpreted as an endorsement of the Governor's Plan to eliminate affirmative action. On the contrary -- even apart from the issue of compliance with the Agreement -- we are concerned about the negative effects that eliminating affirmative action may have on minority access to all of Florida's institutions of higher education. It is very important that minority students have real access to these educational opportunities and that schools reflect the diversity that is the strength of academic discourse.

Members of my staff have attempted to make this clear to Florida State officials and in response to inquiries from members of Congress, the press and others (see enclosed letter to Representatives Brown and Meek). I welcome any assistance you are willing to provide to underscore our position on this matter, and I hope this letter will be helpful in that regard. Please feel free to share it as appropriate. If you have any questions or concerns, please contact me.

Yours sincerely, .

A handwritten signature in black ink, appearing to read "Dick Riley", with a stylized flourish at the end.

Richard W. Riley

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

JAN 19 2000

The Honorable Corrine Brown
United States House of Representatives
2444 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Carrie Meek
United States House of Representatives
401 Cannon House Office Building

Dear Representatives Brown and Meek:

This is in reference to Representative Brown's telephone call to me on January 19, 2000. During our conversation, Representative Brown stated that she is concerned that the Office for Civil Rights' January 14, 2000 letter to Chancellor Herbert regarding Governor Bush's Executive Order/Equity in Education Plan (the "Plan"), is being interpreted by some State officials as an endorsement of the Governor's Order ending the use of race-based affirmative action in the State of Florida. During our conversation, I clarified that this is not the intent of the January 14 letter. I explained further what is in fact the purpose, scope and intent of that letter. Per Representative Brown's request, I am providing that explanation in writing to her and Representative Meek.

On January 14, 2000, Gary Walker, Director of our Atlanta Office for Civil Rights, sent a letter to Chancellor Adam W. Herbert of the State University System of Florida that provides preliminary feedback regarding the Governor's Plan in light of the existing Florida/United States Office for Civil Rights Partnership Report and Commitments (Commitments). The letter addresses the State's ability to continue to fulfill the Partnership Commitment's overall goal of expanding access to minority students to educational opportunities if the Governor's Plan is adopted. With respect to postsecondary education programs, the letter states:

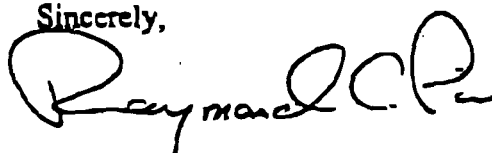
[O]ur preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students in higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments.

Representatives Corrine Brown and Connie Meek – page 2

Our January 14 letter was directed at the important but narrow issue of Florida's obligations under its Partnership Commitments. However, as the Commitments do not require the use of race-based affirmative action, the letter does not address the issue of affirmative action or the Governor's decision to end its use in the State of Florida. We recognize that the Governor's plan has raised substantial concerns regarding the elimination of race-based affirmative action. As we discussed, the Department strongly supports appropriately-tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." It is the Department's position that, under the Constitution and Title VI of the Civil Rights Act of 1964, it is permissible in appropriate circumstances for colleges and universities to consider race in making admissions decisions. They may do so to promote the educational benefits of diversity consistent with Justice Powell's landmark decision in *Regents of the University of California v. Bakke*. They may also do so to remedy the continuing effects of discrimination. As Secretary of Education Richard Riley stated in his "Dear Colleague Letter" dated March 19, 1997, regarding the passage of California's Proposition 209, which generally prohibits the use of affirmative action, "I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions." I am enclosing a copy of the Secretary's March 1997 letter for your information.

With respect to the more narrow issues addressed in the Partnership Commitments, we will continue to work with the State of Florida to ensure that the goals of the Commitments are in fact fulfilled. I hope this letter is helpful in addressing your concerns. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Raymond C. Pierce". The signature is fluid and cursive, with the first name "Raymond" being more prominent than the last name "Pierce".

Raymond C. Pierce
Deputy Assistant Secretary
For Civil Rights

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

March 19, 1997

Dear Colleague:

I am writing to address certain questions that may be raised in the wake of the passage of the California Civil Rights Initiative, Proposition 209, regarding the responsibilities of California's school districts and colleges under educational programs and civil rights laws administered by this Department. I want to confirm that the passage of Proposition 209, which would generally prohibit affirmative action under state law for women and racial minorities, has not changed the obligation of school districts and colleges to abide by federal civil rights statutes in order to remain eligible to receive Department funding, nor has it changed the obligations of schools participating in a small number of federal programs administered by the Department to consider race, as appropriate, under the terms of those programs. In addition, I want to express my continuing support for appropriately-tailored affirmative action measures, which are important tools in our efforts to ensure that all students achieve to high standards.

As a preliminary matter, please be advised that the implementation of Proposition 209 has been enjoined by the federal district court hearing the constitutional challenge to Proposition 209 brought in the case entitled Coalition for Economic Equity v. Wilson, pending the outcome of the case. Regardless of the outcome of the constitutional challenge to Proposition 209, all school districts and colleges, including those receiving funding from the Department of Education, must ensure that they adhere to the requirements of the federal civil rights laws. Students and other beneficiaries of programs administered by schools and colleges receiving Department of Education funds are protected from discrimination on the basis of race, color, or national origin, as guaranteed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. These institutions also must ensure that students and employees are not subjected to discrimination on the basis of gender pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. 1681. School districts and colleges have an affirmative duty under these federal civil rights statutes to eliminate the effects of prior discrimination on the basis of race, color, national origin, or gender. The passage of Proposition 209 has not changed the obligation of school districts and colleges to abide by these federal civil rights statutes in order to remain eligible to participate in Department programs.

To ensure that school districts and colleges in California comply with the requirements of Title VI and Title IX, the Department's Office for Civil Rights (OCR) will continue to investigate complaints that these federal statutes have been violated and, if Proposition 209 does go into effect, will assess its implementation in light of federal statutory requirements. By its terms, Proposition 209 does not affect any activity that is necessary to maintain eligibility for federal funding. Of course, institutions that are implementing compliance plans that have been approved by OCR under Title VI or Title IX must continue to comply with those plans in order to remain eligible for Departmental funding.

Page 2 - Dear Colleague Letter

There are two Department programs that include race-targeted measures regarding the selection of beneficiaries, in addition to others that include race-targeted recruitment and outreach efforts. Under the Department's Magnet Schools Assistance Program, race-targeted measures often may be necessary to meet the desegregation purposes of the program, 20 U.S.C. 7201. The Department also administers the Program to Encourage Minority Students to Become Teachers, which was enacted by Congress as part of the Higher Education Act, 20 U.S.C. 1112a, *et seq.*, to encourage students from minority backgrounds to become elementary or secondary school teachers. California colleges and school districts have received grants under these programs.

The Department of Education continues to be available as a resource to provide technical assistance to educational institutions in California to enable them to meet their obligations under federal civil rights statutes and to maintain eligibility for federal financial assistance. Enclosed is a list of Department employees who may be contacted for that assistance.

In closing, let me assure you that just as I remain committed to fulfilling the mandates of both Title VI and Title IX by requiring the elimination of discrimination based on race, national origin, or gender, I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions. The number of colleges with affirmative action admissions and financial aid programs attests to the experience of many frontline educators that diversity is needed to improve the quality of education for all students.

Yours sincerely,


Richard W. Riley

Enclosure

LIST OF DEPARTMENT OF EDUCATION CONTACT PERSONS**1. Program to Encourage Minority Students to Become Teachers**

**Ms. Vicki Payne
Office of Postsecondary Education
Higher Education Programs
Institutional Development & Undergraduate Education Service
U.S. Department of Education
Washington, D.C. 20202
202-260-3291**

2. Magnet Schools Assistance Program

**Mr. Steven L. Brockhouse
Office of Elementary & Secondary Education
School Improvement Programs
U.S. Department of Education
Washington, D.C. 20202
202-260-2476**

3. Office for Civil Rights

**Mr. Stefan Rosenzweig
Office for Civil Rights
U.S. Department of Education
50 United Nations Plaza
Room 239
San Francisco, CA 94102
415-437-7700**

**Mr. Gary Jackson
Office for Civil Rights
U.S. Department of Education
915 Second Ave. - Room 3310
Seattle, WA 98174
206-220-7880**

**Ms. Cathy Lewis
Office for Civil Rights
U.S. Department of Education
Washington, D.C. 20202
202-205-8217**



Anna Richter

02/04/2000 12:51:18 AM

Record Type: Record

To: Andy Rotherham/OPD/EOP@EOP, Irene Bueno/OPD/EOP@EOP

cc:

Subject: Florida AA --NYT

Jeb Bush Roils Florida on Affirmative
Action

By PETER T. KILBORN

MIAMI, Feb. 3 -- From school vouchers to the death penalty, Gov. Jeb Bush of Florida has had one political success after another in his first year in office. But his sweeping program to end affirmative action in the state, modeled partly after the one in his brother's state, Texas, has inflamed black leaders, even some who had supported him, and looms as the first real test of his administration.

The passions that have been swirling around his program, which among other things gives a break in college admissions to the poor instead of minorities, broke out in a historic theater in downtown Miami today, where 1,700 protesters filled the seats in the orchestra and balcony and hundreds more circled the block waiting their turn to get in.

Mr. Bush, a Republican, put his program, One Florida, into effect by executive order last November without inviting public comment, and he did not attend a hearing before 600 people last week in Tampa. But today he stayed for more than two hours, often taking notes.

Mr. Bush agreed to ask a legislative committee to conduct three hearings after two black legislators staged a sit-in the Capitol.

"We are embracing diversity, not rejecting it," Mr. Bush, the first speaker at today's hearing, told the mostly black audience. "This plan will create more opportunity for people."

To a din of jeers, he added, "This has been a difficult time for me. The last two weeks I have carried a heavy heart around."

Then to deafening cheers, Carrie P. Meek, a Democrat and black congresswoman from Miami, spoke: "The pain the governor feels is a self-inflicted wound."

There is widespread support among whites for Mr. Bush's program, which would end preferences for businesses owned by women and minorities in bidding for state contracts. And it would end college admissions preferences based on race, substituting a program guaranteeing admission to at least 1 of the 10 state universities for high

school students who graduate in the top 20 percent of their class.

But the outpouring from blacks in Florida has made it clear that Mr. Bush's plan, an effort to fend off a more severe public referendum on affirmative action like those that passed in California and Washington, had failed to defuse the issue.

The debate has implications for politics far beyond Florida. It draws national attention to the state, which has replaced California as the primary battleground over affirmative action. And the governor's college admission plan, modeled after one in Texas that grants admission to the top 10 percent of high school graduates, is likely to touch, at least tangentially, the presidential campaign of Mr. Bush's brother Gov. George W. Bush.

The Texas governor, who received about 27 percent of the black vote in the last governor's race, is likely to confront the polarizing issue before the presidential primary here on March 14.

Some black leaders see promise in the One Florida plan, in that it might create opportunities for the poor, disproportionate numbers of whom are black. But they bristle at the governor's abolition of affirmative action, a lack of detail in his plan and above all, his style and methods.

Despite Mr. Bush's presence at today's hearing, some blacks said the governor's reaction to their opposition showed him to be intransigent, secretive and petulant. And they complain of having been excluded from the plan's preparations and finding closed doors when they they ask to discuss it.

Calls today and on Wednesday to Mr. Bush's office for the governor's reaction to these criticisms were not returned.

"When you think you know better for your child, you do what's best without asking him," said Kenneth Nunn, a black law professor at the University of Florida and an expert on affirmative action.

"So we got One Florida. Now we have an enraged black community."

The Rev. R. B. Holmes, pastor of the 6,000-member Bethel Missionary Baptist Church in Tallahassee and a Democrat, was Mr. Bush's most outspoken black supporter in the 1998 governor's campaign, which Mr. Bush won with 55 percent of the vote. Now, he said, he felt double-crossed and embarrassed.

"Instead of One Florida, it's divisive Florida," Mr. Holmes said. "This is the first time in a long time I've seen so many black leaders so outraged by a governor's initiative. This has left me in a very precarious position. It compromised my sense of 'whoseness' -- who I am as a person."

Outside today's hearing, people chanted, "We are not going back. We are not going back." Sam Guydon, a teacher wearing the baseball cap of the predominantly black fraternity Alpha Phi Alpha, said, "It's not about giving us advantage. It's about taking away the disadvantage. Racism is

still here."

One Florida is an effort to confront disparities in opportunities and incomes of minority groups and whites. It is also a means of dodging a court ruling like one four years ago against a Texas affirmative action program that gave minorities an edge over similarly qualified whites in university admissions.

It also seeks to avoid the sweeping referendums in California and Washington promoted by Ward Connerly, a black businessman in Sacramento. Mr. Connerly has made Florida his next battleground for the November elections, and his proposed ballot initiative, which, among other things, would banish affirmative action throughout the public sector, is being reviewed by the state Supreme Court.

Under One Florida, the contracting provision that Mr. Bush put into effect with an executive order in November asks state procurement officials to strive harder to award more business to minority contractors.

But it leaves assessment of the procurement officers' progress to their elected superiors.

The college admission policy is expected to take effect next month after approval by the university system's Board of Regents.

Blacks accuse the governor of ignoring them. Representative Leslie Miller Jr., a Tampa Democrat and the minority leader in the state House of Representatives, said that Mr. Bush had agreed to meet with him only once for four minutes.

"If you're African-American and don't agree with him," Mr. Miller said, "he pushes you off to the lieutenant governor or his staff members."

Bishop Victor T. Curry, pastor of the New Birth Baptist Church in Miami and president of the Miami-Dade County branch of the National Association for the Advancement of Colored People, recalled Mr. Bush's defeat in his first race for governor six years ago and his statement then that he would do "probably nothing" to help African Americans.

When Mr. Bush began his second campaign two years ago, he sought out people like Bishop Curry. "Bush sat in my office," Bishop Curry said. "I said, 'You've got to deal with this issue of doing nothing.'"

Mr. Bush campaigned actively in the black community. In the end, he won only about 14 percent of the black vote, about the same percentage as the state's black population. But he had won some good will, Bishop Curry said, and blacks did not actively fight his legislative agenda last year.

Whatever good feeling Mr. Bush and the African-American community shared last year has been evaporating since Mr. Bush announced One Florida.

"This is the fulfillment of that philosophy" to do nothing, said Bishop

Curry, who did not support Mr. Bush's election. "There's no compassion. He has no compassion for people who are disenfranchised."

Still, blacks held their fire until two weeks ago, when state Senator Kendrick Meek of Miami and state Representative Tony Hill of Jacksonville occupied the office of the Republican lieutenant governor, Frank Brogan, in Tallahassee after they were rebuffed in attempts to see Mr. Bush.

The sit-in ended after 20 hours, when Mr. Bush agreed to hold public hearings on One Florida in Tallahassee, Tampa and Miami and to delay the Board of Regents vote on the college admission plan.

During the sit-in, Mr. Bush was recorded on video tape using a profane word in telling an aide to kick them out, a remark that Mr. Bush's office said later referred only to reporters. But Mr. Meek said he took the governor's remark to mean him and Mr. Hill.

"That was a low point," said Susan MacManus, a political scientist at the University of South Florida in Tampa.

With Florida's presidential primary approaching, Ms. MacManus said, "this will get national attention."

"What affects one brother affects the other," she said. "They're kind of joined at the hip."

Dario Mareno, professor of political science at Florida International University, said, "This is the first big problem for Bush."

"If you look at it carefully," he said of One Florida, "it is not bad. But he's run into a real buzz saw. One of the things that has contributed has been his stubbornness."

From *Washington Post* On Line

Higher Ed: Department of Education

By *Kenneth J. Cooper*

Washington Post Staff Writer
Thursday, February 3, 2000; Page A21

Civil rights monitors at the Education Department say Florida Gov. Jeb Bush (R) can go ahead with his plans to abolish affirmative action at the state's once-segregated colleges and attempt to preserve campus diversity by considering the high school class rank and social backgrounds of applicants, instead of their race and ethnicity.

But the department's Office for Civil Rights also warns it will be keeping an eye on the bottom line: how Bush's plan affects the number of minority students enrolled at every one of Florida's 10 state universities. Currently, minorities make up 35 percent of the overall undergraduate enrollment.

Bullishly, Bush has predicted his semi-guarantee of admission to the top fifth of each high school class will increase minority enrollment. Federal monitors don't seem as sure about the outcome.

State college systems in Florida and five other states remain under federal scrutiny because for decades they operated separate but unequal colleges for whites and blacks. Civil rights reviews are under way in Maryland, Virginia and Texas. A recent agreement with Kentucky is prodding the state to fund \$12.5 million in renovations at historically black Kentucky State University and to step up recruitment of African American students at Northern Kentucky University. A pact with Pennsylvania was signed last year.

In Florida, the changes in admissions practices that Bush proposed last November raised a question about whether they comply with a civil rights agreement reached in 1998 between the Education Department and Bush's Democratic predecessor, Lawton Chiles.

The answer, delivered this month to Florida Chancellor Adam W. Herbert, is a tentative yes. Gary S. Walker, southern regional director for civil rights, wrote that in "our preliminary assessment," Bush's plans "can be reconciled . . . with the overall goal of expanding access for minority students in education."

Florida can remain in compliance with the five-year agreement because the pact doesn't dictate that affirmative action be used to improve minority access. Bush's "Talented 20" program and his willingness to let colleges consider social factors, Walker concluded, "add another avenue for admission" of minority students.

In two weeks, the state Board of Regents is scheduled to give final approval to the new policies, action that was postponed last month because of a sit-in by black legislators. Earlier protests prompted Herbert to delay for a year any changes in admissions policies for graduate programs.

Andy
218

Feb. 2, 2000

To: Maria Echaveste
From: Eddie Correia

You asked me to summarize the issues raised by the exchange of statements regarding OCR's position on Governor Bush's One Florida Initiative (OFI).

Background

OCR's agreement with Florida (the "Partnership Agreement") stems from the state's obligation to break down its historically segregated higher education system. OCR negotiated agreements with several states, based on the Supreme Court's Fordice decision. The agreement refers briefly to admissions policy but requires only that "alternative admission criteria will be continue to be used as a means for broadening the opportunities of students, including minorities, to attend SUS universities." It does not require the state to use affirmative action or to achieve any particular level of diversity. Consequently, the agreement does not really address the difficult policy considerations raised by the OFI.

After extensive discussions between OCR and staff from the Governor's Office, OCR concluded (at least tentatively) that the OFI did not violate the Partnership Agreement. On January 14, OCR's Atlanta Office wrote the Chancellor of the Florida University System indicating that the OFI "can be reconciled" with the Partnership Agreement. Unfortunately, the letter did not clearly differentiate between the Administration's position on the admissions policies recommended in the OFI and the legal obligations of the Partnership Agreement. The Governor then issued a news release claiming that the Administration had approved the OFI. OCR was contacted by Congresswomen Meek and Brown, who were concerned about the release. OCR then wrote a letter to them, which stated more clearly that we were not endorsing the OFI admissions policies. The Department of Education also told the press that we had not approved the plan. The question is whether we need to do anything else at this point.

Arguments for No Action

First, there have already been a number of clarifying statements by the Administration. A number of press reports have quoted the second OCR letter, statements by Congresswoman Meeks, or the Education Department stating that we haven't approved of the plan. Opponents of the OFI can also use these statements in the hearings on the plan. Second, another letter from us would appear too political in that it would be perceived as intended to criticize Governor Bush and perhaps even George W. Bush. The Florida situation has become highly politicized because of the sit-in by opponents of the plan, and the objections to the OFI have become a major point for opponents of the Governor.

Arguments for Another Letter

First, there is still ambiguity about the significance of OCR's decision. For example, a spokesman for Governor Bush claimed in one article that the second OCR letter contradicts others within OCR. The problem is that OCR's review of the legal obligations under the Partnership Agreement has become confused with a policy review of the OFI's approach to achieving diversity. We have never communicated with any Florida official regarding the distinction between our position on the Partnership Agreement and our position on the higher education component of the OFI. A letter from the ED (from someone other than OCR) could state our position clearly. The civil rights community, both nationally and in Florida, has urged us to make another statement. Second, sending a letter provides us with an opportunity to mention some concerns we have about the OFI itself. By pointing to some weaknesses in the plan -- e.g., the failure to include Florida's leading universities, the failure to cover graduate schools, and the fact that many minority students cannot qualify for the Talented 20 program -- we can influence the actions of the Florida Regents in their decision to accept, reject or modify the OFI.

Attached Materials

I am sending you some background materials, including excerpts from the Partnership Agreement, the OCR correspondence, the press release from the Governor's Office, and some of the recent articles. I've also drafted a possible letter in case we want to send something.

cc: Beth Nolan
Peter Rundlet
Irene Bueno
Andy Rotherham
Eric Liu

JAN-14-00 16:57 From:

T-317 P.02/04 Job-750



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ATLANTA OFFICE, SOUTHERN DIVISION
61 FORSYTH STREET, SW
SUITE 19T70
ATLANTA, GEORGIA 30303**

January 14, 2000

**Chancellor Adam W. Herbert
State University System of Florida
325 West Gaines Street
Suite 1514
Tallahassee, Florida 32399-1950**

Dear Chancellor Herbert:

Subsequent to our meeting of December 7, 1999, with you, members of your staff and the Governor's office, we indicated that we would continue our review of the Governor's Executive Order and the Equity in Education Plan in light of the existing Florida/United States Office for Civil Rights (OCR) Partnership Report and Commitments (Partnership Commitments) and provide you with some preliminary feed-back before the next Board of Regents meeting scheduled for January 21, 2000. During our December 7 meeting, OCR was provided with additional information and statistical projections for enrollments under the Talented 20% Program. We were also given a copy of the draft report of the Talented 20 Implementation Task Force. The draft report sets out in greater detail guidelines for the implementation of the Talented 20 Program, the Profile Assessments Program, and the coordination process between the State University System (SUS) institutions, school districts, Florida Department of Education and the Chancellor's office.

First, with regard to elementary and secondary programs, our preliminary view is that the Governor's Executive Order and the Equity in Education Plan advance the goals of the Partnership Commitments. In particular we note many specific initiatives targeted toward low achieving elementary and secondary public schools in Florida that correlate directly with the Partnership Commitments. Some of these areas include: 1) promoting staff development for teachers; 2) hiring qualified teachers; 3) aligning academic instruction with graduation standards; 4) raising GPA, high school competency test scores, and 10th grade access to the PSAT; 5) increasing support for the College Reach Out Program; and, 6) providing and ensuring equity in programmatic areas and funding support to low-performing schools under the A+ Plan and through the work of the Equity in Education Opportunity Task Force. In addition, at the community college level, the Governor's Equity in Education Plan supports the Partnership Commitments by recommending increased support for retention and remediation reduction programs, and efforts to increase the graduation rates to 4-year programs.

JAN-14-00 14:57 From:

T-317 P.03/04 Job-750

Chancellor Herbert
Page 2

At the SUS level, the Partnership Commitments were intended to expand access to higher education and increase the retention and graduation of minority students in the SUS, as well as to enhance the programs at Florida A & M. To achieve this, the SUS continued the use of alternative admission program as a means of broadening the opportunities of all students, including minorities, to attend the SUS. Under the Partnership Commitments, alternative admission criteria must take into account an applicant's academic ability, but consideration may also be given to the applicant's creativity, talent, and character. The SUS articulated a continuing goal of diversity in the composition of the student population in the SUS. Alternative admissions criteria have been used by the SUS to provide access to a diverse group of students, minority and non-minority, who otherwise would not have been eligible under traditional admission criteria.

The Executive Order and the Equity in Education Plan, at the SUS level, appear to add another avenue for admission to the SUS through the implementation of a new Talented 20% Program and to replace the Alternative Admission Program with the Profile Assessment Program. Under the Talented 20% Program students who do not meet traditional admission criteria will, under certain conditions, be guaranteed admission to one of the ten institutions in the SUS. This guarantee is extended to the top 20% of each graduating class from each public high school in Florida. Under the Profile Assessment program, up to 10% of each entering freshman class in the SUS can include students who do not meet traditional admission criteria, do not qualify under the Talented 20% Program, but who have demonstrated through their academic abilities and other factors that they can carry out a successful academic program in the SUS. Twenty five factors, including first time in college, geographic location, graduation from a low-achieving school, and socio-economic factors, may be considered for those students admitted under the Profile Assessment.

In sum, our preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students to higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments. To this end, the monitoring provisions of the Partnership Commitments would be revised to seek information regarding the impact of the Plan, once it is implemented, on the various sections of the Commitments, particularly with respect to its impact on access to higher education for minority students. For example, OCR will ask for information on how the Talented 20% Program and the Profile Assessment Program will impact access to minority students in each of the individual SUS institutions at the undergraduate level.

JAN-14-00 10:58 From:

T-317 P.04/04 Job-750

Chancellor Herbert
Page 3

With respect to graduate and professional schools, it is OCR's understanding that you have proposed a delay in implementing the Governor's Plan until academic year 2001-2002. If your recommendation is accepted, there would be no immediate impact on the provisions in the current Commitments related to access for minority students to graduate and professional schools. Thus, the State would continue to implement those provisions per the current Commitments for academic year 2000-2001. If our understanding is not correct, however, please contact me immediately so that we can discuss this issue before your January 21 meeting. Once the Governor's Plan is implemented at the graduate and professional schools level, OCR will ask for information on how the plan will impact access to minority students in graduate and professional programs.

I am confident that OCR and the State can continue our work to ensure that the fundamental goals of the Partnership Commitments are fulfilled. Please keep us informed of all developments in the implementation of the executive order and the Equity in Education Plan, and with the work of the Partnership Team. . Please be advised that we are in receipt of the 1999 Florida/United States Office for Civil Rights Partnership Agreement Interim Report, dated December 30, 1999. We will review this report and respond to the Partnership Team after the completion of our review. If you have any questions or concerns, please feel free to contact me directly.

Sincerely,



Gary S. Walker
Director

Atlanta Office for Civil Rights
Southern Division

c: Carol A. Licko
Regina E. Sofer



JEB BUSH
GOVERNOR

FOR IMMEDIATE RELEASE
JANUARY 18, 2000

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

CONTACT: ELIZABETH HIRST
(850) 488-5394

GOVERNOR BUSH ENCOURAGED BY CLINTON/GORE ADMINISTRATION'S APPROVAL OF ONE FLORIDA EDUCATION PLAN

TALLAHASSEE - Governor Jeb Bush today praised the U.S. Department of Education's Office of Civil Rights ("OCR") for its review and approval of his Equity in Education Plan, including the Talented 20 percent Program. In a letter dated January 14, 2000, on the eve of the Martin Luther King, Jr. holiday weekend, Mr. Gary S. Walker, Director of the Atlanta Office of Civil Rights, Southern Division, determined that "the Governor's Executive Order and the Equity in Education Plan advance the goals of the Partnership Commitments as set forth in the existing Florida/OCR Partnership Report regarding Florida's higher education system."

"The letter from the U.S. Department of Education's Office for Civil Rights is encouraging in that it will allow us to pursue the One Florida strategy to enhance diversity in our state university system," said Governor Bush.

In his letter, Mr. Walker stated, "In sum our preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students to higher education."

Governor Bush asked OCR to review his Executive Order and his Equity in Education Plan in light of the state's existing Partnership Agreement. OCR has reviewed the Plan, and has met with representatives of the state university system and Governor Bush's office. OCR has completed its preliminary review and has agreed that Governor Bush's Equity in Education Plan includes specific initiatives targeted toward low achieving elementary and secondary public schools in Florida that advance the goal of increasing diversity in Florida's colleges and universities.

"I thank the OCR for its prompt response, and I look forward to working cooperatively with OCR through the Partnership to assure that together we reach the overall goal of expanding access for minority students to higher education," said Governor Bush.

Governor Bush's One Florida Plan was announced on November 9, 1999, and will enhance diversity and opportunity in the state's university system and in state procurement efforts.

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

JAN 19 2000

The Honorable Corrine Brown
United States House of Representatives
2444 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Carrie Meek
United States House of Representatives
401 Cannon House Office Building

Dear Representatives Brown and Meek:

This is in reference to Representative Brown's telephone call to me on January 19, 2000. During our conversation, Representative Brown stated that she is concerned that the Office for Civil Rights' January 14, 2000 letter to Chancellor Herbert regarding Governor Bush's Executive Order/Equity in Education Plan (the "Plan"), is being interpreted by some State officials as an endorsement of the Governor's Order ending the use of race-based affirmative action in the State of Florida. During our conversation, I clarified that this is not the intent of the January 14 letter. I explained further what is in fact the purpose, scope and intent of that letter. Per Representative Brown's request, I am providing that explanation in writing to her and Representative Meek.

On January 14, 2000, Gary Walker, Director of our Atlanta Office for Civil Rights, sent a letter to Chancellor Adam W. Herbert of the State University System of Florida that provides preliminary feedback regarding the Governor's Plan in light of the existing Florida/United States Office for Civil Rights Partnership Report and Commitments (Commitments). The letter addresses the State's ability to continue to fulfill the Partnership Commitment's overall goal of expanding access to minority students to educational opportunities if the Governor's Plan is adopted. With respect to postsecondary education programs, the letter states:

[O]ur preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students in higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

Representatives Corrine Brown and Connie Meek – page 2

Our January 14 letter was directed at the important but narrow issue of Florida's obligations under its Partnership Commitments. However, as the Commitments do not require the use of race-based affirmative action, the letter does not address the issue of affirmative action or the Governor's decision to end its use in the State of Florida. We recognize that the Governor's plan has raised substantial concerns regarding the elimination of race-based affirmative action. As we discussed, the Department strongly supports appropriately-tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." It is the Department's position that, under the Constitution and Title VI of the Civil Rights Act of 1964, it is permissible in appropriate circumstances for colleges and universities to consider race in making admissions decisions. They may do so to promote the educational benefits of diversity consistent with Justice Powell's landmark decision in *Regents of the University of California v. Bakke*. They may also do so to remedy the continuing effects of discrimination. As Secretary of Education Richard Riley stated in his "Dear Colleague Letter" dated March 19, 1997, regarding the passage of California's Proposition 209, which generally prohibits the use of affirmative action, "I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions." I am enclosing a copy of the Secretary's March 1997 letter for your information.

With respect to the more narrow issues addressed in the Partnership Commitments, we will continue to work with the State of Florida to ensure that the goals of the Commitments are in fact fulfilled. I hope this letter is helpful in addressing your concerns. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Raymond C. Pierce". The signature is fluid and cursive, with the first name "Raymond" being the most prominent part.

Raymond C. Pierce
Deputy Assistant Secretary
For Civil Rights

Enclosure

a.. New search

b.. About the archives

c.. For articles prior to 1998

d.. Comments/ questions

Search results

ONE FLORIDA SIT-IN FAILS TO BRING UNITY

Friday, January 21, 2000

Section: FLORIDA/METRO

Page: 1

BY: DAVID WASSONSO: of The Tampa Tribune TALLAHASSEE - Contrary to the governor's claim, the U.S. Education Department insists it has not endorsed One Florida.

The fragile truce between Gov. Jeb Bush and black state lawmakers began crumbling Thursday, just a day after both sides agreed to a compromise that ended a 25-hour sit-in at the governor's office.

Skirmishes erupted over everything from Bush's characterizations of the compromise, to the governor's suggestion that even the Clinton administration has endorsed parts of his plan to end affirmative action.

Joining the fray Thursday were members of Florida's congressional delegation, the U.S. Department of Education and supporters of a stalled initiative drive seeking a statewide vote on abolishing affirmative action.

"If the governor continues to push so hard without talking to people, you are going to see confrontation," said House Democratic Leader Les Miller of Tampa.

Driving the issue was state Sen. Kendrick Meek, D-Miami, and state Rep. Tony Hill, D-Jacksonville, who took over Lt. Gov. Frank Brogan's office Tuesday and refused to leave until Bush rescinded his executive order ending affirmation action, a plan called One Florida. The legislators emerged a day later with a compromise calling for statewide hearings on Bush's plan. The governor also delayed by one month a vote by the Board of Regents on portions of the plan ending racial preferences in university enrollment.

But even Meek felt relations with the governor remained strained. "The governor doesn't feel he has compromised on anything," said Meek. "I think that's totally incorrect."

The U.S. Department of Education, reacting to a Bush news release suggesting the department had "approved" the One Florida plan on behalf of the Clinton administration, issued a statement refuting the claim. Bush's office based its release on a Jan. 14 letter from the federal agency's Office for Civil Rights.

"At this point, we have not come out either way," said Erica Lepping, an Education Department spokeswoman in Washington. "The letter was not an endorsement or an approval."

Additionally, Raymond C. Pierce, the Education Department's deputy assistant secretary for civil rights, sent a letter Thursday to Democratic U.S. Reps. Corrine Brown and Carrie Meek, both of Florida. Pierce assured them, both of whom oppose Bush's plan, that the federal agency had taken no position on One Florida.

Bush spokesman Justin Sayfie stood his ground Thursday.

"He's contradicting someone in his own office," Sayfie said.

Bush believes his plan, announced in Nov. 9, will increase business opportunities and university admissions among minorities without relying on race- and gender-based quotas and set-asides.

Herb Harmon, a political consultant directing the drive to put an anti-affirmative action measure on Florida's ballot, said he believes the compromise only slows down the inevitable.

Harmon is convinced, even with public hearings, the Board of Regents will adopt the plan.

Those hearings are scheduled for Jan. 28 in Tampa; Feb. 3 in Miami; and Feb. 10 in Tallahassee. Times and exact locations have yet to be arranged.

Democrats said they hope it will convince Bush that average Floridians support affirmative action. They acknowledge, however, it may not be enough to convince the governor to reverse course.

"In a war, there are many battles," Kendrick Meek said Thursday. "What we did this week was just a battle. And, I'm prepared to go back and do it again tomorrow if I have to."

Cutline: (C) Commenting on his sit-in, Sen. Kendrick Meek, center, said, "I'm prepared to go back and do it again tomorrow if I have to." COLIN HACKLEY/Tribune photo

Staff writer William March contributed to this report.

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Friday, January 21, 2000

Affirmative action battle far from over

By GARY FINEOUT

Tallahassee Bureau Chief

TALLAHASSEE - Tensions remained between leading black politicians and Gov. Jeb Bush a day after two black lawmakers ended their sit-in to protest the governor's plan to dismantle affirmative action.

Those involved in the protest, as well as U.S. Rep. Corrine Brown, D-Jacksonville, castigated Bush on Thursday for saying the White House has endorsed the university admissions policy called for in his One Florida initiative.

Plus, there are plans to make sure large contingents show up at the three public hearings in Miami, Tampa and Tallahassee that Bush agreed to hold on his plan. And those opposed to Bush's plan plan to rally in Tallahassee on March 7, the day the Florida Legislature starts its annual two-month session.

Bush conceded to hold the public hearings and delay a vote planned today on the university admissions policy to persuade state Sen. Kendrick Meek, D-Miami, and Rep. Tony Hill, D-Jacksonville, to leave the offices of Lt. Gov. Frank Brogan after a 25-hour sit-in.

Bush had to keep his office doors closed Wednesday since about 100 supporters of the two men had crowded into the halls of the Capitol.

While the compromise came after dialogue between Bush and black lawmakers, they remained skeptical a day later about whether the governor was listening to them.

"He's more concerned about his personal pride than what's good for Floridians," Meek said Thursday.

State Sen. Betty Holzendorf, D-Jacksonville, one of 15 lawmakers chosen to serve on a select committee that will moderate the hearings, said Bush doesn't have to agree with black legislators. But he should at least be open to meeting with them and hearing their concerns, she said.

"The governor didn't get 100 percent of the vote, but he is governor for 100 percent of the

people," Holzendorf said. "He can't shut out people."

Meek and Hill began their sit-in Tuesday afternoon and said they wouldn't leave until Bush rescinded his November executive order calling for an end to the use of affirmative action. That same order also asked Florida's Board of Regents to end the use of race and gender as factors in admitting students to the state's 10 public universities.

Regents were poised to approve that policy today, but the meeting was canceled. Instead, regents plan to vote on new university admissions policies at a Feb. 17 meeting in Orlando.

But between now and that meeting, 15 legislators - five black and two Hispanic - will hold public hearings on Jan. 28 in Tampa; Feb. 3 in Miami; and Feb. 10 in Tallahassee.

Meek said the One Florida plan may yet go through, but it's no longer "on the fast track" as sought by Bush. However, Meek and other black politicians on Thursday criticized Bush's pronouncement that the Clinton administration has approved the plan.

The U.S. Office of Civil Rights in the Department of Education has reviewed the university admissions portion and said it could work, but federal authorities also said they had concerns over how it would be implemented. Florida has a partnership agreement with the federal government that calls on the state to keep minority access available to its public universities.

"Governor Bush is intentionally misleading the people of Florida when he suggests the administration supports his initiative," Congresswoman Brown said in a statement.

A spokesman for the state Board of Regents, however, said state university officials still took it as a good sign that federal authorities did not object to proposed changes in admissions policies.

"We're not asking for (the Office of Civil Rights) to endorse it," said Keith Goldschmidt of the regents. "We asked them as to whether they thought it could work. And it can."

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DRAFT

Dear Chancellor Herbert:

I understand that the Florida Board of Regents will soon consider the recommendations regarding university admissions in Governor Bush's One Florida Initiative. I am writing to clarify the Clinton Administration's views regarding those recommendations.

As an initial matter, I want to eliminate any confusion regarding the relationship of the state's compliance with the Florida/U.S. Office for Civil Rights Partnership Commitments and the Administration's views regarding the policies recommended in the One Florida Initiative. As you know, the Supreme Court in a 1992 decision, United States v. Fordice, held that states that operated de jure segregated systems of higher education have a duty to eliminate the vestiges of that discrimination. The Partnership Commitments consist of a series of commitments undertaken by the state to satisfy that obligation. This agreement, arrived at after a series of productive discussions between the State of Florida and the Office of Civil Rights in the Department of Education, have served and will continue to serve as an extremely important tool for accomplishing the goal stated by the Court in Fordice. On behalf of the Administration, we are grateful for the cooperation shown by your and your staff in reaching this agreement and working toward its implementation.

While the Partnership Commitments address university admissions briefly, they do not address the question of whether and how race or gender should be considered in the admissions process. More broadly, they do not purport to set out an approach to admissions that will reach a desirable level of diversity in higher education in the most effective and educationally sound way. Instead, they simply require that the state will use "alternative admissions criteria...as a means of broadening the opportunities of students, including minorities, to attend [Florida universities]."

Based on its preliminary review, the Office for Civil Rights has concluded that the admissions policies recommended in the One Florida Initiative meet the basic obligation set out in the Partnership Agreement. For example, while the Initiative recommends eliminating consideration of race and gender, it also recommends greater consideration of certain socioeconomic factors. It also recommends guaranteeing admission, at least under some circumstances, for students who graduate in the top 20% of Florida high schools. Both those steps could improve the prospects for admissions of many minority students compared to approaches that do not consider those factors. Whether these steps and others included in the One Florida Initiative would achieve a desirable level of diversity in the university system or whether they would increase the level of diversity over levels achieved under well-crafted affirmative action policies are very different questions.

The Administration strongly supports efforts to achieve diversity in higher education at both the undergraduate and graduate level by adopting admissions policies that identify and admit qualified minority and women students. We support that approach at all universities at

both the undergraduate and graduate level. Our experience has been that this goal can be achieved most effectively through a careful individualized assessment of applicants, which takes into account race and gender along with other factors under Supreme Court guidelines. As we understand the approach set out in the One Florida Initiative, universities could take into account a wide variety of factors but they could not consider race and gender. Because it is not clear what role these other factors would play, it is difficult to estimate precisely the effect that the implementation of the initiative would have in the Florida system.

It is possible, however, to identify a number of factors that may result in its failing to achieve a desirable level of diversity, falling short of the diversity now existing in the Florida system, or failing to achieve other sound educational goals. For example, it is not clear whether and how the Talented 20 program would apply to highly competitive universities such as the University of Florida and Florida State University. It is not clear how the elimination of consideration of race and gender would affect admissions at Florida graduate schools. It is not clear whether a large number of minority students would be foreclosed from participating in the Talented 20 plan because their schools fail to offer a sufficient number of college preparatory courses. Finally, it is not clear whether an approach that puts a heavy emphasis on high school grades can result in a careful individual analysis of the academic potential of applicants while achieving a desirable level of diversity. These are some of concerns we have about the overall impact of the proposal.

Thank you for your consideration of these views. I hope that they clarify the Administration's position regarding the university admissions component of Governor Bush's proposal.



UNITED STATES DEPARTMENT OF EDUCATION

PUBLIC AFFAIRS

OFFICE OF THE DIRECTOR

FAX TRANSMITTAL

TO:

Andy

PHONE:

FAX:

456-7028

FROM:

OFFICE OF PUBLIC AFFAIRS

Eric

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PAGE(S) TO FOLLOW:

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MESSAGE:

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

JAN 19 2000

The Honorable Corrine Brown
United States House of Representatives
2444 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Carrie Meek
United States House of Representatives
401 Cannon House Office Building

Dear Representatives Brown and Meek:

This is in reference to Representative Brown's telephone call to me on January 19, 2000. During our conversation, Representative Brown stated that she is concerned that the Office for Civil Rights' January 14, 2000 letter to Chancellor Herbert regarding Governor Bush's Executive Order/Equity in Education Plan (the "Plan"), is being interpreted by some State officials as an endorsement of the Governor's Order ending the use of race-based affirmative action in the State of Florida. During our conversation, I clarified that this is not the intent of the January 14 letter. I explained further what is in fact the purpose, scope and intent of that letter. Per Representative Brown's request, I am providing that explanation in writing to her and Representative Meek.

On January 14, 2000, Gary Walker, Director of our Atlanta Office for Civil Rights, sent a letter to Chancellor Adam W. Herbert of the State University System of Florida that provides preliminary feedback regarding the Governor's Plan in light of the existing Florida/United States Office for Civil Rights Partnership Report and Commitments (Commitments). The letter addresses the State's ability to continue to fulfill the Partnership Commitment's overall goal of expanding access to minority students to educational opportunities if the Governor's Plan is adopted. With respect to postsecondary education programs, the letter states:

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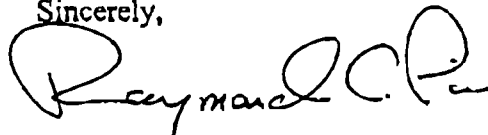
Our Mission is to Ensure Equal Access to Education and to Promote Educational Excellence throughout the Nation.

Representatives Corrine Brown and Connie Meek -- page 2

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With respect to the more narrow issues addressed in the Partnership Commitments, we will continue to work with the State of Florida to ensure that the goals of the Commitments are in fact fulfilled. I hope this letter is helpful in addressing your concerns. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Raymond C. Pierce". The signature is fluid and cursive, with the first name "Raymond" being the most prominent part.

Raymond C. Pierce
Deputy Assistant Secretary
For Civil Rights

Enclosure



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

November 10, 1999

Ms. Norma V. Cantu
Assistant Secretary for Civil Rights
U.S. Department of Education
330 "C" Street, S.W., Suite 5000
Washington, DC 20202

Ms. Suong Mai Cavalli
Chief Civil Rights Attorney
U.S. Department of Education
61 Forsythe Street, SW, Suite 19T70
Atlanta, Georgia 30303

Dear Ms. Cantu and Ms. Mai Cavalli:

Yesterday, Governor Jeb Bush announced his plan for *One Florida*—a plan to end racial, ethnic and gender-based preferences, set-asides and quotas in our State's government enterprises and in the allocation of state contracts, while increasing diversity. With respect to the Florida/OCR Partnership Agreement, it continues to be the policy of this Administration to support equal education opportunities for all Floridians; to prohibit discrimination in education because of race, creed, color or national origin; and, to promote the full realization of equal educational opportunities throughout the State. Through Executive Order 99-281, Governor Bush has requested that the Board of Regents implement a policy prohibiting the use of racial or gender set-asides, preferences or quotas in admissions to all Florida institutions of higher education, effective immediately. A copy of the Order is enclosed.

Also, I have enclosed a copy of our Equity in Education Plan. This comprehensive plan has been developed in consultation with, and with the cooperation of, the chancellor of our State University System, Chancellor Adam W. Herbert. As you will note, our Plan includes a new Talented 20 program, which guarantees admission to one of Florida's state universities to students in the top 20% in each Florida public high school graduating class who have completed a college preparatory curriculum. This plan will increase the number of students, including those who are minority and economically disadvantaged, admitted into one of our public universities.

Every student in the top 20% of his/her class will also be given priority in need-based financial aid awards. To assist financially needy Talented 20 students, the Governor is recommending an increase of 43% in Florida's need-based scholarship programs. In addition, a new Profile Assessment process will be utilized in lieu of the alternative admission process, and will supplement the Talented 20 program.

NOV 16 1999
cc

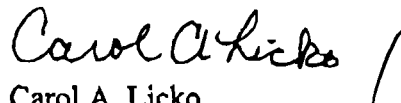
Ms. Norma V. Cantu
Ms. Suong Mai Cavalli
November 10, 1999

Through the Equity in Education Plan, we will ensure that even more high school minority students are challenged academically and are prepared for being admitted to the university system without remediation, and in accordance with the system's standards. Our goal is to equip all of Florida's students for higher education by ensuring that care has been exercised at every level of their secondary experience by providing them and their schools with the necessary resources to succeed. Our state's success in higher education depends on our students' preparation and success at the secondary level.

Florida is prepared to do more than any other state in the nation to enhance diversity at the post-secondary level without having to rely on the policies of the past.

We look forward to your cooperative support of this Plan in the new millennium.

Sincerely,



Carol A. Licko
General Counsel

Enclosures: Plan
Executive Order 99-281

c: Dr. Adam W. Herbert w/o enclosures
Regina E. Sofer w/o enclosures



UNITED STATES DEPARTMENT OF EDUCATION

PUBLIC AFFAIRS

OFFICE OF THE DIRECTOR

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456-7028456-5501

FROM:

OFFICE OF PUBLIC AFFAIRS

Eric

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202-401-3026

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MESSAGE:

Resending
(3 relevant letters)

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

JAN 19 2000

The Honorable Corrine Brown
United States House of Representatives
2444 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Carrie Meek
United States House of Representatives
401 Cannon House Office Building

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Representatives Corrine Brown and Connie Meek – page 2

Our January 14 letter was directed at the important but narrow issue of Florida's obligations under its Partnership Commitments. However, as the Commitments do not require the use of race-based affirmative action, the letter does not address the issue of affirmative action or the Governor's decision to end its use in the State of Florida. We recognize that the Governor's plan has raised substantial concerns regarding the elimination of race-based affirmative action. As we discussed, the Department strongly supports appropriately-tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." It is the Department's position that, under the Constitution and Title VI of the Civil Rights Act of 1964, it is permissible in appropriate circumstances for colleges and universities to consider race in making admissions decisions. They may do so to promote the educational benefits of diversity consistent with Justice Powell's landmark decision in *Regents of the University of California v. Bakke*. They may also do so to remedy the continuing effects of discrimination. As Secretary of Education Richard Riley stated in his "Dear Colleague Letter" dated March 19, 1997, regarding the passage of California's Proposition 209, which generally prohibits the use of affirmative action, "I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions." I am enclosing a copy of the Secretary's March 1997 letter for your information.

With respect to the more narrow issues addressed in the Partnership Commitments, we will continue to work with the State of Florida to ensure that the goals of the Commitments are in fact fulfilled. I hope this letter is helpful in addressing your concerns. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond C. Pierce". The signature is fluid and cursive, with the first name "Raymond" being more legible than the last name "Pierce".

Raymond C. Pierce
Deputy Assistant Secretary
For Civil Rights

Enclosure



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

November 10, 1999

Ms. Norma V. Cantu
Assistant Secretary for Civil Rights
U.S. Department of Education
330 "C" Street, S.W., Suite 5000
Washington, DC 20202

Ms. Suong Mai Cavalli
Chief Civil Rights Attorney
U.S. Department of Education
61 Forsythe Street, SW, Suite 19T70
Atlanta, Georgia 30303

Dear Ms. Cantu and Ms. Mai Cavalli:

Yesterday, Governor Jeb Bush announced his plan for *One Florida*—a plan to end racial, ethnic and gender-based preferences, set-asides and quotas in our State's government enterprises and in the allocation of state contracts, while increasing diversity. With respect to the Florida/OCR Partnership Agreement, it continues to be the policy of this Administration to support equal education opportunities for all Floridians; to prohibit discrimination in education because of race, creed, color or national origin; and, to promote the full realization of equal educational opportunities throughout the State. Through Executive Order 99-281, Governor Bush has requested that the Board of Regents implement a policy prohibiting the use of racial or gender set-asides, preferences or quotas in admissions to all Florida institutions of higher education, effective immediately. A copy of the Order is enclosed.

Also, I have enclosed a copy of our Equity in Education Plan. This comprehensive plan has been developed in consultation with, and with the cooperation of, the chancellor of our State University System, Chancellor Adam W. Herbert. As you will note, our Plan includes a new Talented 20 program, which guarantees admission to one of Florida's state universities to students in the top 20% in each Florida public high school graduating class who have completed a college preparatory curriculum. This plan will increase the number of students, including those who are minority and economically disadvantaged, admitted into one of our public universities.

Every student in the top 20% of his/her class will also be given priority in need-based financial aid awards. To assist financially needy Talented 20 students, the Governor is recommending an increase of 43% in Florida's need-based scholarship programs. In addition, a new Profile Assessment process will be utilized in lieu of the alternative admission process, and will supplement the Talented 20 program.

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CC

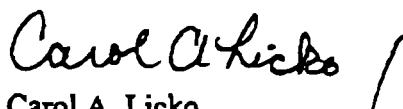
Ms. Norma V. Cantu
Ms. Suong Mai Cavalli
November 10, 1999

Through the Equity in Education Plan, we will ensure that even more high school minority students are challenged academically and are prepared for being admitted to the university system without remediation, and in accordance with the system's standards. Our goal is to equip all of Florida's students for higher education by ensuring that care has been exercised at every level of their secondary experience by providing them and their schools with the necessary resources to succeed. Our state's success in higher education depends on our students' preparation and success at the secondary level.

Florida is prepared to do more than any other state in the nation to enhance diversity at the post-secondary level without having to rely on the policies of the past.

We look forward to your cooperative support of this Plan in the new millennium.

Sincerely,



Carol A. Licko
General Counsel

Enclosures: Plan
Executive Order 99-281

c: Dr. Adam W. Herbert w/o enclosures
Regina E. Sofer w/o enclosures



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ATLANTA OFFICE, SOUTHERN DIVISION
61 FORSYTH STREET, SW
SUITE 19T70
ATLANTA, GEORGIA 30303**

January 14, 2000

**Chancellor Adam W. Herbert
State University System of Florida
325 West Gaines Street
Suite 1514
Tallahassee, Florida 32399-1950**

Dear Chancellor Herbert:

Subsequent to our meeting of December 7, 1999, with you, members of your staff and the Governor's office, we indicated that we would continue our review of the Governor's Executive Order and the Equity in Education Plan in light of the existing Florida/United States Office for Civil Rights (OCR) Partnership Report and Commitments (Partnership Commitments) and provide you with some preliminary feed-back before the next Board of Regents meeting scheduled for January 21, 2000. During our December 7 meeting, OCR was provided with additional information and statistical projections for enrollments under the Talented 20% Program. We were also given a copy of the draft report of the Talented 20 Implementation Task Force. The draft report sets out in greater detail guidelines for the implementation of the Talented 20 Program, the Profile Assessments Program, and the coordination process between the State University System (SUS) institutions, school districts, Florida Department of Education and the Chancellor's office.

First, with regard to elementary and secondary programs, our preliminary view is that the Governor's Executive Order and the Equity in Education Plan advance the goals of the Partnership Commitments. In particular we note many specific initiatives targeted toward low achieving elementary and secondary public schools in Florida that correlate directly with the Partnership Commitments. Some of these areas include: 1) promoting staff development for teachers; 2) hiring qualified teachers; 3) aligning academic instruction with graduation standards; 4) raising GPA, high school competency test scores, and 10th grade access to the PSAT; 5) increasing support for the College Reach Out Program; and, 6) providing and ensuring equity in programmatic areas and funding support to low-performing schools under the A+ Plan and through the work of the Equity in Education Opportunity Task Force. In addition, at the community college level, the Governor's Equity in Education Plan supports the Partnership Commitments by recommending increased support for retention and remediation reduction programs, and efforts to increase the graduation rates to 4-year programs.

Chancellor Herbert

Page 2

At the SUS level, the Partnership Commitments were intended to expand access to higher education and increase the retention and graduation of minority students in the SUS, as well as to enhance the programs at Florida A & M. To achieve this, the SUS continued the use of alternative admission program as a means of broadening the opportunities of all students, including minorities, to attend the SUS. Under the Partnership Commitments, alternative admission criteria must take into account an applicant's academic ability, but consideration may also be given to the applicant's creativity, talent, and character. The SUS articulated a continuing goal of diversity in the composition of the student population in the SUS. Alternative admissions criteria have been used by the SUS to provide access to a diverse group of students, minority and non-minority, who otherwise would not have been eligible under traditional admission criteria.

The Executive Order and the Equity in Education Plan, at the SUS level, appear to add another avenue for admission to the SUS through the implementation of a new Talented 20% Program and to replace the Alternative Admission Program with the Profile Assessment Program. Under the Talented 20% Program students who do not meet traditional admission criteria will, under certain conditions, be guaranteed admission to one of the ten institutions in the SUS. This guarantee is extended to the top 20% of each graduating class from each public high school in Florida. Under the Profile Assessment program, up to 10% of each entering freshman class in the SUS can include students who do not meet traditional admission criteria, do not qualify under the Talented 20% Program, but who have demonstrated through their academic abilities and other factors that they can carry out a successful academic program in the SUS. Twenty five factors, including first time in college, geographic location, graduation from a low-achieving school, and socio-economic factors, may be considered for those students admitted under the Profile Assessment.

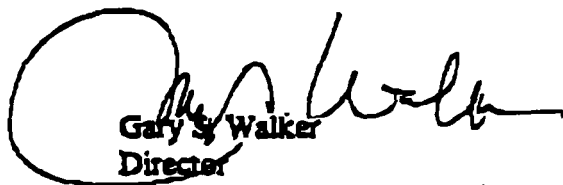
In sum, our preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students to higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments. To this end, the monitoring provisions of the Partnership Commitments would be revised to seek information regarding the impact of the Plan, once it is implemented, on the various sections of the Commitments, particularly with respect to its impact on access to higher education for minority students. For example, OCR will ask for information on how the Talented 20% Program and the Profile Assessment Program will impact access to minority students in each of the individual SUS institutions at the undergraduate level.

Chancellor Herbert
Page 3

With respect to graduate and professional schools, it is OCR's understanding that you have proposed a delay in implementing the Governor's Plan until academic year 2001-2002. If your recommendation is accepted, there would be no immediate impact on the provisions in the current Commitments related to access for minority students to graduate and professional schools. Thus, the State would continue to implement those provisions per the current Commitments for academic year 2000-2001. If our understanding is not correct, however, please contact me immediately so that we can discuss this issue before your January 21 meeting. Once the Governor's Plan is implemented at the graduate and professional schools level, OCR will ask for information on how the plan will impact access to minority students in graduate and professional programs.

I am confident that OCR and the State can continue our work to ensure that the fundamental goals of the Partnership Commitments are fulfilled. Please keep us informed of all developments in the implementation of the executive order and the Equity in Education Plan, and with the work of the Partnership Team. Please be advised that we are in receipt of the 1999 Florida/United States Office for Civil Rights Partnership Agreement Interim Report, dated December 30, 1999. We will review this report and respond to the Partnership Team after the completion of our review. If you have any questions or concerns, please feel free to contact me directly.

Sincerely,



Gary S. Walker
Director
Atlanta Office for Civil Rights
Southern Division

c: Carol A. Licko
Regina E. Sofer

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Jan 21, 2000 - 03:03 AM

One Florida sit-in fails to bring unity

DAVID WASSON
of The Tampa Tribune

The fragile truce between Gov. Jeb Bush and black state lawmakers began crumbling Thursday, just a day after both sides agreed to a compromise that ended a 25-hour sit-in at the governor's office.

Skirmishes erupted over everything from Bush's characterizations of the compromise, to the governor's suggestion that even the Clinton administration has endorsed parts of his plan to end affirmative action.

Joining the fray Thursday were members of Florida's congressional delegation, the U.S. Department of Education and supporters of a stalled initiative drive seeking a statewide vote on abolishing affirmative action.

"If the governor continues to push so hard without talking to people, you are going to see confrontation," said House Democratic Leader Les Miller of Tampa.

Driving the issue was state Sen. Kendrick Meek, D-Miami, and state Rep. Tony Hill, D-Jacksonville, who took over Lt. Gov. Frank Brogan's office Tuesday and refused to leave until Bush rescinded his executive order ending affirmation action, a plan called One Florida.

The legislators emerged a day later with a compromise calling for statewide hearings on Bush's plan. The governor also delayed by one month a vote by the Board of Regents on portions of the plan ending racial preferences in university enrollment.

But even Meek felt relations with the governor remained strained. "The governor doesn't feel he has compromised on anything," said Meek. "I think that's totally incorrect."

The U.S. Department of Education, reacting to a Bush news release suggesting the department had "approved" the One Florida plan on behalf of the Clinton administration, issued a statement refuting the claim. Bush's office based its release on a Jan. 14 letter from the federal agency's Office for Civil Rights.

"At this point, we have not come out either way," said Erica Lepping, an Education Department spokeswoman in Washington. "The letter was not an endorsement or an approval."

Additionally, Raymond C. Pierce, the Education Department's deputy assistant secretary for civil rights, sent a letter Thursday to Democratic U.S. Reps. Corrine Brown and Carrie Meek, both of Florida. Pierce assured them, both of whom oppose Bush's plan, that the federal agency had taken no position on One Florida.

Bush spokesman Justin Sayfie stood his ground Thursday.

"He's contradicting someone in his own office," Sayfie said.

Bush believes his plan, announced in Nov. 9, will increase business opportunities and university admissions among minorities without relying on race- and gender-based quotas and set-asides.

Herb Harmon, a political consultant directing the drive to put an anti-affirmative action measure on Florida's ballot, said he believes the compromise only slows

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action measure on Florida's ballot, said he believes the compromise only slows down the inevitable.

Harmon is convinced, even with public hearings, the Board of Regents will adopt the plan.

Those hearings are scheduled for Jan. 28 in Tampa; Feb. 3 in Miami; and Feb. 10 in Tallahassee. Times and exact locations have yet to be arranged.

Democrats said they hope it will convince Bush that average Floridians support affirmative action. They acknowledge, however, it may not be enough to convince the governor to reverse course.

"In a war, there are many battles," Kendrick Meek said Thursday. "What we did this week was just a battle. And, I'm prepared to go back and do it again tomorrow if I have to."

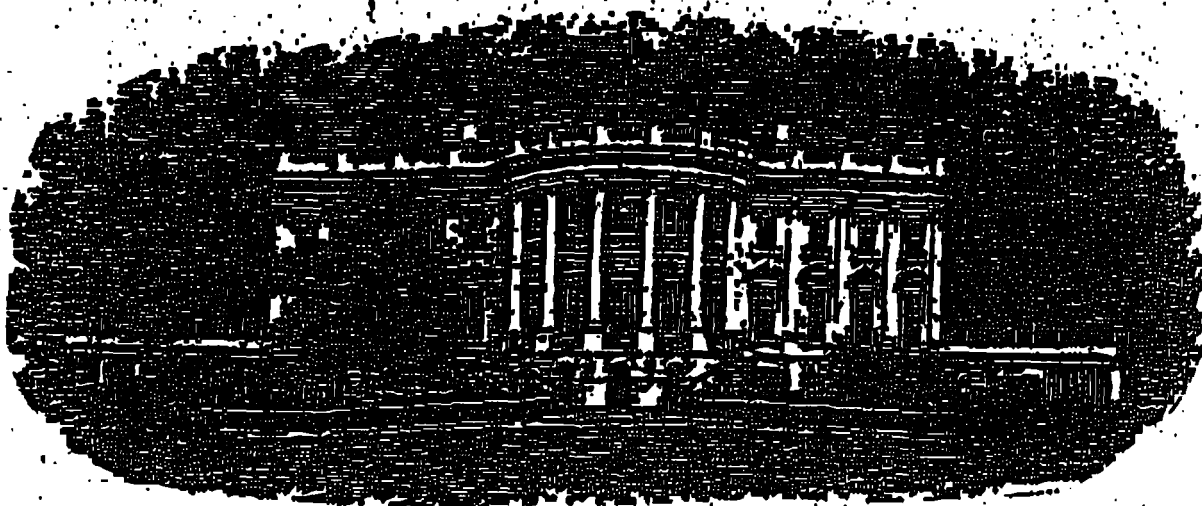
Staff writer William March contributed to this report.

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TO: JB Buxton / Bethany Little

Since you're from FLA

FROM: Steve Bond at 65670

DATE: 1/20/00

RECEIVER FAX: ~~65670~~ 67028

RECEIVER PHONE:

NUMBER OF PAGES (INCLUDING COVER SHEET): 5

COMMENTS: — Gov Jeb Bush of claiming
Admin support of One Florida Plan
— see Dep & Fed letter attached &
Gov's release

— Tampa Tribune asking us for rxn.

01/18/2000 08:28

9502017175

JAN-14-00 16:55 From:

GEN COUNSEL

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ATLANTA OFFICE, SOUTHERN DIVISION
61 FORSYTH STREET, SW
SUITE 1970
ATLANTA, GEORGIA 30303

January 14, 2000

Chancellor Adam W. Herbert
State University System of Florida
325 West Gaines Street
Suite 1514
Tallahassee, Florida 32399-1950

Dear Chancellor Herbert:

Subsequent to our meeting of December 7, 1999, with you, members of your staff and the Governor's office, we indicated that we would continue our review of the Governor's Executive Order and the Equity in Education Plan in light of the existing Florida/United States Office for Civil Rights (OCR) Partnership Report and Commitments (Partnership Commitments) and provide you with some preliminary feed-back before the next Board of Regents meeting scheduled for January 21, 2000. During our December 7 meeting, OCR was provided with additional information and statistical projections for enrollments under the Talented 20% Program. We were also given a copy of the draft report of the Talented 20 Implementation Task Force. The draft report sets out in greater detail guidelines for the implementation of the Talented 20 Program, the Profile Assessments Program, and the coordination process between the State University System (SUS) institutions, school districts, Florida Department of Education and the Chancellor's office.

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GEN COUNSEL

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Chancellor Herbert

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In sum, our preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students to higher education. However, we do have some concerns as to the implementation of the Talented 20% Program and the Profile Assessment Program. If the Plan is adopted, we will need to work together to incorporate the elements of the Plan into the Partnership Commitments in a way that will continue to reinforce the spirit and goals of the Commitments. To this end, the monitoring provisions of the Partnership Commitments would be revised to seek information regarding the impact of the Plan, once it is implemented, on the various sections of the Commitments, particularly with respect to its impact on access to higher education for minority students. For example, OCR will ask for information on how the Talented 20% Program and the Profile Assessment Program will impact access to minority students in each of the individual SUS institutions at the undergraduate level.

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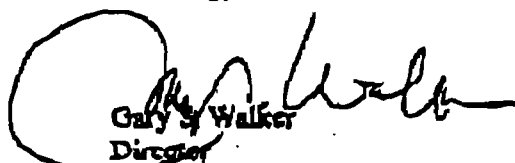
GEN COUNSEL

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1-318 P.04/04 Job-148Chancellor Herbert
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I am confident that OCR and the State can continue our work to ensure that the fundamental goals of the Partnership Commitments are fulfilled. Please keep us informed of all developments in the implementation of the executive order and the Equity in Education Plan, and with the work of the Partnership Team. Please be advised that we are in receipt of the 1999 Florida/United States Office for Civil Rights Partnership Agreement Interim Report, dated December 30, 1999. We will review this report and respond to the Partnership Team after the completion of our review. If you have any questions or concerns, please feel free to contact me directly.

Sincerely,


Gary S. Walker
Director
Atlanta Office for Civil Rights
Southern Divisioncc: Carol A. Licko
Regina E. Sofer

Conveying the Administration's Approach to Affirmative Action

Background: Ballot Initiatives

Florida may be a major battleground for a dispute over affirmative action during 2000. There is currently an effort to place an anti-affirmative initiative on the Florida ballot for the fall of 2000 that is similar to the one that passed in California and Washington (the "Connerly initiative"). The Connerly initiative bans use of race and gender "preferences" by state and local government. It has the effect of eliminating all public affirmative action programs unless required by federal law or necessary to maintain federal funding, including university admissions, personnel policies, and procurement. It even calls into question recruiting and outreach programs that expand the pool of eligible applicants through targeted outreach efforts. The civil rights community and other supporters of affirmative action are endorsing an alternative ballot initiative that preserves affirmative action (the "FREE initiative"). The State Attorney General has recommended that the Florida Supreme Court refuse to certify the Connerly initiative for a vote, though the Court has yet to act.

Governor Bush's Approach

Florida Governor Jeb Bush has also issued an executive order, which has the effect of eliminating most affirmative programs at the state level. Bush's Executive Order bars consideration of race or gender in policy decisions by the state government. However, it includes a number of steps designed to increase diversity in universities, such as guaranteeing admission for all students who graduate in the top 20% of their class and improving poorly performing high schools. While these steps are helpful, they are unlikely to make up for the loss in diversity resulting from eliminating entirely the use of race and gender in admissions and other state policies.

The Administration's Position

The President has followed a policy of mending, but not ending affirmative action. In December 1999, the President, while on a visit to Florida, spoke out strongly in favor of retaining affirmative action and resisting efforts to undermine it. A copy of his remarks is attached. The Administration may also comment more extensively on the Bush proposal. It is currently under review. Cabinet Secretaries and other senior Administration officials speaking in Florida may wish to convey the Administration's strong support for affirmative action and the efforts to mend, but not end it. Additional information about affirmative action can be obtained through Cabinet Affairs.

Florida Affirmative Action Debate Background, Update and Next Steps

CONNERLY INITIATIVE

Background: The Connerly initiative bans use of race and gender “preferences” by state and local government. It has the effect of eliminating all public affirmative action programs unless required by federal law or necessary to maintain federal funding, including university admissions, personnel policies, and procurement. It even calls into question recruiting and outreach programs that expand the pool of eligible applicants through targeted outreach efforts. The State Attorney General has recommended that the Florida Supreme Court refuse to certify the Connerly initiative for a vote, though the Court has yet to act.

Current Status: The Connerly group has apparently suspended getting more signatures until the Supreme Court decides whether to certify their initiative for the ballot. The Florida Supreme Court is unlikely to decide the certification issue until April or May. Consequently, it may be difficult for them to get the total number of signatures they need. In addition, there is a good chance that the Florida Supreme Court will not certify the initiative.

Next Steps: We have asked DOJ to consider the possibility of filing an amicus brief in the Florida certification proceeding. The initial reaction is not positive, but they are still looking at it. In addition, working through Cabinet Affairs, we could inform Cabinet Secretaries and other senior Administration officials speaking in Florida that they may wish to convey the Administration's strong support for affirmative action and the efforts to mend, but not end it. We would provide attached background for the Cabinet Affairs to distribute.

FREE INITIATIVE

Background: The civil rights community and other supporters of affirmative action are endorsing an alternative ballot initiative that preserves affirmative action (the "FREE initiative").

Current Status: The FREE campaign is continuing to get signatures. It is likely that the FREE initiative will be treated the same way as the Connerly initiative by the Florida Supreme Court. The organizers would like the Administration to oppose publicly the Connerly initiative and the Bush Executive Order to help them with editorials and op-eds.

Next Steps: We should help them by encouraging Cabinet Secretaries and other senior Administration officials to convey strong support for affirmative action when they travel to Florida.

BUSH EXECUTIVE ORDER

Background: Florida Governor Jeb Bush issued an executive order, which has the effect of eliminating most affirmative programs at the state level. Bush's Executive Order bars consideration of race or gender in policy decisions by the state government including education, procurement and employment. However, it includes a number of steps designed to increase diversity in universities, such as guaranteeing admission for all students who graduate in the top 20 percent of their class and improving poorly performing high schools. While these steps are helpful, they are unlikely to make up for the loss in diversity resulting from eliminating entirely the use of race and gender in admissions and other state policies. Indeed, the Top 20 program applies to all Florida universities but there is no guarantee admission for the University of Florida and Florida State University and this does not apply to the graduate schools. The other state universities basically have an open enrollment program that makes the Top 20 program an unnecessary tool in increasing diversity.

Current Status: Based on our initial review, it is clear that there are major deficiencies in the plan in both education and contracting and possibly employment as well.

The Florida Regents will consider the Bush education plan at a meeting in January 21. The legislature will have to approve some aspects of the plan, including the additional resources for improving poor high schools and the reforms in procurement. At this point, it is not clear that they will do so.

Also, OCR in ED has an agreement with the state regarding its former dual system of higher education. One provision requires the state to take steps to increase diversity in colleges and universities. OCR is now assessing whether the Bush plan might violate this agreement.

Next Steps:

OCR will continue its review of the Executive Order in light of the OCR agreement.

Regardless of the outcome of that review, we should consider whether the Secretary of Education or some other Administration representative should comment on the impact of the Bush plan on diversity in higher education at the January 21 hearing before the Florida Board of Regents on the education component of the Bush plan. While there are certainly good things about the Bush plan, including putting more resources into poorly performing high schools, the plan may have the effect of eliminating affirmative action at Florida's leading universities and graduate schools. It also requires that students take a minimum number of college level courses before taking advantage of the top 20 percent guarantee despite the fact that many Florida high schools do not make that possible. An Administration statement would provide an effective way to demonstrate the weaknesses in the plan and to encourage the Regents to improve it.