

PHOTOCOPY
PRESERVATION



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D C. 20202-

February 18, 2000

(300C -

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

FRA ACF
ACF

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

cc: Regina Sofer
Carol Licko





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

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Sincerely,

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

cc: Regina Sofer
Carol Licko



February 22, 2000

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

401 5952

partially in April 2
On Board's meeting
been

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 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.

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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,

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

Gov's
As to the (SUS) staff to
could it be that I would refer you
to the (SUS) staff
C: Regina Sofer

Our discussion
should not be taken
as any endorsement
of the Gov's plan.
not a statement of meeting
by OCR



United States Department of Education
Office of the General Counsel

Telephone: (202) 401-6000

Facsimile: (202) 205-2689

To: ERIC
From: M Echaveste

FYI

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:

CONFIDENTIALITY NOTICE

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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.

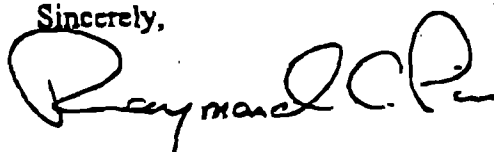
400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

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 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.

800 INDEPENDENCE AVE., S.W. WASHINGTON, D.C. 20202-0100

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

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**

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 not 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 13:57 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

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

FOR IMMEDIATE RELEASE
JANUARY 18, 2000

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.

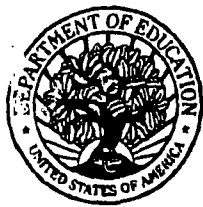
In his letter, Mr. Walker stated, "In sum our preliminary assessment is that the Executive Order and the Equity in Education Plan can be reconciled with the Partnership Commitments' overall goal of expanding access for minority students to higher education."

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.

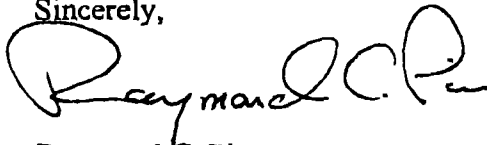
400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

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 black 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

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
COMMISSION ON
CIVIL RIGHTS624 Ninth Street, N.W.
Washington, D.C. 20428

February 3, 2000

The Honorable Richard Riley
Secretary
Department of Education
Washington, D.C.

Dear Secretary Riley:

With reference to the January 14, 2000 letter to Chancellor Adam Herbert from Gary Walker, Director of the Atlanta Office for Civil Rights of the Department of Education, concerning Governor Jeb Bush's proposed twenty percent plan, I am interested in knowing your Department's position on the use of affirmative action in Florida's public higher education institutions? Has the Department indicated its support of Jeb Bush's announcement that he is ending affirmative action, and has the department ascertained that the twenty percent plan is an effective substitute?

Thank you for any insight and supporting materials you might offer concerning this matter.

Sincerely,


Mary Frances Berry
Chairperson

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.

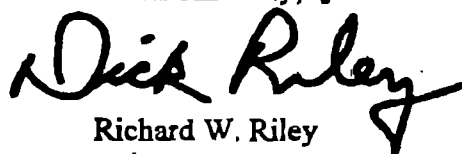
I regret that some individuals and press accounts have misread and misinterpreted the January 14, 2000 letter from the Office for Civil Rights to Florida Chancellor Adam Herbert. That letter provided preliminary feedback, at the Chancellor's request, regarding the narrow issue of whether the Governor's 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

Draft

February 4, 2000, 3:30 PM

Dear Chancellor Herbert,

I am writing to address certain questions that have arisen as a result of recent press stories concerning the proposed One Florida education plan. It appears that there may be some misunderstanding regarding the Clinton Administration's position on race- and gender-based affirmative action in university admissions. I want to make clear our views.

This Department has consistently reaffirmed its strong support for constitutionally sound, appropriately tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." The Department 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. Widely documented research and years of experience indicate that the appropriate consideration of race or gender, as one of several factors considered in an individualized assessment of applicants, has led to diverse and highly qualified student bodies that can be vital to fostering a robust exchange of ideas.

The proposed One Florida plan raises two related but distinct issues: First, the plan raises the important but narrow issue of whether it can be reconciled with the existing agreement between the Department's Office for Civil Rights (OCR) and the State of Florida (the Partnership Commitments) that was developed to help ensure that the State meets its affirmative obligation under *U.S. v. Fordice* to eliminate the vestiges of prior discrimination in its higher education system. As stated in its letter of January 14, 2000, OCR's preliminary assessment is that the proposed One Florida plan and the Partnership Commitments can be reconciled, but there remain important areas of concern that need to be addressed. For example, the 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. OCR will continue to monitor and work with the State to address these and other issues and ensure that the goals of the Partnership Commitments are fulfilled.

Second, the plan raises the broader issue of whether the elimination of affirmative action is consistent with the goal of achieving both diversity and excellence in all of Florida's undergraduate and graduate schools. OCR's letter did not address the policy decision to end affirmative action and should not be misinterpreted as an endorsement of the One Florida plan. Once again, the Administration and the Department, including OCR, strongly support the appropriate use of affirmative action as a vital tool for achieving the goals of diversity and excellence in higher education.

Thank you for your consideration of these views.

Sincerely,

Richard Riley

Dear Chancellor Herbert,

Recent press stories describing Governor Bush's proposed One Florida education plan indicate that there is some **lack of clarity** regarding the Clinton Administration's position **on** race-based affirmative action in university admissions. I am writing to make clear our views.

This Administration has consistently reaffirmed our strong support for constitutionally sound, appropriately tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." 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 students. Widely documented research and years of experience indicate that the appropriate consideration of race, as one of several factors considered in an individualized assessment of applicants, has led to diverse and highly qualified student bodies.

The proposed One Florida plan raises two related but distinct issues: first, whether it can be reconciled with prior agreements (so-called Partnership Commitments) on desegregation; and second, whether it is consistent with the goal of achieving both diversity and excellence in all of Florida's undergraduate and graduate schools. As you know, the preliminary assessment of the Department of Education's Office for Civil Rights is that the proposed One Florida plan could be reconciled with our Partnership Commitments. But we remain deeply concerned about the potential impact of the plan on minority enrollment in Florida's system of higher education.

[new graf] According to a recent article in the Washington Post, "at least 40 percent fewer minority students would become eligible for admission" under the **One Florida** plan, with the possibility of an 80 percent reduction in eligible minority students. (*See "Florida Minorities Plan: An Addition Challenge," Washington Post, Dec. 22, 1999*). Furthermore, because the plan is silent as to whether students eligible for admission **[cut under your plan]** would be admitted to Florida's flagship universities, and because it does not provide for admission to Florida's graduate schools, the extent of the diversity created by this proposal is potentially limited.

With these concerns in mind, the Administration believes that appropriate use of affirmative action in undergraduate and graduate admissions will better achieve the goal of diversity and excellence in all of Florida's undergraduate and graduate schools.

Thank you for your consideration of these views. **[cut this sentence--**I hope that they clarify the Administration's position regarding the university admissions component of Governor Bush's proposal.**]**

Sincerely,

Richard Riley

Dear Chancellor Herbert,

Recent press stories describing the proposed One Florida education plan indicate that there may be some misunderstanding about regarding the Clinton Administration's position on race and gender-based affirmative action in university admissions. I am writing to make clear our views.

This Administration has consistently reaffirmed its strong support for constitutionally sound, appropriately tailored affirmative action measures consistent with the President's policy of "mend it, don't end it." 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. Widely documented research and years of experience indicate that the appropriate consideration of race or gender, as one of several factors considered in an individualized assessment of applicants, has led to diverse and highly qualified student bodies.

The proposed One Florida plan raises two related but distinct issues: first, whether it can be reconciled with prior agreements (the so-called Partnership Commitments) on desegregation; and second, whether it is consistent with the goal of achieving both diversity and excellence in all of Florida's undergraduate and graduate schools. While my Department's preliminary assessment is that the proposed One Florida plan may not violate the Partnership Commitments, I must point out that we remain deeply concerned about the broader potential impact of the plan on minority enrollment in Florida's system of higher education.

We understand that the Board of Regents now has evidence that the plan will result in a significant decline in minority enrollment at Florida's colleges and universities and that it has the potential to exacerbate and entrench racial patterns of attendance in the State higher education system. Furthermore, because the plan is silent as to whether students eligible for admission would be admitted to Florida's flagship universities, and because it does not provide for admission to Florida's graduate schools, the extent of the diversity created by this proposal is potentially limited. As you know, pursuant to the Supreme Court's decision in United States v. Fordice, the State of Florida continues to have an affirmative obligation to remove the vestiges of *de jure* discrimination in higher education.

With these concerns in mind, the Administration believes that appropriate use of affirmative action in undergraduate and graduate admissions will better achieve the goal of diversity and excellence in all of Florida's undergraduate and graduate schools.

Thank you for your consideration of these views.

Sincerely,

Richard Riley

Higher Ed

Department of Education

For Jeb Bush's Plan, Green and Yellow Lights

By KENNETH J. COOPER
Washington Post Staff Writer

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 sched-

uled 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.

PASS OR FAIL: Teachers have been handing out report cards to students for a long time, but it will be at least another year before every state has to issue a report card on new teachers.

Two years ago, Congress called for annual reports on how prospective teachers fare on state licensing exams, broken down according to the college they attended. But college and Education Department officials maintain that putting together such a report card is much harder than grading students. So the first report, due this spring, has been put off.

"It's an issue that seems simple on the surface, but when you get into it, it's full of difficulties," says A. Lee Fritschler, assistant secretary for postsecondary education.

In 45 states, college graduates have to pass a written test to get a license to teach. But there are many tests (Michigan, for instance, has 75) given at different points, before or after completing teacher training, and various passing scores, depending on the state and the test.

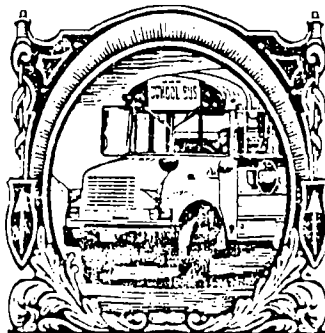
After running into heavy flak from higher education lobbyists who say they are worried about whether the numbers would be reliable and comparable, the department has decided it needs more time to ensure uniform reporting of "pass rates."

"What I worry about is somebody's pass rate being badly miscalculated," said Terry Hartle, senior vice president of the American Council on Education.

The delay has angered Rep. George Miller (D-Calif.), who accuses the administration of "failing to take the necessary action to improve teacher quality." He and other critics suspect an educational coverup of numbers sure to embarrass some colleges.

"If you're going to hold K-12 [schools] accountable for meeting higher standards, you've got to hold higher education accountable for producing better teachers," says Amy Wilkins of the Education Trust, which lobbies on behalf of low-income students.

In response, department officials note that an interim report sent to Congress last fall includes teacher test results voluntarily submitted by 20 states, but not Maryland, Virginia or the District.



Tenet Offers 'No Excuse'

Senate Panel Hears CIA Chief on Deutch's Security Lapses

By VERNON LOEB
Washington Post Staff Writer

CIA Director George J. Tenet said yesterday he has "no excuse" for the CIA's failure to notify the Justice Department in December 1996 that former CIA director John M. Deutch had kept "enormously sensitive material" on unsecure computers in his home.

His remarks came at a hearing of the Senate Select Committee on Intelligence in which he also delivered the CIA's annual assessment of worldwide threats to the United States, stressing the danger of proliferating missile technology.

Tenet stripped Deutch of his security clearances last year, after the Justice Department decided not to prosecute Deutch for mishandling secret information. But a classified report by the CIA's inspector general, parts of which became public this week, faulted Tenet and several top aides for failing to conduct a vigorous probe of the Deutch affair and to report it promptly.

According to the report by Inspector General Britt Snider, Deutch's home computers were used to visit "high-risk" Internet sites. CIA forensics experts determined that some of those sites offered pornography, but they also concluded that Deutch was not at home at the time the pornographic sites were visited.

Under pointed questioning by Sens. Richard C. Shelby (R-Ala.), chairman of the intelligence committee, and Richard H. Bryan (D-Nev.), the newly appointed vice chairman, Tenet acknowledged that it is impossible to determine whether a foreign intelligence service used the Internet to penetrate Deutch's computers and read his files.

Tenet also conceded that the CIA should have informed the Justice Department of Deutch's security

breach as soon as it was discovered in December 1996. But he said the inspector general's report concluded that neither he nor anyone else at the CIA obstructed justice.

Tenet took strong exception when Shelby asked him to compare the material carelessly handled by Deutch with that sold to foreign countries by convicted spies Aldrich Ames and Jonathan Pollard. Deutch was "sloppy," Tenet said, while Ames and Pollard committed espionage. "I don't think that's a fair comparison," he said.

In his threat assessment, Tenet warned that the spread of missile technology is "more stark and worrisome" than ever, with North Korea poised to test a new ballistic missile this year and Iran close behind.

Tenet called Osama bin Laden the foremost terrorist confronting America, adding that the exiled Saudi millionaire has shown an abiding interest in acquiring chemical weapons.

The CIA director also said he remains deeply concerned about the security of Russia's nuclear weapons and fissile materials. "We have no evidence that weapons are missing in Russia, but we remain concerned by reports of lax discipline, labor strikes, poor morale and criminal activities at nuclear storage facilities," Tenet said.

Throughout his lengthy remarks, Tenet returned repeatedly to Iran, which he described as a virulent opponent of the Middle East peace process and the world's "most active state sponsor" of terrorism.

"Although we have seen some moderating trends in Iranian domestic policy and even some public criticism of the security apparatus," Tenet said, "the fact remains that the use of terrorism as a political tool by official Iranian organs has not changed since President [Mohammad] Khatami took office in August 1997."

CDC Concedes 'Mistake' in Misleading Congress

By JOE STEPHENS and VALERIE STRAUSS
Washington Post Staff Writers

The director of the federal Centers for Disease Control and Prevention said yesterday that the agency "made a mistake" by telling Congress it had spent as much as \$7.5 million a year fighting a deadly germ known as hantavirus.

"In recent years, CDC used some of these funds to combat other life-threatening infectious diseases," Jeffrey P. Koplan acknowledged in a written statement. He said he is working to correct accounting problems at the Atlanta-based agency.

Koplan's statement failed to dampen mounting criticism on Capitol Hill, where Senate Budget Committee Chairman Pete V. Domenici (R-N.M.) yesterday called for a congressional audit. Rep. John Edward Porter (R-Ill.) said he will expand appropriations hearings set for Wednesday so he can question CDC officials about why they misled lawmakers.

"We are concerned about truth," Porter said. "We do not have a truthful statement from them about how they

spent this money."

Beginning in 1993, Congress provided the CDC with additional funding so the agency could battle respiratory illnesses linked to hantavirus, a mouse-borne pathogen that can kill people within days. Since then, Domenici said, the agency has repeatedly told Congress its scientists spent as much as \$7.5 million a year on the program.

But The Washington Post reported Wednesday that the CDC in recent years actually had spent much of the funding on other exotic diseases, such as Ebola and Lassa fevers. Koplan's statement gave no indication how much money was diverted or how the diversion occurred. But one agency official has estimated the diversion consumed more than a third of the appropriation in recent years.

Last year, Koplan apologized to Congress after an audit revealed that the CDC had diverted or could not account for as much as \$12.9 million appropriated for research into chronic fatigue syndrome. Critics have called for a Justice Department investigation to determine whether the agency violated laws against lying to Congress.

Fla. '20' Plan: An Addition Challenge

By KENNETH J. COOPER
Washington Post Staff Writer

Gov. Jeb Bush (R) has been promising to pull off what would be a remarkable feat of addition by subtraction: End affirmative action but simultaneously increase minority enrollment at public colleges in Florida.

Bush says Florida can boldly do what no state has done before by adopting his "Talented 20" rule, which would loosely guarantee admission to high school seniors in the state who graduate in the top 20 percent of their class. Texas has a similar 10 percent rule which, after three years, has just about restored undergraduate minority enrollments to the levels they had reached before a federal court banned affirmative action in the state. And California has adopted a 4 percent rule that will take effect in 2001.

But if Florida is to succeed in enrolling more minority students, it will take more than Bush's Talented 20 program. In fact, according to statistics provided by Bush's office and the Florida Board of Regents, at least 40 percent fewer minority students would become eligible for admission under the new rule than the number enrolled this year through affirmative action.

But that doesn't mean Florida colleges won't be able to increase their minority enrollments; only that they may have to resort to a variety of other measures to do so. According to aides to the governor and the board of regents, colleges are being granted license to do almost anything—short of directly considering race or ethnicity in admissions—to attract minority students. Using geographic distribution, income and other factors that could act as proxies for all being considered.

"If any university feels that it does not have sufficient skill, experience or ideas to maintain a diverse student body in a race-neutral fashion," said Chancellor Adam Herbert, an African American who headed Bush's transition team and has staked his reputation on the success of the governor's plan, "I will personally provide technical assistance to them." Currently, minority students make up about one-third of the total enrollment in Florida's public colleges.

In Texas, California and Washington, states where affirmative action has been banished by court decision or referendum, minority enrollments dropped immediately, particularly at selective colleges such as the University of Texas in Austin and the University of California at Berkeley.

In Florida, Bush has proposed his plan to end affirmative action in a bid to head off a more far-reaching referendum drafted for next year's ballot and to prevent a political

backlash that could damage the presidential prospects of his brother, Texas Gov. George W. Bush (R). Various aspects of Florida's new admissions plan will require final approval next year by the board of regents, the state Board of Education or the legislature.

Some critics have characterized such guaranteed admissions rules as an unconstitutional disguise for continued affirmative action. "It is pretty clear these are a means once again to use race as a factor," said David Gerstein, vice president of the Center for Equal Opportunity.

The arithmetic of ending affirmative action in the nation's fourth-most populous state goes something like this: First, subtract 2,000 minority students whose race or ethnicity helped get them into college. Then add 400 to 1,200 from the top fifth of their high school classes who otherwise would not be academically eligible for admission, resulting in a net loss of 800 to 1,600 minority students.

Exactly how many minority students, primarily Hispanics or African Americans, might benefit from the Talented 20 rule remains somewhat uncertain because the "guarantee" of admission comes with a big caveat: Beneficiaries must also have completed 19 required courses in high school.

Florida Gov. Jeb Bush (R).
PHOTOGRAPH BY MICHAEL LEONARD FOR THE POST



Bush's office found that 400 minority seniors in the top fifth of their classes last year had taken the 19 courses, while 800 lacked either foreign language or science courses. His plan raises the possibility of allowing the latter students to enroll and make up their missing course work during the first two years of college.

But even if these students are included, Bush's goal of increasing minority enrollment will require colleges to admit more than 800 additional minority students who otherwise would not qualify, presumably by substituting other social factors for race or ethnicity.

"Universities will still have the option to use other criteria, and they will unintentionally correlate with race," explained Brian Yablonski, a policy analyst in Bush's

office.

Several factors under consideration would capture disproportionate numbers of minorities, such as socioeconomic status (being poor), geography (coming from an inner city or rural area), parental education (being a first-generation college student) and educational disadvantage (attending low-performing schools, where minorities constitute 74 percent of students).

Florida colleges can also target their recruitment efforts to minorities and offer \$4 million in minority scholarships, activities not permitted under broader legal bans affecting Texas and California.

Bush's plan has the backing of state college presidents, including Frederick Humphries of historically black Florida A&M University. Charles Young, acting president

of the University of Florida, initially expressed reservations about the impact on minority enrollment at the state's flagship school, but has changed his opinion.

Civil rights groups have also mostly laid back for strategic reasons, seeing Bush's plan as preferable to the likely passage of a statewide referendum banning affirmative action. The plan's most vocal critic thus far has been Rep. Corrine Brown (D-Fla.), an affirmative action supporter and member of the Congressional Black Caucus.

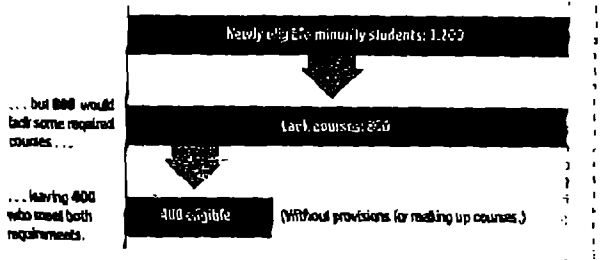
For undergraduates, the ban would take effect for students entering college next fall. But concerns expressed by Brown and others about minority enrollment in law school and other graduate programs prompted Herbert to delay ending affirmative action at that level for one more year.

The Math of Putting 'Talented 20' in College

Florida Gov. Jeb Bush's "Talented 20" plan combined with current course requirements would leave as many as 1,600 fewer minority students eligible for state public colleges. However, the plan might allow those students to make up the required course work after they have enrolled.

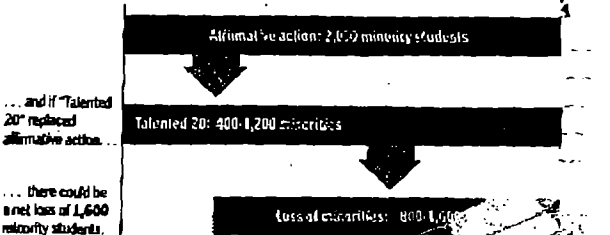
Two sets of requirements

1,200 minority students would be newly eligible under Bush's standard for admission because they graduated in the top 20 percent of their high school class...



Affirmative action vs. top 20 percent

2,000 minority students were admitted to Florida state universities for the 1999-2000 school year under current affirmative action rules...



SOURCE: Florida Board of Regents, Office of Gov. Jeb Bush

THE WASHINGTON POST

Washington Post 12/22/99

Irene Bueno

12/20/99 04:08:28 PM

FOR
WED or
THURSDAY

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP
cc: Andy Rotherham/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP
Subject: FL Affirmative Action - Next Steps Memo

This is the memo that we (Eddie Correia) and I have prepared at the request of Maria. If you are okay with this, we will send it to her for her review.

As I mentioned this morning, Andy and I think we should consider possible Administration action on Bush's EO but that we should carefully consider the pros and cons because as you mentioned, the EO is less objectionable than the Connerly Initiative but it still undermines efforts to diversity the FL higher education system.

Andy, Eddie and I are meeting on Wed to discuss some pros and cons and let you know our recommendation.



Update -- Next Steps1220ibb



Fla. AA -- Background.d

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.

DRAFT 12/20/99

Irene Bueno

01/24/2000 11:12:23 AM

Record Type: Record

To: Edward W. Correia/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: FL situation 

I think that the 1/19/00 letter that OCR sent to Reps. Brown and Meek directly states that the Dept. of Education's 1/14/00 letter is not an indication that the Administration endorses the Bush plan and clarifies OCR earlier letter. In addition, the second OCR letter states that the Administration supports race-based affirmative action programs. Sending another letter now only adds fuel to the fire.

At this point, I believe it would be inappropriate to send a letter that states our position on the EO unless we have been asked for our position. However, I think it may useful to draft and work out the language of a letter in the likely event that someone will ask the Administration's view of the Bush EO.

Edward W. Correia

Edward W. Correia

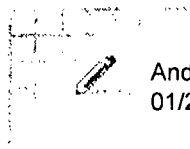
01/21/2000 12:01:36 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: FL situation 

I read Andy's e-mail, arguing that we do not need to respond further to the Governor's press release on the OCR approval of the Floriday partnership agreement. The Counsel's Office tentatively believes that someone from ED -- preferably not OCR -- should clarify our position on the partnership agreement and the Bush plan with another letter. If there is no consensus as to substance, then the letter does not need to address that. Neither the Pierce letter, nor the original letter from the Atlanta Office, states our position clearly. We would like to see ED draft such a letter for our review on Monday. If there is still disagreement on how we should, we can discuss it then. I have asked Steve Wennick from the ED General Counsel's Office to draft something for our review. I'll circulate it when I receive it.

Message Copied To: _____



Andy Rotherham
01/24/2000 09:26:12 AM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc: eric p. liu/opd/eop@eop, andy rotherham/opd/eop@eop, anna richter/opd/eop@eop
Subject: Re: FL situation 

that is how I understand it too, OCR neglected to tell us about the letters to Meeks and Brown until Friday so Irene and I were confused too. We left them with firm instructions not to correspond anymore with anyone without checking with us.

Irene Bueno

01/24/2000 09:21:30 AM

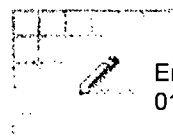
Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc: andy rotherham/opd/eop@eop, anna richter/opd/eop@eop
bcc:
Subject: Re: FL situation 

Sorry for the confusion. This is my understanding of the sequences of events and letters.

- 1/14/00 letter from Ed OCR Atlanta Office to FL Chancellor
- 1/18/00 Bush press release interpreting 1/14 as an endorsement of the One Florida Plan
- 1/19/00 letter ED OCR/DC to Representatives Carrie Meek and Corrine Brown clarifying OCR position.

Eric P. Liu



Eric P. Liu
01/21/2000 09:10:53 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc: andy rotherham/opd/eop@eop, anna richter/opd/eop@eop
bcc:
Subject: Re: FL situation 

You guys have confused me to the point of no return. Here's what I'd like in general: for Eddie not to generate new letters all over the place adding fuel to the fire on this. As to the Chancellor question, it's unclear to me what the sequence of events and letters has been. Maybe you could clarify? Was it: Chancellor letter to OCR, OCR letter to Bush, Bush press release, what else?
Irene Bueno

Irene Bueno

01/21/2000 02:53:23 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc: andy rotherham/opd/eop@eop, anna richter/opd/eop@eop
bcc:
Subject: Re: FL situation 

Sorry I misunderstood your initial response - please see my response to Andy for my reason for considering doing another letter to the Chancellor that is similar to the Meek/Brown letter and let me know what you think.

Eric P. Liu

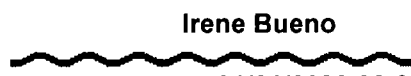
 Eric P. Liu
01/21/2000 02:35:40 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc: andy rotherham/opd/eop@eop, anna richter/opd/eop@eop
bcc:
Subject: Re: FL situation 

I would cut the last sentence of your first paragraph and replace it with "Sending another letter now only adds fuel to the fire."

Irene Bueno

 Irene Bueno
01/21/2000 02:06:27 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP, Andy Rotherham/OPD/EOP@EOP
cc: Anna Richter/OPD/EOP@EOP
bcc:
Subject: Re: FL situation 

Here's my suggestion how to respond to Eddie's email. Please let me know what you think.

"I just read the letter that OCR sent to Reps. Brown and Meek and believe that it directly states that the Dept. of Education's letter is not an indication that the Administration endorses the Bush plan and clarifies OCR earlier letter. In addition, the second OCR letter states that the Administration supports race-based affirmative action programs. Perhaps a similar letter could be sent to Bush to clarify OCR's view of the EO.

At this point, I believe it would be inappropriate to send another letter that states our position on the EO unless we have been asked for our position. However, I think it may useful to draft and work out the language of a letter in the likely event that someone will ask the Administration's view of the Bush EO."

Edward W. Correia

Edward W. Correia

01/21/2000 12:01:36 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Re: FL situation 

I read Andy's e-mail, arguing that we do not need to respond further to the Governor's press release on the OCR approval of the Floriday partnership agreement. The Counsel's Office tentatively believes that someone from ED -- preferably not OCR -- should clarify our position on the partnership agreement and the Bush plan with another letter. If there is no consensus as to substance, then the letter does not need to address that. Neither the Pierce letter, nor the original letter from the Atlanta Office, states our position clearly. We would like to see ED draft such a letter for our review on Monday. If there is still disagreement on how we should, we can discuss it then. I have asked Steve Wennick from the ED General Counsel's Office to draft something for our review. I'll circulate it when I receive it.

Message Copied To:

andy rotherham/opd/eop@eop
eric p. liu/opd/eop@eop
kendra l. brooks/opd/eop@eop
anna richter/opd/eop@eop
peter rundlet/who/eop@eop
edward w. correia/who/eop@eop
Beth Nolan/WHO/EOP@EOP
William Marshall/WHO/EOP@EOP



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

February 8, 2000

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,

A handwritten signature in cursive script, reading "Judith A. Winston", is written over a horizontal line.

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, .


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.

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

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

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,



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.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

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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

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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**