

Schools

THE WHITE HOUSE
WASHINGTON

11-12-1997

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MEMORANDUM TO: THE PRESIDENT
FROM: RAHM EMANUEL
SUBJECT: LOS ANGELES TIMES ARTICLE ON ACADEMIC STANDARDS

This is the standards article I mentioned in my weekly report. I believe that Ronald Brownstein does an excellent job of framing the education standards debate. I thought that you would find the article interesting.

CC Sec. Riley
Thurman
BReed

Mike/ Bill/ Tanya
Tom/ Mary/ Tori
FYI.

Elena

(PS- only the underlining
on the 2nd page is
The President's)

National Perspective

Call for Academic Standards Could Face Test From Civil Rights Law

RONALD BROWNSTEIN

WASHINGTON OUTLOOK

WASHINGTON—President Clinton's education agenda revolves around a simple proposition: that all students should be held to uniform standards through stiff national tests. "We must demand high standards of every student," he insists.

Meanwhile, his Education Department seems to be moving toward an interpretation of civil rights law that could challenge the entire concept of objective academic standards as a threat to racial equity.

Even for a president accustomed to accommodating contradiction, that's a daunting chasm. The time may be coming when Clinton has to choose between common standards in education and a civil rights community uneasy about their implications. It's an either/or question for a president who usually prefers multiple choice.

"This administration has never dwelled too long on philosophical clarity and consistency in anything it has done," said Chester Finn, an education expert at the conservative Hudson Institute. "But you would think one of these would eventually have to yield."

This conflict entangles the priorities of divergent decades. Education reformers today are trying to extract higher performance from students by subjecting them to tests with teeth. About half the states now require students to pass standardized exams to graduate from high school. At the cutting edge, Chicago now requires students to pass tests for promotion from the third, sixth, eighth and ninth grades.

But this standards movement is approaching a collision with the spreading reach of the "disparate impact" doctrine—a cornerstone of early 1970s civil rights law. Disparate

race-neutral standards—like tests—can violate the federal civil rights statutes if they have a disproportionate effect on minorities or women.

Disparate impact analysis has been applied primarily to hiring decisions; typically, an employer might be compelled to drop a requirement for high school diplomas if that standard tends to exclude minorities and he can't demonstrate a clear business necessity for demanding it.

Now, however, the Education Department is hinting at widening the use of disparate impact analysis in education. Last month—in response to a petition from a coalition of civil rights groups—the department agreed to investigate the University of

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California's process for admitting students to its three law schools now that the state regents have banned the use of racial preferences.

With preferences barred, the UC law schools rely primarily on grades and test scores. Since minority acceptances have plunged at the most exclusive campuses this year, the civil rights groups argue that those traditional academic standards are having a "discriminatory effect" and thus violate the civil rights laws.

In a recent interview with David Savage of The Times, Judith Winston—until last week the Education Department's chief lawyer and now the director of Clinton's racial advisory panel—wouldn't comment directly on the California investigation. But, echoing the groups' complaint, she said the government could

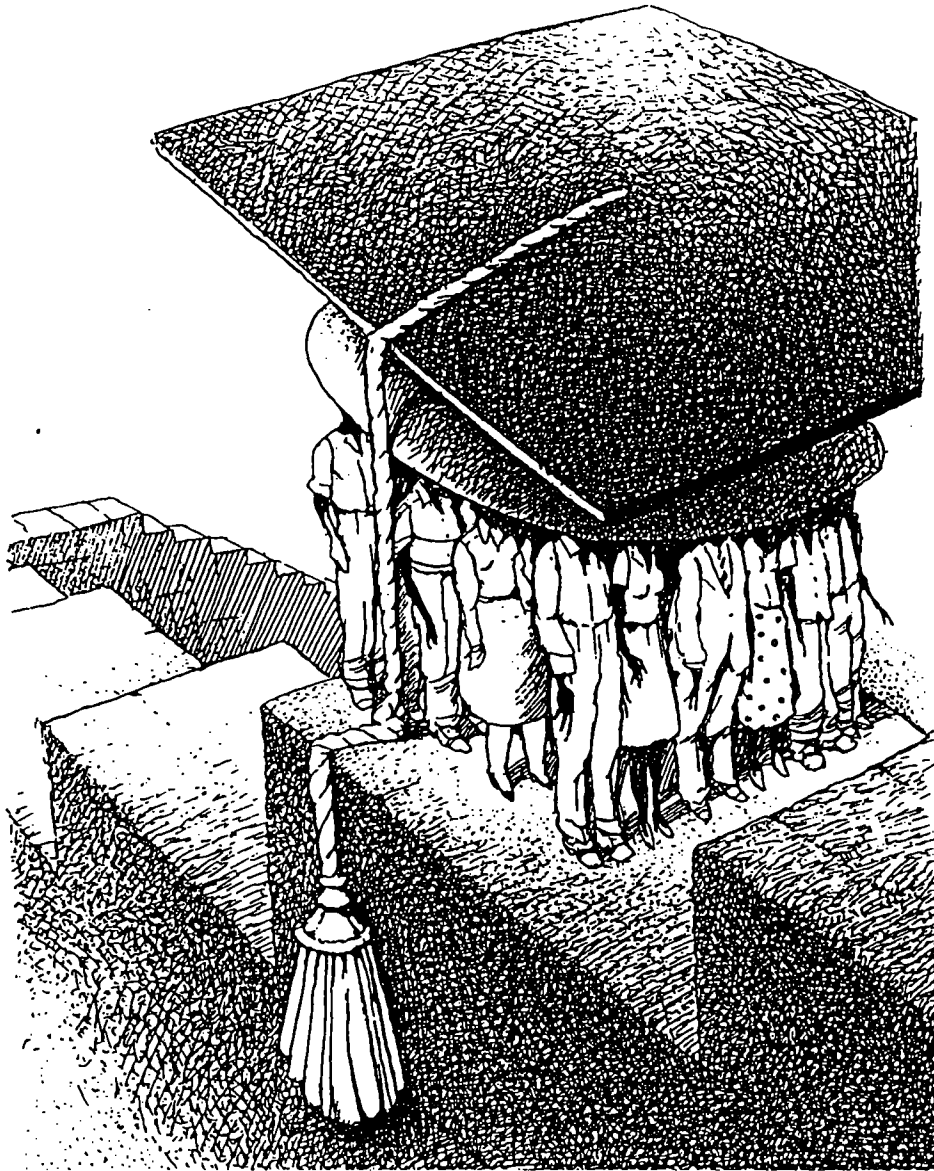
admission on "race-neutral criteria" such as grades and test scores if the use of those measures reduces minority opportunities and cannot be justified as an educational necessity. In other words, holding all applicants to the same standard could still constitute discrimination if it produces racially unequal results.

That argument has enormous implications not only for higher education, but the very push for standards in primary and secondary education that Clinton has championed. If the Education Department rules that objective educational standards can violate civil rights law because they disadvantage minority students, the door would be flung open for racial challenges to the proliferating use of tests for graduation and promotion in lower grades.

Already, civil rights groups are watching with suspicion the higher failure rates for minority students—especially those from low-income areas—in many communities that have imposed high-stakes testing. Last week, the NAACP Legal Defense Fund sought an injunction against a North Carolina county that has required students to pass tests to advance to the next grade. More lawsuits are likely as more communities adopt tests with consequences.

So far, the Education Department has moved cautiously in this area. It hasn't prevented any states from imposing tests. But in 1994, it exhaustively investigated whether Ohio's new high school graduation exam had a "disparate impact" on minorities, before finally approving the test—amid sharp criticism of the probe from House Republicans. Last month, the department negotiated an agreement that allowed Texas to continue its testing program, but required greater monitoring to ensure that minority students were being taught the material on the exams.

Civil rights groups are justified in demanding such protection—and careful examination of the tests that states are imposing. All levels of education can rely too heavily on stan-



WILLIAM BRAMHALL / For The Times

condition promotion or graduation on an exam, minority parents are unlikely to be the only ones with second thoughts. "These tests shouldn't be the sole determinant of whether a student has mastered a particular area," said Stephon Bowens, an attorney in the North Carolina case.

But the answer can't be to repudiate standards as a form of discrimination: To do so is to declare society incapable of effectively educating minority and poor children.

Ultimately, closing the racial gaps in educational performance will require a reconstruction of social order, economic opportunity and family structure in America's most blighted

neighborhoods. More immediately, it calls for aggressive school reform and greater efforts to reclaim the students drifting behind—like the \$50 million Chicago has poured into summer school this year for the nearly 44,000 kids who flunked its promotion tests.

But in graduate school admissions and grade school testing alike, attacking high academic standards amounts to shooting the messenger. The standards "put the spotlight on the problem," said Chris Pipho of the Education Commission of the States. "Now the question is, what are we going to do about it?"

Ronald Brownstein's column appears in this space every Monday