



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

FAX TRANSMITTAL**TO:** Bill Kincaid**ORGANIZATION:** _____**PHONE NUMBER:** _____**FAX NUMBER:** _____**FROM:** Rick Miller**PHONE NUMBER:** 401-3026**MESSAGE:** _____

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_____ **PAGE(S) TO FOLLOW**

4/11 am QUESTIONS & ANSWERS ON THE HOPWOOD DECISION

Q: What is the Government's position on the Fifth Circuit's decision in the Hopwood case concerning affirmative action?

A: Although the Government believes the Hopwood decision is wrong, the Government recognizes that it is binding on both public and private colleges in the Fifth Circuit, which covers the states of Texas, Louisiana, and Mississippi.

The Government is committed to seeking to overturn the Hopwood decision. Therefore, if these issues concerning affirmative action are raised in cases pending either before the Supreme Court or the entire Fifth Circuit, in what is called an en banc proceeding where all of the judges hear the case rather than just a panel of three judges, the Justice Department intends to file pleadings arguing that the Hopwood decision should be reversed.

Q: Isn't the position you are now articulating a change from the position expressed in Norma Cantu's letter to members of the Texas Legislature?

A: Numerous news articles have mischaracterized Ms. Cantu's letter. First, we should stress that the letter did not threaten to cut off dollars to Texas institutions. Second, with regard to the issue of the effect of the Hopwood decision on affirmative action in the Fifth Circuit, Ms. Cantu's letter was based on a reading of the brief filed by the Department of Justice in the Lesage case. As indicated in an April 10 letter from the Acting Solicitor General, to the extent that brief may be inconsistent with the Government's brief filed with the Supreme Court in Hopwood, the position taken by the Government in its Hopwood filing controls. The Government's position remains that the Hopwood case is binding within the Fifth Circuit.

Q. Will OCR comply with the rulings in Hopwood concerning remedial affirmative action to remedy racial discrimination during resolution of its current investigation in Texas?

A: Yes. OCR will comply with the Hopwood decision during its review of Texas' public college system to determine if any current racial discrimination is occurring. On April 11, 1997, Assistant Secretary Cantu wrote to members of the Texas Legislature, who earlier had posed questions about the investigation, to reiterate -- and correct inaccurate press reports -- that OCR would be following the Hopwood decision during its investigation. The Hopwood decision recognized that remedial affirmative action to remedy such discrimination may be constitutional. OCR also will comply with that part of the Hopwood decision limiting an institution's ability to take

remedial affirmative action only to discrimination caused by that particular institution.

In accordance with numerous Supreme Court decisions, OCR also will determine whether race-neutral measures can be used successfully to remedy any current discrimination that may be occurring prior to requiring the use of remedial affirmative action measures.

Q: Why does the Government believe the Hopwood decision is wrong?

A: The Government believes the Fifth Circuit's decision was wrong to hold that an educational institution could not seek diversity in its student body by considering race among other factors when, for example, making admission or financial aid decisions. The Government believes the decision erred by rejecting the approach endorsed by Justice Powell's landmark opinion in the 1978 Bakke case.

The decision also erred by holding that the University of Texas' Law School could only use remedial affirmative action to remedy the current effects of prior de jure discrimination that occurred within the law school -- regardless of whether the effects of prior discrimination were causing discrimination in the University's pre-law programs.

Q: Is it the Government's view that Hopwood rules out any affirmative action programs by colleges in the Fifth Circuit, particularly affirmative action programs based on a college's interest in diversity?

A: Hopwood holds that a college's interest in diversity is not a proper basis to justify making admissions decisions in which the applicant's race is considered. It does not rule out affirmative action that is necessary to remedy the continuing effects of past discrimination by the college itself. Beyond these general points, we ought not to speculate on specific circumstances that might warrant affirmative action under the holding in Hopwood.

Q: What is the Government's position on the use of affirmative action by colleges outside of the Fifth Circuit?

A: Outside the Fifth Circuit, it is constitutional for colleges to consider race in a narrowly tailored manner in their admissions or financial programs in order to achieve a diverse student body or to remedy the effects of past discrimination within educational systems.

Q: The July 30, 1996, letter sent by the Department of Education's General Counsel to all college and university counsel, stated that the precedential effect of the Hopwood decision was "unclear". Why is it now clear that the decision is binding on colleges within the Fifth Circuit?

A: At the time that the General Counsel's letter was sent, the Hopwood case had been remanded to the district court for further proceedings. It is now clear that no subsequent rulings have changed the Fifth Circuit's decision in Hopwood.

Q: Were these recent actions by Government officials politically driven, including pressures from the White House and by Senator Gramm?

A: Senator Gramm, like many press reports, was mistaken in believing that ED was acting to terminate Federal aid to colleges in Texas. Also, questions regarding the effect of the Hopwood decision are technical legal questions, not political questions. The White House was briefed on the matter but did not issue any directives. Officials at ED and the Justice Department have discussed these legal questions and both agencies are in agreement, as is shown in the recent letters sent by Mr. Dellinger and Ms. Cantu.

Q: What is the Department of Education doing with regard to desegregation of public colleges within Texas' public higher education system?

A: The Department's Office for Civil Rights (OCR) wrote to Governor Bush recently to inform him that OCR would be conducting an investigation of Texas' public college system to determine if any vestiges or remnants of Texas' former de jure segregation policies were currently causing racial discrimination. That investigation will include a review of the actions taken by Texas under its OCR-approved desegregation plan. If OCR determines that illegal discrimination is occurring, OCR may require that affirmative action measures be taken to remedy such discrimination. The Hopwood decision, necessarily, recognized that remedial affirmative action can be required to remedy the current effects of discrimination. OCR's current investigation is being conducted in accordance with the Supreme Court's 1992 decision in the Fordice case, concerning Mississippi's college system.

Q: Did the Hopwood decision impose limits on affirmative action based on gender?

A: No. The Hopwood decision did not address affirmative action

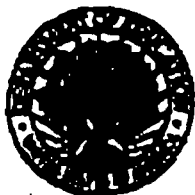
programs based on gender.

Q: There have been press reports that bills have been introduced in the Texas Legislature requiring public colleges to take affirmative action measures. Does the Department of Education favor the passage of these affirmative action bills?

A: The Department has not reviewed any such bills and does not believe it would be appropriate to comment on them, except to say that any state legislation concerning affirmative action in the Fifth Circuit must comply with the decision in the Hopwood case.

Q: Did the decision by the Ninth Circuit lifting the temporary injunction against Proposition 209 cause the Government to change its position regarding the Hopwood case?

A: Absolutely not. As we have already stated, the Government's position has not changed.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Honorable Rodney Ellis
Texas Senate
P.O. Box 12068
Capitol Station
Austin, TX 78711

MAR 18 1997

Dear Senator Ellis:

Thank you for your letter concerning the use of affirmative action in admission, scholarships and retention programs. I appreciate the opportunity to respond to the questions in your letter.

First, you inquired whether Texas' new race-neutral university policies comply with Title VI and relevant federal education policies. In accordance with the Supreme Court's decision in United States v. Fordice, the Mississippi public higher education desegregation case, I wrote to Governor Bush seeking to renew OCR's dialogue with the State of Texas regarding the implementation of its OCR-approved desegregation plan and determining whether Texas has eliminated the vestiges of prior de jure segregation in its system of public higher education. (See attached.) OCR will work with Texas officials to determine whether any vestiges of prior discrimination are causing discrimination to continue. If any such vestiges remain, OCR will require appropriate remedial action, which may include the use of affirmative action in admission, scholarship, and retention programs. The Supreme Court has consistently held that affirmative action measures may be taken to remedy the effects of prior discrimination.

Your letter referred to a Texas Coordinating Board report concerning the use of race-neutral criteria in Texas. The sufficiency of any race-neutral policies implemented within the Texas higher education system will depend upon whether race-neutral criteria would be effective to eliminate discrimination or vestiges of segregation, if they exist.

Second, you asked what federal funds would be "at risk" if Texas is not in compliance with Title VI. We fully expect Texas voluntarily to seek to remedy any current effects of past discrimination that are found to remain. However, all Federal funds received by an institution or higher education system that failed to take appropriate remedial measures could be terminated pursuant to the sanctions established in Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.

Finally, you inquired whether the Hopwood decision applies to private universities or public university programs other than admission to the University of Texas School of Law.

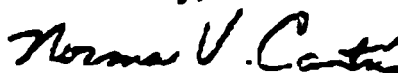
Page 2 - Honorable Rodney Ellis

We believe that the Honwood decision is limited to its facts, as the Department of Justice recently explained, on behalf of the United States, in an amicus curiae brief in LeSage v. University of Texas. That brief pointed out to the United States District Court that the Honwood decision by the Court of Appeals for the Fifth Circuit concerned the University of Texas Law School's affirmative action program, and should not be used to invalidate the affirmative action admission program used by the University of Texas' College of Education to assist in creating a diverse student enrollment for educational purposes. We believe that Justice Powell's landmark decision in the Bakke case allows both public and private universities to seek diversity to fulfill their academic missions through the robust exchange of ideas and through other educational benefits that may result from enrolling students of many backgrounds. This conclusion applies under the Constitution, which applies to state colleges and universities and the state system, and under Title VI, which applies to all public and private higher education institutions in Texas that receive Federal funds.

It is the Department's position that under the Constitution and Title VI, universities and colleges may, in appropriate circumstances, consider race and national origin in making admissions decisions and granting financial aid. They may do so to promote diversity in the student body consistent with the opinion of Justice Powell in the Bakke opinion. They also have a clear legal obligation to do so to remedy current discrimination or the effects of past discrimination.

We appreciate your interest in these important educational issues. I am confident that Texas and the Office for Civil Rights will be able to work together for the benefit of all students and each of the universities in Texas. I have sent a similar letter to each of your colleagues who co-signed your letter. If you need additional information, please contact Taylor August, Director, Dallas Office, Office for Civil Rights, (214) 767-3959.

Yours sincerely,



Norma V. Carró
Assistant Secretary
Office for Civil Rights

Enclosure

cc: Honorable Mario Gallegos, Jr.
Honorable Judith Zaffirini
Honorable John Whitmire
Honorable Gonzalo Barrientos
Honorable Gregory Luna
Honorable Carlos F. Truan
Honorable Eddie Lucio, Jr.
Honorable Royce West
Honorable Eliot Shapleigh



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

MAR 24 1997

Mr. Daniel C. Morales
Attorney General
State of Texas
P.O. Box 12548
Austin, TX 78711

Dear Mr. Morales:

I have read your Letter Opinion, No. 97-001, dated February 5, 1997, to the Chancellor of the University of Houston System. Your letter responds to questions concerning the effect of the Fifth Circuit Court of Appeals decision in *Hopwood v. Texas*. Your Opinion advises that under *Hopwood*, unless evidence of race discrimination or the present effects of past discrimination by a Texas institution can be established, the consideration of race or ethnicity is expressly prohibited by colleges and universities. You conclude on page 24 that while "individual conclusions regarding specific programs are dependent upon their particular facts, *Hopwood's* restrictions would generally apply to all internal institutional policies, including admissions, financial aid, scholarships, fellowships, recruitment and retention, among others."

On two occasions, I have offered to meet with your office to ensure that public institutions of higher education are receiving clear and comprehensive advice regarding the scope of the *Hopwood* decision. Because compliance with your Letter Opinion by colleges and universities in Texas may have a substantial impact on access to educational opportunities, statewide, I want to be sure you are aware of the position of the U.S. Department of Education (Department) on these issues.

We believe that the *Hopwood* decision is limited to its facts, as the Department of Justice recently explained on behalf of the United States, in an *amicus curiae* brief in *LeSage v. University of Texas*. That brief pointed out to the United States District Court that the *Hopwood* decision by the Court of Appeals for the Fifth Circuit concerned the University of Texas Law School's affirmative action program, and should not be used to invalidate the affirmative action admission program used by the University of Texas' College of Education to assist in creating a diverse student enrollment for educational purposes. In short, we have concluded that, beyond its facts, *Hopwood* does not limit the continuation or creation of admissions, financial aid, scholarship, fellowship, recruitment, retention or other higher education programs in Texas that take race or national origin into account in a lawful, narrowly-tailored manner consistent with Title VI of the Civil Rights Act of 1964 and the Constitution.

Page 2 - Daniel Morales

Justice Powell's landmark decision in the *Bakke* case allows both public and private universities to seek diversity to fulfill their academic missions through the robust exchange of ideas and through other educational benefits that may result from enrolling students of many backgrounds. This conclusion applies under the Constitution, which applies to state colleges and universities and the state system, and under Title VI, which applies to all public and private higher education institutions in Texas that receive Federal funds.

It is the position of the Department that under the Constitution and Title VI, universities and colleges may, in appropriate circumstances, consider race and national origin in making admissions decisions and granting financial aid. They may do so to promote diversity in the student body consistent with the opinion of Justice Powell in the *Bakke* decision. They also have a clear legal obligation to do so to remedy current discrimination or the effects of past discrimination.

Concerning the issue of the use of race or national origin to remedy discrimination and its effects, OCR recently advised the Governor of Texas that we are renewing collaborative efforts with the State to ensure that, consistent with *United States v. Fordice*, the State of Texas has eliminated all vestiges of its past racially segregated higher education system (copy of letter to Governor Bush enclosed). For your further information, several documents are enclosed that demonstrate ways in which the Department has indicated that race or national origin may be taken into account in higher education programs consistent with Federal law.

I hope this information is helpful to you. OCR is available to provide technical assistance to institutions in their efforts to comply with applicable Federal policies and court decisions. Please do not hesitate to call me at 202-205-5557 if we can be of assistance.

Sincerely yours,



Norma V. Cantú
Assistant Secretary
Office for Civil Rights

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

FEB - 4 1997

Honorable George W. Bush
Governor of Texas
P.O. Box 12428
Austin, Texas 78711

Dear Governor Bush:

The Office for Civil Rights is writing in fulfillment of our Federal Register Notice, published January 31, 1994, concerning the 1992 Supreme Court decision U.S. v. Fordice, 505 U.S. 717, 112 S. Ct. 2727 (1992). Since our correspondence dated January 27, 1994, regarding Fordice, we've been in close contact with colleges and universities to discuss their Title VI obligations under the Fordice decision. In Texas, we've offered technical assistance to postsecondary institutions, and we've offered assistance to members of the legislature and the Governor's office regarding Title VI of the Civil Rights Act of 1964 (Title VI) compliance issues.

In the Fordice Notice, we stated that OCR would be examining the situation of states which formerly had racially segregated systems of public higher education and which are on our open legal docket. These states are operating, or previously operated, under systemwide higher education desegregation plans pursuant to Title VI.

We have several ideas for reaching closure on these Title VI issues expeditiously and in a manner which utilizes Texas and OCR resources efficiently with minimum disruption. For example, we believe that involving stakeholders in defining the issues and identifying solutions where necessary is in our mutual interests. We see possibilities for collaboration where we can identify shared goals and objectives. We would like an opportunity to hear your thoughts and to establish a dialogue on how we might proceed through collaboration to the maximum extent possible. Direct cooperation and interaction between your staff and ours will make it possible to examine access to public higher education opportunities, and address both post Fordice concerns and those concerns remaining from the previous plan, while recognizing and crediting any efforts which have been made by Texas in the period subsequent to expiration of the previous plan.

OCR has the obligation to ensure that the OCR-approved desegregation plan has been implemented and that the States have eliminated the vestiges of their de jure segregated systems. In order to augment our information in the areas of the plan where OCR has concerns, and to address information indicating possible problems with higher educational opportunities for African-Americans and Hispanics in Texas, I am renewing OCR's dialogue with the State of Texas.

Page Two - Letter to Honorable George W. Bush

Since these are important matters that deserves thought and discussion, we would certainly like to hear your opinion in the near future, and we ask that you designate a contact person for future communications in these matters who can facilitate this process on behalf of the Governor's office and institutions of public postsecondary higher education in Texas.

We are prepared to come to Texas at your earliest convenience to discuss these and other matters related to OCR's responsibility to ensure that former de jure state higher education systems have both implemented their OCR-approved desegregation plans and eliminated vestiges of the formerly de jure systems. We hope to hear from you or your representative within the next two weeks.

Thank you for your consideration of these matters. Please feel to free call me, or have your staff call Taylor D. August, Director of the Dallas Office in the Southern Division of OCR, at (214) 767-3959, with any questions you may have.

Sincerely,

Norma V. Cantú

Norma V. Cantú
Assistant Secretary
for Civil Rights

cc: Taylor August, Director, Dallas Office
Susan Bowers, Enforcement Director, East

Enclosure: Fordice Federal Register Notice

Civil rights office says Texas colleges can use race

By MICHELLE MITTELSTADT
Associated Press Writer

WASHINGTON (AP) - The Clinton administration has told Texas a recent federal court ruling does not force the state to adopt strictly race-neutral policies at state colleges and universities.

In response to questions from some Texas legislators, the Department of Education also said in a letter that the state could lose federal aid if it fails "to take appropriate remedial measures" to eliminate racial discrimination in higher education.

The department said despite the ruling state colleges can still take race and ethnicity into account in various programs - a position at odds with that of Texas Attorney General Dan Morales.

In a letter Monday, assistant education secretary Norma Cantu disagreed with Morales' Feb. 6 legal opinion directing state colleges and universities to have race-neutral policies for admissions, financial aid, scholarships and other aspects of college life. Ms. Cantu heads the Education Department's Office of Civil Rights.

One state senator who has been critical of the Morales opinion said Texas could lose up to \$1.8 billion in federal funds if the state is found in violation of federal civil rights law.

Morales issued the opinion after the Supreme Court left intact a federal appeals court's decision striking down the University of Texas law school's former affirmative-action admissions policy. The plan, designed to boost minority enrollment, amounted to unlawful bias against whites, the 5th U.S. Circuit Court of Appeals ruled.

Ms. Cantu's letter said the appeals court ruling doesn't invalidate all race or ethnic considerations in Texas higher education programs.

"It is the position of the department that under the Constitution and Title VI (of the Civil Rights Act), universities and colleges may, in appropriate circumstances, consider race and national origin in making admissions decisions and granting financial aid," she wrote.

Morales' office said it interprets the 5th Circuit ruling as binding in Texas, Louisiana and Mississippi and requires race neutrality. But other officials have said the other states aren't under the same constraints as Texas because of a separate court case.

Critics have accused Morales of overreaching, saying the court ruling can be narrowly interpreted to affect only the former University of Texas law school admissions program.

Morales' opinion "is not going to change based on a letter from the federal bureaucracy," said Morales spokesman Ward Tisdale on Tuesday.

State Sen. Rodney Ellis, a Houston Democrat, said Morales' opinion could cost Texas.

"I think that the letter from the assistant secretary for civil rights has \$1.8 billion behind it," he said.

The Office of Civil Rights is assessing whether Texas has eliminated vestiges of discrimination in its public higher education system.

If discrimination is found, affirmative-action remedies could be imposed. As a last resort, Texas could face loss of federal funds should its higher education system be found in violation of the Civil Rights Act.

Texas Is Told to Keep Affirmative Action In Universities or Risk Losing Federal Aid

By PETER APPLEBOME

Compounding the uncertainties about the use of race in college admissions and scholarships, the United States Department of Education has warned Texas officials that the state could lose Federal higher education money unless it maintains affirmative-action programs in its university system — programs the Texas Attorney General says are illegal under a groundbreaking Federal court ruling.

In a letter on March 18, the Office of Civil Rights at the department told Texas officials that they must aggressively take steps like affirmative action to attract minorities or risk losing \$500 million in student scholarships, work-study programs and research grants.

The Education Department's statement directly contradicts the Texas Attorney General's directive that the decision in the Hopwood reverse-discrimination case had the effect of barring any use of race in admissions and scholarships at state colleges and universities.

In the Hopwood case, a three-judge panel said that affirmative action as approved by the Supreme Court in the landmark 1978 Bakke decision was no longer permissible.

Experts say state officials are highly unlikely to risk legal sanctions from the Federal court by ignoring Attorney General Dan Morales's interpretation of the case.

Still, the conflicting directives are the clearest display of the nation's widespread uncertainty about what the law allows for affirmative action and what further guidance will be coming from the courts.

Lawsuits in Washington and Georgia have the potential to become the next major tests of affirmative action. Ballot initiatives banning affirmative action are being proposed in several states including Florida, Colorado, Ohio and Washington.

In the other direction, two civil rights groups have filed complaints challenging the decision of the California Board of Regents to bar affirmative action in hiring and admissions at public colleges and universities.

"What's needed is some authoritative statement by the Supreme Court of where Bakke stands," said Samuel Issacharoff, a University of Texas law professor and a lawyer for the university in the Hopwood case.

"One of the ironies of the situation is that until Hopwood came along Bakke stood in a vacuum. Bakke came in 1978 and there's been no interpretive case law since then."

"I can't think of any other area of law," Mr. Issacharoff added, "where there's been one major Supreme Court decision that's stood by itself for 25 years and then a lower court comes along and says it's to be disregarded."

In fact, while officials for the Attorney General's office in Texas disagree with the Education Department's interpretation of Hopwood, Ron Dusek, a spokesman for Mr. Morales, said the conflicting direc-

Contradictory statements over an issue that is already uncertain.

tives could provide an avenue for further court review.

The Texas case stems from a lawsuit filed in 1992 by Cheryl Hopwood and three other white law-school applicants at the University of Texas. They asserted that they were denied admission because affirmative action policies gave unfair preferences to less-qualified minority applicants.

The three-judge panel, by the United States Court of Appeals for the Fifth Circuit, in New Orleans, shook the academic world last March by ruling not only that the law school's admissions policies were illegal but also that the Supreme Court's ruling in the Bakke reverse discrimination case was no longer valid.

The Bakke decision said schools could not adopt racial quotas but race could be used as one of several factors in admissions. The Fifth Circuit ruling said the law school "may not use race as a factor" in admissions, "even for the wholesome purpose of correcting perceived racial imbalance in the student body."

But the decisive language of the ruling has not been affirmed elsewhere. Instead, the Supreme Court let the ruling stand, leaving it in effect only in the Fifth Circuit. But even the two other states covered by

the Fifth Circuit, Louisiana and Mississippi, are under court orders to further desegregate their colleges and universities and have not adopted the strict interpretation of Hopwood being used in Texas.

And even in Texas, despite Mr. Morales's directive, there is still disagreement over how far the Hopwood ruling extends. Lawmakers have vowed to amend Hopwood though legislative action and until Mr. Morales's directive, the University of Houston was continuing some race-based scholarships after other state universities had decided they were not permitted.

The Education Department's stance is the latest wrinkle. It was offered in response to a letter from Texas legislators asking for an interpretation of Hopwood. It is also part of a review of progress toward desegregation in six states first announced in 1994.

In a letter to Texas legislators, Norma Cantu, head of the Office of Civil Rights at the Education Department, said the Hopwood decision applied only to admissions programs used by the law school at the time the suit was filed.

The old policy of separate application tracks for different races is no longer in effect, and both sides agree it was not permissible.

Instead, Ms. Cantu said, under the terms of the 1992 Ayers v. Fordice ruling in Mississippi, Texas is required to continue to root out current discriminatory practices and the vestiges of past discrimination and make its campuses more accessible to minorities.

Not only can race be used as a factor in admissions, universities "have a clear legal obligation to do so to remedy current discrimination or the effects of past discrimination," Ms. Cantu's letter said.

"The Texas Attorney General's office has interpreted the Fifth Circuit decision much more broadly than necessary," Ms. Cantu said in a telephone interview. "Unless the facts are identical to those in place at the time at the University of Texas Law School, universities may use appropriate affirmative action."

More.

Texas Is Told to Keep Affirmative Action continued...

Ms. Cantu said she hoped to meet with Texas officials to help craft "a more reasoned reading of the Fifth Circuit decision that would permit the universities to continue appropriate use of affirmative action."

Critics of affirmative action said Ms. Cantu's statement reflected the degree to which the Clinton administration remains committed to affirmative action no matter what the courts say.

"It seems to me this is an outright flouting of very clear Supreme Court precedent," said Clint Bolick, litigation director of the Institute for Justice, a conservative public-interest legal organization. "This Administration has not found a preference policy it will not abide."

Meanwhile, officials in Texas said there was no way to comply with both sets of contrasting directives.

"I can't imagine the University of Texas is going to undertake to ignore

the Fifth Circuit opinion and the directive of the Attorney General of Texas," said Michael Sharlot, dean of the University of Texas Law School.

"If the Department of Education's Office of Civil Rights seeks to require us to engage in affirmative action," Mr. Sharlot said, "maybe we should let Ms. Cantu fight it out with them, and we'll hold their coats."

THE NEW YORK TIMES, WEDNESDAY, MARCH 26, 1997

A 29

School Buys Laptops for All 7th Graders

By The New York Times

KENT, Conn. — Hoping to level a high-tech disparity among students, the school system here has bought laptop computers for every student in the seventh grade — all 36 of them.

The \$80,000 purchase last month was the first part of an unusual program aimed at providing all seventh and eighth graders in town with their own portable computers to use in every class, and to take home. Computers will be purchased for the eighth grade in 1998.

Ed Epstein, the school principal, said the purchase is intended to eliminate the gap between the computer haves and have-nots. About half the families of seventh graders in Kent already have a computer at home, he said.

What is more important, assigning students their own laptops and encouraging the children to take them home provides broader experience than the standard computer lab delivers, he said. Mr. Epstein said the students are on line several hours a day.

"It's like learning French in France rather than in Connecticut," Mr. Epstein said. "It's total

immersion as opposed to dabbling."

The school bought the \$1,855 laptops through a new program by Toshiba and Microsoft. Given a seventh grader's penchant for losing homework assignments, permission slips and hats, the school has set up strict rules for handling computers. Students store their computers in locked cabinets during lunch, gym and after-school activities. Parents needed to attend a training session themselves before students could take their laptops home.

Since receiving computers Feb. 10, the two classes have been learning how to write a research paper on the computer, how to create a spreadsheet and how to track their French grades. They set up electronic reminders for homework assignments. Soon, they will use the Internet for research.

Students interviewed at the school said that of course they like to play computer games — a pastime allowed only outside school. But two girls said they wrote "novels" of about 2,000 words one week just for fun.

Students also said the comput-

ers make it easier to write and revise papers and take notes in class.

"It helps keep us organized," Tait A. Nielsen, 12, said. "All our papers are in one place."

Kent officials say the town is able to do this in part because of its small size — about 3,000 full-time residents who include everyone from factory workers to New York City financiers, as well as well-known weekenders like Henry A. Kissinger.

Yet they also point out that the laptop purchase is a sizable chunk of a \$3.5 million education budget — nearly eight times the \$11,000 heating oil budget and more than four times the \$17,000 allocated for textbooks. An insurance policy covers drops and losses, for a \$500 deductible that the school will split with parents.

Carolyn MacLeod, Kent's computer coordinator, stressed that the computers motivate students to do more learning on their own, to explore areas they just touched upon in class.

"They're soaring," she said. "They're not waiting for us to take their learning to the next level."

Math test for Spanish speakers draws fire

By Carol Innerst
THE WASHINGTON TIMES

A bilingual version of a new, national mathematics test will be developed and administered to pupils whose native language is Spanish, officials in the Clinton administration said yesterday.

"Ridiculous," responded Jim Boulet Jr., executive director of English First, to the administration's mandate for a Spanish-language version of the mathematics test.

"This is part of a continued attempt to justify failed bilingual-education programs," he said. "The first argument for bilingual education was that

children would learn English better. That hasn't happened.

"Then they said it would help them keep up in the subject matter. Well, if they're giving subject-matter tests in Spanish, I guess that's not true either," he added.

"What are we going to do in Florida about the children who speak Haitian, Creole, Portuguese, Vietnamese?" asked Brewster Brown, spokesman for Florida Commissioner of Education

Frank T. Brogan. "Currently in Florida, we don't give tests in other languages."

Responding to a GOP request for more information on the administration's plan to have the federal Department of Education develop voluntary national tests in reading and mathematics for use by the states and local school districts, acting Deputy Secretary of Education Marshall S. Smith said that the reading test "will be a test of reading in English."

"Consequently, it will not be given in other languages," he said. "However, the mathematics test will be made

available in a bilingual [Spanish-language] version."

Braille and large-print versions of both tests and an audio-cassette version of the math test also will be developed, he said. States and localities voluntarily agreeing to use the new national tests will be expected to provide special accommodations at testing sites for students with disabilities. Accommodations could include extra time or one-on-one testing.

Other red flags went up as the administration responded to GOP queries for more information about the president's order to

Administration plan called 'ridiculous'

press ahead with development of national tests in reading and mathematics:

- Early indications are that the tests will be costlier than anticipated. The cost of developing the tests, first announced at \$7 million to \$8 million for the first year, is up to \$10 million and then \$12 million in 1998. The cost of administering and scoring the tests, originally put at \$5 a head, is now estimated at \$10 to \$12.

- The new tests are likely to be easier than the rigorous congressionally mandated National Assessment of Educational Progress (NAEP) tests used as their model.

For 30 years, NAEP has served as a report card on how the nation's schoolchildren are doing in var-

ious subjects. In recent years, NAEP was expanded to provide state-by-state scores on a voluntary basis.

Now, the Clinton administration is proposing to use the NAEP frameworks as models for 90-minute national tests in reading and math. The new tests would provide scores for individual students, schools and districts that could be compared with national and international benchmarks and, in theory at least, would encourage the country to strive for higher academic achievement.

The Department of Education two years ago began to push for inclusion of disabled and Spanish-speaking students in the NAEP tests in various subjects.

Many states, including Florida, are interested in participating in the national exams because they believe it is important to have an "apples-to-apples" comparison around the country.

At the same time, the states have already invested heavily in developing their own rigorous standards and assessments and don't want to have to choose between their own newly developed tests and the upcoming national tests.

Florida also is concerned about a lessening of rigor if the national tests deviate much from the current NAEP tests, Mr. Brown said.

The 90-minute tests, as currently conceived, would be "weighted more toward the bottom" of the present NAEP tests,

according to officials close to the development process. And Mr. Smith has said the goal for the reading test is to have every fourth-grader attain only the "basic" or lowest standard of achievement, and not the "proficient" level.

"Before they get out of the gates, they're shooting too low," said Gary Huggins, executive director of the Education Leaders Council, an organization of market-oriented chief state school officers also concerned about how the national tests will evolve.

"The standards have to be high enough that they wouldn't undercut state efforts to set their own high standards," he said.

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Sallie Mae dissidents find independent ally

A panel representing dissident Sallie Mae shareholders said an independent advisory firm backed its call for a vote on a reorganization plan for the government-sponsored purchaser of student loans.

Institutional Shareholder Services termed the dissidents' proposed articles and bylaws for the reorganized company "a model of corporate governance," according to the panel.

The D.C.-based Student Loan Marketing Association, known as Sallie Mae, was created by the federal government to support the market for student loans. Now it faces a congressional mandate to privatize.

The company's board and the dissident shareholders are at odds over who should set the course of the revamped company and how it should be governed.