



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 2, 2009

Honorable Steve Beshear
Governor of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601

Dear Governor Beshear:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its review of Kentucky's performance under the Partnership Agreement between the Commonwealth of Kentucky and the U.S. Department of Education, Office for Civil Rights (Agreement). OCR and Kentucky entered into the Agreement on January 24, 2000 and OCR agreed in November 2005 to amend the agreement to permit construction of a new dormitory. The Agreement included activities to be carried out by the Commonwealth of Kentucky and its eight public universities to address the requirements of Title VI of the Civil Rights Act of 1964, as set forth by the U.S. Supreme Court in *United States v. Fordice*, that Kentucky eliminate the vestiges of the formerly *de jure* segregated system of higher education.

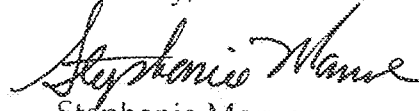
Enclosed please find the Final Report on the Commonwealth of Kentucky's Implementation of the Partnership Agreement between the Commonwealth of Kentucky and the U.S. Department of Education, Office for Civil Rights (Report), a draft of which we shared with you in October 2008 for your review and comment. In addition to the historical and legal foundation of the Agreement, the Report summarizes OCR's monitoring of the commitments, details Kentucky's accomplishments in meeting each commitment and describes OCR's assessment of these efforts. Finally, the Report states OCR's findings and conclusion that the Commonwealth is in compliance with Title VI and its implementing regulation with respect to the issues addressed in the Agreement.

Thank you for your cooperation and the cooperation shown to OCR by Kentucky staff and university officials. I would like to take this opportunity to thank Dr. Richard A. Crofts, Interim President for Kentucky's Council on Postsecondary Education (CPE), the

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members and staff of CPE, and the members of CPE's Committee on Equal Opportunities. In addition, we are particularly grateful for the assistance provided by Sherron Jackson, CPE's Assistant Vice President for Finance and Equal Opportunity and Dennis Taulbee, CPE's General Counsel.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Monroe".

Stephanie Monroe
Assistant Secretary
Office for Civil Rights

Enclosure

**Final Report on the Commonwealth of Kentucky's Implementation of the
Partnership Agreement between the Commonwealth of Kentucky and the U. S.
Department of Education, Office for Civil Rights
January 2, 2009**

On January 24, 2000, the U.S. Department of Education, Office for Civil Rights (OCR) entered into a partnership agreement (the Agreement) with the Commonwealth of Kentucky. The Agreement addressed the Commonwealth's affirmative duty under Title VI of the Civil Rights Act of 1964 (Title VI)¹ and *U.S. v. Fordice*² to dismantle vestiges of its formerly *de jure* racially segregated higher education system. The Agreement was entered into pursuant to OCR's enforcement authority under Title VI and the implementing regulation.³

OCR has monitored Kentucky's implementation of the commitments it made in the partnership Agreement. Through its monitoring activities, which will be detailed more fully below, OCR has determined that the Commonwealth has met its commitments under the Agreement and is closing its monitoring of the Agreement as of the date of this report.

In this report, OCR sets forth the basis for its determination and highlights Kentucky's accomplishments in performing its obligations to meet its commitments under the Agreement. In addition to the historical and legal background of the Agreement, this report summarizes OCR's monitoring of the Agreement's commitments, details the Commonwealth's accomplishments in meeting each commitment and sets forth OCR's findings and conclusions.

I. History of OCR's Relationship with the Commonwealth Regarding Higher Education Desegregation Issues

The Commonwealth's system of public higher education includes eight public universities:

- Eastern Kentucky University
- Kentucky State University (the state's one HBCU)
- Morehead State University
- Murray State University
- Northern Kentucky University
- University of Kentucky
- University of Louisville
- Western Kentucky University

¹ 42 U.S.C. 2000 *et seq.*

² 505 U.S. 717 (1992).

³ 34 C.F.R. Part 100

The Kentucky Council on Postsecondary Education (CPE) is the statewide coordinating agency for higher education. CPE submits budget proposals to the Governor for the development of the Commonwealth's budget, who, in turn, submits a state budget to the General Assembly, which passes a budget every two years. The Committee on Equal Opportunities (CEO), a committee within CPE, oversees the Commonwealth's desegregation and equal opportunities plans for postsecondary education.

In 1981, the Office for Civil Rights notified the Commonwealth that it was operating a racially segregated system of higher education in violation of Title VI of the Civil Rights Act of 1964. Kentucky developed a comprehensive five-year plan (the Plan) designed to provide the remedial activities necessary to meet the mandates of Title VI for public institutions of higher education in Kentucky. The Plan included a wide range of affirmative measures and activities designed to eliminate past discrimination in three areas of higher education, as described in the Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education issued by OCR in 1978. Those areas were:

- Disestablishment of the dual system and enhancement of Kentucky's historically black university, Kentucky State University (KSU).
- Desegregation of student enrollment in three areas – recruitment, retention and graduation.
- Desegregation of faculty, administrative staff, nonacademic personnel and governing boards.

In 1983, OCR accepted the Commonwealth's desegregation plan. Throughout the five years of the Plan, Kentucky submitted yearly progress reports to OCR detailing the efforts to achieve the goals outlined in the Plan. In 1987, the Commonwealth submitted a final report to OCR describing the accomplishments achieved under the Plan.

In January of 1989, OCR released to the public for comment a draft copy of its factual report, summarizing the efforts of the Commonwealth to implement the Plan. In December 1990, OCR incorporated the comments and additional explanatory statements offered by Kentucky. Ultimately, a final version of the factual report was not issued and Kentucky was not advised as to its status under the Plan.

II. Legal Context

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin in programs or activities that receive Federal financial assistance. Title VI states: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Thus, programs and activities that receive Federal financial assistance from the United States Department of Education (the Department) are covered by Title VI and its

implementing regulations, 34 C.F.R. Part 100, and they are enforced by the Department's Office for Civil Rights.

When a state has operated a racially dual system of higher education, the Title VI regulations require that the state take "affirmative action to overcome the effects of prior discrimination." 34 C.F.R. §100.3(b)(6)(i). When OCR has accepted commitments to take remedial action, submitted by a state or other institution, OCR will gather information through monitoring to determine whether the commitments have been implemented consistent with the terms of the settlement agreement.

United States v. Fordice

In *United States v. Fordice*, the Supreme Court held that, under Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment, race neutral policies alone are not sufficient to determine that a state has effectively discharged its affirmative obligation to dismantle a formerly *de jure* segregated system of higher education. According to the standards announced by the Court, "[I]f policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound education practices." *Fordice*, 505 U.S. 717, 729 (1992).

The Court urged an examination of "a wide range of factors to determine whether [a] state has perpetuated its formerly *de jure* segregation in any facet of its institutional system." *Fordice*, 505 U.S. at 728. As identified by the Court, a few examples of the wide range of possible factors include, but are not limited to: admissions standards, program duplication, institutional mission assignments and other policies rooted in the prior segregated system that contribute to the continued racial identifiability of previously segregated institutions. The Court held:

If the State perpetuates policies and practices traceable to its prior system that continue to have segregative effects – whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system – and such policies are without sound educational justification and can be practicably eliminated, the State has not satisfied its burden of proving that it has dismantled its prior system. [505 U.S. at 729.]

Responding to inquiries concerning the effect of *Fordice*, on January 31, 1994, OCR published a Notice in the *Federal Register* outlining the procedures and analysis that the agency planned to follow in future reviews of states with a history of *de jure* segregated systems of higher education. 59 Fed. Reg. 4271 (1994).

The Notice stated that OCR planned to apply the *Fordice* standard to all pending Title VI evaluations of statewide higher education systems with OCR-accepted desegregation plans that had expired. Specifically, the Notice explained that OCR planned to examine a wide range of factors to ensure that the vestiges of segregation have been eliminated.

The comprehensive array of factors that OCR would consider included those addressed in *Fordice* and those reflected in the criteria for acceptable desegregation plans specified in the Department's *Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education*, published in the *Federal Register* on February 12, 1978, (43 Fed. Reg. 6658). 59 Fed. Reg. 4272.

Additionally, OCR reaffirmed in the Notice its position that States may not place an unfair burden upon African American students and faculty in the desegregation process and that State systems of higher education may be required to strengthen and enhance historically black institutions. Further, OCR announced that it planned to "strictly scrutinize state proposals to close or merge traditionally or historically black institutions and any other activities that might impose undue burdens on black students, faculty, or administrators or diminish the unique roles of those institutions." 59 Fed. Reg. 4272.

III. Summary of Process after OCR's *Fordice* Notice

In January 1994, OCR sent to then-Governor of Kentucky Brereton Chandler Jones a letter informing him that the Supreme Court's decision in *Fordice* required a reevaluation of state higher education systems' desegregation efforts. The letter included an advance copy of OCR's notice to be published in the *Federal Register* on January 31, 1994, announcing that the agency would apply the *Fordice* decision to all pending evaluations of statewide higher education systems with expired desegregation plans. Kentucky was one of the remaining states.

After the original 1983 plan expired, Kentucky continued its efforts to eliminate the vestiges of its formerly dual system of higher education. The Commonwealth developed a second plan, entitled *The Kentucky Plan for Equal Opportunities in Higher Education*, which contained the identical actions, goals, and objectives as the original OCR-negotiated plan. The duration of this plan was from 1990 to 1997. Following the expiration of this plan, the Commonwealth adopted *The Kentucky Plan 1997-2002*. This plan had three system-wide objectives:

- Increase African American student enrollment;
- Increase the number of African Americans employed at all levels at all institutions; and
- Continued enhancement of KSU.

In February 1999, Assistant Secretary for Civil Rights, Norma Cantú advised then-Governor Paul E. Patton that OCR would be examining Kentucky's formerly segregated system of higher education in light of the *Fordice* decision and OCR's January 1994 *Federal Register* Notice. That letter invited Kentucky's comments concerning a partnership method of conducting this analysis. In June 1999, after a series of preliminary discussions between OCR, CPE and CEO, OCR and the Commonwealth agreed to pursue a collaborative approach to address concerns regarding the status of African Americans in Kentucky's public universities.

The parties reviewed information from all institutions relating to access, retention, campus climate, faculty and physical plant. OCR also joined CEO on site visits to several institutions, which included interviews with faculty, administrators and students, as well as inspections of physical facilities.

In June 1999, OCR advised Kentucky that there were three major areas that needed to be addressed in the Kentucky system:

- Continued enhancement of KSU;
- Initiatives at traditionally white institutions in the areas of improving campus climate; and
- Recruitment and retention of African American students throughout the state.

During the months that followed, OCR and CPE drafted an agreement to address the areas identified by OCR. On January 24, 2000, the parties executed the Agreement. The Agreement's Commitments are organized into two broad categories: 1) strategies to enhance KSU; and 2) strategies to enhance the initiatives at traditionally white universities in the areas of campus climate, student recruitment and student retention.

IV. OCR's Monitoring of the Commonwealth's Completion of Agreement Commitments

OCR monitored the Commonwealth's performance of its commitments through review of written reports submitted according to the schedule provided by the Agreement⁴, on-site visits by OCR staff to each public university and through numerous communications between OCR staff and Commonwealth officials.

A summary of OCR's monitoring actions, in cooperation with the Commonwealth, follows:

- OCR and representatives of the Commonwealth conduct campus visits throughout 2000.
- August 18, 2000 – a scheduled comprehensive monitoring report addressing several aspects of the Agreement, including physical plant enhancement at KSU, appointments to KSU's Board of Regents and undergraduate recruitment and retention strategies at the traditionally white institutions.
- June 21, 2001 – a scheduled comprehensive monitoring report addressing several aspects of the Agreement, including an analysis of the Commonwealth's post-secondary education funding model and its impact on KSU and strategies to improve the climate at the traditionally white institutions.

⁴ OCR also reviewed a Report by the Civil Rights Project, Building on Success Educational Diversity and Equity in Kentucky Higher Education Choices Before The Commonwealth, (September 16, 2008). Commissioned by Kentucky's Council on Postsecondary Education, the report studied the Commonwealth's past progress and future challenges and made recommendations for action on issues of access, equity and diversity at the Commonwealth level and at the higher education institutions.

