

## Statewide Study for Diversity Planning

Action: The Committee on Equal Opportunities recommends that the Council adopt the following recommendations:

- That the Commonwealth, in collaboration with the institutions, conduct a study to determine its compelling state interest, if any, to engage in diversity planning.
- That the Council request institutions or others to partner with the Commonwealth to financially support a diversity study.
- That the diversity study be conducted immediately when funds are identified.

The Committee on Equal Opportunities began the process of developing a new statewide equal opportunities plan in June 2004. The institutional presidents appointed representatives to work with the Council staff during the planning process. At its April 2005 meeting, the committee confirmed its intent to continue the current plan until the Office for Civil Rights informs Kentucky of its status under the Partnership Agreement.

The committee directed the workgroup to begin investigating the requirements for developing a statewide diversity plan. The workgroup has met three times since the April CEO meeting to discuss and develop recommendations regarding diversity planning.

The workgroup discussions and recommendations are:

- The CEO should recommend to the Council that an environmental scan (diversity study) be conducted to determine Kentucky's compelling interest in engaging in diversity planning.
- The following process should be used to implement the environmental scan: (a) issue a request for qualifications to identify firms or individuals that are capable of conducting the study, (b) issue a request for proposals to the smaller group of qualified professionals to ascertain the best proposal and timeline for conducting the study, and (c) collaborate with the institutions to provide financial support for the study.
- The CEO should immediately implement the study as funds are identified to support an environmental scan.

- The study results should provide insight on the basic legal and constitutional framework for engaging in diversity planning and suggest a design of policies that would comply with the constitutional guidelines (established in the *Grutter*, *Gratz*, and *Bakke* cases) for race-conscious postsecondary education policies and the compelling interest and narrow tailoring requirements established by the courts.
- The results should provide guidance on establishing diversity policies where consideration of race is not the focus.
- The CEO and the Council should encourage the Office for Civil Rights to expeditiously inform the Commonwealth of its status under the Partnership Agreement.
- The workgroup should continue to analyze *The Kentucky Plan* accomplishments and deficiencies and advise the committee as a new plan is developed.

These recommendations recognize that many factors contribute to how states and institutions develop policies regarding diversity. The study provides the opportunity for Kentucky to improve its policy to ensure that it fully advances its educational mission and diversity goals. The study should present the basic legal and constitutional framework for establishing race-conscious policies and policies where race is not a consideration and offer suggestions on the design of policies that would comply with the constitutional guidelines established in the *Grutter*, *Gratz*, and *Bakke* cases.

Finally, the study should present the basic constitutional and statutory framework appropriate to examine the two “compelling governmental interests” recognized by the Supreme Court in the postsecondary education context of student body diversity and remediation of past discrimination. These frameworks should fall within one of the three following Supreme Court identified levels of scrutiny: (a) rational basis, (b) intermediate scrutiny, and (c) strict scrutiny. The highest level of scrutiny is typically applied to plans that are based on race or national origin.