

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft	"Affirmative Action Assessment Outline: Postsecondary Admissions and Financial Aid Programs" (30 pages)	03/98	P5
002. draft	"Affirmative Action Assessment Outline: Technical Assistance for Postsecondary Admissions and Financial Aid Programs" (32 pages)	05/01/98	P5

COLLECTION:

Clinton Presidential Records
 Domestic Policy Council
 Kendra Brooks (Subject Files)
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FOLDER TITLE:

[Education - Affirmative Action]

kh16

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

SIGNIFICANT OCR CASES: April 14, 1998

SIGNIFICANT CASES THAT RAISE "CALL HOME" ISSUES:

["Call Home" issues are affirmative action, desegregation, testing, single sex or single race schools or programs and First Amendment. We have also included the 25 intercollegiate athletics complaints filed by the National Women's Law Center.]

AFFIRMATIVE ACTION

1. UC Graduate School Admissions

OCR is investigating whether the current admissions practices of the UC law schools have a discriminatory impact, in violation of Title VI, on applicants on the basis of race or national origin. OCR hired a nationally recognized expert to analyze the data that we have received from all three law schools. Initial data on admissions criteria has been reviewed. We have asked the consultant to do additional analysis of the impact of using various index scores on the number of minority and non-minority applicants in the "read" pool for each school, we are gathering information about the performance of students admitted in previous years with scores below the current automatic denial lines and we are interviewing additional experts to identify a consultant who can address the method or weighting of criteria that each school is currently using, whether the criteria are being used for their intended purpose and whether the criteria are valid for the purpose being used.

OCR is continuing to review data from the UC medical schools. OCR has not made a decision to move forward with an investigation and no evaluation letters have been issued.

2. University of Chicago

On December 27, 1996 OCR received a complaint alleging that the law school maintains a race-based preferential admissions program. A preliminary data request was mailed to the university on May 29, 1997 and a response was received on July 10. OCR issued a further data request on November 14, 1997. On December 9, OCR staff, including the national affirmative action facilitator, met with University officials to discuss the admissions process. In January 1998, OCR received from the University a sample applicant file. Documents in the file are being examined and will serve as source material for detailed interview questions regarding the admissions process.

**3. Wichita State
Kansas Board of Regents**

Complaint filed in October 1996 by a white graduate student alleging WSU denied him participation in Kansas Ethnic Minority Fellowship Program because he is white. Program awards are limited to ethnic minority graduate students. OCR met with University and Board officials in June. Discussion centered around remedial and diversity justifications for the program. Recipients did not respond to several parts of OCR's subsequent data request. On January 8, 1998, the KC Office sent the recipients another request for information, focusing specifically on their stated reasons for the program and steps they have taken to address questions about narrow tailoring. OCR had a conference call with the Board of Regents and the University on March 11, 1998 to discuss the case status and the second data request. The response to the second data request is now due on May 11, 1998. All activities in this case are being coordinated with Affirmative Action facilitator.

4. Roanoke Public Schools, Virginia

Complaint alleges that magnet schools admission policies in this unitary school district discriminates against minority students. There are twelve magnets, two are part of the Federal MSAP program, others were previously funded. Discussed in affirmative action task force meeting in November. Resolution letter being drafted to incorporate narrow tailoring standard. Meeting held with GC March 27 to discuss the draft. Conversations beginning with the school district to discuss how to go evaluate the program, consistent with the Federal Magnet School notice.

6. Rutgers University School of Law

OCR complainant applied to and was rejected for admission to the School of Law. The complaint alleges that the law school has established a Minority Student Program to assist minorities to gain admission. The complainant also alleges that the Program provides support services to admitted minority students that are not available to non-minority students. Data has been submitted and we have completed a preliminary analysis of the data. On site took place on February 20, 23, and 24. Additional analyses are being conducted.

7. New Orleans Public Schools

In response to two complaints, OCR initiated an investigation into "schools with special requirements" (also known as magnet schools) in New Orleans. Our preliminary investigation showed that some of the schools were placing too much emphasis on race as a factor in admissions, at least one other used the IQ as a gatekeeper for admission. The school district, recognizing that there were civil

rights concerns, entered into negotiations to resolve the Title VI concerns. OCR worked with the school district to draft a voluntary resolution agreement. In March 1998, the Board forwarded a signed agreement to OCR. Shortly after forwarding the agreement, the Board President announced that any admission offers that had been made for the class of 1998-99 would be rescinded. This created public uproar and a lot of press attention. The Assistant Secretary and Deputy Assistant Secretary have become personally involved with this case. The AS sent the Board President a letter of April 6, stating that the students who had received admission offers under the old criteria should be admitted. OCR felt that necessary outreach to parents had not occurred prior to implementing the new criteria. OCR has been in contact with Louisiana Senators Landrew and Breaux and Congressman Jefferson and has briefed their staffs on next steps with this case. During the week of April 13, the full Board approved OCR's resolution agreement, OCR will be working with the Board to ensure that implementation of the agreement includes working with parent groups. OCR staff met with School Board members and one of the complainants on April 15 to discuss next steps.

HIGHER EDUCATION DESEGREGATION

1. Florida Higher Ed Desegregation

The Florida partnership was initiated by OCR, in April 1995, to address Title VI concerns relating to higher education desegregation, in light of the U.S. Supreme Court's 1992 decision in the Fordice case. The partnership effort was subsequently expanded, at Florida's initiative, to cover broader concerns relating to the higher education of all minority students.

The Partnership has reached basic agreement on a set of Partnership Commitments which address concerns identified in light of the Fordice case, as well as broader issues relating to access, retention, and graduation of minority students in higher education in Florida. We have also reached, within the last month, basic agreement with Florida representatives on related language to be included in the Partnership Report and Commitments that addresses most of the remaining issues related to the Partnership. We expect that, within the next few weeks, we will recirculate the Partnership Agreement within the Department and that it will be adopted by both Florida Governor Chiles and Secretary Riley, as well as by the various Florida education sectors represented on the Partnership's Coordinating Group.

2. Ohio Higher Ed. Desegregation

OCR made a finding in 1981 that the State of Ohio had unlawfully segregated Central State University, the State's only public historically black university. State has taken significant steps to strengthen Central State, and has outlined, as part of its

recent State budget legislation and in a separate plan for Central State, additional steps that it will take in the future to further strengthen Central State. Based on the State's actions to date and on OCR's expectation that the State legislation and plan will lead to the elimination of any vestiges at Central State, OCR closed its current Title VI investigation in February 1998. The state will inform OCR regularly of its progress in implementing the state budget legislation and plan for Central State.

3. Virginia Higher Education Desegregation

On April 9, the Assistant Secretary sent a letter to Governor Gilmore of Virginia, informing him that OCR would be beginning its Fordice review of Virginia. The letter informed the Governor that we would like to work together to resolve issues of higher education desegregation in the Commonwealth. Next step: Meeting with Governor's representatives to begin the process, presently scheduled for week of May 11.

4. Texas Higher Education Desegregation

On April 15, staff from the Dallas Office briefed the Assistant Secretary, Deputy Assistant Secretaries, OGC, and DOJ on the progress of our Fordice investigation in Texas. The review began over one year ago, and the briefing was a check in to discuss what OCR had found and next steps for the review. On-sites are continuing. DOJ and OGC concurred with the approach being taken by OCR.

5. Pennsylvania Higher Education Desegregation

On March 10, OCR Philadelphia met with the Pennsylvania work group to have preliminary discussions on some of the deficiencies that had been found at Cheyney (an HBCU) and other problems identified in the system. The Commonwealth requested a written list of major issues that OCR had thus far identified. On March 13, OCR provided a list which included: (1) enhancement of Cheyney's facilities and computer system; (2) reservation of unique programs at Cheyney; and (3) issues concerning student recruitment, retention, and campus climate throughout the state, but particularly at Penn State and in the institutions in the southeastern portion of Pa. The working group will meet again on April 21 at which time the Commonwealth will present its positions regarding these items. The parties agree that there are significant deficiencies at Cheyney that should be addressed.

ELEMENTARY AND SECONDARY SCHOOL DESEGREGATION

1. Lima, Ohio

Complaint received in 1996 alleged that district denied a request by a white student to transfer to a neighboring district based on race. Closed with no violation. Reopened following Federal court decision in Equal Open Enrollment Association v. Board of Education of Akron City School District (N.D. Ohio, August 29, 1996). OCR met with District in July 1997 to discuss resolution options that would be more narrowly tailored to the goal of maintaining a diverse student body. During last July and early August, OCR collected information about open enrollment policies in other districts in the state. On September 30, 1997, office received another complaint alleging that another white student's transfer was denied based on his race. Cleveland Office contacted counsel for the district on December 3 to discuss the case law related to race-based classifications. Counsel for the district was in agreement on steps district would need to take to sustain such a program. A meeting with the district was held on January 29 to discuss the district's rationale for the program. District representatives are looking into ways to alter the attendance policy to ensure that it complies with Title VI.

2. Palm Beach County School District, Florida

In November, Congressman Hastings filed a complaint alleging: (1) that funds for construction and renovation are disproportionately channeled to schools with predominately white populations, (2) school board members are more responsive to request from white communities than black communities concerning school boundary changes, (3) African American students are bused from their home schools more often than counterparts in white communities. Atlanta Office sent the Congressman a letter on 11-20-97 informing him that the first allegation is covered by a previous resolution agreement which is currently being monitored by OCR and that we would proceed to resolve the second and third allegations. In April, we found that there was insufficient evidence of a violation concerning the remaining allegations.

3. Beaufort County School District, South Carolina

District, operating under a 441B plan, requested technical assistance from OCR regarding proposal to establish a charter school. OCR met with attorneys for the Lighthouse school, providing technical assistance, recommending that efforts be taken to recruit minority students to expand access. The charter school did not receive financing this year as a result of pending litigation, filed by the School District, as to whether the State Board's approval of the school violates the Voting Rights Act and OCR's 441 B plan. At trial, the judge found that the State's decision to charter the Lighthouse school was inconsistent with the State's racial balance charter law and OCR's 441 B plan.

4. Anne Arundel County Public Schools, Maryland

The Philadelphia Office has received 9 complaints alleging that changes to feeder patterns at county schools are designed to resegregate schools. In response to informal and formal data requests, the District recently submitted data that is currently being analyzed. There has been some press concerning these complaints.

5. Urbana School District, Illinois

On January 23, 1998, OCR received a complaint alleging that the District discriminates against African-American students in its policy and practice of assigning students to schools for the purpose of desegregation. In particular, the complainants allege this policy and practice imposes burdens on African-American students that are not shared by nonminority students. Specific District actions cited by the complainants as discriminatory include the following: disproportionate assignment of African-American students to schools outside their "walk-zone", mandatory busing of these students; closing a school located in an African-American community; construction of new schools in white communities; and failure to provide needed Title I services to African-American students bused to one school. A letter of acknowledgment was issued by OCR on February 6, 1998. OCR is currently evaluating the information submitted by the complainants in support of the allegations.

TESTING

1. Ohio Department of Education

This review was resolved on October 3, 1994. The agreement committed ODE to take action in five major areas: preparation to taking the test in grade nine; timely and appropriate assistance for those students who are not successful in passing the tests; review of equity issues; equity issues related to limited English proficiency; and attendance improvement/truancy prevention programs. State wide teacher standards, designed to improve teacher preparation programs were adopted and enacted into legislation effective January 1, 1998. The K-12 standards, designed to monitor school districts performance on proficiency tests were adopted by the State Board of Education in principle in May 1997. In June 1997 the General Assembly enacted Senate Bill 55 which sets new academic accountability standards for schools. These accountability standards become effective in July 1999. The state implemented a program beginning in 1995 which uses Goals 2000 funds to support intervention programs for students who were not passing the proficiency tests in Ohio. Funds have been provided to 125 districts. OCR is coordinating with the Department's Goals 2000 program to collect information about the results of the state's efforts.

2. Nevada State Department of Education

Complaint filed with OCR Seattle Office alleges that the state's high school proficiency examination, which is a condition for graduation, has a discriminatory impact on LEP students. Evaluation letters issued on August 5. OCR received the data regarding the state's policies on September 22, 1997. On November 10, 1997, OCR interviewed the state testing director and on November 17 additional data was provided by the state. Seattle Office is now drafting a proposed settlement agreement. Activities on this case are being coordinated with the testing facilitators and with the Deputy for Policy.

3. North Carolina State School Board, North Carolina Department of Public Instruction, North Carolina State Legislature

On December 10, 1997, companion complaints were filed with OCR alleging discrimination under Title VI in the implementation of the State of North Carolina's student assessment programs. The complaints allege discrimination against minority and language minority students, and minority teachers and administrators who work in low performing schools (serving primarily minority populations). The complaints also allege unequal funding and support for minority schools as well as disproportionate assignment of at risk students to minority, inner city schools. The complaints are still at the evaluation stage. OCR plans to send a letter to complainants that we cannot pursue this complaint based upon Title VI's employment jurisdiction limitation and ripeness issues.

4. North Carolina Department of Public Instruction and 28 School Districts in North Carolina

On March 16, 1998, the NAACP and the NC Education and Law Project filed a class complaint alleging discrimination on the basis of race by the NC Dept. of Public Instruction and 28 named school districts. The complaint alleges that there is a disparate impact on black students and that many such students will not be able to graduate based upon their inability to pass the state's high stakes test. The complaint is being evaluated. We expect to send out an evaluation letter and data request during the week of April 20.

5. Hunter College Elementary School, New York

The complaint, filed by the Puerto Rican Legal Defense and Education Fund alleges, in pertinent part, that the test for eligibility to this high track special school is conducted only in English. OCR letter of evaluation and data request was issued in March.

6. California State Department of Education

The SF office received a complaint from a parent organization challenging the implementation of the state's Standardized Testing and Reporting Program (STAR) with respect to LEP students. OCR was in the process of evaluating the complaint when a law suit was filed by the San Francisco Unified School District against the state, challenging the STAR program under Title VI, the EEOA and the Constitution. The district is seeking federal participation in the court litigation.

SINGLE SEX/SINGLE RACE

1. New York City - Young Women's Leadership School

The NY OCR received a complaint from three civil rights organizations alleging that the creation of YWLS, a public school that will serve girls from grades 7 through 12, is a violation of Title IX. After a lengthy investigation, OCR has concluded that comparable opportunities are not being provided to boys in the school district. There have been a number of conversations with DOJ and the White House to ensure consistency between Title IX and the 14th Amendment. After meeting with the WH, the Secretary called Chancellor Crew in December. A Department team composed of educators and representatives from OCR meet with the Chancellor's staff on February 10 and again on March 30 to discuss options for resolving this case. The OCR team met with the complainants on February 10. The complainants are dissatisfied with any potential resolution that would permit the school to continue as a single sex school. They have requested a meeting with the Secretary. The AS informed the complainants that the Secretary would meet with them, but not to discuss the resolution of the case, but to hear their views on single sex education. Meeting is being scheduled. presented. There has been lots of press attention concerning this case.

2. Edmonds Community College, Washington

This case was resolved on May 9, 1997. The College offered a course perceived to be exclusively for women and some student support and counseling groups were available only to women students. In resolution, the college agreed to modify all notices regarding the course offering to make it clear that the class was open to all students. The college also agreed to review its approval process for support and counseling groups. The college agreed that if it determined that some services needed to be provided in gender-specific groups, the college would develop clear standards for when this would be appropriate. The college also agreed to submit such standards to OCR for review and approval before they would be implemented. OCR met with the college on January 21, 1998 and discussed the proposed procedures and

standards for possible acceptance of gender-specific support/counseling groups. OCR provided model language to the college in March 1998.

3. Pellston School District, Michigan

Complaint received on September 26, 1997, alleges that the District assigns students to math and science classes based on the gender of the student and maintains some math and science classes comprised solely of male students at its middle school. District responded to request for information on December 23 and this information has been assessed. A proposed resolution agreement is being drafted.

4. Ann Arbor Public School District, Michigan

Complaint alleges that the District operates several programs that are designed for African American students only, effectively denying other students, on the basis of race, the opportunity to participate. Complainants have been interviewed and the investigative plan is being developed. OCR Cleveland staff met with the District in late January. The District indicated its willingness to take action to resolve the complaint. A proposed resolution agreement is being drafted.

5. Santa Monica-Malibu Unified School District, California

Complaint alleges that a District elementary school that provides a specialized Marine Science Program discriminates against boys. The complainant alleges that the District automatically admitted all of the female applicants. Remaining openings were given to male applicants; however, a number of boys were not admitted due to limited enrollment capacity. Subsequent to the initiation of our investigation the district approved a new admissions policy that contains gender neutral enrollment procedures. While the new policy may resolve the Title IX issues, it may now raise some Title VI concerns because of the district's "minority specific" enrollment priority criteria. At OCR's request, the district has provided further information on this aspect of their revised policy. OCR is, in consultation with OCR's national Affirmative Action Coordinator, reviewing that information.

6. Springfield Technical Community College

Male student filed a Title IX complaint alleging that the college discriminated against males by barring them from enrolling in its Rape Aggression defense course. Boston Office prepared a letter to the College using the resolution approach employed in the Edmonds Community College Case (see above). The resolution approach has been shared with OGC and a letter has been drafted and shared with the Secretary's Chief of Staff. We hope to send this letter to the College during the week of April 20.

TITLE IX ATHLETICS

1. Title IX Intercollegiate Athletics Complaints

In June 1997, the National Women's Law Center filed 25 athletic complaints alleging discrimination in the awarding of athletic scholarships to women. Data has been obtained from each institution, and resolution discussions either have been, or shortly will be, initiated with each institution. OCR has closely coordinated its handling of these investigations with the Office General Counsel. The National Women's Law Center has been intensely interested in the resolution of these complaints and contact with the organization has been ongoing.

OCR plans to issue four letters shortly, including letters of compliance to Brigham Young University and Bethune-Cookman College, a resolution letter to the University of Toledo and a response to the legal counsel for Bowling Green University that further articulates what constitutes substantial proportionality in the awarding of athletic financial assistance. We anticipate significant press coverage on the Bowling Green letter and a very vocal response from many of the other institutions under investigation. The preparation of each of these letters has been coordinated with the Office of the General Counsel.

A separate update on the 25 cases has been provided by the Athletics Facilitator.

CONGRESSIONAL OR PRESS INTEREST:

1. Orange Unified, Orange, California

OCR has two activities pending with this district: (1) two complaints; and (2) ongoing monitoring of an agreement that the district entered into in 1994. On November 26, 1997 we responded to an inquiry from Congressman Christopher Cox on behalf of the district. The district was concerned about our level of involvement in the district's programs. Last summer the district received a one year waiver from the state of California that allowed it to discontinue its bilingual program at the k-3 level and replace it with a sheltered English instruction program.

With respect to the two complaints, we are proceeding with our investigation. (Note: The program being implemented by the District pursuant to its waiver is different from the program proposed under the "English Language Education for Immigrant Children Initiative," otherwise known as the Unz initiative). On February 18-19, 1998, OCR staff met with several parents and teachers affiliated with the district. OCR heard complaints of disparate treatment of parents and inadequate notice and translations. OCR also was given information about possible areas of noncompliance in the program being implemented at the elementary level. As a result of this information, OCR has identified a sample of schools covering all grade levels for the on-site visit and has prepared a supplemental data request. The on-site visit is

planned for May 1998.

With respect to the monitoring activity, in February the District was to indicate whether it would continue to implement its 1994 agreement or would modify the agreement. The district continues to maintain that it is in compliance and it provided additional data in mid-February. The SF office is analyzing the information to assess whether the District is implementing its plan.

2. University of California, Davis

This case has received extensive media coverage and numerous inquiries from state legislators. Complaint alleged that UCD discriminated against minority, female and disabled students in the implementation of its academic probation and expulsion policies at the medical school and in the provision of support services. It also alleged that disabled medical students are denied appropriate academic adjustments. The university responded to OCR's data request in November 1996. Additional data was requested and was received in September 1997 and onsites were conducted in September, October and December 1997. OCR anticipates submitting a voluntary resolution to plan to the University shortly.

3. University of Illinois - College of Medicine, Illinois

OCR has received a number of complaint against the College alleging discrimination on the basis of race and/or sex and/or disability in the University's (1) granting leaves of absence and classification upon return from leaves of absence; (2) dismissal of students; (3) provision of financial aid; (4) provision of academic assistance; (5) provision of faculty advisors; (6) provision of academic adjustments; (7) changing of academic requirements and (8) loss and/or falsification of records. OCR has drafted evaluation letters for all of the filed complaints. Four of the complaints will be closed due to insufficient information to infer that discrimination has occurred. OCR will proceed with complaint resolution with regard to the three remaining complaints.

FIRST AMENDMENT

1. Montesano School District No. 66, Washington

Complaint alleged that the District discriminated against a student on the basis of disability when the student's special education teacher and an aide assisted students in a special education class to draft, circulate, and present to the school principal a petition stating that the student's disability-related behavior in class was interfering with their ability to learn. OCR received a signed resolution agreement on March 12, 1998. OCR will monitor the terms of the agreement to ensure compliance.

POSSIBLE ENFORCEMENT CASES

1. Virginia State University, Virginia

Sexual harassment case. Issue is timely grievance procedures. The violation finding was issued the week of April 3.

2. Fredricksburg School District, Virginia

Section 504 case. Issue is charging disabled students additional tuition to attend out of district public school. Also, limitations on admission that violate Section 504. Conversations on options with OGC and OSERS during the week of December 5. Revised memorandum is being drafted to present legal theory and responsibilities of public schools to out-of-district students. This memorandum will be shared again with OGC and OSERS, to share with their principals.

3. Gallup School District, New Mexico

This is a Title VI Lau case. A letter of findings was issued in 1993. After three years of monitoring, OCR recommended enforcement in February 1996. Based upon the District's agreement to take appropriate action to address outstanding issues, OCR entered into new settlement agreement with district in April 1996. Denver Office has prepared a brief summary of the portions of the agreement that are still outstanding and is preparing a letter to the district based upon that assessment.

4. University of Wisconsin, Madison

A settlement agreement was obtained to resolve this Title IX intercollegiate athletics case on February 28, 1990. Based upon OCR's analysis of the latest information provided by the university in September 1997, in consultation with GC, we have determined that the University is not fulfilling its obligations under the plan. A letter advising the University that it is in noncompliance and requesting that the areas of non-compliance be addressed within 30 days has been discussed with GC and will be issued shortly.

5. Tempe Union High School District, Arizona

Denver office has engaged in protracted negotiations with the district regarding softball fields at two of its six high schools. As a result of the complaint, one of the schools added new varsity and junior varsity softball fields. These fields and the softball facilities at a second high school are not comparable to facilities provided for boys' sports. On January 8, 1998, the Director informed the District Superintendent that, having failed to resolve these matters, OCR is preparing a letter of findings.

PENDING ENFORCEMENT CASES

1. Prince George's County, Maryland and State of Maryland

The case involves a violation of Section 504 by the school district regarding disabled students' access to day care programs in their neighborhood schools. Last spring, OCR initiated enforcement by filing a Notice of Opportunity for a Hearing. Briefs have been filed by all parties. Oral argument took place January 8, 1998 before an Administrative Law Judge in D.C. The initial decision by ALJ found that the school district had violated Section 504 as to those disabled students who are placed in private school settings. Exceptions have been filed by the school district. OCR will be filing exceptions as to the finding that there was no violation as to those students who are placed in special education centers in the school district.

OTHER NEWS

Hopwood v. University of Texas - Possibility of Appeal

On April 17, 1998, Texas's Attorney General, Dan Morales filed a notice of appeal with the U.S. Court of Appeals for the Fifth Circuit, thus signaling that the state of Texas is considering appealing the March 20, 1998, District Court Judgment enjoining the University of Texas School of Law and its officers from taking into consideration racial preferences in the selection of those individuals to be admitted as students at the University of Texas School of Law. The District Court awarded \$776,000 to attorneys for prevailing plaintiffs and \$1 each to the plaintiffs based on a determination they would not have been admitted under a race neutral policy.

70. The New Republic

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In defense of preference

By Nathan Glazer

Affirmative action is bad. Banning it is worse.

The battle over affirmative action today is a contest between a clear principle on the one hand and a clear reality on the other. The principle is that ability, qualifications, and merit, independent of race, national origin, or sex should prevail when one applies for a job or promotion, or for entry into selective institutions for higher education, or when one bids for contracts. The reality is that strict adherence to this principle would result in few African Americans getting jobs, admissions, and contracts. What makes the debate so confused is that the facts that make a compelling case for affirmative action are often obscured by the defenders of affirmative action themselves. They have resisted acknowledging how serious the gaps are between African Americans and others, how deep the preferences reach, how systematic they have become. Considerably more than a mild bent in the direction of diversity now exists, but it exists because painful facts make it necessary if blacks are to participate in more than token numbers in some key institutions of our society. The opponents of affirmative action can also be faulted: they have not fully confronted the consequences that must follow from the implementation of the principle that measured ability, qualification, merit, applied without regard to color, should be our only guide.

I argued for that principle in a 1975 book titled, provocatively, *Affirmative Discrimination*. It seemed obvious that that was what all of us, black and white, were aiming to achieve through the revolutionary civil rights legislation of the 1960s. That book dealt with affirmative action in employment, and with two other kinds of governmentally or judicially imposed "affirmative action," the equalization of the racial proportions in public schools and the integration of residential neighborhoods. I continued to argue and write regularly against governmentally required affirmative action, that is, racial preference, for the next two decades or more: it was against the spirit of the Constitution, the clear language of the civil rights acts, and the interests of all of us in the United States in achieving an integrated and just society.

It is not the unpopularity of this position in the world in which I live, liberal academia, that has led me to change my mind but, rather, developments that were unforeseen and unexpected in the wake of the successful civil rights movement. What was unforeseen and unexpected was that the gap between the educational performance of blacks and whites would persist and, in some respects, deepen despite the civil rights revolution and hugely expanded social and educational programs, that inner-city schools would continue to decline, and that the black family would unravel to a remarkable degree, contributing to social conditions for large numbers of black children far worse than those in the 1960s. In the presence of those conditions, an insistence on color-blindness means the effective exclusion today of African Americans from positions of influence, wealth, and power. It is not a prospect that any of us can contemplate with equanimity. We have to rethink affirmative action.

In a sense, it is a surprise that a fierce national debate over affirmative action has not only persisted but intensified during the Clinton years. After twelve years under two Republican presidents, Ronald Reagan and George Bush, who said they opposed affirmative action but did nothing to scale it back, the programs seemed secure. After all, affirmative action rests primarily on a presidential executive order dating back to the presidencies of Lyndon Johnson and Richard Nixon which requires "affirmative action" in employment practices from federal contractors—who include almost every large employer, university, and hospital. The legal basis for most of affirmative action could thus have been swept away, as so many noted at the time, with a "stroke of the pen" by the president. Yet two presidents who claimed to oppose affirmative action never wielded the pen.

Despite the popular majority that grumbles against affirmative action, there was (and is) no major elite constituency strongly opposed to it: neither business nor organized labor, religious leaders nor university presidents, local officials nor serious presidential candidates are to be found in opposition. Big business used to fear that affirmative action would undermine the principle of employment and promotion on the basis of qualifications. It has since become a supporter. Along with mayors and other local officials (and of course the civil rights movement), it played a key role in stopping the Reagan administration from moving against affirmative action. Most city administrations have also made their peace with affirmative action.

Two developments outside the arena of presidential politics galvanized both opponents and defenders of affirmative action. The Supreme Court changed glacially after successive Republican appointments—each of which, however, had been vetted by a Democratic Senate—and a number of circuit courts began to chip away at the edifice of affirmative action. But playing the largest role was the politically unsophisticated effort of two California professors to place on the California ballot a proposition that would insert in the California Constitution the simple and clear words, taken from the Civil Rights Act of 1964, which ban discrimination on the basis of race, national origin, or sex. The decision to launch a state constitutional proposition, Proposition 209, suddenly gave opponents the political instrument they needed to tap the majority sentiment that has always existed against preferences.

While supporters of affirmative action do not have public opinion on their side, they do have the stillpowerful civil rights movement, the major elites in education, religion, philanthropy, government, and the mass media. And their position is bolstered by a key fact: how far behind African Americans are when judged by the tests and measures that have become the common coin of American meritocracy.

The reality of this enormous gap is clearest where the tests in use are the most objective, the most reliable, and the best validated,

as in the case of the various tests used for admission to selective institutions of higher education, for entry into elite occupations such as law and medicine, or for civil service jobs. These tests have been developed over many years specifically for the purpose of eliminating biases in admissions and appointments. As defenders of affirmative action often point out, paper-and-pencil tests of information, reading comprehension, vocabulary, reasoning, and the like are not perfect indicators of individual ability. But they are the best measures we have for success in college and professional schools, which, after all, require just the skills the tests measure. And the tests can clearly differentiate the literate teacher from the illiterate one or the policeman who can make out a coherent arrest report from one who cannot.

To concentrate on the most hotly contested area of affirmative action—admission to selective institutions of higher education—and on the group in the center of the storm—African Americans: If the Scholastic Assessment Test were used for selection in a color-blind fashion, African Americans, who today make up about six percent of the student bodies in selective colleges and universities, would drop to less than two percent, according to a 1994 study by the editor of the *Journal of Blacks in Higher Education*.

Why is this so? According to studies summarized in Stephan and Abigail Thernstrom's book, *America in Black and White*, the average combined SAT score for entering freshmen in the nation's top 25 institutions is about 1300. White applicants generally need to score a minimum of 600 on the verbal portion of the test—a score obtained by eight percent of the test-takers in 1995—and at least 650 on the mathematics section—a score obtained by seven percent of the test-takers in 1995. In contrast, only 1.7 percent of black students scored over 600 on the verbal section in 1995, and only two percent scored over 650 on the math. This represents considerable progress over the last 15 years, but black students still lag distressingly far behind their white counterparts.

There is no way of getting around this reality. Perhaps the tests are irrelevant to success in college? That cannot be sustained. They have been improved and revised over decades and predict achievement in college better than any alternative. Some of the revisions have been carried out in a near-desperate effort to exclude items which would discriminate against blacks. Some institutions have decided they will not use the tests, not because they are invalid per se, but because they pose a barrier to the increased admission of black students. Nor would emphasizing other admissions criteria, such as high school grades, make a radical difference. In any case, there is considerable value to a uniform national standard, given the enormous differences among high schools.

Do qualifications at the time of admission matter? Isn't the important thing what the institutions manage to do with those they admit? If they graduate, are they not qualified? Yes, but many do not graduate. Two or three times as many African American students as white students drop out before graduation. And the tests for admission to graduate schools show the same radical disparities between blacks and others. Are there not also preferences for athletes, children of alumni, students gifted in some particular respect? Yes, but except for athletes, the disparities in academic aptitude that result from such preferences are not nearly as substantial as those which must be elided in order to reach target figures for black students. Can we not substitute for the tests other factors—such as the poverty and other hardships students have overcome to reach the point of applying to college? This might keep up the number of African Americans, but not by much, if the studies are to be believed. A good number of white and Asian applicants would also benefit from such "class-based" affirmative action.

(I have focused on the effect of affirmative action—and its possible abolition—on African Americans. But, of course, there are other beneficiaries. Through bureaucratic mindlessness, Asian Americans and Hispanics were also given affirmative action. But Asian Americans scarcely need it. Major groups—not all—of Hispanic Americans trail behind whites but mostly for reasons we understand: problems with the English language and the effect on immigrant children of the poor educational and economic status of their parents. We expect these to improve in time as they always have with immigrants to the United States. And, when it comes to women, there is simply no issue today when it comes to qualifying in equal numbers for selective institutions of higher and professional education.)

How, then, should we respond to this undeniable reality? The opponents of affirmative action say, "Let standards prevail whatever the result." So what if black students are reduced to two percent of our selective and elite student bodies? Those who gain entry will know that they are properly qualified for entry, that they have been selected without discrimination, and their classmates will know it too. The result will actually be improved race relations and a continuance of the improvements we have seen in black performance in recent decades. Fifteen years from now, perhaps three or four percent of students in the top schools will be black. Until then, blacks can go to less competitive institutions of higher education, perhaps gaining greater advantage from their education in so doing. And, meanwhile, let us improve elementary and high school education—as we have been trying to do for the last 15 years or more.

Yet we cannot be quite so cavalier about the impact on public opinion—black and white—of a radical reduction in the number of black students at the Harvards, the Berkeleys, and the Amhersts. These institutions have become, for better or worse, the gateways to prominence, privilege, wealth, and power in American society. To admit blacks under affirmative action no doubt undermines the American meritocracy, but to exclude blacks from them by abolishing affirmative action would undermine the legitimacy of American democracy.

My argument is rooted in history. African Americans—and the struggle for their full and fair inclusion in U.S. society—have been a part of American history from the beginning. Our Constitution took special—but grossly unfair—account of their status, our greatest war was fought over their status, and our most important constitutional amendments were adopted because of the need to right past wrongs done to them. And, amid the civil rights revolution of the 1960s, affirmative action was instituted to compensate for the damage done to black achievement and life chances by almost 400 years of slavery, followed by state-sanctioned discrimination and massive prejudice.

Yet, today, a vast gulf of difference persists between the educational and occupational status of blacks and whites, a gulf that encompasses statistical measures of wealth, residential segregation, and social relationships with other Americans. Thirty years ago, with the passage of the great civil rights laws, one could have reasonably expected—as I did—that all would be set right by now. But today, even after taking account of substantial progress and change, it is borne upon us how continuous, rooted, and substantial the differences between African Americans and other Americans remain.

The judgment of the elites who support affirmative action—the college presidents and trustees, the religious leaders, the corporate executives—and the judgment even of many of those who oppose it but hesitate to act against it—the Republican leaders in Congress, for example—is that the banning of preference would be bad for the country. I agree. Not that everyone's motives are entirely admirable; many conservative congressmen, for example, are simply afraid of being portrayed as racists even if their opposition to affirmative action is based on a sincere desire to support meritocratic principle. The college presidents who support affirmative action, under the fashionable mantra of diversity, also undoubtedly fear the student demonstrations that would occur if they were to speak out against preferences.

But there are also good-faith motives in this stand, and there is something behind the argument for diversity. What kind of institutions of higher education would we have if blacks suddenly dropped from six or seven percent of enrollment to one or two percent? The presence of blacks, in classes in social studies and the humanities, immediately introduces another tone, another range of questions (often to the discomfort of black students who do not want this representational burden placed upon them). The tone may be one of embarrassment and hesitation and self-censorship among whites (students and faculty). But must we not all learn how to face these questions together with our fellow citizens? We should not be able to escape from this embarrassment by the reduction of black students to minuscule numbers.

The weakness in the "diversity" defense is that college presidents are not much worried about the diversity that white working-class kids, or students of Italian or Slavic background, have to offer. Still, there is a reputable reason for that apparent discrepancy. It is that the varied ethnic and racial groups in the United States do not, to the same extent as African Americans, pose a test of the fairness of American institutions. These other groups have not been subjected to the same degree of persecution or exclusion. Their status is not, as the social status of African Americans is, the most enduring reproach to the egalitarian ideals of American society. And these other groups have made progress historically, and make progress today, at a rate that incorporates them into American society quickly compared to blacks.

This is the principal flaw in the critique of affirmative action. The critics are defending a vitally important principle, indeed, the one that should be the governing principle of institutions of higher education: academic competence as the sole test for distinguishing among applicants and students. This principle, which was fought for so energetically during the 1940s and 1950s through laws banning discrimination in admission on the basis of race, national origin, or religion, should not be put aside lightly. But, at present, it would mean the near exclusion from our best educational institutions of a group that makes up twelve percent of the population. In time, I am convinced, this preference will not be needed. Our laws and customs and our primary and secondary educational systems will fully incorporate black Americans into American society, as other disadvantaged groups have been incorporated. The positive trends of recent decades will continue. But we are still, though less than in the past, "two nations," and one of the nations cannot be excluded so thoroughly from institutions that confer access to the positions of greatest prestige and power.

On what basis can we justify violating the principle that measured criteria of merit should govern admission to selective institutions of higher education today? It is of some significance to begin with that we in the United States have always been looser in this respect than more examination-bound systems of higher education in, say, Western Europe: we have always left room for a large degree of freedom for institutions of higher education, public as well as private, to admit students based on nonacademic criteria. But I believe the main reasons we have to continue racial preferences for blacks are, first, because this country has a special obligation to blacks that has not been fully discharged, and second, because strict application of the principle of qualification would send a message of despair to many blacks, a message that the nation is indifferent to their difficulties and problems.

Many, including leading black advocates of eliminating preference, say no: the message would be, "Work harder and you can do it." Well, now that affirmative action is becoming a thing of the past in the public colleges and universities of California and Texas, we will have a chance to find out. Yet I wonder whether the message of affirmative action to black students today really ever has been, "Don't work hard; it doesn't matter for you because you're black; you will make it into college anyway." Colleges are indeed looking for black students, but they are also looking for some minimal degree of academic effort and accomplishment, and it is a rare ambitious African American student seeking college entry who relaxes because he believes his grades won't matter at all.

One of the chief arguments against racial preference in college and professional school admissions is that more blacks will drop out, the quality of blacks who complete the courses of instruction will be inferior, and they will make poorer lawyers, doctors, or businessmen. Dropping out is common in American higher education and does not necessarily mean that one's attendance was a total loss. Still, the average lower degree of academic performance has, and will continue to have, effects even for the successful: fewer graduating black doctors will go into research; more will go into practice and administration. More blacks in business corporations will be in personnel. Fewer graduating black lawyers will go into corporate law firms; more will work for government.

And more will become judges, because of another and less disputed form of affirmative action, politics. Few protest at the high number of black magistrates in cities with large black populations—we do not appoint judges by examination. Nor do we find it odd or objectionable that Democratic presidents will appoint more black lawyers as judges, or that even a Republican president will be sure to appoint one black Supreme Court justice. What is at work here is the principle of participation. It is a more legitimate principle in politics and government than it is for admission to selective institutions of higher education. But these are also gateways to power, and the principle of participation cannot be flatly ruled out for them.

Whatever the case one may make in general for affirmative action, many difficult issues remain: What kind, to what extent, how long, imposed by whom, by what decision-making process? It is important to bear in mind that affirmative action in higher education admissions is, for the most part, a policy that has been chosen (albeit sometimes under political pressure) by the institutions themselves. There are racial goals and targets for employment and promotion for all government contractors, including colleges and universities, set by government fiat, but targets on student admissions are not imposed by government, except for a few traditionally black or white institutions in the South.

Let us preserve this institutional autonomy. Just as I would resist governmentally imposed requirements that these institutions meet quotas of black admissions, so would I also oppose a judicial or legislative ban on the use of race in making decisions on admission. Ballot measures like Proposition 209 are more understandable given the abuses so common in systems of racial preference. But it is revealing that so many other states appear to have had second thoughts and that the California vote is therefore not likely to be repeated. (A recent report in *The Chronicle of Higher Education* was headlined "legislatures show little enthusiasm for measures to end racial preferences"; in this respect, the states are not unlike Congress.)

We should retain the freedom of institutions of higher and professional education to make these determinations for themselves. As we know, they would almost all make room for a larger percentage of black students than would otherwise qualify. This is what these institutions do today. They defend what they do with the argument that diversity is a good thing. I think what they really mean is that a large segment of the American population, significant not only demographically but historically and politically and morally, cannot be so thoroughly excluded. I agree with them.

I have discussed affirmative action only in the context of academic admissions policy. Other areas raise other questions, other problems. And, even in this one area of college and university admissions, affirmative action is not a simple and clear and uncomplicated solution. It can be implemented wisely or foolishly, and it is often done foolishly, as when college presidents make promises to protesting students that they cannot fulfill, or when institutions reach too far below their minimal standards with deleterious results for the academic success of the students they admit, for their grading practices, and for the legitimacy of the degrees they offer. No matter how affirmative action in admissions is dealt with, other issues remain or will emerge. More black students, for example, mean demands for more black faculty and administrators and for more black-oriented courses. Preference is no final answer (just as the elimination of preference is no final answer). It is rather what is necessary to respond to the reality that, for some years to come, yes, we are still two nations, and both nations must participate in the society to some reasonable degree.

Fortunately, those two nations, by and large, want to become more united. The United States is not Canada or Bosnia, Lebanon or Malaysia. But, for the foreseeable future, the strict use of certain generally reasonable tests as a benchmark criterion for admissions would mean the de facto exclusion of one of the two nations from a key institutional system of the society, higher education. Higher education's governing principle is qualification—merit. Should it make room for another and quite different principle, equal participation? The latter should never become dominant. Racial proportional representation would be a disaster. But basically the answer is yes—the principle of equal participation can and should be given some role. This decision has costs. But the alternative is too grim to contemplate. ■



Scott R. Palmer
04/08/98 12:11:23 PM

I support
Olive Mills
800 F1
Hector Garza

Record Type: Record

To: Karen E. Skelton/WHO/EOP, Tanya E. Martin/OPD/EOP
cc: Maria Echaveste/WHO/EOP, Judith A. Winston/PIR/EOP, Angelique Pirozzi/WHO/EOP
Subject: Higher Education Leaders Meeting w/ ACE

Blocking out for a moment the Chronicle of Higher Education, the following is a preliminary list of issues that Tanya and I developed that should be discussed at today's meeting with ACE concerning this **effort of the higher education community**. I ran the list by Hector Garza, and he agreed with it:

1. We should talk briefly about the purpose and structure (i.e., size, membership, etc.) of the proposed coalition.
2. We should talk about what higher education leaders should be engaged in the effort in addition to those to whom we have already spoken. (We should reach out to these leaders this week if possible and work with ACE to set the follow up meeting with institutional liaisons for late next week or early the following week.)
3. We should talk about the process for helping develop, at least initially, the core message and concrete actions for the proposed coalition. (This likely requires (1) looking within the higher education community at past and ongoing efforts on which we can build and from which we can learn and (2) consulting with other outside communications, etc., experts. We should suggest that ACE do the former and we help with the latter, and that both efforts be completed by, say, Wednesday of next week.)
4. We should talk about the strategy for developing financial, logistical, and staff support for the coalition, which Hector Garza and ACE have done already to some extent.
5. We should talk about the best strategy to ensure the wider support of the higher education community for this effort. (ACE is likely the right entity within the higher education community to gather such support, and ACE has already begun doing so.)

Let me know if you have any questions or concerns.

Karen -- I will meet you at your office at 1 p.m. to head to the meeting.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft	"Affirmative Action Assessment Outline: Postsecondary Admissions and Financial Aid Programs" (30 pages)	03/98	P5

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FOLDER TITLE:

[Education - Affirmative Action]

kh16

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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Draft/SRP/March 24, 1998

**WH/PIR Concept Paper:
Creation of Higher Education Coalition and POTUS Meeting**

Statement of Project and Goals:

Working with the White House and the President's Initiative on Race (PIR), the higher education community will come together and establish a new coalition to promote, through words and actions, the values of access to and diversity in higher education. The primary role of the coalition will be to lead a coordinated campaign to educate the public about the values of access and diversity. A secondary role will be to share and promote knowledge about what works in terms of policies and practices to promote diversity and its benefits.

Once the coalition has been formed, its mission clearly articulated, and a number of concrete actions identified, we will work to promote this effort of the higher education community in several ways, including a possible meeting between the President (and Secretary Riley and others) and the coalition at the White House. The purpose of such a meeting would be to announce and acknowledge the higher education coalition, to announce a number of concrete actions that the coalition will take, and to discuss what can and must be done to promote the values of access to and diversity in higher education.

Background:

The President strongly believes in the importance of access to and diversity in higher education. The higher education community supports those values as well. The public debate, however, over the role of affirmative action in promoting access and diversity has become confused and misdirected. The higher education community can play an important role in making the case to the American public that access to and diversity in higher education are necessary to create One America. Based on conversations with key higher education leaders, it is clear that what is needed is a coordinated, public campaign within the higher education community to promote, through words and actions, the values of access and diversity and the role of colleges and universities in bridging America's racial divides.

Project Description:

White House, PIR, and Department of Education officials will work with a core group of higher education leaders to plan and establish a new higher education coalition, which, as explained above, will lead a coordinated effort on behalf of the larger higher education

Draft/SRP/March 24, 1998

community to promote the values of access to and diversity in higher education. The ultimate coalition will consist of a diverse group of 20-25 higher education leaders. It will also include a core group of 3-5 business leaders. Based on conversations with several higher education leaders, the following is a proposed, preliminary breakdown of the coalition's membership:

- Presidents from large, private research universities (4);
- Presidents from large, public research universities (or systems) (4);
- Presidents from other private four-year colleges and universities (2);
- Presidents from other public four-year colleges and universities (2);
- Presidents from historically black colleges and universities (2);
- Presidents from Hispanic-serving institutions (2);
- President from a tribal college (1 or 2);
- Presidents from community colleges (2);
- Deans of professional schools (2);
- Business leaders (4).

The coalition should have a chair or co-chairs, one or more of whom should come from the initial higher education leaders who led us to this project idea. The chair(s) should be committed to providing some level of staff support for the coalition.

Leaders of key higher education organizations and foundations will be included in the coalition planning efforts to provide guidance, galvanize support for the coalition from the larger higher education community, and provide monetary and logistical support for the effort. We will also consult with public relations experts, key community leaders, legal experts, etc., who will help us construct the proper message and identify concrete actions for the coalition.

Once the coalition has been formed, its mission clearly articulated, and a number of concrete actions identified, we will work to promote this effort of the higher education community in several ways, including a possible meeting between the President (and Secretary Riley and others) and the coalition at the White House. The purpose of such a meeting would be to announce and acknowledge the higher education coalition, to announce a number of concrete actions that the coalition will take, and to discuss what can and must be done to promote the values of access to and diversity in higher education.

Next Steps:

- Initial vetting conversations with key higher education leaders indicate substantial support for this project, and this concept paper is meant to reflect their input and

guidance. We will continue to work with those key higher education leaders and their staffs to further develop our shared vision for the higher education coalition and the proposed meeting with the President and to promote ownership of this project within the higher education community.

- There is strong agreement that the higher education coalition must be inclusive to be successful. We will continue to identify leaders from the diverse groups of proposed coalition members identified above to serve on a more inclusive core planning group.
- We will host a meeting of the core planning group (i.e., a meeting of the staff liaisons from the core institutions) and others (such as representatives from key higher education organizations, foundations, public relations firms, etc.) at the White House on Wednesday, March 25, from 10 a.m. to 12 p.m. to discuss the project and what must be done to move forward. While we have already established a common vision with key higher education leaders on several foundational issues, which is reflected in this concept paper, we should seek to further address at least the following questions:
 1. What should be the purpose/role of the proposed higher education coalition?
 2. What is the appropriate structure of the coalition (in terms of size, membership, co-chairs, etc.)? How do we secure endorsements of the coalition's work from the larger higher education community? What kind of logistical, financial, and/or staff support will the coalition need?
 3. What kind of expertise should we consult to help develop the core message of the higher education coalition and to identify concrete actions that the coalition can take to promote its goals?
 4. What should be the timeline for forming the coalition?

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. draft	"Affirmative Action Assessment Outline: Technical Assistance for Postsecondary Admissions and Financial Aid Programs" (32 pages)	05/01/98	P5

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