

THE TEXAS PLAN FOR EQUAL EDUCATIONAL OPPORTUNITY

A Brief History

The Texas Plan was implemented in 1983 in response to an investigation of higher education in Texas conducted by the U.S. Department of Education's Office for Civil Rights (OCR) between 1978 and 1980. OCR's review of Texas' higher education institutions came as a result of the *Adams v. Richardson* case, which was filed in 1970 against the U.S. Department of Health, Education and Welfare (HEW) by the NAACP. The *Adams* case alleged that HEW had failed to implement and enforce Title VI of the Civil Rights Act of 1964 to eliminate racial discrimination in higher education. The NAACP sought a court order requiring HEW (and later, the Department of Education) to implement Title VI and initiate litigation against ten states that had already been found to be in noncompliance with Title VI.

In 1973, an order was entered requiring the Department of Education to investigate higher education in six states, including Texas, and to issue guidelines for desegregation efforts in those states. OCR conducted the investigation and concluded that Texas had failed to eliminate the vestiges of its former *de jure* racially dual system of public higher education. To avoid enforcement proceedings, Governor William Clements developed a voluntary plan in compliance with the guidelines issued by OCR to desegregate and increase the representation of Blacks and Hispanics in Texas institutions of higher education. After submitting a provisional plan in 1981 and negotiating its terms with OCR, Texas submitted a final plan which was accepted by OCR in June 1983. That plan, the Texas Educational Opportunity Plan for Public Higher Education, known as the Texas Plan, was federally monitored and effective from 1983 to 1988.

A second five-year plan was effective from September 1989 to August 1994, and continued the efforts of the first plan. It was initiated by Governor Clements without the need for a federal mandate. A third plan, Access and Equity 2000, effective in September 1994 and designed to take Texas into the next century, was created under the leadership of Governor Ann Richards to continue and build upon previous efforts.

In March 1996, the Fifth Circuit Court of Appeals issued its decision in the case *Cheryl J. Hopwood, et al. v. State of Texas, et al.*, ruling that the University of Texas Law School violated the equal protection clause of the Fourteenth Amendment when it used racial preferences in deciding which applicants to admit to the law school. The 5th Circuit's decision raised

questions about Texas' ability to continue implementation of the Access & Equity 2000 Plan, in particular, the use of racial preferences by institutions to carry out the Plan's goals. After the decision, the Coordinating Board re-endorsed the Plan at its January 1997 meeting. The Board also called on institutions to vigorously pursue the Plan's goals but to use criteria consistent with current state and federal law in the areas of admissions, financial aid and student retention.

In February 1997, the State of Texas was notified by OCR that it was going to conduct a review of Texas' system of higher education "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." The standard under which OCR is conducting its review is set out in *United States v. Fordice*, a 1992 case where the U.S. Supreme Court held that any state with a history of segregation in higher education must implement affirmative measures, including racial preferences, to eliminate those vestiges. This standard differs from the one set out by the court in *Hopwood*, which allows use of racial preferences only when a state entity is acting to remedy the present effects of past discrimination.

OCR's review of Texas' higher education system should be completed sometime in 1998. OCR's actions upon completion of the review will depend on its findings. If OCR finds that Texas' system still contains vestiges of prior segregation, it will attempt to negotiate a settlement with the State whereby the State would agree to take steps to eliminate those vestiges. If a settlement cannot be reached, OCR will refer the case to the Justice Department for enforcement proceedings against the State. Although OCR's ultimate remedy for noncompliance with Title VI is cutoff of federal funds to Texas higher education, OCR has never resorted to that remedy since it has always been able to reach settlements with states, either through negotiation or litigation. The amount of federal funds to higher education in Texas during FY 1995 was approximately \$500 million dollars.

Texas Higher Education Coordinating Board
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