

1982 WL 189140 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 18, 1982

\*1 Howard R. Boozer  
Executive Director  
S.C. Commission on Higher Education  
Rutledge Building  
1429 Senate Street  
Columbia, South Carolina 29201

Dear Mr. Boozer:

You have requested the opinion of this Office on three questions, which are restated and discussed hereinbelow, concerning the Proposed South Carolina Graduate Incentive Fellowship Program dated December 11, 1981 [hereinafter the Proposed Program]. As I understand the context in which these questions are presented, the Proposed Program is one of the measures the State committed itself to implementing in its efforts to achieve the goals set forth in The South Carolina Plan for Equity and Equal Opportunity in the Public Colleges and Universities [hereinafter the Plan], as approved by the United States Department of Education. The Plan was required of the State by the Department, pursuant to authority and enforcement powers asserted by it under Title VI of the Civil Rights Act of 1964 (42 U.S.C., Sections 2000d, et seq.), because it had concluded that the State had not eliminated all vestiges of its former de jure racially dual system of public higher education and was, therefore, in violation of Title VI.

Question 1 Is the definition of 'other race students' in the Proposed Program consistent with the requirements of Title VI?

In response to the requirements and guidelines proposed to the State by the United States Department of Education and prescribed by it in Revised Criteria Specifying the Ingredients of Acceptable Plans To Desegregate State Systems of Higher Education, Federal Register, Volume 43, Number 32 [hereinafter the Revised Criteria], the State has committed itself in the Plan to an effort to achieve certain goals. The Proposed Program, as one of the measures selected by the State as part of the Plan, is for the purpose of contributing to the goals, among others, of (1) increasing the number of black South Carolina residents who enroll in graduate and professional programs at traditionally white public post secondary institutions [pp. 42-44 of Plan; II. C. of Revised Criteria]; (2) reducing the disparity, if any, between the proportion of blacks and white students graduating from graduate programs at public institutions [pp. 44-45 of Plan; II. E. of Revised Criteria]; increasing the total number of white students attending traditionally black public postsecondary institutions [pp. 38-42 of Plan; II. D. of Revised Criteria]; and increasing the proportion of black faculty and administrators at public post secondary institutions [pp. 48-60 of Plan; III. of Revised Criteria].

The Proposed Program will provide funds to qualified black students to enroll in graduate and professional programs at traditionally white postsecondary public institutions and to qualified white students to enroll in such programs at traditionally black institutions. Consequently, it defines 'other race students' in its eligibility criteria as 'black students at traditionally white institutions and white students at traditionally black institutions.' This definition is consistent with the requirements of Title VI as administered by the United States Department of Education. It should be noted that the Proposed Program has been approved by the Department by virtue of its being specified in the Plan, at pages 43-45, accepted by the Department.

\*2 Question 2 Does the moral obligation provided in the Proposed Program comply with the statement in the Plan that the eligibility criteria for the incentive scholarship program will include a commitment to remain in South Carolina for a period of time?

At pages 43-44 of the Plan, it is stated that one of the eligibility criteria for the incentive scholarship program will be a 'commitment to stay and work in South Carolina for a specified period of time.' Thus, the Proposed Program provides that 'recipients are expected to accept a moral obligation to remain in South Carolina, following completion of studies, for the same number of years they receive the Incentive Fellowship.' The obligation provided by the Proposed Program complies with the noted specification from the Plan.

Question 3. Can a student legally be required to sign a statement accepting the aforementioned moral obligation?

No legal authority has been found, or is known of, that prohibits a student from being required to sign a document accepting a moral obligation to remain in a certain area for a specified period of time, as a requirement for eligibility for a government funded fellowship. The legitimacy of this requirement also is substantiated by the important and specific purposes the Proposed Program is designed to serve.

Sincerely yours,

James M. Holly  
Assistant Attorney General

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