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Good morning. My name is Raymond C. Pierce and I currently serve as Dean and Professor of Law at North Carolina Central University School of Law. Our law school is one of four remaining Historically Black Law Schools accredited by the American Bar Association that were created during the era of segregation. Our Law School received a grant from NAFEO to examine certain issues affecting Black Colleges within the context of the law and Federal education policy.

Prior to becoming Dean of the law school I had earlier served in a political appointment as Deputy Assistant Secretary for Civil Rights at the United States Department of Education from April 1993 through August 2000. My primary role was in policy development and enforcement of federal civil rights laws in education.

Clearly the first and most pressing issue that was presented to the Office for Civil Rights (OCR) upon my arrival to Washington was the question of what would be the federal government Department of Education's reaction to the then recent 1992 U.S. Supreme Court decision in Ayers v Fordice. The Ayers case had been decided seven months earlier on a Fourteenth Amendment Equal Protection issue on the state of Mississippi's obligation to remedy remaining vestiges from the past practice of segregation in higher education as they presently impacted African Americans attending the state's Historically Black Colleges.

Some initial reactions to the Supreme Court decision that I recall attributed to the state of Mississippi included suggestions that the state could close all of the Historically Black

Colleges as a method of resolving any continuing vestiges of the practice of segregation. Black College leadership nationwide was understandably concerned that state systems of higher education would retreat further from obligations and commitments to Black Colleges and advance more state policies adverse to these institutions. During the 1970's all 19 states with publicly supported Black Colleges created during segregation were involved in investigations and/or litigation involving federal higher education desegregation efforts. In many of these instances litigation had been initiated by private citizens seeking equal educational opportunities for African Americans.

The result was fifteen states entering into settlement agreements with OCR involving plans designed to remedy vestiges of segregation and bring compliance with Title VI of the 1964 Civil Rights Act as it applied to states with federally funded programs in higher education. Five other states were unable to reach agreement and proceeded to litigation with Mississippi going all the way to the United States Supreme Court. In 1989 the U.S. Department of Education concluded that eight of the fifteen states that had earlier entered into settlement agreements had now reached compliance with federal civil rights laws. Against protests from many Black College Presidents, these eight states were released from federal higher education desegregation oversight. These states were: Arkansas, Missouri, Oklahoma, Georgia, South Carolina, North Carolina, West Virginia and Delaware. Six states remained under federal oversight and were held responsible for continuing adherence to the settlement agreements and the compliance plans designed to remedy the vestiges of segregation. These states were: Kentucky, Pennsylvania, Maryland, Virginia, Florida and Texas.

In early 1993 and in response to the concerns expressed by Black College Presidents and civil rights and other civic organizations, OCR began a development process that ultimately produced new federal civil rights policy on higher education desegregation and Title VI which prohibits discrimination in federally funded education programs. This new policy was published in early 1994 as a Notice in the Federal Register. The basic foundation of the policy was that states have an affirmative duty, to the greatest extent practicable, to remove all vestiges of the past practice of segregation that have a present

day effect.

The foundation of the policy was drawn from the majority opinion of the Supreme Court in the 1992 Ayers case. In addition the new policy built upon earlier federal education higher desegregation policy published in 1978 which was titled: Revised Criteria for the Desegregation of State Systems of Higher Education. That policy was composed primarily of two elements. One: the strengthening of Black Colleges through increased resources for upgraded and additional educational programming. Two: affirmative action programs in recruitment of African American students to attend Traditionally White Institutions and recruitment of White students to attend Black Colleges. The first part was designed to address the constricted educational opportunities of African Americans attending Black Colleges due to years of discriminatory treatment by state systems of higher education in violation of the Fourteenth Amendment Equal Protection Clause. In addition the policy of strengthening Black Colleges was also designed to remove distinctions of quality of educational opportunity between Black colleges and White Colleges and allow for attracting students more on the basis of programming and less on the basis of race.

It is important to note that the earlier 1978 policy was developed as a result of litigation brought against OCR and the U.S. Department of Health, Education and Welfare for failing to enforce federal civil rights laws. That litigation resulted in the 1977 U.S. Court of Appeals decision in Adams v Caliafano.

The new policy following the 1992 Ayers case added a "vestiges analysis" to the standard by which states would be measured for compliance with Title VI. This meant that states efforts towards compliance through increased resources and other actions on behalf of Black Colleges would be examined to determine whether following such efforts there are any remaining vestiges from the past practice of segregation that have a present day effect on the educational opportunities of African Americans that could be practicably eliminated.

In 1994, and immediately after the new policy was published the six states that remained under federal oversight were notified that they would be reviewed for compliance pursuant to the new policy and that they may be required to take action in addition to that articulated in the earlier settlement agreements.

Ohio had not been one of the states entering into one of the earlier settlement agreements during the 1970s and early 1980s and had been amongst those states headed for litigation in the federal courts. After the 1994 publication of the Ayers v Fordice Notice in the Federal Register, OCR and the U.S. Department of Justice agreed to remove Ohio from the litigation list allowing OCR to pursue efforts for a settlement agreement with the state.

From 1995 to 2000 following extensive reviews, discussions and negotiations all seven states (including Ohio) entered into new and mostly five year compliance agreements designed to resolve the federal government's docket of higher education desegregation cases. These new compliance plans addressed many new and enhanced educational programs for Black Colleges and commitments of additional recourses. Each state was notified that OCR would conduct compliance reviews following the expiration of the term for implementation of the plans. Again, most of these plans were designed to be implemented over a five year period.

At this date all of the settlement plans have expired and to my knowledge OCR has not concluded any review to determine whether the efforts of these states have resulted in compliance with Title VI.

Since leaving OCR I have repeatedly been made aware of grave concerns expressed by Black College Presidents and alumni regarding actions by states in recent years that are adverse to the letter and spirit of federal desegregation policy and the various settlement agreements. I hear of these concerns mostly in Ohio and Maryland centering around issues of unnecessary program duplication and inadequate funding for institutional mission. Actions in these two states and others are largely regarded by those concerned

as posing significant threats to the ability of Black Colleges to be competitive in higher education. Further, there has never ceased to be concerns of unequal treatment of Black Colleges expressed by Black College leadership in some of the eight states that were found in compliance in 1988 prior to the development of the new policy in 1994.

The National Association for Equal Educational Opportunity (NAFEO) awarded a grant to North Carolina Central University School of Law to examine these issues and the law with regard to possible new litigation similar to that in the Adams v Caliafano case that could result in moving OCR to perform its Congressionally mandated duty of enforcing federal civil rights laws in education in particular as they relate to the seven states with remaining outstanding Title VI violations.

Initially I held a position that their remained a basis for litigation against OCR for failure to enforce federal civil rights laws similar to the charge brought against OCR in the Adams v Caliafano case. Research at NCCU School of Law concluded that federal court decisions subsequent to Adams will no longer allow legal action against a federal agency as it was done in the 1970's that resulted in moving OCR to take action to enforce federal civil rights laws that would benefit Black Colleges.

The reality of federal court decisions having left no avenue for pursuing litigation against OCR presents these hearings as ever more critical in halting state actions that would negatively impact public Black Colleges unnecessarily. It is also before this Committee as to what is the reaction by Congress towards a Department of Education that continues to appropriate federal funds to state systems of higher education that are operating in violation of federal education civil rights laws as determined by OCR. OCR must be called upon to conduct the long overdue reviews and analysis and make the determinations as to compliance for the remaining seven states. Whether such analysis will result in additional resources for the effected Black Colleges or a determination of compliance, some movement by the federal government is required to bring closure to its docket of higher education desegregation cases that stretches back over thirty plus years.

A point with respect to the leadership made available to Black Colleges through the involvement of state systems of higher education. Outstanding men and women have served and continue to serve our Nation's Black Colleges. Many in this leadership have produced near miraculous results in their mission of educating students. However, it is my belief that the numbers of talented education leaders currently on these campuses is too low for the demand. It has been my observation during and after my seven years of directing federal higher education desegregation efforts that Black Colleges suffered greatly from a loss of talent as a result of affirmative action that attracted many Blacks in higher education away from Black Colleges and into positions at Traditionally White Colleges. This loss of talent in addition to continued policies adverse to Black Colleges in my opinion have caused harm to these institutions leaving many of them in weakened conditions lacking the ability to effectively compete in higher education.

State higher education commissions must review their relationships and policies towards Black Colleges with a view of improved expectations and improved treatment in the selection of leadership at both the college and on the board. There can be no room for disparity in the quality of appointments by states made at Historically Black Colleges in comparison to White Colleges. Indeed, given the continuing harm from years of differential treatment of Black Colleges it is imperative that states apply the highest of standards in making appointments to the leadership and management of Black Colleges no less than those appointed to the leadership of Traditionally White Colleges.

OCR should be able to conclude its higher education desegregation docket. It should result in further enhancement and strengthening of Black Colleges. State higher education commissions must reach a level of full and comparable inclusion for Black Colleges. I believe this will be a major step towards concluding the federal government's oversight of these cases.

Thank you.

Raymond C. Pierce