

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Review Item:

Settlement of United States Department of Education Office for Civil Rights (OCR) complaint concerning the Minority Educator Recruitment and Retention (MERR) loan forgiveness program and the Administrative Leadership Institute (ALI) financial assistance program.

Rationale:

To advise the Kentucky Board of Education (KBE) that the Kentucky Department of Education (KDE) recently settled a claim pending with OCR.

Applicable Statute or Regulation:

KRS 161.165

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* and its implementing regulation 34 C.F.R. Part 100

History/Background:

Existing Policy: For approximately 13 years, KDE has been defending a complaint filed by OCR concerning the MERR/ALI programs.¹ Both MERR and ALI offer loan forgiveness options to minority post-secondary students who complete education-related programs of study and later serve as teachers and/or administrators in public schools in the Commonwealth.² In 2004, an initial complaint was filed alleging that KDE's use of race in the selection criteria for the programs was unconstitutional and in violation of federal law. After issuing the complaint, communications from OCR were relatively infrequent until early 2017.

On May 1, 2017, OCR advised KDE that it had concluded that KDE was in violation of federal civil rights law and placed KDE on a 90-day deadline to resolve the outstanding 2004 complaint. Later, on May 23, 2017, KDE responded with a 17-page letter to OCR in support of its position concerning the constitutionality of the programs. OCR then responded on June 21, 2017, also in a 17-page letter, reaffirming its position wherein it maintained that the U.S. Supreme Court has not recognized teacher and administrator diversity as a compelling interest capable of justifying the consideration of a student's race in application criteria.

¹ For clarity, please note the OCR complaint was against KDE; KBE was not named or otherwise implicated in the complaint.

² KRS 161.165; HB 303 (2016).

With the assistance of the Kentucky Office of the Attorney General, KDE negotiated a settlement with OCR which effectively ended both programs, *but* permits all new and returning students who were enrolled in either program prior to September 15, 2017 to remain in the programs until graduation. Going forward, the Kentucky General Assembly may consider re-codifying the language of KRS 161.165 in a manner that would allow the programs to withstand constitutional strict scrutiny. Meanwhile, KDE is pursuing ongoing efforts to comply with the provisions of KRS 161.165 and federal civil rights law.

Summary: The Resolution Agreement was executed by KDE on September 14, 2017. Thereafter, on September 29, 2017, KDE submitted documentation, as required by the Resolution Agreement, to illustrate to OCR that the programs had, in fact, been discontinued. KDE is currently in the process of responding to limited inquiries from OCR concerning the reporting requirements. KDE is hopeful that this matter will be closed in full by year's end.

Budget Impact: In HB 303 (2016), the General Assembly allotted \$1,338,200 in each fiscal year for the Teacher Recruitment and Retention Program-Educator Quality and Diversity, which includes the MERR/ALI programs. If allotted similar funding as these programs phase out, KDE will use the funding to support other on-going diversity efforts.

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Commissioner of Education

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