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THE WHITE HOUSE
WASHINGTON

1.13.82

Bill -

Please work out w. Kevin,
after checking with Chuck. (Perhaps
he or Brad would like to do a
first out on this.)

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

1/20/83
~~1/21/83~~

DATE: 1/11/83 ACTION/CONCURRENCE/COMMENT DUE BY: _____

SUBJECT: Administration's Title IX Policy

	ACTION	FYI		ACTION	FYI
HARPER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DRUG POLICY	<input type="checkbox"/>	<input type="checkbox"/>
PORTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
BARR	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
BLED SOE	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
BOGGS	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>	PROPERTY REVIEW BOARD	<input type="checkbox"/>	<input type="checkbox"/>
CARLESON	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
DENEND	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FAIRBANKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FERRARA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GALEBACH	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GARFINKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GUNN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LI	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MONTOYA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ROCK	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ROPER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SMITH	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
✓ UHLMANN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ADMINISTRATION	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please return this tracking sheet with your response

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

THE WHITE HOUSE

WASHINGTON

January 11, 1983

MEMORANDUM FOR KEVIN HOPKINS

FROM: EDWIN L. HARPER 

SUBJECT: Administration's Title IX Policy

Would you please prepare a draft issue paper with respect to our position on Title IX.

This is a sensitive issue and you should work closely with Mike Uhlmann in putting it together.

Attached is a memo that Mike prepared on the issue and one prepared by Elizabeth Dole.

cc: Mike Uhlmann

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

OFFICE OF
POLICY DEVELOPMENT
1983 JAN -7 P 6: 22

January 7, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Title IX Policy

Contrary to the impression conveyed by Elizabeth Dole's memo to you, the Administration is not "still forming" its Title IX policies. Nor do I think that any of the women's (or other civil rights groups) is under any delusion as to what our policy is. The reason for all the lobbying every time a Title IX issue presents itself is that various interest groups who disagree with our policy are seeking "soft spots" within the Administration -- not to "clarify" our policy, but to change it.

At the core of the Title IX controversy is the issue of program-specificity. The traditional liberal-Democrat-interest group position has been that any federal financial assistance to any component of an institution is sufficient to bring the entire institution under the purview of federal regulation. Our position has been, and is, that Title IX applies only to particular programs receiving assistance, and it was sustained by the Supreme Court in the North Haven case in 1981.

The issue has been fully aired on numerous occasions at the White House -- for example, in discussions on Grove City, Hillsdale, and the Richmond case. On each occasion, the scenario has been essentially the same: the Education Department argues for the expansive view and the Justice Department argues that we continue to follow the Court's ruling in North Haven. In every instance, the DOJ view has prevailed.

I should perhaps add two other points: (1) the program-specificity position is the only possible legal translation of the policy position that the President has articulated over many years; (2) the trend of the courts is increasingly our way -- including the Fifth Circuit, which has traditionally been the most liberal appellate court on civil rights matters.

I would argue against the wisdom of a briefing for concerned interest groups, since the only likely outcome would be an argument over the course we are taking. Why we should provide a forum for people to hector us, I do not know. Every advocacy organization you can name has at one time or another wrestled

with the folks at DOJ on this, and they will undoubtedly do so again every time a Title IX case arises. That is their job, and they may even win a point now and again. But what they really want, to repeat, is a policy reversal, and the likelihood of that is nil.

As for a statement on our Title IX position, all that would be necessary is to collect the relevant briefs filed by Justice in the major cases. But those arguments are already well known to the advocacy groups. If you think it useful, I shall prepare a short, general policy position for internal guidance. The difficulty would be that, as with any general policy statement, it cannot address particular hypothetical cases and for that reason is unlikely to satisfy anyone.

THE WHITE HOUSE

WASHINGTON

January 3, 1983

MEMORANDUM FOR ED HARPER

FROM: ELIZABETH H. DOLE 

SUBJECT: Title IX

For a series of reasons, women's educational advocacy groups barrage us each time a new Title IX case comes under consideration. They continue pressing because they have the impression that this Administration is still forming its overall policy framework on the issue of Title IX.

While we may not have a definitive policy paper on Title IX, it appears as though we have settled on some basic views which make our judicial actions more predictable.

Is there some merit to putting together an Administrative position on Title IX? If so, such a document might be used at a briefing that could include interested organizations. The briefing could be handled at Education or some other facility removed from the White House. By conducting such, and outlining our position on the Title IX issue, we may be able to minimize these recurring outbreaks by the advocacy groups each time a case is under consideration.

Attached is a letter to Secretary Bell from Clarence Pendleton, which does raise questions in the Title IX area, not unlike those posed us by the advocacy groups.

December 2, 1982

Honorable Terrel H. Bell
Secretary of Education
Washington, D.C. 20202

Dear Mr. Secretary:

As you may know, the Commission has been following legal developments affecting civil rights enforcement in education. Last January, for example, we commented on the change in Federal policy denying tax exemptions to racially discriminatory private schools. We also have commented on several cases seeking to limit the Education Department's enforcement authority under Title IX of the Education Amendments of 1972, including University of Richmond v. Bell, 534 F. Supp. 321 (E.D. Va. 1982). We are continuing to study the implications of these and related cases.

We, therefore, would appreciate your cooperation in providing us with the Department's interpretation of its civil rights enforcement authority. We are interested in how the Department currently views its authority both nationwide and in specific geographical areas covered by relevant Federal district and appellate court rulings. Specifically, we would like to know whether, as a matter of national enforcement policy, the Department believes that:

- o Federal student aid, including both student grants and guaranteed loans, constitutes Federal financial assistance for the purposes of Title IX enforcement?
- o The Department can enforce its Title IX regulations in all the components and functions of an education institution receiving Federal student aid except those that have entirely separate, non-Federal funding sources?
- o The Department can enforce its Title IX regulations in all the components and functions of an education institution, except those with entirely separate, non-Federal funding sources, when the institution receives other Federal funds not earmarked for a specific program--for example, monies for indirect costs included in Federal research grants?

- o Under Title IX, an "education program" includes a complex of all interdependent education components and functions, and all are covered by Title IX and the Department's regulations when any receives Federal aid insofar as such aid frees other funds that could be allocated to them?
- o The Department may investigate possible Title IX violations in unassisted programs to determine whether they "infect" assisted programs?
- o The Department may investigate possible Title IX violations without first establishing that the program in which they are alleged to occur receives Federal financial assistance?

If any of these questions is answered in the negative, please provide the Department's interpretations and their basis. That is, please explain the Department's alternative views of its Title IX enforcement authority in geographical areas not directly covered by limiting court rulings.

We also ask that you identify Federal court jurisdictions where the Department believes it currently cannot enforce its national Title IX policies and provide the Department's interpretation of its enforcement authority under each relevant ruling on the above points.

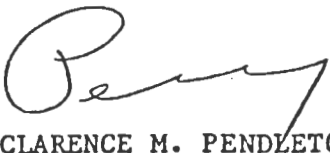
Finally, we would like to know whether the Department believes Title IX cases have limited in any way its authority to enforce Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabilitation Act of 1973. If so, please identify the relevant cases and explain how the Department believes they apply to its authority under these laws.

We would appreciate copies of any generally-applicable guidelines or memoranda on civil rights enforcement issued by the Department or its Office for Civil Rights since January 1980 and would welcome your views on related issues.

It would be especially helpful to hear from you by the end of December so we might be in a position to consider your response early next year. Your staff may direct any questions about this request to Deborah P. Snow, Assistant Staff Director for Federal Civil Rights Evaluation, at 254-6701.

Sincerely,

FOR THE COMMISSIONERS



CLARENCE M. PENDLETON, JR.
Chairman