Education Dept. Clears Minority Programs of Discrimination at Colleges in 3 States

By Peter Schmidt

The Education Department's Office for Civil Rights has scrapped long-running investigations of programs for minority students at colleges in Missouri, New York, and North Carolina, based mainly on its determinations that the programs either have ended race-based participation criteria or consider race narrowly enough to comply with federal antidiscrimination laws.

In letters released to The Chronicle last week, the civil-rights office said it was closing its investigation of several programs focused on black males at the City University of New York, and a separate program that had been geared toward minority students at the University of North Carolina at Greensboro, because the office had concluded that students of any race were eligible to participate.

The civil-rights office told the University of Missouri at Columbia it was closing an investigation of several financial-aid programs there based on its conclusion that the programs' consideration of race was narrowly tailored to serve a compelling government interest that would not be sufficiently advanced by race-neutral eligibility criteria. The office said the university's consideration of race in awarding financial aid "does not create an unduly severe or intrusive burden for students not eligible for such scholarships."

Roger B. Clegg, who as president of the Center for Equal Opportunity filed the 2005 complaint that led to the Missouri investigation, said in an e-mail on Friday that his advocacy group was contesting the civil-rights office's findings in that case and laying the groundwork to challenge the university's programs in federal court if the office did not reverse itself.

Noting that the office's letter of determination in that case hardly suggested that all such programs would withstand legal scrutiny—and that the Supreme Court appears poised to offer additional guidance on colleges' use of race-conscious policies in a case involving admissions to the University of Texas at Austin—Mr. Clegg said, "we hope and expect that other schools will not conclude that they may close the doors to their programs in this way."
Michael Meyers, who as executive director of the New York Civil Rights Coalition filed the 2006 discrimination complaint that led to the CUNY investigation, similarly said he planned to challenge the civil-rights office's findings, which he called "a disingenuous and very shaky ruling."

Delayed Responses

The federal office's decision on Missouri, especially, represents a setback for critics of race-conscious higher-education policies, who during the administration of President George W. Bush persuaded many colleges to open up minority scholarships and programs to members of any race to avoid legal trouble.

The office, known as OCR, under President Bush did not actually find any colleges guilty of discrimination for operating race-exclusive programs—the Missouri, New York, and North Carolina investigations were among several involving minority programs that it began and left unresolved. But it had sent numerous signals that race-exclusive programs would not pass legal muster, declaring in a 2003 statement that "programs that use race or national origin as sole eligibility criteria are extremely difficult to defend." The Justice Department under President Bush also got involved, pressuring Southern Illinois University to alter fellowship programs that had been reserved for women or members of minority groups.

The OCR's investigations of the complaints similarly lingered unresolved for several years under the Obama administration. The agency finally mailed its determination letter to CUNY on November 23, and its letters to Missouri and Greensboro on November 26, but it did not otherwise announce its specific findings. It referred to them only vaguely, without naming the institutions involved, in a Congressionally mandated report on its activities over the past four years that it released on November 28, just days before Russlynn H. Ali, the Obama appointee who had headed the office since May 2009, announced she was stepping down. The Chronicle obtained the letters from the Education Department after requesting details of actions referenced in the report.

Mr. Meyers, of the New York Civil Rights Coalition, said last week that he had not been notified by the OCR of its findings regarding his complaint about CUNY. Mr. Meyers, whose organization describes itself as committed to racial integration, characterized the office's findings, and its failure to inform him of them, as evidence that it is "engaged in an exercise of Orwellian double talk and double standards of civil-rights law enforcement."

Dollars for Diversity

Mr. Clegg's complaint against the University of Missouri at Columbia had accused it of operating a range of racially exclusive financial-aid programs in violation of Title VI of the Civil Rights Act of 1964.

In its letter reporting its findings last month to Brady J. Deaton, chancellor of the University of Missouri, the civil-rights office said its investigation of the university had identified 34 scholarship programs that considered race or national origin as a condition for eligibility, and 18
more that considered students' race or ethnicity as "a plus factor" in determining who received aid awards.

The letter said no scholarship had been awarded solely based on race or national origin "because other factors also are considered such as academic performance, demonstrated personal integrity, socioeconomic disadvantage, and involvement in the candidate's school or community." It added that the university evaluates each applicant for aid on an individual basis, in keeping with guidance handed down by the Supreme Court in its 2003 rulings in *Grutter v. Bollinger* and *Gratz v. Bollinger*, involving race-conscious admissions policies then in place at the University of Michigan at Ann Arbor.

Being a member of a minority group that is underrepresented on the campus, the letter said, "is not a guarantor of aid, nor is it the paramount factor affecting aid opportunities at the university." In the 2009-10 academic year, it said, scholarships tied to race went to no more than 42 percent of such minority students.

The letter said the office's investigators had accepted, as consistent with its own guidance to colleges, the university's argument that race-conscious scholarship programs should be considered in the context of all financial aid awarded by the university, to make clear that being ineligible for a particular race-conscious scholarship does not preclude a student from receiving other scholarship funds. It also said the university had offered assurances that it was periodically reviewing the necessity of linking financial aid to race to achieve a diverse student body, and had shown that its past history of racial segregation, its location 120 miles away from the nearest urban center, and perceptions of an unwelcoming environment for minority students on the campus had hindered it from enrolling such students without offering scholarships tied to race or ethnicity.

The letter said the office also had accepted the university's argument that, were the university precluded from considering race in awarding scholarships, such funds would probably be plowed into programs that aim to attract and retain minority students but do so much less efficiently and effectively. The OCR also said it had accepted the university's assertions that converting the scholarships for which only minority students are eligible into scholarships that merely consider race or ethnicity as a factor would result in smaller aid awards to minority students, leading fewer to enroll.

Michael A. Middleton, the university's deputy chancellor, on Friday issued a statement in which he said, "We're very pleased with the ruling from the OCR. Diversity is important on our campus as we prepare our students for the global marketplace."

In his e-mailed statement, Mr. Clegg of the Center for Equal Opportunity said the OCR letter to Missouri "should hardly be read as encouraging racially exclusive programs," especially considering that the investigation lasted more than seven years and the letter spelled out "a variety of hoops that the university had to jump through" to show its programs could withstand strict scrutiny. He rejected several of the office's key conclusions.
"We continue to believe that racially exclusive programs cannot survive the Supreme Court's stated requirement in *Grutter* and *Gratz* that any use of race must also involve 'individualized consideration,'" he said. The argument that students whose race precludes them from applying for a minority scholarship can always apply for some other award, he said, "smacks of 'separate but equal,' ignores the fact that each scholarship is different in terms of, for example, resources and prestige," and otherwise does not hold up "since the court has long rejected similar set-asides in admissions."

**Questions of Separation**

The OCR investigation of the City University of New York involved a total of 18 cases. One examined whether the CUNY system's Black Male Initiative, established in 2005, violated both Title VI and Title IX of the Education Amendments of 1972, which prohibits sex discrimination at institutions that receive federal funds. A second case examined whether the CUNY system and its campuses were discriminating based on race or sex in selecting faculty and staff to carry out the effort. The other cases examined each of the 16 campuses where programs focused on black males had been set up.

In its letter last month to Matthew Goldstein, chancellor of CUNY, the office said it was closing all 18 cases as moot based on CUNY's assurances in its promotional materials and discussions with the OCR that "all programs and activities of the Black Male Initiative are open to all academically eligible students, faculty, and staff, without regard to race, gender, national origin, or other characteristic."

The letter acknowledged that the availability of such programs to all was not widely publicized when the CUNY system and its campuses began the effort, and that Queensborough Community College initially recruited only black males for participation in its program. But, the letter said, CUNY later altered its promotional materials, and Queensborough its promotional materials and recruiting practices, to make clear that any student could participate.

In response to the allegation that the CUNY effort had led to employment discrimination, the OCR letter said the question of whether there was race-based employment discrimination fell outside its jurisdiction under Title VI. Noting that 38 women held leadership positions associated with Black Male Initiative programs, it said it had found no evidence of sex discrimination in employment in violation of Title IX.

Jay Hershenson, a spokesman for the CUNY system, on Friday issued a written statement that said CUNY "is very pleased" with the OCR's finding. The Black Male Initiative, his statement said, "was not created to promote race-exclusive programs but instead to help black males and others compete more effectively in higher education through mentoring, internships, and other support services."

Mr. Meyers, of the New York Civil Rights Coalition, offered a much different take, arguing in e-mails that the OCR's letter to Mr. Goldstein represented "the government sanctioning separate but equal on the pretext that the segregation—by race and sex—is a supposed 'benefit' to 'African-American males.'" He argued that the Black Male Initiative had been exclusively for
black males "on its face" and in every way it has been organized, advertised, and administered, sending messages to everyone else "that they need not apply."

"This," Mr. Meyers said, "is an appalling betrayal of the public policy and our federal laws that seek to end segregation and discrimination based on skin color and—in this case—discrimination based on the groups’ skin color and sex."

Especially compared with its other recent decisions, the OCR's resolution of the Greensboro case was more in keeping with how it had resolved such complaints under President Bush. In its letter to Linda Brady, the campus's chancellor, the office said it was closing its investigation of the campus's Scholars Recognition Program, which honors high-achieving students through an award ceremony rather than money, because the campus had voluntarily abandoned race as a criterion for eligibility, focusing instead on other indicators of potential disadvantage. The person who filed the complaint has never been publicly identified.
MU Health Care costs

By Henry J. Waters III

Monday, December 10, 2012

Like other employers across the nation, the University of Missouri faces increasing costs for its group health insurance coverage. The system’s medical costs are up from about $60 million in 2004 to more than $135 million today.

Betsy Rodriguez, the system human resources director, told the UM Board of Curators about 24 percent of health problems result from obesity, smoking, lack of exercise and people not taking care of themselves. Managing those issues could reduce system costs by $16 million, she said.

Employees pay 27 percent of health care premiums. The university offers a cash incentive to encourage workers to get in better shape, but Rodriguez admits this is not much in the way of cost control for the institution.

MU’s situation points up a basic factor affecting health care costs. Ideally one might want to directly associate the cost of individual insurance with that individual's cost of care, but no one has figured how to do this — and no one ever will. By the very nature of insurance, the more fortunate or more careful help pay for those who trigger higher costs.

Insurance actuators take bad habits into rough account by such tactics as giving health premium discounts to nonsmokers and charging young drivers more for auto insurance. These are valid general propositions but only vaguely answer the problem of balancing who pays and who receives.

Of course this is socialism, but socialism of a kind everyone accepts. Insurance provides protection against potentially unmanageable future costs at manageable present cost by spreading the risk and allowing time payments in advance.

As rates go up, MU Health managers will have two choices: scaling back coverage or increasing charges to employees. Thousands of employers will be faced with similar choices as the fragmented and inefficient system of employer group health insurance hangs on.
Thank goodness we are on the way toward an improved method of expanding health coverage and reducing average costs per beneficiary, and if experience in the rest of the world is an example, we can improve health outcomes in the bargain. It will take time, but it's worth the continuing effort.

HJW III

The commanding officer of a large aircraft carrier noted for its excellent morale always told each new officer, "See that your men have reason to respect you." This is an essential rule for good management of any business.
A new five-story residential hall expected to open in 2015 will help the University of Missouri keep up with record-setting freshman classes but also might allow more upperclassmen to live on campus.

The UM Board of Curators last week saw design plans for the proposed Virginia Avenue South residential hall. Curators review but do not have to approve architectural designs.

Construction on the 92,120-square-foot building, which will be between College and Virginia avenues, will begin in September, said Nikki Krawitz, vice president of finance and administration.
Renderings from Treanor Architects of Kansas City show a building that will be compatible with the architecture and aesthetics of the existing Virginia Avenue housing community. The designs call for single and double rooms as well as study areas and common spaces.

Freshmen are required to live on campus and are given higher priority for housing, said Frankie Minor, director of the MU Department of Residential Life. Whether the extra space will allow upper-level students to live on campus depends on enrollment, he said. MU has experienced record numbers of freshmen for several years.

"If the freshman class size remains stable, adding these beds to our capacity will allow us to accommodate more current MU students," Minor said in an email. "However, if the freshman class continues to grow as it has recently, then these beds will be needed to keep pace with that growth but still provide some housing for current MU students."

In St. Louis last week, curators also saw the proposed design for a new outpatient medical clinic at the corner of Providence Road and Southampton Drive. The $32.5 million building will be 86,000 square feet and will replace the 48,000-square-foot Green Meadows Clinic. Krawitz said administrators have not decided what to do with the Green Meadows property when the clinic closes.
Don't be afraid to hire people with disabilities

Learning from one another has its benefits

By Rex Huppke  December 10, 2012

One of the best experiences of my life was watching Jamie Smith, a young man with autism, leave his routine in Chicago, travel to the Special Olympics World Games in the chaotic Chinese city of Shanghai — and succeed.

Jamie's success — managing in a foreign country and bringing home a silver medal — was the result of one thing: hard work. And I've yet to meet a harder worker than him, or a person who more appreciates the opportunities a job presents.

Our workplaces have grown diverse, but jobs remain far too scarce when it comes to people with autism or other intellectual disabilities. Unemployment rates vary depending on the study but hover around 80 percent, and people with disabilities who do get jobs are routinely paid less than other workers. A stigma surrounds people with disabilities, and employers fear that accommodating workers from this demographic might be cost-prohibitive.

Fortunately, some progress is being made.

Walgreen Co., for example, has for years welcomed workers with intellectual disabilities. In 2007, it opened a distribution center in Anderson, S.C., with the goal that people with disabilities would make up 33 percent of the staff and be paid and treated the same as any other employee.

That number now tops 40 percent, and the company opened a similar center in Connecticut in 2009. It also has begun a separate program that recruits people with disabilities to work in Walgreen stores.

The results, according to Deb Russell, a manager in the company's diversity and inclusion department, have been statistically excellent. Turnover among employees with disabilities is 50
percent lower than that among nondisabled employees, and accuracy and productivity measurements are the same.

"People think accommodations will be expensive and daunting," Russell said. "What we found, especially on the accommodations front, is that it's minimal. Over the thousands of people we've had in the distribution centers, we've spent less than $50 per person. A lot of the time, all the accommodation they need is an open mind."

She said that more than 100 Fortune 500 companies have toured the South Carolina facility to learn more about the program.

"We've been so proud to see quite a few companies coming out recently with programs that are similar to ours," Russell said. "They take what we're doing and make it their own."

What's important to realize is that when Walgreen and other companies hire people with intellectual or other disabilities, they aren't doing it as an act of charity. They're doing it because the people they're hiring are good employees who help the company make money.

**Scott Standifer, a University of Missouri researcher who studies employment issues affecting adults with autism, said he's encouraged to see large companies such as Walgreen, AMC Theatres and the investment firm TIAA-CREF, to name a few, aggressively employing people with disabilities.**

"For decades the employment specialists who work with people with disabilities have been saying things like, 'These people are very dedicated; they will really love the work; they'll be very loyal employees,'" Standifer said. "The business community knows these agencies are trying to sell their clients, they're trying to convince the businesses to hire them, so they're skeptical. And there hasn't been any data to really back up their claims.

"But now we've got some large corporations who have invested and are evaluating their disability employment projects and are able to talk to other corporations as corporate peers. It's one thing to have job developers coming and saying these people are good workers, give them a chance. It's another to have Walgreens say, 'We are making more money by hiring these folks.'"

Standifer wrote a paper titled "Adult Autism & Employment: A Guide for Vocational Rehabilitation Professionals," which provides a wealth of information for employers, from advice on interviewing people with autism to explanations of the disability. That paper can be found at: [tinyurl.com/autismemploy](http://tinyurl.com/autismemploy).

He also said he hopes to see more coordination between people in the autism community and an employment resource found in every state — the vocational rehabilitation agency. This agency, overseen by the federal Rehabilitation Services Administration, focuses on finding jobs for people with physical disabilities, often veterans.

But Standifer believes these agencies may be better equipped than state groups to assist people with autism and other intellectual disabilities.
"It's hard for anybody to find a job," he said. "But these state agencies (that work with people with intellectual disabilities) don't have the 80 years of history that the vocational rehabilitation program has. One of the things that I'm excited about is that the autism community, as they start to understand vocational rehabilitation, will also start to lobby for increased vocational rehabilitation funding."

Standifer also pointed out that study after study has shown employing people with disabilities saves the country money.

"It has turned out to be cheaper and better to do whatever it takes to get people with disabilities working," he said. "When you support that, they don't need as many other social services. They're not needing Social Security disability income and other things. It's cheaper, it's better and it's healthier."

And, dare I say, it's the way things should be. Our workplaces have always benefited from inclusion.

We should aspire to work alongside people with disabilities, not as an act of good will, but with the hope that we might benefit by learning from each other.
UPDATE: Missouri lawmakers consider higher education funding formula

NO MU MENTION

BY DAVID A. LIEB/The Associated Press

JEFFERSON CITY — Ten percent of state funding for Missouri's colleges and universities would depend on whether they can meet performance goals such as improved graduation rates, according to a plan presented Monday to state lawmakers.

It's part of an initiative, required by state law, to develop a funding formula for higher education institutions similar to what exists for public K-12 education. Missouri's current approach allots money based largely on how much the colleges and universities received in the past and how much the state has available for the future.

Gov. Jay Nixon is likely to recommend that performance criteria be used for a funding increase — perhaps around 1 or 2 percent — to higher education institutions in the 2014 budget, said deputy higher education commissioner Paul Wagner. But the plan prepared by staff for the Legislature's Joint Committee on Education would take a more aggressive approach.

Committee chairman, Sen. David Pearce, R-Warrensburg, described the proposed funding model as a "starting point" for continued discussions. He asked higher education officials and others to submit comments by the end of this year. The committee is not mandated by law to develop a funding formula until the end of 2013.

Under Monday's proposal, the state would fund 35 percent of an institution's operating costs. Of that, 90 percent would be automatic and the remaining 10 percent would depend on whether it meets specific performance goals, such as retaining students from their freshmen to sophomore years, graduating students within a certain number of years and achieving success for students on licensure exams or in job placements.
The funding proposal isn’t designed to benefit any particular university or category of institutions, nor would it tell institutions how to spend their state money, said Stacey Preis, the committee’s executive director.

A year ago, the state Coordinating Board for Higher Education — which oversees the higher education department — recommended that Missouri should start awarding performance-based funding in the 2014 fiscal year. But that would be on top of an institution’s base funding and would not exceed 2 or 3 percent of an institution’s total state funding in any given year.

The proposal for a comprehensive funding formula put forth Monday could run into political trouble if the performance criteria are used to help determine a university’s base budget, as opposed to serving as a bonus. That’s because lawmakers often vote for or against education funding measures based on whether the schools they represent stand to gain or lose money.

"The bottom line is: Are institutions going to be able to lose money?" Wagner said about the proposed higher education funding formula. "If not, then I think it’s a lot of unnecessary complications, and I think we should just focus on funding institutions that are doing well."
Missouri could face disproportionate hit in ‘fiscal cliff’

NO MU MENTION
By DAVID A. LIEB

JEFFERSON CITY -- Missouri could lose about $125 million in federal funding for various programs and the state’s military-related economy could take a $1 billion hit, according to a projection of what to expect if officials in Washington don’t reach a deal to avert the “fiscal cliff.”

The estimates from the Washington-based Federal Funds Information for States show that automatic spending cuts due to begin in the new year could have disproportionate impact on Missouri because of the state’s above-average concentration of defense contractors and military installations.

Unless Congress and the White House agree on an alternative deficit-reduction plan, the spending cuts will be coupled with the expiration of tax cuts enacted during President George W. Bush’s administration to create what some have called a “fiscal cliff” because of the potential to nudge the nation back toward a recession.

The Federal Funds Information for States, which tracks the effects of federal policy decisions on states, projects that Missouri’s share of the defense spending cuts could total just over $1 billion — the 10th-highest amount among states.

Separately, Missouri government could lose $125.8 million in federal funding in 2013 for dozens of programs, including aid to public schools that serve a high number of low-income students, the organization said. Funding for special education, early childhood programs and food subsidies for women and children also could be cut sizably.

“It certainly has the potential to impact multiple programs in the state of Missouri, some of those which potentially could cause increased demand on state resources. There’s no doubt about that,” said Missouri Senate Appropriations Committee Chairman Kurt Schaefer, R-Columbia.
The exact impact remains unclear, especially if federal officials reach a compromise that includes a different mixture of program cuts or tax hikes than what is currently scheduled to occur.

That uncertainty comes as Missouri officials are trying to come up with a revenue projection that will be used by Gov. Jay Nixon and lawmakers to prepare a budget for the fiscal year that starts July 1.

Perhaps even more uncertain than the specific federal spending cuts is the potential impact that the federal tax changes will have on Missouri revenues. Because Missouri’s tax code is tied to the federal one in some areas, Missouri’s revenues could rise or fall depending on the federal actions.

For example, an increase in the federal income tax rate for individuals could have a negative effect on state revenues, because federal taxes can be deducted from the amount of income subject to Missouri taxes, said state budget director Linda Luebbering. If the federal government reduces its standard deduction for income taxes, that could have a positive effect on Missouri’s revenues, because a greater amount of income then would be subject to Missouri’s taxes, Luebbering said.

Luebbering said she isn’t banking on the federal tax code changes being either a boon or a bust for Missouri.

“It’s pretty much going to be a wash,” she said, unless the combination of federal tax hikes and spending cuts pushes the nation toward a recession, in which case tax revenues are likely to fall.

Schaefer said the amount of federally generated uncertainty facing state budget “is ridiculous.”

“It is extremely annoying and difficult to deal with when you’re trying to come up with a state budget that funds everything from health care to public education and everything in between,” Schaefer said. “A major partner of yours in that process is the federal government. Yet we’re coming up now on the end of the calendar year, and the federal government has absolutely no clue on where they’re going to be on some of these major issues.”
Top Jindal aides use personal e-mail to strategize

BATON ROUGE, La. (AP) — Top officials in Louisiana Gov. Bobby Jindal's administration used personal e-mail accounts to craft a media strategy for imposing hundreds of millions of dollars in Medicaid cuts — a method of communication that can make it more difficult to track under public records laws despite Jindal's pledge to bring more transparency to state government.

E-mails reviewed by the Associated Press reveal that non-state government e-mail addresses were used dozens of times by state officials to communicate last summer about a public relations offensive for making $523 million in health care cuts. Those documents weren't provided to AP in response to a public records request.

Jindal, now in his second term, has become a leading voice among Republican governors and is considered a potential presidential candidate. His administration's e-mails fold into a national debate over the use of personal e-mail accounts by government officials to discuss official business.

The issue was a prominent one during the administration of former Alaska Gov. Sarah Palin.

Palin's use of private e-mail accounts as governor prompted a lawsuit in which the Alaska Supreme Court ruled that officials using private e-mail accounts for public business need to keep documents "appropriate for preservation" under the state's records management act. In response, her successor has instructed employees to use state e-mail for conducting state business.

The head of a nonpartisan watchdog group that tracks public records issues said government officials often use private e-mail accounts to try to sidestep disclosure laws designed to provide sunshine in government.

"Absolutely people use private accounts to hide things," said Kenneth Bunting, executive director of the National Freedom of Information Coalition, based at the University of Missouri. "If government business is conducted or information about it is sent or received on personal computers or through personal e-mail accounts, that does not keep it from being the public's business."

The e-mail exchanges in Louisiana took place this past summer, as the Jindal administration was planning steep reductions to programs for the poor and uninsured because of a drop in federal Medicaid funding.
Participants included Jindal's top budget adviser Kristy Nichols, health care secretary Bruce Greenstein, Greenstein's chief of staff and health policy adviser, and Jindal's communications staff. Jindal was not included in the e-mails, and it's unclear whether he knew his top staff used private accounts to conduct public business.

The dozens of conversations held outside the state's official e-mail system covered subjects such as press releases, responses to news coverage of the budget cuts, preparation of an opinion column to be submitted by Greenstein to newspapers and complaints about reporters' coverage. The e-mails were sent mainly through accounts administered by Google and Yahoo.

In one exchange, Calder Lynch, a health policy adviser to Greenstein, directs a communications staffer to send certain types of items to Lynch's personal Gmail account, rather than to use his state government e-mail address.

The e-mails were provided to AP by an administration official who participated in the discussions and who asked not to be identified because he wasn't authorized to release them.

Jindal campaigned for his first term on a platform of providing more transparency in government.

However, the e-mails in question weren't among more than 3,800 documents and e-mails provided to AP by the Department of Health and Hospitals in response to a request for information on discussions surrounding the health care cuts.

Louisiana's public records law states that all documents used in "the conduct, transaction or performance" of public business are considered public except in cases where there is a specific exemption.

Administration officials didn't respond directly to questions about whether they were using private e-mail accounts to shield conversations about public business from disclosure.

"Certainly we believe that conducting public business even when using personal means of communication is subject to public records law," Nichols, the governor's commissioner of administration, said in a statement.

Jindal spokeswoman Shannon Bates agreed with Nichols' assessment and said the governor's office encourages all officials to conduct state business on state accounts.

Bates didn't directly answer an e-mailed question about why she and Jindal communications director Kyle Plotkin sent multiple group e-mails in July to Greenstein, Nichols and DHH employees using their personal e-mail accounts when talking about news organizations' coverage of the Medicaid budget cuts.

DHH spokeswoman Kristen Sunde said the department agrees "any state issues discussed over electronic communication are subject to public records law, regardless of the type of account used."

It's unclear how department attorneys and computer experts who do the leg work in responding to public records requests would know to check individual employees' personal e-mail accounts for documents complying with a request.

Also, experts say, there's no certainty the individual won't delete public records from a personal account rather than turn them over.
"You're the only one really who can cough it up," said Robert Travis Scott, president of the Public Affairs Research Council of Louisiana, which advocates for transparency in state government. "It does lend itself to a way of getting around the law, if it's not properly handled."

Sunde didn't answer a question about why the e-mails that involved non-state accounts weren't included in the agency's response to AP's public records request.

She said DHH staff uses state e-mail accounts for work-related matters, but may use a personal account if employees are working remotely, have limited access from a mobile device or are encountering difficulties with the state e-mail server. Nichols offered a similar explanation.

After Louisiana's federal Medicaid financing rate dropped, Jindal decided the largest share of the Medicaid reductions would fall on the LSU-run hospitals that care for poor and uninsured patients. The governor is pushing to shift more care to private hospitals.

In a July 27 e-mail exchange, six administration officials discussed how to respond to LSU's announcement of where it would make its budget cuts.

Nichols, then Jindal's deputy chief of staff, talked of the need to include a reference to "long term strategic reform" in the official administration response. Plotkin, the governor's top communications adviser, struck the word "challenging" from a description of the cuts. Greenstein agreed to use whatever statement was devised in coordination with the governor's office to respond to the LSU cuts.

In a series of e-mails on July 13 and 14, Plotkin urged Greenstein and his staff to "pen an op-ed from Bruce for all papers on why LSU hospitals need to transform the way they do biz now with this loss of money."

Using his personal Gmail account, Plotkin sent the message to the personal e-mail accounts of five DHH employees saying, "We need to get out front on this message."

In another set of conversations about a requested newspaper correction, Lynch, one of Greenstein's top advisers, told a department spokesman not to use a state government e-mail account.

"Please be careful to send stuff from Kyle like what you just sent .... only to my gmail. May have accidentally hit my state addy (address), but they are very particular," Lynch wrote.

Bunting, of the Missouri-based watchdog group, said government employees who use private e-mail accounts to conduct public business should forward those conversations to public e-mail addresses and direct others to send e-mails to their public accounts, to help ensure those communications are included in response to public records requests.

When running for office in 2007, Jindal campaigned on improving government transparency in a state known for its backroom political deals, imprisoned elected officials and ongoing investigations into public corruption.

Since then, the governor has opposed attempts to open more of his office's records to public scrutiny, and agencies in his executive branch have exerted new claims of privilege to shield documents.
VILLA PARK, ILL. • Tiffany Davis was determined to build the barrier that no one else would. By age 15, she’d lost two friends in two years to the railroad tracks in this small Chicago suburb. First was 13-year-old Alyssa Gonzalez. Then 14-year-old Kristen Bowen was struck by a freight train as she ran toward a small park.

Other pedestrians have died on the tracks here. Trackside memorials dot the rails, including a wood cross marking the spot where a middle school student was killed and two others injured as they walked home from school years ago. But it was Kristen’s accident in 2006 that spurred Tiffany Davis and shook the town, reverberations that eventually led to another tragedy, this time involving Kristen’s twin sister.

Everyone knew the railroad tracks in Villa Park and neighboring Lombard were a popular shortcut. It had been that way for years. Police could pick out the well-worn paths on satellite photos. The tracks divided neighborhoods and ran past schools and a park. But any talk of blocking access to the busy rails was brushed aside as too difficult and too expensive. Kristen’s death didn’t seem to change that.

“No one stepped up to do anything about it,” Tiffany Davis said.

So she took up the fight. She organized a car wash. She held a concert. She got fencing donated at cost. More importantly, her efforts put pressure on the railroads and city officials after years of foot-dragging. Today, a black, metal rail fence runs along stretches of the tracks, paid for with railroad and public funds. And it seems to be doing its job, local officials say.

What happened in Villa Park and Lombard is an example of how railroads and towns across the nation often battle over how to prevent pedestrian-train accidents, which are now the leading cause of death on the nation’s railroad system.

Experts say the solutions are never simple. But the tactics used to this point haven’t worked. They have made barely a dent in the number of pedestrian deaths on the tracks each year. At the same time, most other measures of railroad safety have improved dramatically, with much of that progress due to tighter regulation.
“It’s a huge problem,” said Archie Burnham, a railroad safety engineer outside Atlanta. “But to me, it’s a fixable problem.”

Railroads have staked out the position they don’t need to take steps to stop people from walking on the tracks. The rails are private property. A person crossing the tracks is trespassing. The railroads might put up “No Trespassing” signs or stage an enforcement blitz. Beyond that, they need to do little. The courts generally agree. And the federal rules governing railroad operations do not require action.

So communities resort to pleading for help.

Tiffany’s father, John Davis, recalled how his daughter’s campaign made him realize that the railroad companies were not going to protect his family. He had to do it. Inspired by his daughter, he got into local politics. He pushed for a law requiring railroads to barricade tracks near parks and schools. He called it Kristen’s Law. State lawmakers paid little attention.

But after Villa Park got its fence, John Davis, now a village trustee, was invited to neighboring towns to give advice on how they could get fences, too. He was surprised. Other communities wanted what Villa Park had. They sounded jealous.

“Other towns were screaming, ‘How come you got it?’” he recalled. “‘Why not us?’”

A horrendous fatality can help. In San Jose, Calif., residents’ complaints about one particularly well-known shortcut over the tracks had been ignored for years. Then, in 2005, an Amtrak train fatally struck a 2-year-old boy as he crossed at that spot with his baby sitter. Public outcry grew. Finally, plans for a publicly financed pedestrian overpass were approved. The bridge, named “Xander’s Crossing” after the dead toddler, opened in September.

In some ways, the struggle over what to do about these accidents mirrors the challenge presented decades ago by railroad crossings. In the early 1970s, crossing accidents were the biggest dangers on the railroad. Then hundreds of millions in public funds were spent upgrading thousands of crossings with automatic lights and gates. Since the early 1980s, crossing accidents have fallen 80 percent.

But stopping people from walking across the rails, what can be done about that?

**The three E’s**

The answer, say railroads and regulators, is contained in a list of three E’s: education, enforcement and engineering.

Education is mostly Operation Lifesaver, a national nonprofit group that spreads the message about rail safety. Awareness campaigns can help, experts say. But, as the Post-Dispatch reported Monday, Operation Lifesaver’s funding and staffing have been significantly cut.
Enforcement focuses on anti-trespassing laws and arrests. But the railroads employ relatively few police officers in their corporate departments. Local police, already spread thin, can't afford to patrol more often. And the specialized training that railroads occasionally provide to local authorities remains focused on grade crossings. In July, when 14 St. Louis-area officers spent 16 hours over two days in a grade crossing and collision investigation class, just 30 minutes was spent on trespassing.

That leaves engineering — restricting access to the tracks using things such as fences or overpasses.

And it is here that the starkest lines between railroads and communities are drawn.

Union Pacific does not favor engineering solutions to trespassing, although it says it works with communities to erect fencing when appropriate. “Engineering focuses on grade crossings,” Union Pacific spokesman Mark Davis said.

Railroads also dismiss fencing because, they say, people determined to cross will do it, such as in cases of suicide. But many experts disagree with that. The same tactics used to stop people from accidentally reaching the tracks can be used to stop those seeking them out, said Dr. Matthew Miller, associate director of the Harvard Injury Control Research Center, who has studied suicide prevention methods.

“If you can prevent suicide in the short run, like stopping someone from jumping in front of a train, you can prevent suicide in the long run,” Miller said. “Restricting access can save lives.”

The railroads say they can’t restrict access everywhere.

“We can’t fence off the entire system. It’s impractical to do that,” said Robin Chapman, a spokesman for Norfolk Southern.

This is a popular sentiment echoed across the industry. With more than 160,000 miles of railroad track in the United States, fencing every mile of railroad right of way would be impossible.

But no one is suggesting that, either.

What is more common is the call for fencing along known trespassing hot spots. “That is not the same as fencing in 10,000 miles of track,” said David Clarke, director at the University of Tennessee’s Transportation Research Center.

Clarke has heard the arguments that partial fencing means people just walk around.

“I don’t necessarily buy that,” he said. “You can make it unattractive enough to cross at a particular point.”
Fencing is about reducing risk, not eliminating it. It’s the same argument with lights and gates at railroad crossings. Vehicles still collide with trains at crossings with gates, but it happens less often.

“So the gate is not 100 percent effective,” Clarke said.

Fences no one can see

The Federal Railroad Administration has tried other tactics.

Currently, the agency has big expectations for a study in West Palm Beach, Fla., which is focused on a stretch of tracks that saw four pedestrian deaths in 2008. Progress has been slow: Researchers complained early on about the lack of data pinpointing where the casualties were occurring. They couldn’t find the hot spots. This longtime weakness in the agency’s accident reporting system was highlighted in an article Monday in the Post-Dispatch.

The agency declined to discuss its Florida study with the Post-Dispatch because the research was ongoing. But a brief update on the project’s progress, published in a conference journal, noted the research team plans to throw everything at the problem, from more Operation Lifesaver talks to more warning signs to adding fences.

The Federal Railroad Administration hopes to use the project to develop national recommendations.

The last time the agency completed such an ambitious research project was in 2004. And the results were mixed.

The project was focused on a railroad bridge in the town of Pittsford in upstate New York. The bridge crossed the Erie Canal and was popular with swimmers during the summer. In June 1997, a girl, 14, and a boy, 16, were fatally struck by a CSX train on the bridge.

Four years later, the Federal Railroad Administration selected the bridge for a demonstration project. Motion-detection cameras were installed on the bridge, sending images to a security company. If the security guard saw a trespasser, an automated announcement over loudspeakers was triggered: “Warning: You are trespassing on private property and are in danger of being struck by a train. Leave the area immediately.”

The cameras seemed effective. The three-year study credited the warning system with preventing four deaths of people facing close calls with trains. But the system remains one-of-a-kind. And CSX is no longer using it.

Nothing can be done

Union Pacific owns the tracks running through Villa Park.
The railroad company also owns the tracks over the Brazos River near Texas A&M University. That’s where college freshman Betsy Helbing fell from a railroad bridge in September 2007.

Helbing was partially paralyzed. In the lawsuit that followed, a Union Pacific executive shared how he believed trespassing was essentially unstoppable.

The railroad bridge, known as Whiskey Bridge, runs over a riverbed popular with fossil hunters. The bridge also was popular with college students who climbed onto bridge supports and watched trains run overhead. It sounds crazy, but it was a long-standing tradition. Helbing visited the bridge with a freshman orientation group. And she was not the first casualty there. The previous year, student Amber Penn had broken her legs in a fall. In 1996, a train fatally struck a 17-year-old girl on the bridge.

After Penn’s accident in 2006, a Union Pacific employee sent an internal email alerting a superior to the danger. “Over the years we have had problems with trespassers getting on that bridge and laying down on the caps while the train goes over them,” wrote the railroad worker, according to court filings. “It is the big thing for (A)ggies to do.”

In another email, a railroad worker suggested putting up a “No Trespassing” sign: “Not that it will keep them off, but it shows we are doing what we are supposed to do to keep trespassers off the bridge.”

Union Pacific’s public safety director Dale Bray testified in Helbing’s case about why the railroad didn’t do more to keep people off the bridge. He was doubtful that signs worked. He didn’t think a fence was the answer. A fence, he said, could actually force people to walk closer to the track.

“So what I would say is, I would not — in my professional opinion and in my position, I would not recommend even to this day a fence where this incident took place,” Bray testified. “I do not believe that it would prevent the trespassing.”

“Do you think that there’s anything that Union Pacific could do to prevent access to pedestrians on that bridge?” he was asked by an attorney for the paralyzed student.

“No,” Bray responded. “I’ll add to that. Nothing reasonable.”

**Fencing for cows**

Many railroads do fence for livestock, though.

At least 25 states have laws saying railroads are liable for livestock struck by trains along unfenced tracks. Missouri’s fencing law, which has been on the books since at least 1909, is typical.
In Missouri, questions about the law end up going to Joe Koenen, a University of Missouri Extension agricultural business specialist. He is the point man for ranchers wanting to learn about the railroad’s fencing obligations.

Koenen said railroads used to fence extensively outside of populated areas, through miles of crop and timber lands, even in areas where livestock were not known to roam. They’ve cut back some, but there is still plenty of post and wire fencing along the tracks. And the railroads are particular about the work.

“I know several railroads that wouldn’t let ranchers build it themselves,” Koenen said. “They wanted to do it to their specifications.”

To Ken Heathington, a railroad safety engineer who has worked as an expert witness in railroad injury lawsuits, the idea of fencing for livestock but not people doesn’t add up.

Thousands of miles of interstate highway are fenced, he said.

So are airport perimeters.

And power plants — anywhere you don’t want people.

So, Heathington said, to argue that railroads should have fences for livestock, “but it doesn’t hurt to have people in there? That doesn’t make sense.”

Accidental success

The railroad industry has fended off attempts to require fencing along railroad tracks. The last serious attempt at the federal level came more than two decades ago. In 1987, Rep. Thomas Luken, D-Ohio, introduced a bill that included a provision requiring fencing in rail yards “in heavily populated areas in order to prevent injury to nonrailroad personnel.”

Luken’s bill went nowhere. But for the next couple of years, Luken, chairman of the House Energy and Commerce subcommittee, kept plugging away at the issue. He held hearings on whether the railroads should be required to fence tracks running through dense suburbs and cities. That effort eventually died, too.

Some cities have seen success with limited fencing — even when they were not expecting it.

In Moorhead, Minn., the city fenced along the railroad tracks cutting through downtown. So did neighboring Fargo, N.D., just across the Red River.

The 2½ miles of fencing, along with fortified crossings, were aimed at qualifying for a “whistle ban,” allowing trains to skip blowing their horns at each crossing.

The train horns stopped in late 2007 — and, surprisingly, so did the pedestrian railroad accidents.
It had been a problem: In the eight years before the whistle ban, 10 people died walking on the tracks in the counties that are home to Moorhead and Fargo. Just a few months before the fences went up, a train fatally struck a 21-year-old college student in downtown Moorhead. The accidents seemed to just keep happening, said Moorhead assistant city engineer Tom Trowbridge. “It was getting pretty ridiculous.”

But no pedestrians have died inside the whistle zone in the last five years.

“In terms of safety,” Trowbridge said, “it’s been a success.”

No easy answers

Villa Park got its fence, too. So did neighboring Lombard. But it wasn’t easy. Villa Park fenced about 1.5 miles of one side of the track. Lombard did the other side. There are gaps, big stretches where people can cross. Still, the limited fencing seems to be working.

“We’re not having trespassers,” said Joe Menolascino, a Lombard police officer.

“Our numbers have definitely dropped,” said William Lyons, a Villa Park police officer who investigates train accidents.

The fences are not perfect, Lyons said. But they help.

Tiffany Davis is 22 now and living in Texas, years removed from her fence-building campaign in Villa Park. After Kristen Bowen died, Tiffany volunteered with Operation Lifesaver. She talked to her friends about railroad safety. But people kept dying. She can count nine people she’s known who have died along the tracks.

“What else can I do?” she asked.

Her father still lives in Villa Park. He could do without the trains. “They scare the bejesus out of me,” John Davis said. These days, he’s pushing for a pedestrian underpass at one busy intersection.

One block from the railroad tracks sits a modest home. It’s where Kristen Bowen lived. North Ahrens Street dead-ends into the tracks. On the other side is a small park. That’s where Kristen was headed on Feb. 11, 2006.

Kristen’s father Ray Zukowski still lives in that house. After Kristen died, he poured his energy into a website detailing the lives lost along railroad tracks in Illinois. He found some comfort in the changes brought by his daughter’s death.

But nothing seemed to ease the sense of loss for Kristen’s twin sister, Kendra Bowen. In February 2010, days after the four-year anniversary of her sister’s death, Kendra, then 18, sneaked out of the house on the dead-end street. She headed for the tracks.
She walked past the spot where her twin sister died, where a black, metal rail fence now blocked the path. She walked a few more blocks to an open spot and waited in the darkness. A freight train approached. She stepped onto the tracks. The train couldn’t stop in time.
Using money, science to win over stomachs

MU MENTION PAGE 7

By ALAN BAVLEY and MIKE MCGRAW | | The Kansas City Star © 2012

Big Beef tries to shape U.S. Dietary Guidelines, saying it wants to fill ‘information gaps.’

It was here in this prosperous New England town that America’s love affair with beef started to lose its sizzle.

It was here a half century ago that obesity, high blood pressure and high cholesterol levels were all identified as risk factors for heart disease.

Indeed, it was here that scientists coined the term “risk factor,” triggering the deluge of nutrition research that keeps beef from being “what’s for dinner” in many households.

The study’s impact has been profound for Big Beef over the last few decades. As consumption has fallen, Big Beef has fought back, winning some and losing some.

The industry has funneled millions into a public relations campaign to cast steaks and burgers as something akin to health food — something you can eat every day, even twice a day.

In its yearlong study of the issue, The Kansas City Star found that Big Beef is:

• Attempting to influence the next rewrite of the federal government’s Dietary Guidelines in 2015. Big Beef wants them to include new research the industry paid for that promotes a beef diet intended to lower cholesterol and blood pressure. It also has paid for advertising and promotions, for example, getting lean cuts certified by the American Heart Association as “heart-healthy” food.

• Spending even more money influencing the nation’s dietitians, treating them to junkets and dinners. The industry arranges continuing education programs for nutritionists immediately after beef-sponsored research is published in scientific journals.

• Stifling criticism of food or its production methods through what are called “veggie libel” laws now in effect in 13 states. The laws were promoted by the American Feed Industry Association, whose members include large beef packers and animal pharmaceutical firms.
In an effort to maintain market share, the beef industry has gone on the nutritional offensive. Its own marketing research shows that concerns about nutrition, and fat in particular, remain a major disincentive to consumers from buying beef as voraciously as they did a generation ago.

The average American maxed out on beef in 1976, eating a record 67.9 pounds that year. Since then, beef consumption in the United States has fallen by about a third. Chicken surpassed beef as the nation’s most popular meat nearly a decade ago.

“Everybody is competing for the same calories. The only way you can sell your product is by giving it a health aura,” said Marion Nestle, a professor of nutrition and food studies at New York University and a regular critic of the food industry.

Despite a seemingly endless onslaught of medical research that implicates beef and other red meat in heart disease, cancer, diabetes and weight gain, the beef industry remains hopeful, citing marketing data that 94 percent of us eat beef at least once a month.

Industry-sponsored research, such as the beef diet study, is designed to “address important information gaps,” Shalene McNeill, a registered dietitian and executive director of nutrition research at the National Cattlemen’s Beef Association, told The Star.

Yet other nutrition experts remain skeptical of the continuing marketing push to burnish beef’s public image.

“There’s just so much evidence that beef is related to heart disease,” said Michael Jacobson, executive director of the health advocacy organization Center for Science in the Public Interest.

The beef industry can “add a little confusion to the health message of eating less meat,” Jacobson noted. “But their propaganda and lobbying and advertising haven’t been that effective. They’re fighting a rear-guard action.”

That tectonic shift in America’s diet attitudes arguably began in Framingham in homes like the Tostis’.

Heart study

Dinner at the Tosti household always was a big production. Joe, Dorothy and their five children gathered round the table every evening for a huge spread.

And in the 1950s and ’60s that meant beef practically every other day — roast beef, steaks and, true to their Italian heritage, meatballs.

That was then. Today, as has been the case for many health-conscious Americans, seafood, chicken, vegetables and even tofu have replaced most of the beef on the Tostis’ table and on the tables of their adult children.
"You kids all got older and realized that wasn’t a healthy diet," Dorothy Tosti said as she chatted recently with her two daughters, Barbara Tosti and Paula Cuneo, at the offices of the Framingham Heart Study.

Since 1948, the heart study has used this middle-class town about 21 miles west of Boston as a virtual research laboratory. The Tostis and thousands of other people — continuing to this day into a third generation — have been surveyed about their lifestyles and undergone regular comprehensive medical exams.

Early findings from the Framingham Heart Study, and from other research at that time, helped set off the nation’s turbulent relationship with food and fat — and turned prime rib into a prime suspect.

The basic message has always been that having high cholesterol levels raises our risk of heart disease. And eating saturated fats — which are found in animal products such as meat and dairy — raises those levels.

Americans know a lot more about diet and health now than they did when the first studies started coming out of Framingham. And more nuanced nutritional messages are beginning to get through:

Not all fat in your diet is bad for you. Not all the cholesterol in your blood is unhealthy, and the cholesterol in foods such as meat and eggs generally isn’t the biggest contributor to the cholesterol in your blood.

Red meats like beef no longer are Nutrition Enemy No. 1 — that role has been assumed by sugary drinks, white bread and french fries. Refined carbohydrates can wreak havoc with heart health.

But that doesn’t mean red meat has won a total reprieve.

"Meat has got to be a rare experience, and whenever you can eat a plant protein over an animal protein, you’re better off," is the advice William Castelli, former director of the Framingham study, gives his patients.

Big Beef, as might be expected, will give you different advice.

Beef is a different food from what it was in the 1960s, the industry maintains. It’s a lot leaner. On average, a well-trimmed sirloin steak has 34 percent less fat, 17 percent less saturated fat, than it did 49 years ago.

Beef is not only a good source of iron, zinc and B vitamins, its high-quality protein helps maintain muscle mass and keeps you feeling full between meals. There’s industry-sponsored and other research to back up these claims.
There’s even a scientifically tested diet plan — Beef in an Optimal Lean Diet, or BOLD — to lower cholesterol levels in your blood while serving up modest portions of lean beef every day for lunch and dinner.

The BOLD diet has become the centerpiece of industry efforts to promote beef as heart healthy food.

And its development, The Star found, illustrates just how closely Big Beef is tied to both academic researchers and to the health professionals who advise people on what to eat. It also suggests just how sophisticated industry strategy has become for gaining beef some leverage in the federal Dietary Guidelines.

BOLD vs. DASH

The BOLD diet is a direct response to another diet plan with a catchy acronym, DASH (Dietary Approaches to Stop Hypertension), that has become a mainstay of doctors and dietitians who want to lower their patients’ blood pressure or cholesterol.

One of DASH’s recommendations calls for curbing consumption of red meat.

The Star found that after DASH made its way into the federal Dietary Guidelines in 2005, Big Beef started planning BOLD.

The guidelines “really pushed people toward choosing a dietary pattern that looked like DASH,” McNeill of the cattlemen’s association told members of the industry during a Jan. 19 webinar on BOLD that The Star found online.

“Why couldn’t we also have, for lack of a better word, a ‘beefy’ DASH diet?” she suggested.

The Dietary Guidelines for Americans, first published in 1980 and updated every five years by the USDA and the Department of Health and Human Services, may be the nation’s most influential food document.

The guidelines are used to determine nutrition standards for school lunch programs, how much assistance is provided through food stamps, and what goes on food product labels. They’re also used to write educational materials for schoolchildren and the curriculum of doctors and registered dietitians.

“They are the basis of everything where nutrition guidance is needed,” said Robert Post, deputy director of the USDA’s Center for Nutritional Policy and Promotion.

Big Beef set out to make the new guidelines friendlier to the industry.

Planning for BOLD began in 2006 “so that we can be prepared for future dietary guidelines and future advocacy,” McNeill explained during the webinar. They’re aiming for the next revision of the guidelines in 2015.
The Star found that to get the science it needed to back up a BOLD diet, the cattlemen’s association approached Penny Kris-Etherton, a prominent Penn State University nutrition expert.

"We knew that she was open to beef," McNeill said during the webinar. "We went to her ... and said can you help us design a rigorous study of DASH and compare a beefy DASH diet to the DASH diet?"

Penn State researchers engineered BOLD to include amounts of calories, fat, cholesterol and fiber comparable to those in DASH.

But where the DASH diet skimps on beef, different versions of BOLD average 4 to 5.4 ounces per day. That means meatballs or chili for lunch and beef fajitas or pot roast for dinner.

Kris-Etherton put 36 people with above-normal blood cholesterol levels on a series of diets: BOLD, DASH and something called a "healthy American diet," which was low in beef but had more fat and less fiber than the other diets.

The researchers found that, compared to a "healthy version" of a typical American diet, BOLD diets lowered cholesterol just as well as DASH. BOLD diets with the most beef also lowered blood pressure.

Kris-Etherton said that the source of her funding doesn’t affect how she conducts her research.

"As a scientist I wouldn’t do that. I design studies that make sense, that follow dietary recommendations," she said.

There will be more findings coming out of the BOLD research, McNeill said, “to keep this story alive for longer than just the study of the day.”

Dietary Guidelines

There have been plenty of skirmishes between Big Beef and federal officials who try to suggest that people eat less meat, including a recent dust up over a “Meatless Monday” campaign suggested by lower level USDA bureaucrats.

When the USDA released its Eating Right Pyramid for the first time in 1991, the beef industry wasn’t comfortable with meat wedged near the top of the pyramid next to dairy, and just below fats, oils and sweets.

Shortly after the pyramid was announced, representatives of the National Cattlemen’s Beef Association confronted newly appointed USDA secretary Edward Madigan at a meeting that had been scheduled well in advance.

“The beef people were after me,” Madigan said at the time. “This cowboy stands up and says, ‘Where the hell did this come from?’”
The USDA quickly pulled the pyramid. After a flood of protests from health and advocacy groups, it was re-released the following year with minor revisions. Meat’s position on the pyramid didn’t change.

The first version of the Dietary Guidelines in 1980 advised people to “avoid too much fat, saturated fat and cholesterol.”

“The goal, frankly, was to tell people to eat less meat,” said Carol Tucker-Foreman, a consumer advocate who was then USDA assistant secretary for food and consumer services.

Beef producers, who didn’t want the government telling people to avoid eating anything, realized that and mounted a counteroffensive.

“The Cattlemen went after the department and me,” Tucker-Foreman recalled. “We were attacked as anti-farmer, as anti-food. They were infuriated that USDA was involved with it.”

Soon after the guidelines appeared, then-Missouri Sen. Tom Eagleton, who was up for re-election, called Tucker-Foreman to his office.

“He was just furious. He pretty much made it clear to me that he was being beaten up by the cattlemen in Missouri, who were quite powerful. They were all over him because of the Dietary Guidelines. Much of it was stated to me as ‘why are you doing this in an election year?’ ” she said.

When it comes to the Dietary Guidelines, Big Beef hasn’t been so pugnacious in recent years, Tucker-Foreman said, but just as effective.

“They’ve very subtly gotten exactly what they want in them over the years,” she said.

The guidelines have always emphasized eating lean meat and limiting consumption of fats, but they were slow to offer advice about specific foods.

It wasn’t until the 2010 guidelines that these connections were made more explicit. The guidelines now include advice to substitute some of the meat in your diet with fish and seafood. And unlike the 2005 guidelines, which talked about the DASH diet in general terms, the 2010 version makes it clear that DASH means eating less red meat.

As federal food programs have become tied more closely to the Dietary Guidelines, the panels of experts who write the recommendations “seem to be doing more for the public than the industry’s bidding,” Tucker-Foreman observed. “I think they’ve grown more and more responsible.”

And more tied to scientific research, often paid for by food industries, The Star found.

In recent years, the cattlemen’s association and state beef councils have funded nutrition scientists at more than a dozen universities, including the University of Colorado, Cornell, Tufts,
Purdue and the University of Arkansas. In its 2011 fiscal year, the association budgeted $1.2 million for nutrition research and had committed about $504,000 of it to studies.

Dependence on industry may lead to biased research, said Lenard Lesser, a researcher at the Palo Alto Medical Foundation Research Institute.

When Lesser reviewed scientific articles about the health effects of soft drinks, juice and milk, he found that those funded by industry were almost eight times more likely to have favorable conclusions than the reports with no industry funding.

Lesser thinks food industries are likely to sponsor only studies destined to produce positive results, “and there are definitely ways to design a study to get a positive result.”

Heather Leidy, an assistant professor of nutrition and exercise physiology at the University of Missouri in Columbia, said the beef industry had no say in how she conducted her research. A beef program grant helped pay for her research on how girls made it through the day when they skipped breakfast or started with a high-protein meal.

Leidy’s study ended up showing that the girls ate fewer high-fat snacks in the evening when they had a high-protein breakfast of an egg and beef burrito or an egg waffle with a beef sausage patty compared with when they skipped breakfast or just had a bowl of cereal.

But no matter what the results, Leidy said, the industry doesn’t control what she publishes about her work.

“It can have a positive connotation. It can have a negative connotation. They know that,” Leidy said. “They chose to do with it what they want as far as giving it to consumers.”

However, one consequence of food industry funding is reluctance among nutrition researchers at universities to speak out on controversial issues, said Walter Willett, chairman of the department of nutrition at the Harvard School of Public Health. Willett saw that happen when he tried unsuccessfully to rally his colleagues to oppose a powerful food manufacturer.

“They were all silenced,” he said.

Getting dietitians on board

The Star found that the beef industry also invests heavily in the nation’s dietitians. Indeed, it spent close to $700,000 in its 2011 fiscal year to reach dietitians and others who influence what we eat.

The National Cattlemen’s Beef Association and the industry’s promotional fund have been loyal sponsors of the dietitians’ professional society, the American Academy of Nutrition and Dietetics, appearing regularly on the list of major donors — $10,000 or more annually — to its foundation.
In 2000, the academy’s foundation gave the cattlemen its “Corporate Award for Excellence” in recognition of its long financial support and its work with dietitians.

Big Beef has good reason to seek them out. Registered dietitians are the health professionals who provide nutrition advice to the media, schools, hospitals and patients who have chronic conditions, such as heart disease or diabetes and have to watch their diets closely.

And it seems to be working.

Nestle, the professor of nutrition and food studies at New York University, said that the “dietetics profession has completely sold out to the food industry. The (food) companies are shameless and the dietitians eat it up.”

The Star found that, even before the Penn State BOLD study made it into print on Jan. 1, the National Cattlemen’s Beef Association had conceived a marketing campaign: The “BOLD Strategy” to “disrupt conventional thinking about beef and heart health,” according to the association’s webinar presentation.

As soon as BOLD was published by the American Journal of Clinical Nutrition, press releases went out from the cattlemen’s association, Penn State and the nutrition journal. The study was quickly picked up by the Reuters news service and a WebMD blogger. The online version of Shape magazine posted an article by one of the BOLD researchers.

The message the cattlemen were getting out, said Julie Sodano, the organization’s food and nutrition communications director, is that “contrary to conventional wisdom, beef can be good for heart health.”

On Valentine’s Day this year, Kris-Etherton presented BOLD during a cattlemen’s webinar for dietitians that provided them with continuing education credit.

“Because beef is a source of saturated fat, in many health professionals’ minds it has been translated to the following message: You can’t include red meat and beef in particular on a blood cholesterol lowering diet because you won’t be able to meet saturated fat targets,” she said.

“You’ll see today that’s not the case.”

Nutrition experts such as Nestle and others are quick to point out, however, that there’s really nothing special about the cattlemen’s BOLD plan. Any well-balanced diet that’s low in fat and has the right amount of calories will be better than what most Americans eat. It’s not surprising that BOLD might have health benefits.

“So much about what healthy diets are about is proportion,” Nestle explained. “From my standpoint, I wish everyone would just relax and eat less.”

The cattlemen’s association also is involved in several dozen regional seminars per year for dietitians and other health professionals. One was held in May in Kansas City, Kan., when the
Kansas, Missouri and Nebraska beef councils sponsored a three-day “Nutrition Adventure” for several dozen dietitians from about 10 states.

A visit to a cattle ranch near Tonganoxie, Kan., and a beef and wine pairing class at Kansas City’s Pierpont’s restaurant in Union Station were on their itinerary. Another recent seminar took New York University students and dietitians to a farm in the scenic Hudson Valley for a talk about the beef industry and a hay ride through the rolling hills.

“I think it’s important to stress that the academy doesn’t support any companies, products or services,” said Jeannie Gazzaniga-Moloo, a member of the nutrition faculty at California State University in Sacramento and a spokesman for the American Academy of Nutrition and Dietetics. “All the propaganda out there by (the food) industry is not going to sway us.”

About 5 percent of the academy’s $33.9 million in revenues came from various food industry sponsors, not just beef, during the fiscal year that ended May 31, 2011.

Even Kris-Etherton is concerned that her message about a healthy, balanced diet may “get all mixed up” if people interpret the BOLD findings for lean beef as a license to eat any and all beef.

“What is the main beef people eat? High-fat hamburgers,” she said. “Look at all the monster burgers out there with cheese and bacon, and 22-ounce Porterhouse steaks.”

Yet that’s something suggested by the cattlemen’s association’s own market research.

“Lean serves as a ‘halo’ word for beef, increasing the consumer’s comfort in eating beef frequently,” according to a recent cattlemen’s report. Like companies that offer both light and higher fat ice cream, “smart marketers sell a lean product, and an indulgent product.”

All of which exasperates nutrition researchers such as Barry Popkin at the University of North Carolina.

“Why don’t they sell just lean beef? We’d be a hell of a lot healthier,” Popkin said. “But that’s not happening. They don’t want to do that. Their business is to sell more beef.”

Stifling beef’s detractors

Big Beef’s fight to rebuild its public image isn’t only being fought in academia and research laboratories. In recent years it has spilled over into the nation’s courtrooms and state legislatures, where the industry is confronting criticism of food and production methods.

In September, Beef Products Inc. sued ABC News and several whistle-blowers for allegedly maligning its lean finely textured beef product, described as “pink slime” in news reports earlier this year.

The $1.2 billion suit was originally brought under South Dakota’s “veggie libel” law, which makes it illegal to disparage “agricultural food products.” The suit is pending.
South Dakota is one of at least 13 states with “veggie libel” laws, along with Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma and Texas.

The laws were pushed by the American Feed Industry Association. The nonprofit trade group calls itself the “world’s largest organization devoted exclusively to representing the business, legislative and regulatory interests of the U.S. animal feed industry and its suppliers.”

The American Feed Industry Association distributed drafts of model veggie libel bills to numerous states.

The “pink slime” case is “exactly the kind of situation these laws were designed to address,” said Steve Kopperud, a senior vice president at the association.

He said the goal behind the legislation was to force activists to think twice about their attacks on the food industry and to hold animal rights groups accountable for their claims, Kopperud said.

The laws prohibit “knowingly making any materially false statement about an agricultural product” and allow food producers to recover damages.

Texas’ law was used to sue Oprah Winfrey in 1998 over statements made on her talk show by an animal-rights activist, and Winfrey’s statement that the comments “just stopped me cold from eating another burger.”

Winfrey spent about $1 million fighting the suit and finally won when the court ruled that the beef industry hadn’t proved its case, although critics contend the ruling left the issue of its constitutionality murky.

Janet Riley, a vice president at the American Meat Institute, acknowledged that on their face, such laws may sound “counterintuitive” for a meat industry that is trying to be more transparent with consumers.

But Riley added, “Look what happened with lean finely textured beef. We should be able to reasonably expect fair treatment, and this industry did not get fair treatment on lean finely textured beef at all.”

Tostis and tofu

Big Beef’s battle to reclaim its place on America’s dinner table is hardly over.

To be sure, the Tostis are still eating beef in Massachusetts; it’s served at some family gatherings. However, health concerns have kept it from recapturing that central place it used to have in their diets.

Daughter Barbara Tosti eats beef two or three times a month. Usually though, it’s fish or chicken.
Her sister, Paula Cuneo, serves beef regularly once a week. “My husband is not crazy about red meat. He feels healthier when he has salmon, instead of steak tips, which I love,” she said.

One of their brothers is married to a vegetarian. “Poor thing, he’s so thin,” Barbara Tosti said. Another brother is always on a diet. And the third is married to the daughter of a doctor, so they watch what they eat.

For their parents, Joe and Dorothy Tosti, it’s that decision everyone faces between what might be good for us, and what’s really good.

“Now, my choices are more scallops, fish,” Joe said. “I might as well eat something that helps me.”

“He’s so saintly,” Dorothy answered. “And I’m so devilish. I order the most expensive steak on the menu.”