

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THE COALITION FOR EQUITY AND
EXCELLENCE IN MARYLAND HIGHER
EDUCATION, INC., et al.,

Plaintiffs,

Civil No. 06-2773-CCB

v.

MARYLAND HIGHER EDUCATION
COMMISSION, et al.,

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS'
REMEDIAL PROPOSAL**

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INTRODUCTION

After a six-week trial, and hundreds of pages of proposed findings of fact and conclusions of law, the Court concluded in its 2013 Memorandum Opinion that Maryland still operates a dual system of higher education in which the State's Historically Black Institutions ("HBIs") lack institutional identifiability beyond race and have only 11 unique, high-demand academic programs compared to 122 at the Traditionally White Institutions ("TWIs").¹ The Court concluded that Maryland "has never dismantled the *de jure* era of duplication of programs that facilitated segregation—and it has maintained policies and practices that have even exacerbated this problem."² The Court further concluded: "The State offered no evidence that it has made any serious effort to address continuing historic duplication. Second, and even more troublingly, the State has failed to prevent *additional* unnecessary program duplication, to the detriment of the HBIs."³

More troubling still is the fact that even after the Court's decision, Maryland still does not take seriously its constitutional obligation to prevent unnecessary program duplication. For example, Chancellor Kirwan said the following to the *Baltimore Sun*: "In my opinion, I think the system has been very supportive of creating unique programs at the HBCUs whenever possible and has been very careful to avoid duplication. . . . There are obviously some programs that are in high demand in the economy. In such instances there is some duplication, but that is in the best interest of the state's economy."⁴

¹ See Memorandum Opinion, D.E. 382 at 44, 46 (Oct. 7, 2013), [hereinafter Memorandum Opinion] (citing *United States v. Fordice*, 505 U.S. 717, 738 (1992)).

² *Id.* at 49-50.

³ *Id.* at 50.

⁴ Carrie Wells, *Maryland universities unnecessarily duplicated the programs of black colleges, court rules*, BALTIMORE SUN, Oct. 8, 2013, available at http://articles.baltimoresun.com/2013-10-08/news/bs-md-black-colleges-rulling-20131007_1_black-institutions-black-colleges-hbcus.

Maryland is simply not prepared to abandon this unconstitutional practice. Indeed, through a combination of aggressive litigation tactics and vaporous promises, the State has delayed for a full generation dismantling its unconstitutional system.

Over forty years ago, Maryland's Cox Commission recommended that the State allow each HBI to "develop its own specialty areas or programs within the total state system that will broaden the appeal of the institution to a more diverse student body."⁵ But the State did not do so.

Thirty years ago, Maryland settled ongoing litigation with the U.S. Department Office for Civil Rights ("OCR") by agreeing, among other things, to create 25 new programs at the HBIs. But as the Court noted, it did not do this either.⁶

Fifteen years ago, to avoid being sued by the U.S. Department of Justice, Maryland agreed to discontinue the practice of unnecessary program duplication. But it did not do so.⁷ Moreover, as a part of the State's 2000 Partnership Agreement ("Partnership Agreement") with OCR, Maryland agreed to create at the HBIs a number of unique, high-demand programs sufficient to create the kind of specialties called for by the 1973 Cox Commission. But it did not do that either.⁸ Instead, such programs were disproportionately placed at the TWIs.

Ten years ago, in a confidential memorandum, the Office of Maryland's Attorney General warned the State that its legal obligations to avoid unnecessary program duplication

⁵ Memorandum Opinion at 11.

⁶ *Id.* at 13.

⁷ *See id.* at 49.

⁸ *Id.* at 49-50.

remained “in full force and effect”⁹; it advised the State to reconsider its approval of what it called the “alarming” duplication of Morgan State University’s MBA program.¹⁰ But the State did not do that either.

Six years ago, in Maryland’s 2009 State Plan for Higher Education, the State committed to implementing plans that would enable the HBIs to compete with the TWIs with academic programs that would attract a diverse student body.¹¹ But Maryland did not do so.

Four years ago, on the eve of trial in this case, Maryland suddenly declared an interest in mediation; in moving to delay the trial date, it represented to the Court that “the State has already committed orally and in writing to discuss and propose remedies on essentially all of Plaintiffs’ topics.”¹² But six months of mediation led nowhere, and the State emerged from those discussions with a new trial team.

Almost a year ago, after the Court’s decision and contrary to Plaintiffs’ status report, Maryland represented to the Court that a mediated agreement was achievable because the parties’ proposals “already have significant areas of overlap” and so far as the State was concerned, the remedial issues discussed in the Court’s Memorandum Opinion (academic niches and targeted transfers) could be meaningfully discussed, as no issue was “non-negotiable.”¹³ But these discussions, predictably, led nowhere.

⁹ See PTX 14 at 1.

¹⁰ See PTX 14 at 3.

¹¹ See 2009 State Plan for Higher Education, PTX 1 at 26-30.

¹² See Defendants’ Request for Status Conference to Discuss Possible Mediation, D.E. 244.

¹³ See Joint Status Report, D.E. 394 at 3.

Meanwhile, the State’s violation of the Equal Protection Clause continues. Though Maryland has always attempted to minimize the significance of unnecessary program duplication as a traceable vestige, of all the *de jure* era practices, it is the most inextricably linked to the policy of “separate but equal.”

Not surprisingly, then, the Court concluded that this policy has “independent segregative effects.”¹⁴ That is to say that acting alone, without another vestige, it acts to steer white students away from Maryland’s HBIs. In fact, the evidence at trial showed that because of the State’s policy, the HBIs have fewer white students enrolled now than they had in the 1970s.¹⁵

The Court’s 2013 Memorandum Opinion identifies some of the direct evidence showing that Maryland’s deliberate policy of unnecessary program duplication undercut integration at the HBIs.¹⁶ Notwithstanding its litigation position, Maryland has recognized that unnecessary program duplication has the effect of segregating the HBIs, which is why it agreed to discontinue the practice as a part of its Partnership Agreement with OCR and why it agreed to establish unique, high demand academic programs at the HBIs. But as the Court concluded, “[u]nfortunately, the State did not follow through on this commitment.”¹⁷

¹⁴ Memorandum Opinion at 52.

¹⁵ *See id.* at 12.

¹⁶ *See id.* at 49-60.

¹⁷ *Id.* at 49. Maryland has a pattern of ignoring its obligations when it comes to academic programs at the HBIs. In its 1985 Desegregation Agreement, for example, the State promised the HBIs 25 new academic programs, but only provided 13. *See* Plaintiffs’ Proposed Findings of Fact and Conclusions of Law, D.E. 355 at 31.

The Court also concluded that Maryland made no serious attempt to justify its policy of unnecessary program duplication.¹⁸ As the Court noted, this policy is also inconsistent with best practices in higher education.¹⁹

Since the parties have not been able to agree on a remedy, Plaintiffs submit their proposal (“Remedial Proposal”) designed to dismantle the State’s dual system.²⁰ It generally follows the outline of Dr. Walter Allen’s trial testimony²¹ and calls upon Dr. Clifton Conrad’s experience in other higher education desegregation cases. Driven by the common sense proposition that a constitutional remedy should address the constitutional violation, Plaintiffs’ remedy focuses on unnecessary program duplication. *Milliken v. Bradley*, 433 U.S. 267, 280 (1977) (remedy must be related to the condition alleged to offend the constitution). It is consistent with Maryland’s non-litigation position, reflected in its 2000 Partnership Agreement. It establishes, after considerable input from the HBI presidents and their faculty and staffs,²² programmatic niches of unique, high demand programs that would be attractive to students regardless of race. The centerpiece is unique programs, especially high-demand programs that are unique (not unnecessarily duplicated by geographically proximate TWIs) and mostly in the STEM²³ fields that are expected to meet workforce needs.

¹⁸ See Memorandum Opinion at 56 (noting the State did not, for the most part, present evidence that unnecessary program duplication could not be eliminated consistent with sound educational practices).

¹⁹ See *id.* at 54.

²⁰ See Pls.’ App. 1.

²¹ See Memorandum Opinion at 59-60 (citing 1/18/12 AM Trial Tr. 90-107 (Allen)).

²² During the course of the mediation process, each HBI submitted a document setting forth program creation and enhancement measures that would serve to desegregate its institution. These documents, as well as the mediation discussions that involved the HBI presidents and their staff, helped inform Plaintiffs’ proposed remedial plan.

²³ STEM fields refer to programs in Science, Technology, Engineering and Mathematics.

Plaintiffs' plan is consistent with the 2006 Committee I Report that Maryland submitted to OCR ("Committee I Report"), which rightly noted that unique, high-demand programs at HBIs attract white students.²⁴ It states: "The last time Morgan [State University] had a number of unique programs at the graduate level was in the late 1960s and early 1970s. During that period a *minority* of enrollments at the graduate level were African-American. The recent development of unique graduate programs, primarily at the doctoral level, has once again enabled the [sic] Morgan to attract significant non-black enrollments."²⁵ Maryland continued, "In architecture and planning, which are master's levels [sic] programs and are not duplicated in the Baltimore area, enrollments are 60% non-black."²⁶

Accordingly, Plaintiffs' Remedial Proposal places major emphasis on creating unique, high-demand programs within programmatic niches that will enhance the institutional identities of Maryland's HBIs based on their academic program offerings. Plaintiffs believe that this approach is most likely to desegregate HBIs in the manner that Maryland's 2009 State Plan for Higher Education identified as a top priority.²⁷

In terms of its focus, Plaintiffs' Remedial Proposal differs from the remedies in other cases involving *de jure* era vestiges in higher education. For the most part, remedies in Louisiana, Mississippi, and Alabama ultimately were not aimed at eliminating the segregative

²⁴ See Committee I Report, PTX 8 at 28 (stating that Maryland will take appropriate steps to ensure that new unique, high-demand and other programs are approved for the HBIs for the purpose of promoting their institutional competitiveness and ability to attract students regardless of race).

²⁵ *Id.* at 60 (emphasis in original).

²⁶ *Id.* at 60, 77.

²⁷ See PTX 1 at 27 (referring to the need to ensure that HBIs succeed in "[r]ecruiting, retaining, and graduating an academically, racially, culturally, and ethnically diverse student body."). As the Court may recall, then Chancellor William Kirwan testified that diversity at HBIs is just as important to the state as diversity at TWIs. See Plaintiffs' Proposed Findings of Fact and Conclusions of Law, D.E. 355 at 12.

practice of unnecessary program duplication, and thus did not focus on creating niches of unique, high-demand programs. These remedies instead largely focused on other traceable policies, such as funding, mission, and facilities. To the extent that new programs were created, there was limited emphasis placed on uniqueness. It may well be that by focusing on these other vestiges, the courts underestimated the segregative effect of unnecessary program duplication, since the HBIs in those states are still segregated. This case shows that, at least in Maryland, unnecessary program duplication standing alone has a strong segregative effect.

As for remedies in other states, Tennessee was different than Alabama, Louisiana, and Mississippi in that it involved an institutional merger.²⁸ That HBI, Tennessee State University (“TSU”), is one of the most diverse HBIs in the country, with a level of white enrollment which far exceeds any Maryland HBI. As of the fall of 2013, TSU has a white student enrollment of 24.5%.²⁹

While reviewing the remedies in other jurisdictions is instructive as to what works and does not work in terms of desegregating an institution, insofar as unnecessary program duplication is concerned, Maryland is unique in several ways. It is the only state that had in place an agreement with the OCR to cease unnecessary program duplication but then systematically violated that Agreement.³⁰ It is the only state that duplicated an HBI program (the controversial

²⁸ See *Geier v. Blanton*, 427 F. Supp. 644, 660-61 (M.D. Tenn. 1977) (mandating a merger between the proximately located HBI and TWI when progress towards desegregating the racially identifiable HBI was insufficient), *aff’d Geier v. Univ. of Tennessee*, 597 F.2d 1056 (6th Cir. 1979).

²⁹ TENNESSEE HIGHER EDUCATION FACT BOOK (2013-2014) [hereinafter Tennessee Fact Book], available at <https://www.tn.gov/thec/Legislative/Reports/2014/2013-2014%20FACTBOOK.pdf>

³⁰ Mississippi, Alabama, and Tennessee did not have a partnership agreement with OCR prior to the litigation. See *Ayers v. Allain*, 674 F. Supp. 1523, 1530 (N.D. Miss. 1987) [hereinafter *Ayers I*], *vacated sub nom. Fordice*, 505 U.S. 717 (1992); *Knight v. Alabama*, 787 F. Supp. 1030, 1047-49 (N.D. Ala. 1991) [hereinafter *Knight I*], *vacated on other grounds*, 14 F.3d 1534 (11th Cir. 1994); see generally *Sanders v. Ellington*, 288 F. Supp. 937 (M.D. Tenn. 1968). Louisiana never entered a partnership agreement with OCR prior to the commencement desegregation litigation; however, Louisiana entered a consent decree with the Department of Justice in 1981, which outlined a

joint Masters of Business Administration (“MBA”) program) over the objection of its Attorney General’s Office. And, so far as Plaintiffs can discern, this is the only case where Plaintiffs actually presented specific examples of how unnecessary program duplication drained the HBIs of white students. The segregative effect of unnecessary program duplication is demonstrable.

Unlike in other jurisdictions, where the remedies did not achieve desegregation, Plaintiffs’ proposal meets the constitutional violation head-on. Both the HBIs and TWIs would be put in the same positions they would have been in absent the State’s illegal conduct. Plaintiffs’ proposal also proposes reform of the program approval process, as it is abundantly clear that the State cannot be trusted to meet its constitutional obligations.

The first section of this document discusses the legal requirements of a remedy. After summarizing the Court’s finding of a violation, it analyzes the general remedial principles and the lessons learned from other states where a remedy was implemented. Attached to the brief, there are a series of appendices. Appendix 1 is the Plaintiffs’ remedial proposal authored by Plaintiffs’ experts Drs. Walter Allen and Clifton Conrad. Appendices 2-5 contain summaries of the procedural history and remedies in the Alabama, Louisiana, Mississippi, and Tennessee cases, respectively. Appendices 6-29 provide selected enrollment and degree completion data from Maryland, Alabama, Louisiana, Mississippi, and Tennessee.

plan for desegregation. *See United States v. Louisiana*, 527 F. Supp. 509 (E.D. La. 1981), *reconsidered and overridden to reassert jurisdiction*, to resolve claims, 811 F. Supp. 1151 (E.D. La. 1992), *vacated and remanded*, 9 F.3d 1159 (5th Cir. 1993); Agreement, *United States v. Louisiana*, No.-CV-3300 (E.D. La. Nov. 14, 1994) (settlement agreement).

THE LEGAL REQUIREMENTS OF A REMEDY

I. The Court's Decision: Unnecessary duplication in Maryland is widespread and traceable to the *de jure* era, undermines desegregation of the HBIs, and must be remediated.

As the Court noted, the unnecessary duplication of academic programs at HBIs and TWIs is “part and parcel of the prior dual system of higher education—the whole notion of ‘separate but equal’ required duplicative programs in two sets of schools—and . . . present unnecessary duplication is a continuation of that practice.”³¹ “Given the multitude of regionally proximate institutions in Maryland, convincing expert analysis of the state of program duplication throughout Maryland, and the recognition of several State officials of the historic problem of program duplication, the Coalition has proven that unnecessary program duplication continues in Maryland, to the detriment of its HBIs, and is traceable to the *de jure* era.”³²

Relying upon the testimony of Dr. Clifton Conrad, the Court found that “Maryland continues to have a ‘dual structure of higher education’ which is ‘a structure in which there is a substantial amount of unnecessary or non-essential program duplication between the TWIs and [H]BIs, and there is not meaningful program uniqueness at both sets of institutions.”³³ Dr. Conrad found that on balance the TWIs in Maryland still enjoy greater institutional identity than the HBIs, which continue to be perceived primarily as “a school for black students.”³⁴

In fact, the Court noted, based on Dr. Conrad’s findings, the level of duplication in Maryland is “comparable to, and in some cases more pronounced than, the duplication found in

³¹ Memorandum Opinion at 44 (citing *Fordice*, 505 U.S. at 738).

³² *Id.* (referencing Assistant Attorney General’s Memorandum on the UB/Towson University Joint MBA Proposal, PTX 14, at 3; 1/11/12 AM Trial Tr. 50 (Former MHEC Chairman Oliver); 90 Opinions of the Maryland Attorney General 153 (2005), PTX 698, at 19.

³³ *Id.* at 46-47 (citing 1/10/12 AM Trial Tr. 49, 73-75 (Conrad)).

³⁴ *Id.* at 53 (citing 1/18/12 AM Trial Tr. 88-89 (Allen)).

Mississippi during the *Fordice* remand proceedings that held the state liable for failing in its desegregation efforts.”³⁵ Statewide, approximately 60% of the non-core programs at Maryland’s HBIs are unnecessarily duplicated compared with only 18% of such programs being duplicated at Maryland’s TWIs. In the Baltimore region alone, the percentage of unnecessary program duplication is at least 38%.³⁶ At the time of trial, the Court found that “Maryland’s HBIs only have 44 unique programs, in total, for an average of only 11 per institution.”³⁷ While duplication varies by degree level, Maryland’s HBIs offer an average of 3 non-duplicated, high-demand, non-core programs, compared with an average of 17 per TWI.³⁸

Yet Maryland has never dismantled the practices that facilitate segregation at its HBIs.³⁹ The Court recognized that “[u]nique, high-demand programs are a key reason white students attend HBIs in other states, and, without them, HBIs ‘are identified by their racial history as opposed to [their] programs.’”⁴⁰ “During the 1960s and 1970s, in the wake of *Brown*, Maryland’s HBIs began offering unique, high-demand programs and began attracting significant numbers of white graduates.”⁴¹ But rather than building upon that progress, “Maryland made very large investments in TWIs, particularly newly created Towson and UMBC, that undermined

³⁵ *Id.* at 46 (noting that the rate of statewide program duplication in Mississippi was 40% at the undergraduate level and 25% at the graduate level).

³⁶ *See id.* at 45 (noting that the scope of duplication in the Baltimore region might be as high as 59% if UMUC and UMCP are included in the calculation as argued by Plaintiffs).

³⁷ *Id.* at 46 (citing Conrad Expert Rep. III, PTX 71, at 114).

³⁸ *See id.*

³⁹ *See id.* at 50.

⁴⁰ *Id.* at 46-47.

⁴¹ *Id.* at 48 (citing “Second Annual Desegregation Status Report (Vol. III, Feb. 1976), PTX 455, at 235-246; 1/10/12 Trial Tr. 30-31 (Conrad)).

preliminary gains in desegregation.”⁴² As a result, “early gains that had been made in integration at Maryland’s HBIs halted almost as soon as they began, and the State has continued to duplicate HBI programs at TWIs, failing to address the dual system it created in the *de jure* era.”⁴³

Maryland therefore continues to maintain a “dual structure of higher education” in which there is substantial unnecessary (non-essential) duplication between HBIs and non-HBIs.⁴⁴

As a result, Maryland’s HBIs remain racially identifiable.⁴⁵ In the fall of 2009, white students made up only 5% of the overall student population at Maryland’s HBIs, and only 2% of the white students pursuing graduate degrees in Maryland were attending its HBIs.⁴⁶ The fall 2013 enrollment data reported by the Maryland Higher Education Commission in its “2015 Data Book”⁴⁷ shows that things have not changed since the trial:

Institution	Total Enrollment	White Enrollment	% White
Bowie State University	5,561	201	3.6%
Coppin State University	3,383	51	1.5%
Morgan State University	7,546	256	3.4%
University of Maryland Eastern Shore	4,220	634	15.0%

⁴² *Id.* (referring to “Trends in White Graduate Students at Historically Black Institutions in Maryland” (Oct. 2009), PTX 184, at 8-9; “Final Report of the Governor’s Commission on Education (1975), PTX 380, at 16-17; 1/10/12 AM Trial Tr. 26-33 (Conrad)).

⁴³ *Id.* at 49 (citing Conrad Expert Rep. I, PTX 69, at 19).

⁴⁴ *Id.* at 46-47.

⁴⁵ *Id.* at 53 (citing 1/10/12 AM Trial Tr. 38-39 (Conrad)).

⁴⁶ *Id.* at 20 - 21 (citing 2011 MHEC Data Book, PTX 755, at 16).

⁴⁷ MARYLAND HIGHER EDUC. COMM’N, 2015 DATA BOOK 4-9 (2015), available at <http://www.mhec.state.md.us/Publications/research/AnnualPublications/2015DataBook.pdf>.

Total HBIs	20,710	1,142	5.5% ⁴⁸
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Significant evidence supports the conclusion that unnecessary duplication and its concomitant harm to Maryland’s HBIs is a direct result of the “continuing failure of the State to address the *de jure* era policy of duplicating programs to maintain a dual, segregated system.”⁴⁹ Maryland has not only failed to take steps to eradicate existing unnecessary duplication, it has continued to duplicate high-demand programs to the further detriment of the HBIs.⁵⁰ During 2001 to 2009, Maryland approved 18 new programs at the TWIs which unnecessarily duplicated existing programs at the HBIs, 13 of which were also high-demand.⁵¹ Six times as many new unique, high-demand programs were developed at the TWIs than the HBIs during that same time period.⁵²

In other words, state policies and practices actually worsened rather than corrected this problem.⁵³ For example, in Maryland’s 2000 Partnership Agreement with the OCR, the State committed to developing unique, high-demand academic programs at the HBIs and to avoid further unnecessary program duplication.⁵⁴ Unfortunately, the State failed to follow through with this commitment, and white graduate student enrollment at Coppin State University and Bowie

⁴⁸ See *id.* Indeed, it is noteworthy that there are nearly as many foreign students (1,065) as white students at the HBIs and only UMES has fewer foreign students than white students.

⁴⁹ Memorandum Opinion at 47-48 (citing the Soper Commission Report, PTX 17, at 56-57, 88 and 1/18/12 AM Trial Tr. 43-44 (Allen)).

⁵⁰ See *id.* at 49.

⁵¹ *Id.* at 49-50 (citing Conrad Expert Rep. II, PTX 70, at 102).

⁵² See *id.* at 47 (citing Conrad Demonstrative Exhibits at 67).

⁵³ See *id.* at 50-52.

⁵⁴ See *id.* at 49 (citing 1/11/12 AM Trial Tr. 35-38 (Oliver); 2000 Partnership Agreement, PTX 4, at 36-37).

State University (“Bowie”) declined following the implementation of that Partnership Agreement even as graduate enrollment at the TWIs grew rapidly, leading to the increased racial identifiability of those institutions.⁵⁵

As the Court observed, the keystone question is not whether the State has done enough to integrate its institutions of higher learning, but whether the State has left in place policies rooted in its prior segregated system.⁵⁶ Maryland has not addressed its tolerance for unnecessary program duplication.⁵⁷ The purported safeguards adopted by the Maryland Higher Education Commission (“MHEC”) are only “forward facing” – they do not address the substantial duplication that has existed since the beginning of Maryland’s system of public higher education.⁵⁸ In addition, “even more troublingly, the State has failed to prevent *additional* unnecessary duplication, to the detriment of the HBIs.”⁵⁹ Despite what the State characterizes as “an elaborate system” to avoid unnecessary duplication, Maryland has failed to eliminate this vestige.⁶⁰

While traceable policies and practices may work in concert to perpetuate segregation in higher education, unnecessary program duplication may also function independently to create segregative effects. In fact, the Court specifically held that unnecessary program duplication has

⁵⁵ See *id.* at 49 (noting a 73% decline in white graduate student enrollment at Coppin and 67% decline in white graduate enrollment at Bowie following implementation of the 2000 Partnership Agreement).

⁵⁶ See *id.* at 22 (citing *Fordice*, 505 U.S. at 743).

⁵⁷ See *id.* at 50-51 (noting Maryland offered “no evidence that it has made any serious effort to address continuing historic duplication”).

⁵⁸ *Id.* at 50.

⁵⁹ *Id.* at 51.

⁶⁰ See *id.* 51-52 (referencing the 2005 development of the joint UB/Towson MBA program over the objections of Morgan and concerns of OCR, HBI leaders, and MHEC and ongoing expansion of UB).

had its own segregative effect in Maryland⁶¹ and contributed to an intensification of the racial identifiability of the HBIs over the past twenty years.⁶² In the absence of a competitive academic advantage, non-black students have less incentive to enroll in what is otherwise perceived as a school for black students.⁶³

Maryland did not, for the most part, present evidence that it was unable to eliminate unnecessary duplication consistent with sound educational practices.⁶⁴ Indeed, the Court observed that the strategy of “eliminating unnecessary program duplication has been a centerpiece of most prior higher education desegregation efforts.”⁶⁵ Duplicative programs and institutions are inefficient, expensive, and undesirable. Yet Maryland offered no compelling evidence that any sound educational need is an “unavoidable driver of the ongoing unnecessary duplication of HBI programs throughout Maryland’s system of higher education.”⁶⁶ As a result, the Court held that the maintenance and exacerbation of proximate program duplication “does not comport with best practices in higher education.”⁶⁷

The Court indicated that “[r]emedies will be required”⁶⁸ to dismantle the extensive unnecessary program duplication in Maryland. The Court specifically contemplated that a remedy is likely to include revised policies and practices to ensure both the “avoidance of such duplication” in the future and the “expansion of mission and program uniqueness and

⁶¹ *See id.* at 52.

⁶² *See id.* at 53 (citing Conrad Expert Rep. I, PTX 69, at 19; Conrad Demonstrative Exhibits, at 32-33; “Trends in White Graduate Students” (Oct. 2009), PTX 184, at 1); 1/10/12 AM Trial Tr.38-39 (Conrad)).

⁶³ *See id.* (citing to Conrad Expert Rep. II, PTX 70, at 5; 1/18/12 AM Trial Tr. 88-89 (Allen)).

⁶⁴ *See id.* at 56.

⁶⁵ *Id.* at 56.

⁶⁶ *Id.* at 58.

⁶⁷ *Id.* (citing to 1/18/12 AM Trial Tr. 62-64 (Allen)).

⁶⁸ *Id.* at 3.

institutional identity at the HBIs.”⁶⁹ The Court also found that “[i]t is also likely that the transfer or merger of select high-demand programs from TWIs to HBIs will be necessary.”⁷⁰ “Similarly, the creation of collaborative programs through the wide use of resources to enhance the quality of current and newly developed programs at the HBIs may be an additional effective and creative method of enhancing the HBIs’ programs.”⁷¹ It should also be presumed that an effective remedy requires adequate long-term funding to ensure the meaningful implementation of that remedy.⁷²

II. General remedial principle: Traceable policies which perpetuate a segregated system of higher education are unconstitutional and must be remedied.

The analytical framework which informs the remedies required here is outlined in *United States v. Fordice*, 505 U.S. 717 (1992). The primary issue in higher education desegregation cases is whether the state has met its affirmative duty to dismantle its prior dual system. *Id.* Once a violation has been found, a state does not discharge its constitutional obligation until it eradicates policies and practices traceable to its prior *de jure* dual system that continue to foster segregation. *Id.* at 728. If traceable policies or practices perpetuate the vestiges of discrimination by influencing student enrollment decisions or fostering segregation in other facets of the higher education system, and such policies are without educational justification and can be practicably eliminated, the state has not satisfied its burden of dismantling its dual system. *Id.* at 731.

A state has not dismantled its dual system or eradicated the vestiges of segregation from its schools if “existing racial identifiability is attributable to the State,” *id.* at 728, although

⁶⁹ *Id.* at 59 (citing to Final Report on the OCR Partnership Agreement (February 15, 2006), PTX 8, at 73).

⁷⁰ *Id.* (citing to 1/18/12 AM Trial Tr. 103 (Allen)).

⁷¹ *Id.* at 60 (citing to 1/18/12 AM Trial Tr. 102 (Allen)).

⁷² See Pls.’ Apps. 2-5 (briefly summarizing the remedial orders and/or settlement agreements reached in other higher education desegregation cases, and demonstrating that funding was provided to implement the terms of the court order or negotiated settlements).

racially identifiable institutions alone do not establish a constitutional violation. *Id.* at 743. Segregated institutions are a function of student choice, which is influenced by many factors. *Id.* at 729. The court must determine whether the state is responsible for the current racial identifiability of its institutions. *Id.* at 728. If so, a “State may not leave in place policies rooted in its prior officially segregated system that serve to maintain the racial identifiability of its universities if those policies can practicably be eliminated without eroding sound educational policies.” *Id.* at 743.

Fordice recognized that traceable policies and practices may influence student enrollment decisions, including program duplication which may discourage whites from seeking to attend the HBIs. *Knight v. Alabama*, 14 F.3d 1534, 1541 (11th Cir. 1995) (citing *United States v. Fordice*, 112 S. Ct. 2727, 2740-42 (1992)). As a result of traceable policies such as program duplication, “disproportionate numbers of whites *can* satisfy their curricular desires at HWIs, and *cannot* satisfy them at HBIs, thereby discouraging them from choosing to attend HBIs.” *Id.* (emphasis in original).

The circumstances in which a state may maintain a segregative policy or practice are narrow. *Fordice*, 505 U.S. at 744 (O’Connor, J., concurring). The court must “carefully examine [the State’s] proffered justifications . . . to ensure that such rationales do not merely mask the perpetuation of discriminatory practices.” *Id.* If the state can accomplish its legitimate educational objectives through less segregative means, the court may infer lack of good faith or place a “heavy burden” upon the state to justify its preference for an apparently less effective method, and when doing so the state must still prove that it has counteracted and minimized the segregative impact of such policies “to the extent possible.” *Id.*

The State bears the burden of adopting, from among the full range of practicable and educationally sound alternatives to the challenged policy, the one that would achieve the greatest possible reduction in the identified segregative effects. *See Knight*, 14 F.3d at 1541 (citing to *Fordice*, 112 S. Ct. at 2744 (O'Connor, J. concurring)). The court in *Knight* noted that “the state’s burden of proving that such alternatives are impracticable or educationally unsound is a heavy one and the circumstances in which a State may maintain a policy or practice traceable to *de jure* segregation that has segregative effects are narrow.” *Id.* (internal quotation marks omitted). “Moreover, because the obligation to remedy the segregative effects of vestiges of segregation is an affirmative duty borne by the state, the onus is not on the plaintiffs to propose the remedy options to be considered.” *Id.* Accordingly, to the extent that “the State could practicably take steps to desegregate that do not run afoul of sound educational practices, the State has a duty to do so and the remedial decree should so reflect.” *Ayers v. Fordice*, 111 F.3d 1183, 1213 (5th Cir. 1997).

In remedying discrimination, a court must be guided by general equitable principles. The scope of those powers is broad, for “breadth and flexibility are inherent in equitable remedies.” *Knight v. Alabama*, 787 F. Supp. 1030, 1377 (N.D. Ala. 1991) [hereinafter *Knight I*] (quoting *Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977)), *vacated and rev’d in part on other grounds*, 14 F.3d 1534 (11th Cir. 1994). The specific remedy required will be determined by the nature and scope of the violation, but must be remedial in nature in that the remedy seeks to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. *Id.* While the remedy must relate to the condition alleged to offend the constitution, once a constitutional violation has been shown a remedy does not exceed the

violation if the remedy is tailored to cure the condition that offends the Constitution. *Milliken*, 433 U.S. at 282 (citing *Milliken v. Bradley*, 418 U.S. 717, 738 (1974)).

III. In higher education, desegregation requires a significant increase in other-race enrollment and an overall reduction in the racial identifiability of the HBIs.

Successful desegregation of a higher education system requires a state to take “the necessary steps to ensure that [student] choice now is truly free.” *Fordice*, 505 U.S. at 742-43. The strategies adopted must not only reduce segregation, but should eliminate or minimize practices responsible for that segregation to the extent possible. *Id.* at 744-45 (O’Connor, J., concurring) (stating that only by eliminating a remnant that unnecessarily continues to foster segregation, or by negating insofar as possible its segregative impact, can the State satisfy its constitutional obligation to dismantle its discriminatory system). The Supreme Court therefore mandated that policies which substantially restrict the choice of which institution to attend and contribute to the racial identifiability of an institution must be justified or eliminated. *Id.* at 733.

Unfortunately, the courts offer little guidance in terms of how to measure whether system of higher education has been successfully desegregated.⁷³ The Supreme Court’s majority opinion in *Fordice* did not specifically address the question of whether some level of integration is required in order to successfully desegregate a higher education system. Instead, the focus there

⁷³ Pre-*Fordice*, the District Court in Mississippi did address whether “some level of racial mixture at previously segregated institutions of higher learning is not only desirable but necessary to ‘effectively’ desegregate the system.” *Ayers v. Allain*, 674 F. Supp. 1523, 1552 (N.D. Miss. 1987) [hereinafter *Ayers I*], *vacated on other grounds*, *Ayers v. Fordice*, 970 F.2d 1378 (5th Cir. 1992). In answering that question, *Ayers I* held that the duty to desegregate “does not contemplate either restricting choice or the achievement of any degree of racial balance.” *Ayers I*, 674 F. Supp. at 1553. That decision was later upheld by the Fifth Circuit, which agreed that the duty to dismantle a *de jure* system of higher education is satisfied by “discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures.” *Ayers v. Allain*, 914 F.2d 676, 687 (5th Cir. 1990), *vacated*, *Fordice*, 505 U.S. 717 (1992). The Supreme Court ultimately overturned and revised that conclusion in *Fordice* without revisiting the specific question of whether successful desegregation required some level of racially integrated student enrollment. *See Fordice*, 505 U.S. 717 (1992).

was on the elimination of “the specific *policies* alleged to produce racial imbalance, rather than on the *imbalance* itself.” *Id.* at 746 (Thomas, J., concurring) (emphasis in original). Rather than identifying a specific level of other-race enrollment that indicates successful desegregation, *Fordice* recognized that racial disparities in enrollment may reveal a traceable policy or practice which perpetuates the vestiges of discrimination. *Id.* at 742-43. Even so, where the goal is desegregation, an effective remedy should seek to ensure a significant increase in other-race enrollment.

After *Fordice*, for example, the district court on remand specifically analyzed the continuing racial identifiability of institutions as one factor when assessing whether Mississippi’s system of higher education fostered a racially hostile climate on its college campuses. *Ayers v. Fordice*, 879 F. Supp. 1419, 1467-72 (N.D. Miss. 1995) [hereinafter *Ayers II*], *aff’d in part, rev’d in part on other grounds* 111 F.3d 1183 (5th Cir. 1997). In doing so, the court observed that “black students in Mississippi are moving to the HWIs, but little change has been seen in the racial percentages of the HBIs.” *Id.* at 1470. The court acknowledged that one of the main challenges in desegregation in higher education has not been in attracting blacks to the TWIs, but “the paucity of whites who choose to go to the HBIs.” *Id.* The Court recognized that while “[d]irecting or impacting student choice in and of itself . . . is not an end to be shaped by this court,” understanding why students choose a particular institution is “helpful in determining whether a particular vestige of the past shapes or impacts student choice and determines the result.” *Id.* at 1471.

Consequently, the remedial decree ordered measures that were expected to increase other-race enrollment. *Id.* at 1495-96. The district court in Mississippi emphasized that the “real purpose of the enhancements ordered by the court is to desegregate the HBIs, i.e., to attract more

white students to attend them.” *Ayers v. Fordice*, 40 F. Supp. 2d 382, 384 (N.D. Miss. 1999). For example, the court ordered an institutional study of Jackson State University (“JSU”) which was to assess the “nature and extent of duplication with other institutions in the system” in order to determine “*whether meaningful programmatic uniqueness may be gained which would bring about significant white enrollment through elimination and/or transfer of existing programs at other institutions and the feasibility/educationally soundness of such elimination and/or transfer.*” *Ayers II*, 879 F. Supp. at 1495 (emphasis added). This strategy was upheld and extended to include a similar analysis of Alcorn State University (“Alcorn”) and Mississippi Valley State University (“MVSU”) by the Fifth Circuit, which directed the State to study and report on programs that “have a reasonable chance of increasing other-race presence” at MVSU and Alcorn. *Ayers*, 111 F.3d at 1214, 1228.

Tennessee’s desegregation decisions in the *Geier* line of cases may also prove instructive on this point.⁷⁴ When discussing the residual effects of *de jure* segregation which previous remedial measures had not yet removed, the district court approved a settlement agreement – upheld on appeal – after observing that the court was “empowered, if not compelled, to implement a remedy formulated to reverse the effects of such [discriminatory] treatment.” *Geier v. Alexander*, 593 F. Supp. 1263, 1266 (M.D. Tenn. 1984), *aff’d*, 801 F.2d 799 (6th Cir. 1986). In doing so, it presumed that the court may analyze changes in other-race enrollment at the institutional level when assessing the effectiveness of a desegregation plan, and numerical

⁷⁴ The procedural history and the remedial framework and settlement terms in the Tennessee line of desegregation cases are summarized in Appendix 5. While the district court’s remedial decrees predate *Fordice*, the Tennessee decisions and subsequent settlements offer some of the most extensive discussion specific to the question of how a court should assess whether the level of other-race enrollment satisfies the state’s obligation to dismantle its dual system. More importantly, the constitutional violation there was based on the racial identifiability of University of Tennessee Nashville and Tennessee State University produced by the programmatic structure and duplicative offerings of those institutions. *Geier*, 427 F. Supp. at 660-61. Thus, the basis of liability is most similar to the case here, where liability is limited to unnecessary program duplication.

objectives may serve as “[g]uideposts” to measure and incentivize progress. *Id.* at 1267. The ultimate goal is “*not* any ideal ratio or mix of black and white students,” but a system of higher education in which “race is irrelevant” and in which equal protection is a reality. *Id.* (emphasis in original).

For example, in 1971 the overall black enrollment at TSU⁷⁵ exceeded 99%. *See Geier v. Blanton*, 427 F. Supp. at 647, *aff’d* 597 F.2d 1056 (6th Cir. 1979). By 1975, white enrollment had increased to 7% and reached 12% when off-campus students were included in this calculation. *Id.* at 52. Still, these increased levels of white enrollment were insufficient to demonstrate that the State had successfully desegregated the HBI. *Id.* The district court expressed some concern that the phenomenon of a “black Tennessee State, so long as it exists, negates both the contention that defendants have dismantled the dual system of public higher education in Tennessee” or were likely to do so. *Geier v. Dunn*, 337 F. Supp. 573, 576 (M.D. Tenn. 1972).

The level of white student enrollment within specific programs at an HBI may also be relevant to this inquiry. At the program level, for example, the Tennessee district court found that adding three exclusive programs at TSU had failed to integrate that institution.⁷⁶ *Geier*, 427 F. Supp. at 655-56. Two of those programs remained predominantly black, as reflected by 95% black enrollment in the criminal justice program and 80% black enrollment in allied health. *Id.* at 655. Given the student demographics in these exclusive programs, the court did not view them as

⁷⁵ Prior to the institutional merger of the University of Tennessee Nashville (“UT-N”) under Tennessee State University (“TSU”), UT-N was the TWI in operating in the Nashville area. *See* Appendix 5.

⁷⁶ There were also programs “exclusively” assigned to TSU during the day, with UT-N having the opportunity to offer those same programs after 4:00 pm. *See Geier*, 427 F. Supp. at 655. Of those, the programs exclusive to TSU during part of the day were also “overwhelmingly black at TSU (ranging from 97.6% black in the Arts and Science program to 87.1% black in the engineering program), and predominantly white at UT-N (ranging from 90.9% white in the engineering program to 79.8% white in the undergraduate education program).” *Id.*

having successfully desegregated TSU. *Id.* at 656. By contrast, the graduate teacher education program that the court ordered to be added at TSU produced a student enrollment that was approximately 53% black and 47% white. *Id.* at 655-56. The level of diversity there was viewed by the court as successful desegregation, but that success was limited to that single program. *Id.* at 655.

These increases in other-race enrollment should be sustained over time. When fashioning a remedy, a court should consider the long-term effects of successful desegregation rather than the short-term effects. For example, *Knight* characterizes a practicable remedy as one that would appear to be “most likely to achieve the remedial purpose into the future.” *Knight v. Alabama*, 900 F. Supp. 272, 285 (N.D. Ala. 1995) [hereinafter *Knight II*]. Furthermore, *Knight* reflected that an analysis of the desegregation trends at HBIs which have been relatively successful in attracting white students indicates that desegregation occurs gradually and over long periods of time. *Id.* at 320.

Where there has been unnecessary program duplication, successful desegregation at the system level should also address the overall imbalance in unique program offerings available at the HBIs as compared to the TWIs. For example, when analyzing duplication in Mississippi, the Fifth Circuit noted that as a group, the TWIs continued to have significantly more high-demand, non-core programs than the HBIs. *Ayers*, 111 F.3d at 1218. To the extent that the TWIs collectively offer more unique, high-demand programs than the HBIs, this structural inequity may reveal an ongoing violation. *See Ayers II*, 879 F. Supp. at 1442-43 (analyzing the percentage of statewide duplication between HBIs and TWIs throughout the state system of higher education). Therefore, a successful remedy may need to address the systemic disparities reflected

by the overall imbalance in unique program offerings associated with the limited missions of HBIs and the extensive unnecessary duplication of their program offerings.

IV. The remedial plans implemented in most of the other higher education desegregation cases largely failed to desegregate the HBIs.

There are four states – Alabama, Louisiana, Mississippi, and Tennessee – where higher education desegregation cases resulted in a court ordered and/or mutually agreed upon remedial plan. The remedies were first implemented in Alabama in 1995,⁷⁷ in Louisiana in 1981,⁷⁸ in Mississippi in 1995,⁷⁹ and in Tennessee in 1979⁸⁰. As the table below shows, in three of the

⁷⁷ A summary of the procedural history and remedies in *Knight v. Alabama* is outlined in Appendix 2. Litigation was initiated in Alabama in 1983, the parties were ordered to develop a remedial plan in 1991, after *Fordice* a remedial order was entered in 1995, and a settlement agreement was reached in 2006 to resolve the issues outstanding following the 1995 order. See *Knight I*, 787 F. Supp. 1030 (N.D. Ala. 1991), *aff'd in part, rev'd in part, vacated in part*, 14 F.3d 1534 (11th Cir. 1994); *Knight II*, 900 F. Supp. 272 (N.D. Ala. 1995); *Knight v. Alabama*, 469 F. Supp. 2d 1016 (N.D. Ala. 2006), *aff'd*, *United States v. Alabama*, 271 F. App'x. 896 (11th Cir. 2008).

⁷⁸ A summary of the procedural history and remedies in *United States v. Louisiana* is outlined in Appendix 3. The United States sued Louisiana in 1974 alleging that the State maintained racially discriminatory practices in higher education in violation of the Fourteenth Amendment and the Civil Rights Act of 1964. The resulting settlement, litigation related to liability, appeal and consent decrees can be found in the *United States v. Louisiana* line of decisions. See *United States v. Louisiana*, 527 F. Supp. 509 (E.D. La. 1981) (first consent decree later overturned); *United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988) (finding ongoing court jurisdiction and requiring a new remedial order); *United States v. Louisiana*, 811 F. Supp. 1151 (E.D. La. 1992) (ordering remedial plan); *United States v. Louisiana*, 9 F.3d 1159 (5th Cir. 1993) (vacating the district court's remedial plan due to, *inter alia*, facts that remained in dispute thereby requiring a trial on the merits rather than a liability determination on summary judgment).

⁷⁹ A summary of the procedural history and remedies in *Ayers* is outlined in Appendix 4. Litigation was initially filed in 1987. After the district court found that Mississippi fulfilled its affirmative duty to disestablish its formerly segregated system of higher education by adopting race-neutral policies and practices related to student admission and recruitment, faculty and staff hiring and resource allocation, the case was appealed and overturned by a panel of the Fifth Circuit, which reversed and remanded, but upon rehearing *en banc* the Fifth Circuit subsequently affirmed the district court decision. After the U.S. Supreme Court decided *Fordice*, the case was remanded back to the district court, which found that traceable policies and practices had ongoing segregative effects, and entered a remedial plan. Plaintiffs appealed, and the Fifth Circuit affirmed in part, reversed in part, and remanded. The parties signed a settlement agreement in 2001, which was approved by the district court in 2002. See *Ayers v. Allain*, 674 F. Supp. 1523 (N.D. Miss. 1987) (“Ayers I”), *rev'd*, 893 F.2d 732 (5th Cir. 1990) (“Ayers II”), *aff'd and reinstated en banc*, 914 F.2d 676 (5th Cir. 1990); *vacated and remanded*, *United States v. Fordice*, 505 U.S. 717 (1992); *Ayers II*, 879 F. Supp. 1419 (1995), *aff'd in part, rev'd in part, vacated in part*, 111 F.3d 1183 (5th Cir. 1997); *Ayers v. Musgrove*, No. 4:75CV009-B-D, 2002 WL 91895 (N.D. Miss. Jan. 2, 2002) (approving settlement agreement).

⁸⁰ A summary of the procedural history and remedies in *Geier* is outlined in Appendix 5. Litigation was initiated in Tennessee in 1968, the district court eventually ordered institutional merger in 1979, and there was an initial stipulation and settlement agreement in 1991, followed by a final settlement agreement in 2001. A summary of the relevant procedural history and remedies in *Geier* is outlined in Appendix 5. See *Sanders v. Ellington*, 288 F. Supp. 937 (M.D. Tenn.1968), *sub nom. Geier v. Blanton*, 427 F. Supp. 644 (M.D. Tenn. 1977), *aff'd sub nom. Geier v.*

states, these plans failed to dismantle the extreme racial identifiability of the HBIs. Only in Tennessee, where the geographically proximate TWI was merged into the HBI, has there been some success in attracting appreciable numbers of white students.

Fall 2013 Enrollment of HBIs in Alabama, Louisiana, Mississippi, and Tennessee

Institution	Total Students	Total White Students	Percentage White
Alabama A&M (AL)	5020	254	5.1%
Alabama State (AL)	6075	206	3.4%
Southern University and A&M College (LA)	6777	265	3.9%
Southern University at New Orleans (LA)	2292	63	2.7%
Grambling State (LA)	5071	112	2.2%
Alcorn State (MS)	3249	108	3.3%
Mississippi Valley (MS)	2201	75	3.4%

Univ. of Tennessee, 597 F.2d 1056 (6th Cir. 1979); *Geier v. Alexander*, 593 F. Supp. 1263 (M.D. Tenn. 1984), *aff'd*, 801 F.2d 799 (6th Cir. 1986); *Geier v. Sundquist*, 128 F. Supp. 2d 519 (M.D. Tenn. 2001) (consent decree).

Jackson State (MS)	8452	508	6.0%
Tennessee State (TN)	8833	2160	24.5% ⁸¹

For the most part, the experiences in Alabama, Louisiana, and Mississippi are instructive as examples of what components of a remedial plan are unlikely to have a significant impact on desegregation.⁸² Accordingly, this Court must review those cases with the understanding that a different strategy will be required in order to achieve a meaningful level of desegregation in Maryland as mandated by *Fordice*.

A. Alabama⁸³

In Alabama, there are two public HBIs which were implicated in the litigation. By the fall of 2013, only 5.1% of the total number of students enrolled at A&M University (“AAMU”)

⁸¹ See Alabama Comm’n on Higher Educ., Alabama Statewide Student Database (2013) [hereinafter Alabama Student Database], <http://www.ache.alabama.gov/content/StudentDB/SDBReports.aspx>; Mississippi Public Universities, Enrollment Fact Book & A Ten-year Enrollment Comparison & Selected Information on Diversity (2013) [hereinafter Mississippi Fact Book], available at <http://www.mississippi.edu/research/downloads/2013enrollmentbook.pdf>; Tennessee Higher Educ. Comm’n, Tennessee Higher Education Fact Book (2014) [hereinafter Tennessee Fact Book], available at <https://www.tn.gov/thec/Legislative/Reports/2014/2013-2014%20FACTBOOK.pdf>; National Center on Education Statistics, IPEDS Data Center [hereinafter NCES IPEDS Data Center] Enrollment Data (Fall 2013), available at <https://nces.ed.gov/ipeds/datacenter/InstitutionByName.aspx>; The National Center for Education Statistics (NCES) is the primary federal entity for collecting and analyzing data related to education in the U.S. and other nations. NCES is located within the U.S. Department of Education and the Institute of Education Sciences. NCES fulfills a Congressional mandate to collect, collate, analyze, and report complete statistics on the condition of American education; conduct and publish reports; and review and report on education activities internationally. This information is provide from: <https://nces.ed.gov/about/> The Data Center is available for users to pull data regarding specific institutions. At <https://nces.ed.gov/ipeds/datacenter/InstitutionByName.aspx>, one can type in a particular institution and data options related to enrollment, completion, years, etc. are available for the user to choose from.

⁸² Throughout this brief, enrollment figures for programs and institutions are reported where available and when they are the source is noted. In Alabama, enrollment information is not available disaggregated by race at the program level. It is, however, available at the institutional level through the National Center for Educational Statistics IPEDS database. Therefore, some tables will reflect enrollment numbers. Others may reflect the number of degrees awarded by program by race, which is the data available on IPEDS.

⁸³ A summary of the procedural history and remedies in *Knight v. Alabama* is outlined in Appendix 2.

identified as white. That same year, only 3.4% of the total enrollment at Alabama State University (“ASU”) identified as white.⁸⁴ By this measure, the remedial plan in Alabama failed to produce meaningful white enrollment at the two HBIs.

Following years of litigation, the district court issued a lengthy decision and remedial decree in 1991 which found numerous actionable vestiges of discrimination surviving within Alabama’s system of higher education.⁸⁵ After *Fordice* was decided, the 1991 remedial decree was vacated in part and remanded. The Eleventh Circuit held that “[t]he state is obligated to adopt, from among the full range of practicable and educationally sound alternatives to the challenged policy, the one that would achieve the greatest possible reduction in the identified segregative effects.” *Knight*, 14 F.3d at 1541 (citing *Fordice*, 112 S. Ct. at 2744 (O’Connor, J., concurring)).

In 1995, the district court entered a new remedial decree. *See Knight II*, 900 F. Supp. at 348-75. Applying the analysis outlined in *Fordice*, the court fashioned a remedial plan to address traceable policies and practices with continuing segregative effects. *Id.* With respect to unnecessary duplication, the court ordered less duplication of programs at geographically proximate institutions and mandated a few programmatic enhancements at the HBIs. *Id.* at 370-72. However, the court analyzed duplication in a way that essentially resulted in a finding of minimal unnecessary duplication by the TWIs and narrowed the remedy ordered. *See id.* at 291-303, 305-08, 315-22.

⁸⁴ *See* ALABAMA STUDENT DATABASE, <http://www.ache.alabama.gov/content/StudentDB/SDBReports.aspx>.

⁸⁵ *See Knight I*, 787 F. Supp. at 1368.

In the end, the remedial order implemented pursuant to *Knight* failed even by the court's own standards. The court intended to fashion what would be "the most desegregative remedy that is educationally sound and practicable." *Id.* at 280. The court recognized that an educationally sound and practicable remedy should, among other considerations, have a "likelihood of continued success," *id.*, and "be most likely to achieve the remedial purpose into the future." *Id.* at 285. The court articulated that success should be measured by the "practical effect on institutions or students" to achieve desegregation. *Id.* at 285. The court reasoned that small increases in white student enrollment would not satisfy the constitutional obligation to desegregate, but rather "a critical mass" of white students at HBIs would be necessary. *Id.* at 319-20.

Knight's failure to desegregate the HBIs suggests that the court's underlying assumptions about student choice were not well founded. First, the court failed to eliminate program duplication and even exacerbated such duplication by adding programs that it considered high-demand without considering whether the program was sufficiently unique;⁸⁶ second, the court over-estimated the de-segregative potential of non-programming remedies such as financial aid and advertising.⁸⁷ Ultimately, the court's actions with regard to both new and existing programming created a program structure that failed to cultivate unique programmatic niches for HBIs. With regard to existing programs, *Knight* acted against the recommendations of "many

⁸⁶ See *Knight II*, 900 F. Supp. at 315-17. *Knight* explicitly considered the duplicative nature of the proposed engineering program at AAMU, but ultimately decided that high market-demand alone would attract white students to AAMU by asserting: "a quality engineering program at an HBI can also attract significant numbers of white students even when there is a high quality, proximate PWT". *Id.* at 315-16, 371-72. See Appendix 27 which illustrates current enrollment statistics in AAMU's and UAH's engineering programs and shows that the engineering program at AAMU failed to attract white students, which overwhelmingly attend UAH.

⁸⁷ See *id.* at 318-20.

experts, including the court-appointed experts” by opting to generally reject “program transfers as an educationally sound or practicable remedy.” *Id.* at 315.

With regard to the Huntsville area, the *Knight* court declined to eliminate duplicative programs in nursing, business, and education between AAMU and three geographically proximate TWIs. *Id.* at 294-296, 315-18, 349-75. The court limited its remedial decree to only one minimal constraint on duplicative programs at one of the TWIs: an upper cap on the TWI’s enrollment. *Id.* at 359. The court likewise failed to eliminate existing duplicative programs in the Montgomery area in business and education, as well as distance education between ASU and two proximate TWIs. *Id.* at 299-303, 349-75. The court only implemented two minimal remedial constraints on the proximate TWIs: placing a five-year moratorium on the development of a Masters in Accounting, *id.* at 371, and enjoining a TWI from expanding its physical plant in the Montgomery area. *Id.* at 372.

Knight appears to have overestimated the extent to which other measures might desegregate the schools, specifically other-race scholarships, recruitment, and extra funding. Of these, the court presumed that scholarships would have the most powerful desegregative effect. *See id.* at 318-20 (“other-race scholarships are the most educationally sound and practicable mechanism to eliminate those particular perceptible barriers [that foster segregation]”); “[f]inancial aid is a powerful magnet in attracting white students to HBIs”; “financial aid, economic considerations, and factors involving the accumulation of debt, all play a very important role in the student choice”; and “offering carefully designed other-race financial aid is an important mechanism to promote desegregation”). The emphasis on financial incentives resulted in a remedial decree that did little to address the dual curricular structure. *Id.* at 349-75.

B. Mississippi⁸⁸

Similarly, the *Ayers* litigation did little to achieve long-term desegregation at the state's HBIs. In Mississippi, there are three public HBIs: JSU, Alcorn, and MVSU. *See Ayers I*, 674 F. Supp. at 1529. Pursuant to the court-ordered desegregation and subsequent settlement, a number of new and enhanced programs were added at all three institutions.⁸⁹ Twenty years later, those campuses remain racially identifiable. During the fall of 2013, enrollment at JSU was 90% black, enrollment at Alcorn was 94% black, and enrollment at MVSU was 89% black.⁹⁰

The 1995 remedial decree and 2001 settlement proposal added or enhanced a number of programs at all three HBIs⁹¹. Prior to approving the settlement, the district court observed that the “parties’ plan acknowledges only in a cursory fashion the heart of this case, desegregation.”⁹² With respect to the proposed programs at MVSU, the court expressed concern that “a significant portion of those programs is already offered at nearby Delta State University (“DSU”), approximately forty miles away, and therefore merely duplicates DSU’s present offerings and would not promote desegregation by attracting white students to MVSU.”⁹³ The court recognized that “when new academic programs are instituted at historically black universities which merely duplicate existing programs at nearby historically white universities, the effect is

⁸⁸ A summary of the procedural history and remedies in *Ayers* is outlined in Appendix 4.

⁸⁹ The brief summary of the relevant procedural history and an overview of the relevant aspects of the 1995 remedial decree and 2001 settlement are outlined in Appendix 3 and attached to this brief. The court ordered desegregation plan and subsequent settlement agreement are outlined in detail in the *Ayers* decisions. *See Ayers II*, 879 F. Supp. 1419 (1995), *Ayers v. Fordice*, 111 F.3d 1183 (5th Cir. 1997), *Ayers v. Musgrove*, No. 4:75CV009-B-D, 2002 WL 91895 (N.D. Miss. Jan. 2, 2002). References to the specific programs added at JSU, Alcorn and MVSU addressed here were not overturned or altered by subsequent decisions.

⁹⁰ *See* MISSISSIPPI FACT BOOK, *supra* note 72.

⁹¹ *See* Pls.’ App. 4.

⁹² *Ayers v. Musgrove*, Civ. No. 4:75CV009-B-D. (N.D. Miss. May 8, 2001), *available at* casetext.com/case/ayers-v-musgrove-2.

⁹³ *Id.*

not to help desegregation but rather to decrease existing areas of desegregation, by causing black students taking those courses at historically white universities to leave and go to historically black universities for the same courses.”⁹⁴

The proposed programs to be added or enhanced pursuant to the settlement were not informed by the court-ordered institutional study of Alcorn and MVSU, which was expected to identify those programs which would offer desegregative potential. *Ayers v. Musgrove*, No. 4:75CV009-B-D, 2002 WL 91895, at *2 (N.D. Miss. Jan. 2, 2002) (“The IHL Board was ordered by this court and by the Court of Appeals in 1997 to present a plan to the court for consideration but, as yet, the court has not received a plan to attract white students to ASU and MVSU”). The district court noted it may have been “overly lenient” not to set deadlines for those studies, which were never submitted. *Id.*

In light of those concerns, the results may be unsurprising. As demonstrated by the tables in Appendices 21 to 23, most of the programs referenced in the settlement agreement are offered at other institutions throughout the state and have not resulted in significant levels of white enrollment.⁹⁵ At Alcorn, the 2001 settlement agreement contemplated eight new programs, with enhancements in four others.⁹⁶ The table in Appendix 21 shows programs currently offered at

⁹⁴ *Id.*

⁹⁵ The tables in Appendices 21 to 23 show the programs or degrees available at JSU, Alcorn and MVSU as reflected by the 2013 Degree Book. See MISSISSIPPI PUBLIC UNIVERSITIES, AY 2010 – AY 2013 DEGREES AWARDED AND TOP-TEN DEGREES & MAY 2013 ACADEMIC PROGRAM INVENTORY (2013) [hereinafter 2013 DEGREE BOOK], available at http://www.mississippi.edu/research/downloads/2013_degreebook.pdf. The tables include those degrees or programs either specifically identified in the Mississippi Agreement to be added or enhanced at the HBIs, or a degree within the programmatic area consistent with those identified in the settlement. For example, the programs to be added or enhanced at Alcorn included those within a “school of allied health” or sciences such as “biology, chemistry, physics.” In that event, all courses within those areas were identified and included on the tables.

⁹⁶ See Settlement Agreement, *Ayers v. Musgrove*, No. 4:75CV009-B-D, 2002 WL 91895 (N.D. Miss. Jan. 2, 2002) [hereinafter Mississippi Agreement], available at http://www.mississippi.edu/ayers/downloads/settlement_agreement_ayers.pdf. As of 2013, thirteen of those programs appear to have students enrolled. Three programs which were identified in the 2001 settlement agreement

Alcorn which are consistent with those identified in the agreement. Of the 13 programs which enrolled students in fall 2013, 11 were also offered at other public colleges or universities in Mississippi. Ten had less than 20% white enrollment. Whites comprised 8.7% of the total enrollment in the programs specifically addressed by the settlement.⁹⁷

Appendix 22 shows the fall 2013 enrollment in the potential new programs identified for JSU in the settlement agreement.⁹⁸ Fourteen of those programs actually enrolled students that year.⁹⁹ Of those, eight were also offered at another public college or university in Mississippi. Thirteen reflect white student enrollment levels of less than 20%, and seven had white enrollment of less than 10%. Whites comprised 8.9% of the total enrollment in the programs addressed in the settlement.¹⁰⁰

The settlement agreement identified seven programs to be added and five program areas to be enhanced at MVSU.¹⁰¹ Appendix 23 shows the fall 2013 enrollment in those programs.¹⁰² Of those, eight programs had students enrolled that year, and all had less than 15% white enrollment. Only the Masters in Bioinformatics appears to be a unique program, but that program

to be placed at Alcorn did not reflect students enrolled in fall 2013 according to IPEDS data and did not appear to be available according to the institution website. The reasons are unclear.

⁹⁷ *Id.*

⁹⁸ *See id.* at 7-8.

⁹⁹ Five of the programs the settlement agreement contemplated for JSU did not appear to enroll students that year, and the university website only showed one of those five programs as being currently offered. The reasons are unclear.

¹⁰⁰ *Id.*

¹⁰¹ *See id.* at 5-8.

¹⁰² Two of the programs identified in the settlement agreement to be added or enhanced at MVSU had no enrollment that year and do not appear to be currently offered according to a search of the university website. The reasons are unclear.

only had two white students. Whites comprised 4.8 % of the total enrollment in the programs addressed in the settlement.¹⁰³

In addition, Mississippi’s HBIs still collectively offer fewer programs and degrees than the TWIs:

Mississippi HBI Unique Programs and Programs Offered

	Jackson State University (HBI)	Alcorn State University (HBI)	Mississippi Valley State University (HBI)
Unique Programs	31	12	10
Total Programs Offered	94	40	35
Percentage Unique at Institution	33.0%	30.0%	28.6% ¹⁰⁴

Meanwhile, the TWIs continue to offer a robust set of programs and degrees, many of which are also offered at the HBIs:

Mississippi TWI Unique Programs and Programs Offered

¹⁰³ *Id.*

¹⁰⁴ *See* 2013 DEGREE BOOK, *supra* note 87, at 16-24.

	Delta State Univ. (TWI)	Mississippi Univ. for Women (TWI)	Mississippi State Univ. (TWI)	Univ. of Mississippi (TWI)	Univ. of Southern Mississippi (TWI)	Univ. of Mississippi Medical Center (TWI)
Unique Programs	20	19	95	72	109	28
Total Programs Offered	63	52	179	143	209	36
Percentage Unique at Institution	31.7%	36.5%	53.1%	50.3%	52.2%	77.8% ¹⁰⁵

Mississippi considered but ultimately rejected early proposals to place geographically unique, extremely high-demand and prestigious programs like medicine, law, and pharmacy at JSU. Instead of transferring or adding these unique, high-demand programs to the HBI, the court accepted the conclusion that *additional* student demand did not justify or necessitate new law or pharmacy programs at JSU.¹⁰⁶

¹⁰⁵ See 2013 DEGREE BOOK, *supra* note 87, at 16-24.

¹⁰⁶ In 1995, the district court noted that while the U.S. urged consideration of affiliating JSU with the medical school in Jackson, the evidence did not establish how that would increase diversity at JSU or within the medical profession. Especially persuasive was the administration's position that JSU did not see the need for that affiliation. *Ayers II*, 879 F. Supp. at 1485. By January of 2001, the district court ordered that having found no unmet demand for additional legal education in the Jackson area, the Board need not establish a law school at JSU as part of its obligation to desegregate that institution. In addition, it was held that the existing pharmacy program at UM met the state need for pharmacy education so that the addition of such a program at JSU was neither feasible nor educationally sound. With that, the court found the remedial decree satisfied with respect to JSU. *Ayers v. Thompson*, 358 F.3d 356, 367 (5th Cir. 2004).

C. Louisiana¹⁰⁷

There are four public HBIs: Southern University and Agricultural and Mechanical College in Baton Rouge (“SUBR”), Southern University at New Orleans (“SUNO”), Southern University at Shreveport (“SUSBO”), and Grambling State University (“Grambling”). The HBIs in Louisiana remain racially identifiable. In fall 2014, the white enrollment at SUBR was 3.0%, at SUNO it was 2.7%, at SUSBO it was 7.8%, and at Grambling it was 2.3%.¹⁰⁸

In 1974, the U.S. commenced litigation to challenge Louisiana’s racially discriminatory practices in higher education. *See United States v. Louisiana*, 527 F. Supp. 509, 513 (E.D. La. 1981). A consent decree was eventually entered in 1981, *id.* at 515, but before it expired the parties filed cross-motions for summary judgment on the question of whether the State continued to maintain a dual system of higher education. *United States v. Louisiana*, 692 F. Supp. 642, 643 (E.D. La. 1988). The district court found liability, *id.* at 659, and after *Fordice* it ordered a remedial plan; but the remedial plan was vacated and remanded by the Fifth Circuit for a full trial on the merits rather than a decision issued on summary judgment. *See United States v. Louisiana*, 9 F.3d 1159 (5th Cir. 1993). The parties settled prior to trial and entered a settlement agreement in 1994 (“Louisiana Agreement”). *See United States v. Louisiana*, No. 80-CV-3300 (E.D. La. Nov. 14, 1994) [hereinafter Louisiana Agreement].¹⁰⁹

¹⁰⁷ A summary of the procedural history and remedies in *United States v. Louisiana* is outlined in Appendix 3.

¹⁰⁸ *See* Statewide Student Profiling System – Student Headcount Enrollment by Student Major (Fall 2014-2015) [hereinafter Student Headcount Enrollment], available at <http://regents.louisiana.gov/data-and-publications/fall-2014-2015-data/>

¹⁰⁹ *See also* Pls.’ App. 3.

The 1994 Louisiana Agreement addressed a number of issues, including the addition and funding of new programs at SUBR, SUNO, and Grambling.¹¹⁰ *See* Louisiana Agreement at 10-13 ¶ 13. The Louisiana Agreement also outlined the process by which duplicative programs might be eliminated, but by its terms that process seemed problematic.¹¹¹ The 1993 Board of Regents Master Plan (“Master Plan”) adopted by the Louisiana Agreement outlined a four-step process to identify which duplicative programs would be examined for elimination.¹¹²

On its face, that process did not appear to offer strong protections against unnecessary program duplication. Duplicative programs could be deemed “necessary” and avoid elimination if they were categorized as: within the traditional disciplines of the arts, the humanities, and the sciences; necessary for the attainment of the role, scope, mission of the institution;¹¹³ had such high student demand that no one institution was capable of administering the program; had sufficiently different admission standards; or was in high demand by business or industry.¹¹⁴ The process also articulated a commitment to avoid a “disproportionate effect on any one institution.”¹¹⁵ Accordingly, there appear to be a number of conditions under which program duplication would continue to exist.

¹¹⁰ The institution websites reveal that some of the proposed programs in the 1994 Settlement Agreement are not currently offered at the institution. The reasons are unclear.

¹¹¹ *See* Appendix E, Regents for Review of Academic Programs entitled “Elimination of Academic Programs While Broadening Access”, The Master Plan for Higher Education, Board of Regents, State of Louisiana, April, 1994, 78-79; Settlement Agreement § 17. The Louisiana Agreement incorporated this program elimination plan and specifically emphasized that questions of fact remained as to whether existing program duplication constituted a constitutional violation and required elimination. *See* Louisiana Agreement at 17 ¶ 16.

¹¹² *Id.* *See also* Appendix 3 (describing the four step process for program elimination adopted in the 1993 Master Plan).

¹¹³ Appendix A to the 1994 Settlement Agreement addressed the goal of differentiating institutional missions. Even so, a significant degree of overlap appears to have been tolerated. *See* Appendix 3.

¹¹⁴ *See* Appendix E, Settlement Agreement § 17.

¹¹⁵ *Id.*

Perhaps unsurprisingly, several of the programs added to the HBIs pursuant to the 1994 Louisiana Agreement are also available at many of the other public colleges and universities in Louisiana, and many have low levels of white student enrollment. The tables in Appendices 24 to 26 show the fall 2014 enrollment in programs or program areas discussed in the 1994 settlement. They reveal that at all three HBIs, many of the programs expected to enhance these HBIs and their ability to attract students of all races are also available at another – or several other – public colleges or universities throughout the state. Consequently, the percentage of white enrollment in many of those institutions is low: 2.3% overall at Grambling, 3.0% overall at SUBR, and 2.7% overall at SUNO.¹¹⁶

Of the six programs added at Grambling with students enrolled in fall 2014, every single one of them is offered at multiple institutions. Of the two programs added at SUNO with students enrolled that same year, both were offered multiple schools and had insignificant levels of white enrollment.¹¹⁷ Of the 16 programs contemplated for SUBR, only eight had students enrolled that year¹¹⁸ and five were also offered at multiple institutions throughout the state. None had meaningful levels of white student enrollment. In addition, many of the added programs have low overall enrollment as well as insignificant white enrollment,¹¹⁹ previewing their limited effectiveness in terms of desegregating those campuses.

¹¹⁶ Louisiana HBI enrollment data from Statewide Student Profiling System – Student Headcount Enrollment by Student Major, Fall 2014 – 2015. *See* Pls.’ Apps. 24-26 for programs added to institutions pursuant to the Louisiana Agreement. Many of those identified in the Louisiana Agreement either were never offered or are no longer offered at those institutions. The reasons are unclear. For a more complete description of the programs added, see Appendix 4.

¹¹⁷ Four of the six programs contemplated for SUNO are not currently available and three do not show as available on the university’s website. The reasons are unclear.

¹¹⁸ Seven programs identified to be added at SU had no headcount enrollment data available and did not appear to be available on the university’s website. The reasons are unclear.

¹¹⁹ The master of social work and master of criminal justice at SUNO, the bachelor of criminalistics at Grambling, and the bachelor of criminal justice at SU all have very high levels of overall enrollment but low white enrollment.

V. In a unitary system, the HBIs have a distinctive institutional identity created by a meaningful number of unique, high-demand programs organized around programmatic niches.

The recommendations offered by Plaintiffs respond to the fundamental failure of other states to refine the programmatic identity of the HBIs to ensure that each fulfills a unique role within a state's coordinated, cost-effective system of affordable, high-quality institutions. Adding or enhancing discrete programs which are *unique but not high-demand*, or *high-demand but not unique*, does relatively little to influence student choice or alter the racial identifiability of those institutions. Instead, successful desegregation requires the strategic cultivation of programmatic niches consistent with an institution's distinct role in the overall system of higher education.

A dual curriculum structure is one in which there is a substantial amount of unnecessary program duplication between the TWIs and HBIs and where the HBIs are largely defined by race.¹²⁰ On the other hand, a unitary curriculum structure is characterized by program uniqueness and schools which have a distinct institutional identity.¹²¹ Where unnecessary program duplication has been found to perpetuate a dual structure of higher education, the remedy should seek to confront this lack of programmatic identity which encourages white students to enroll at the HBIs. An effective remedy for the duplication found here must therefore ensure that a meaningful number of sufficiently unique, high-demand programs are placed at the HBIs and organized around distinct programmatic niches.

¹²⁰ See Conrad Expert Rep. II, PTX 70, at 7-8.

¹²¹ See *id.*

A. Unique, high-demand programs are the most effective way to ensure that HBIs can attract students of all races.

One of the most effective ways to remediate unnecessary duplication involves the placement of unique, high-demand programs at the HBIs to allow them to attract students of all races. There is a “strong ‘symbiotic relationship’” between programs and schools. *Knight II*, 900 F. Supp. at 315. “Indeed, evidence presented . . . indicates that well-planned programs that respond to the particular needs and interests of local populations can help to desegregate historically black institutions. . . . [P]rograms not duplicated at proximate institutions, targeted to local demands, and in many cases offered through alternative delivery systems (such as off-campus, evening, or weekend programs) have had success in attracting white students to historically black institutions in other states.” *See Ayers*, 111 F.3d at 1213-14.

Unique programs are the key to fashioning an appropriate remedy for duplication, and “meaningful uniqueness” requires a reasonable number of high-demand, non-core programs at a university that are not duplicated elsewhere in the system. *See Ayers II*, 879 F. Supp. at 1442. At the same time, those unique programs must be sufficiently high-demand to generate the “critical mass” of other-race students necessary to overcome the presumption that HBIs are academically inferior. *Knight II*, 900 F. Supp. at 319-20. High-demand programs are those which a disproportionately large number of students can be expected to select as their major field of study. If they are not replicated at institutions with overlapping service areas, these high-demand programs are often the epicenter of institutional identity.¹²²

Maryland recognizes that the enhancement and development of unique, high-demand programs will lead to the desegregation of the HBIs. For example, the 2000 Partnership

¹²² *See id.* at 8.

Agreement committed to implementing new unique, high-demand programs at the HBIs “for the purpose of promoting their institutional competitiveness and ensuring that these institutions attract students regardless of race...consistent with available resources, and with the mission, student profiles, academic program mix and degree levels of the institution.”¹²³ The blue ribbon panel it convened in 2008 confirmed that Maryland’s HBIs were not yet comparable to or competitive with the state’s TWIs and made specific recommendations related to capital improvements and funding.¹²⁴ Moreover, Maryland’s 2009 State Plan for Higher Education reiterated the importance of the HBIs ability to recruit, retain, and graduate an academically, racially, culturally, and ethnically diverse student body.¹²⁵ Maryland has therefore implicitly conceded the practicability and educational soundness of this approach to desegregation.

This Court also agrees that unique, high-demand programs are “a key reason [why] white students attend HBIs in other states,” and that without them the HBIs “are identified by their racial history as opposed to [their] programs.”¹²⁶ It has been shown that where white students can satisfy their curricular desires at a TWI but not at an HBI, they are discouraged from attending the HBI. *See Fordice*, 505 U.S. at 738-39. On the other hand, unique programs empower institutions to attract a diverse student body.¹²⁷ Thus, for racial desegregation to occur at Maryland’s HBIs, they must offer programs *not* offered at geographically proximate TWIs.¹²⁸

¹²³ 2000 Partnership Agreement, PTX 4 at 34.

¹²⁴ *See* 2008 HBI Study Panel, PTX 2 at 24-27.

¹²⁵ 2009 State Plan for Higher Education, PTX 1 at 27.

¹²⁶ Memorandum Opinion at 46 (citing Conrad Expert Rep. II, PTX 70, at 5).

¹²⁷ *Id.* at 54 (citing 1/18/12 AM Trial Tr. 91, 112 (Allen); Allen Expert Rep., PTX 661, at 8-9); *Knight*, 14 F.3d at 1541).

¹²⁸ *Id.* at 52-53 (citing Conrad Expert Rep. II, PTX 70, at 4; 1/18/12 Trial Tr. 88-89 (Allen)).

For example, a number of programs at University of Maryland Eastern Shore (“UMES”) that are unique to the region reflect high levels of diversity as measured by white enrollment.¹²⁹ As demonstrated by the table in Appendix 9, many of those programs show meaningful levels of white enrollment including the Masters in Special Education, the Doctorate in Pharmacy, and the unduplicated Doctorate in Physical Therapy. Even at the undergraduate level, unique programs at UMES reveal higher levels of white enrollment, as reflected by enrollment data for the Bachelors in Hotel and Restaurant Management. Similarly, as demonstrated by the table in Appendix 6, approximately 18.2% of the students enrolled in the unique Masters in Education/Student Personnel at Bowie identified as white.

This experience is not limited to Maryland. Unique programs at the HBIs in other states reflect similarly high rates of white participation within those discrete programs, even when the institution as a whole remains highly segregated. In some instances, more than half of total degrees awarded in unique programs went to students who identified as white.

In Mississippi, for example, Alcorn offers a unique Bachelors in Elementary Education and Teaching.¹³⁰ Approximately 65% of the students who received that degree in 2012 identified as white.¹³¹ At the graduate level, the unique Masters in Registered Nursing/Nursing Administration¹³² awarded 43% of the total number of degrees granted in 2012 to white

¹²⁹ See Pls.’ App. 9.

¹³⁰ 2013 DEGREE BOOK, *supra* note 84, at 16-24.

¹³¹ All statistics for the degrees awarded at the following institutions and within discrete programs at those institutions were pulled from IPEDS for the 2011-2012 academic year. Programs identified as unique are offered at the HBI but are not offered at the geographically proximate TWI (LSU – Baton Rouge) according to an analysis of the programs available at each institution as reflected by IPEDS, meaning they are unique to the region. See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹³² 2013 DEGREE BOOK, *supra* note 84, at 16-24. The Masters in Registered Nursing/Nursing Administration is unique to the region.

students.¹³³ In fall of 2013, Alcorn as a whole had 3.3% white enrollment,¹³⁴ confirming that Alcorn remains extremely segregated but experienced some of its highest levels of diversity in its unique programs. Meanwhile, only 6% of the overall enrollment at JSU was white in the fall of 2013.¹³⁵ Even so, JSU offers a unique Masters in Communication Sciences and Disorders.¹³⁶ In 2012, approximately 42% of those degrees went to students who identified as white. That same year, 36% of the unique Masters in Engineering were awarded to white students.¹³⁷

In Alabama, only 5.6% of the degrees awarded by ASU in 2012 went to students who identified as white.¹³⁸ *See* Appendix 13. Even so, ASU offers a unique Doctorate in Physical Therapy, and a unique Masters in Occupational Therapy.¹³⁹ Approximately 39% of the Doctorates in Physical Therapy and 36% of the Masters in Occupational Therapy were awarded to white students.¹⁴⁰ AAMU has an overall student enrollment that is only 5.1% white. *See* Appendix 12. AAMU offers a unique Masters in Speech-Language Pathology as well as a unique Masters in Secondary Education and Teaching.¹⁴¹ In 2012, 67% of the Masters in Speech-Language Pathology and 46% of those Masters in Secondary Education and Teaching went to

¹³³ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹³⁴ *See* ALCORN STATE UNIVERSITY FACT BOOK (2012-2013) [hereinafter ALCORN Fact Book], available at http://ira.alcorn.edu/factbooks/Fact_Book_2012_13.pdf.

¹³⁵ JACKSON STATE ENROLLMENT FACT BOOK (FALL 2013) [hereinafter JSU Fact Book], available at http://www.jsums.edu/institutionalresearch/files/2013/10/Fall_2013_enroll_disp_eth_gen-2.pdf.

¹³⁶ 2013 DEGREE BOOK, *supra* note 84, at 16-24.

¹³⁷ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹³⁸ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹³⁹ Unique degrees are those not offered by the geographically proximate TWI (Troy State or Auburn University – Montgomery) according to data available on NCES IPEDS Data Center 2011-2012 Student Completion, meaning that they were unique to the region.

¹⁴⁰ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁴¹ Unique programs are those offered at AAMU but are not offered at the geographically proximate TWI (University of Alabama – Huntsville) meaning that they are unique to the region according to data available on NCES IPEDS Data Center 2011-2012 Student Completion.

white students.¹⁴² Again, unique programs are the areas in which those campuses see some of the greatest levels of desegregation.

In 2012, only 3.7% of the total enrollment at SUBR in Louisiana was white, confirming that SUBR remains racially identifiable.¹⁴³ *See* Appendix 18. At the same time, SUBR offers several unique programs that attract a greater percentage of other-race students.¹⁴⁴ For example, 42% of the unique masters degrees awarded in Vocational Rehabilitation Counseling/Counselor were to white students, 26% of the unique Masters in Family Practice Nurse/Nursing were awarded to white students, and 20% of the unique masters degrees awarded in Audiology/Speech Language/Pathology went to white students.¹⁴⁵ At Grambling, only five students were awarded its unique Doctorate of Education in 2012, but 60% of those went to white students.¹⁴⁶ Unfortunately, that campus also remains highly segregated with only 2% of the overall total enrollment in 2013 identifying as white. *See* Appendix 17.

This is consistent with the experiences of the HBIs in other states, as well. In 2012, approximately 11% of the total degrees granted at North Carolina Central University (“NCCU”) went to white students.¹⁴⁷ Even so, 67% of the degrees in the unique Masters in Curriculum and Instruction were awarded to white students, 47% of the degrees in the unique Masters in Special Education were awarded to white students, and 58% of the degrees in the unique Masters in

¹⁴² *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁴³ *See id.*

¹⁴⁴ Unique programs are those offered at SU which are not duplicated at the geographically proximate TWI (LSU – Baton Rouge) according to data available on NCES IPEDS Data Center 2011-2012 Student Completion.

¹⁴⁵ Unique programs are those offered at SU but not offered at the geographically proximate TWI (LSU – Baton Rouge) according to data available on NCES IPEDS Data Center 2011-2012 Student Completion.

¹⁴⁶ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁴⁷ *See id.*

Communication Sciences and Disorders were awarded to white students, again demonstrating the ability of such programs to attract students of all races.¹⁴⁸ In Delaware, Delaware State University offers a unique Masters in Social Work¹⁴⁹ and in 2012, 40% of the students who earned that degree identified as white.¹⁵⁰ At Kentucky State University (“KSU”), the unique Associates degree in Registered Nursing¹⁵¹ awarded 65% of the total number of those degrees to white students.¹⁵² The unique Bachelors in Information Technology awarded 50% of those degrees to students who identified as white.¹⁵³ In Oklahoma, unique programs at Langston University¹⁵⁴ reflect substantially high levels of white enrollment at both the graduate and undergraduate levels. Langston University has a unique Doctorate in Physical Therapy, and just under 70% of those degrees awarded in 2012 were earned by white students. At the undergraduate level, 30% of the unique Bachelors in Rehabilitation Science were awarded to white students.¹⁵⁵

¹⁴⁸ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁴⁹ Unique programs are those offered at DSU which are not offered at the geographically proximate TWI (University of Delaware) according to data available at NCES IPEDS Data Center 2011-2012 Student Completion, meaning that they are unique to that region.

¹⁵⁰ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁵¹ Unique programs are those offered at KSU which are not offered at the geographically proximate TWI (University of Kentucky) according to data available at NCES IPEDS Data Center 2011-2012 Student Completion., meaning that they are unique to that region.

¹⁵² See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁵³ See *id.*

¹⁵⁴ Unique programs are those offered at Langston which are not offered at the geographically proximate TWI (Oklahoma State) according to data available at NCES IPEDS Data Center 2011-2012 Student Completion, meaning that they are unique to that region.

¹⁵⁵ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

B. The creation of programmatic niches composed of a meaningful number of unique, high-demand programs may require new, enhanced, or transferred programs at the HBIs.

To dismantle a dual curricular structure through the creation of a meaningful number of unique, high-demand programs at the HBIs will require enhancing, adding, or transferring such programs to the HBIs in order to establish distinctive programmatic identities for those campuses. Establishing new programs at the HBIs, as well as eliminating or transferring existing programs which duplicate those offerings, will enable the HBIs to develop institutional identities anchored in distinctive programmatic niches.

As a strategy, enhancing existing unique, high-demand programs at the HBIs also holds the possibility of increasing other-race enrollment in those programs. In some circumstances that approach can be effective where an institution has a demonstrated capacity and accreditation to offer that program, and the program is already drawing a meaningful number of other-race students.

For example, enrollment in the UMES Doctorate in Pharmacy program is oversubscribed. According to Dr. Juliette Bell, President of UMES, every year that program turns away applicants due to its limited capacity. The same might be said of the Doctorate in Physical Therapy at UMES, which is both unique in the region *and* high-demand and represents one of the most integrated programs on that campus.¹⁵⁶

As a remedial strategy, the finite number of new programs which are *both* unique and high-demand may necessitate the select transfer of existing programs from TWIs to the HBIs. Targeted transfers of particularly high-demand and diverse programs from a TWI to a

¹⁵⁶ See Appendix 9.

geographically proximate HBI with demonstrated capacity – and accreditation – to absorb those programs can potentially offer high desegregative potential even though some white students may not choose to pursue their degree at the HBI. Such a strategy is consistent with the State’s constitutional obligation to dismantle the dual structure of education and may be especially worthy of consideration where the HBI is currently offering a few unique programs within a broader curricular niche, but the portfolio of discrete programs and degree levels which constitute that niche are dispersed among multiple institutions.

The potential effects of this on student enrollment can be demonstrated by the impact of MHEC’s decision to divide the engineering programs between Morgan and University of Maryland Baltimore County (“UMBC”).¹⁵⁷ Instead of establishing an exclusive engineering niche at Morgan by concentrating these programs at the HBI, it permitted UMBC to offer similar degrees in the same service area. Today, UMBC offers a number of engineering degrees at all levels which have compromised the status of Morgan’s engineering programs.

In 1947, a state commission recommended that an engineering program be established at Morgan.¹⁵⁸ Approval for that program did not come until the early 1980s, however, when Morgan was authorized to offer electrical, civil, and industrial engineering, each of which was unique in the Baltimore area.¹⁵⁹ MHEC denied repeated requests from UMBC to add similar programs given the concern that to do so would unnecessarily duplicate those programs at Morgan.¹⁶⁰ Later, MHEC permitted UMBC to offer a degree in general engineering and permitted University of Maryland College Park (“UMCP”) to offer chemical and mechanical

¹⁵⁷ See PTX 39 at 44-45.

¹⁵⁸ See PTX 18, at 353.

¹⁵⁹ See 1/9/12 Trial Tr. at 12 (Popovich).

¹⁶⁰ See PTX 39, at 44.

engineering at the UMBC campus.¹⁶¹ Division of these programs denied Morgan the ability to establish a distinctive institutional identity anchored in unique, high-demand programs within the engineering and sciences niche.¹⁶² The consequences have been dramatic.

Today, Morgan offers four bachelors degrees, one masters degree, and one doctoral degree in engineering.¹⁶³ Total aggregate enrollment in those programs is high but overwhelmingly black. In the four undergraduate programs, a total of 828 students were enrolled in fall of 2013, but none of those programs had more than 10% white enrollment. At the graduate level, only 5.6% of the masters students and just 4.9% of the doctorate students identified as white.¹⁶⁴

Morgan State Engineering Enrollment 2013

	Total Enrolled	Number Of Enrollments - White	Percentage Of Enrollments - White
Bachelors - Civil, Construction, And Transportation Engineering	204	15	7.4%
Bachelors - Electrical, Electronics, And Communications	476	10	2.1%
Bachelors - Industrial And Management Engineering	119	4	3.4%
Bachelors - Engineering	29	3	10.3%

¹⁶¹ See PTX 39 at 59.

¹⁶² See 1/12/12 PM Trial Tr. at 27-30 (Richardson).

¹⁶³ See 2013 Undergraduate and Graduate Enrollment by Institution by Degree Program provided by Maryland Higher Education Commission.

¹⁶⁴ All enrollment data for fall 2013 provided by State.

Technologies			
Masters - Engineering, General	54	3	5.6%
Doctorate Research/Scholarship - Engineering, General	61	3	4.9%
Total	943	38	4.0% ¹⁶⁵

On the other hand, UMBC offers a large and robust portfolio of engineering programs, including four undergraduate degrees in engineering, two certificates, five masters, and five doctorate degrees. Taken together, the UMBC engineering offerings outmatch those at Morgan both in terms of size and diversity. In fall of 2013, at least 18% of the students enrolled in each of those programs at UMBC identified as white. All of the engineering degrees at UMBC are extremely high-demand as demonstrated by their enrollment numbers.

UMBC Engineering Enrollment 2013

	Total Enrolled	Number Of Enrollments - White	Percentage Of Enrollments - White
Bachelors - Mechanical Engineering	543	323	59.5%
Bachelors - Other, Engineering	326	161	49.4%
Bachelors - Chemical Engineering	281	129	45.9%
Bachelors - Engineering, General	171	95	55.6%
Masters - Other, Engineering	69	37	53.6%

¹⁶⁵ 2013 Undergraduate and Graduate Enrollment by Institution by Degree Program provided by Maryland Higher Education Commission.

Masters - Mechanical Engineering	32	15	46.9%
Masters - Electrical, Electronics, And Communications	15	7	46.7%
Masters - Chemical Engineering	5	2	40.0%
Masters - Civil, Construction, And Transportation Engineering	8	2	25.0%
Doctorate Research/Scholarship - Electrical, Electronics, And Communications	34	11	32.4%
Doctorate Research/Scholarship - Mechanical Engineering	38	11	28.9%
Doctorate Research/Scholarship - Chemical Engineering	23	5	21.7%
Doctorate Research/Scholarship - Other, Engineering	18	4	22.2%
Doctorate Research/Scholarship - Civil, Construction, And Transportation Engineering	11	2	18.2%
Postbac Cert - Other, Engineering	11	6	54.5%
Postbac Cert - Chemical Engineering	3	1	33.3%
Total	1588	811	51.1% ¹⁶⁶

Given the number and variety of engineering programs available at UMBC, Morgan has been severely disadvantaged both in terms of overall enrollment and other-race enrollment. This

¹⁶⁶ Id.

invites serious consideration of targeted transfers where appropriate. For example, transferring the civil and electrical engineering programs at the masters and doctorate level, would have a desegregative effect and also complement existing programming at Morgan. Such a transfer offers the potential to increase white enrollment. The Masters in Civil Engineering has small enrollment, but in fall of 2013 it was 25% white. The corresponding doctorate degree had 18.2% white enrollment that same year, and the Masters in Electrical Engineering was over 46% white.

The MBA at Morgan offers another example of an opportunity to achieve meaningful desegregation through targeted program transfer. The duplication of Morgan's MBA program began in 1975 with the entry of University of Baltimore ("UB") into the public system of higher education.¹⁶⁷ Enrollment in Morgan's MBA program precipitously declined following the availability of the MBA at UB. In 1975, Morgan enrolled 54 white students and 176 black students. In 1985, UB awarded 177 degrees to white students and 14 to black students. Meanwhile, the degrees awarded to white students at Morgan that same year dropped to zero and the number awarded to black students was 48.¹⁶⁸ Over the strenuous objections of Morgan, despite concerns expressed by OCR, and against the advice of the Attorney General at that time, MHEC reversed its initial decision to reject the development of a joint MBA at Towson and UB and allowed it in 2005.¹⁶⁹ The MBA at Morgan today continues to experience low white enrollment. In fall 2013, the MBA program at Morgan enrolled 129 students but only two

¹⁶⁷ See Plaintiffs' Proposed Findings of Fact and Conclusions of Law, D.E. 355 at 317.

¹⁶⁸ For 1975, enrollment data is provided for the Morgan MBA program. In 1985, data was reported as the number of degrees awarded. *See id.* at 287 (citing to PTX 184 at 9). *See also* PTX 39 at 58 (showing that after UB became a public campus in 1975, the number of MBAs awarded by UB essentially doubled during the next 20 years while the number of MBAs awarded by Morgan dropped by nearly half during that same time period).

¹⁶⁹ Memorandum Opinion at 51.

(approximately 2%) identified themselves as white. Meanwhile, the masters at Towson enrolled a total of 233 students that same year, and 148 (approximately 64%) of them identified as white.

2013 White Student Enrollment in Maryland Public MBA Programs

Institution	Total Enrolled	White Students Enrolled	% White Students Enrolled
UB	677	308	45.5%
Towson University	233	148	63.5%
Morgan State	129	2	1.6%
Totals	1039	458	44.0% ¹⁷⁰

It is important to note that the evidence also shows that high-demand, but less competitive programs with low barriers to entry do *not* offer the same desegregative potential when placed at an HBI. Adding such programs at the HBIs will only increase the available supply for those degrees and will not lead to meaningful desegregation. Historically, there has been an overreliance on engineering, business, education, and nursing programs to desegregate

¹⁷⁰ 2013 Undergraduate and Graduate Enrollment by Institution by Degree Program Provided By Maryland Higher Education Commission.

the HBIs, regardless of whether those programs are already offered at TWIs with overlapping service areas. The outcomes confirm that these attempts to remedy duplication by adding high-demand but less competitive programs to the HBIs when they already exist at the TWIs will tend to reinforce the racial identifiability of those institutions.

Alabama's decision to order the creation of an undergraduate electrical and mechanical engineering program at the HBIs demonstrates the shortcomings of this approach. *See Knight II*, 900 F. Supp. at 315-17. First, the engineering programs were not unique: the proximate TWI already had a successful engineering program. *See id.* *Knight* justified the duplicative programming on the basis that engineering was such a "high-demand" program that it would still attract other-race students, a claim based upon the observation that HBIs in other states had attracted other-race students through duplicated engineering programs. *Id.* at 316. However, *Knight* failed to analyze whether engineering programs were sufficiently in high-demand among white Alabama students. Indeed, *Knight* recognized Alabama already had a high number of engineering programs. *Knight I*, 787 F. Supp. at 311-12. Perhaps more troubling still, *Knight* only found that minority students needed more access to engineering programs rather than finding white Alabama students demonstrated a high demand for more engineering programs. *Knight II*, 900 F. Supp. at 316.

As demonstrated by the table in Appendix 27, which shows the level of white and black enrollment in the engineering programs at AAMU and University of Alabama – Huntsville ("UAH"), duplication of programs leads to almost totally segregated programs. The two institutions offer three identical degrees, and for each degree, AAMU's student population is

overwhelming black and UAH's student population is overwhelmingly white.¹⁷¹ This racial segregation is also reflected within AAMU's four engineering programs that are not explicitly duplicated by UAH.¹⁷² The low enrollment of whites in AAMU's engineering programs compared with the high white enrollment rates in UAH's engineering programs underscore the critical error made in *Knight*: additional programming will not desegregate an HBI merely because it is high-demand since it must *also* be unique or sufficiently competitive.

As shown by the table below, duplicated engineering programs were highly segregated:

**Degrees Awarded By Race 2012 - Alabama A&M and University Of Alabama Huntsville
Duplicated Engineering Programs**

	AA&M Total	AA&M White	AA&M White %	AA&M Black	AA&M Black %	UAH Total	UAH White	UAH White %	UAH Black	UAH Black %
Civil Engineering, General / Bachelors	15	2	13.3%	13	86.7%	30	24	80%	1	4.3%
Mechanical Engineering / Bachelors	24	1	4.2%	23	95.8%	141	124	87.9%	5	3.5%
Electrical And Electronics Engineering / Bachelors	34	0	0.0%	34	100.0%	46	26	56.5%	9	19.6%
Total	73	3	4.1%	70	95.9%	204	169	82.8%	9	4.4% ¹⁷³

¹⁷¹ See Pls.' App. 27.

¹⁷² See *id.*

¹⁷³ 2013 Undergraduate and Graduate Enrollment by Institution by Degree Program Provided By Maryland Higher Education Commission.

C. Unique but low-demand programs will not make a significant contribution to the desegregation of an institution.

The Mississippi experience shows that the addition of discrete programs which are not clustered around a programmatic niche, or the addition of unique but low-demand programs, will have limited desegregative effect.¹⁷⁴ Where the objective is to dismantle a dual system of education produced by and reinforced by unnecessary duplication, new unique programs must be sufficiently high-demand in order to generate the “critical mass” of other-race students necessary to overcome the presumption that HBIs are academically inferior. *See Knight II*, 900 F. Supp. at 319-20. The experience of other states reveals that the addition of discrete, unique but low-demand programs at the HBIs will have limited desegregative effect.

In Mississippi, the district court ordered the addition of a masters and a doctorate in urban planning at JSU. *Ayers II*, 879 F. Supp. at 1494. Today, those degrees are unique to that institution and are not offered elsewhere in the state.¹⁷⁵ In 2012, 40% of the masters degrees in Urban Planning awarded were to white students, confirming that unique programs do appear to draw students of all races. However, JSU only awarded four of those degrees to white students.¹⁷⁶ The same could be said about the Masters in Communication Sciences and Disorders, another unique program¹⁷⁷ added at JSU pursuant to the settlement.¹⁷⁸ In 2012, approximately 42% of the Masters in Communication Sciences and Disorders were awarded to white students but the total number awarded was just eight.¹⁷⁹ In other words, low-demand

¹⁷⁴ *See generally* Appendix 4 (summarizing the procedural history and remedies in *Ayers* litigation).

¹⁷⁵ *See* 2013 DEGREE BOOK, *supra* note 84, at 16-24 (confirming program not offered at other Mississippi schools).

¹⁷⁶ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁷⁷ *See* 2013 DEGREE BOOK, *supra* note 84, at 16-24 (demonstrating the program is not currently offered at another four year public institution in Mississippi).

¹⁷⁸ *See* Mississippi Agreement, *supra* note 85, at 6.

¹⁷⁹ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

programs offer low yield in terms of desegregation, especially if they are not clustered around programmatic specialties or niches.

Similarly, Mississippi added a unique Masters in Bioinformatics¹⁸⁰ at MVSU.¹⁸¹ In 2012, 50% of those degrees went to white students, again demonstrating the high desegregative potential of unique programs. Unfortunately, that program has low yield in terms of overall numbers – only three white students earned that degree in 2012.¹⁸² Because of its more limited mission, MVSU offers fewer graduate-level programs and therefore has fewer unique non-core programs than other institutions throughout the state. Another problem MVSU faces is that those programs it does have are not sufficiently high-demand to create a meaningful desegregative effect.

In Alabama, AAMU has a unique Bachelors in Special Education and Teaching and a unique Masters in Educational Leadership and Administration.¹⁸³ The levels of diversity in both of those programs appears high – in 2012, 50% of the degrees awarded in those programs were awarded to white students.¹⁸⁴ However, total enrollment in each of those programs was four students. Between those two programs, AAMU only awarded four degrees to white students, even though they were unique.¹⁸⁵ Similarly, 22% of the unique Bachelors in Secondary

¹⁸⁰ Program not currently offered at another four year public institution in Mississippi. *See* 2013 DEGREE BOOK, *supra* note 84, at 16-24.

¹⁸¹ *See* Mississippi Agreement, *supra* note 84, at 7.

¹⁸² *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁸³ According to IPEDS, these programs are not currently offered by the geographically proximate TWI (UA-H).

¹⁸⁴ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁸⁵ *See id.*

Education at AAMU were awarded to white students, but that only yielded two white students out of a total of seven.¹⁸⁶

D. Placing duplicative programs at the HBIs is unlikely to lead to meaningful desegregation.

Mississippi further demonstrates the limited desegregative effect of adding new but duplicated programs at the HBIs. The court decree in *Ayers* added programs which were not unique to JSU.¹⁸⁷ The outcomes generally demonstrate the limited ability of duplicated programs to desegregate a school. For example, the Doctorate in Business Administration is offered at both Mississippi State University (“MSU”) and University of Mississippi (“UM”).¹⁸⁸ In 2012, JSU awarded just two of those doctorates to white students.¹⁸⁹ Similarly, it only awarded three Masters in Business Administration degrees to white students.¹⁹⁰ That same degree is also offered at three TWIs, including MSU, UM, and USM.¹⁹¹ In 2012, MSU awarded 161 Masters in Business, and 135 of those went to white students; UM granted 71, and 63 of those were to white students; and USM awarded 32 Masters in Business, 25 of which went to white students.¹⁹²

To illustrate further, the settlement added a Doctorate in Higher Education at JSU,¹⁹³ a degree that students may also earn from UM and USM.¹⁹⁴ Consequently, only two of the

¹⁸⁶ *See id.*

¹⁸⁷ *See* Pls.’ App. 4 (identifying programs added to the HBIs in Mississippi pursuant to the 1995 court ordered remedial plan).

¹⁸⁸ *See* 2013 DEGREE BOOK, *supra* note 84, at 16-24.

¹⁸⁹ *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁹⁰ *See id.*

¹⁹¹ *See* 2013 DEGREE BOOK, *supra* note 84, at 16-24.

¹⁹² *See* NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁹³ *See* Mississippi Agreement, *supra* note 85, at 7.

¹⁹⁴ *See* 2013 DEGREE BOOK, *supra* note 84, at 16-24.

Doctorates in Higher Education awarded by JSU in 2012 were granted to white students.¹⁹⁵ The Civil and Computer Engineering bachelors degrees added to JSU pursuant to the settlement¹⁹⁶ are also available at MSU.¹⁹⁷ In 2012, JSU awarded just four Bachelors in Civil Engineering and four Bachelors in Computer Engineering to white students.¹⁹⁸

The settlement also required that an MBA be placed at Alcorn.¹⁹⁹ However, that degree is also offered by a number of institutions throughout the state.²⁰⁰ In 2012, none of the MBAs awarded by Alcorn was granted to a white student.²⁰¹ However, MSU awarded 161 Masters in Business and 135 of those were to white students.²⁰² UM awarded 71 Masters in Business, and 63 of those were granted to white students.²⁰³ USM awarded 32 Masters in Business, and 25 of those were to white students.²⁰⁴ The Masters in Teacher Education added at Alcorn is similarly available at DSU, MVSU, and JSU. In 2012, Alcorn only awarded three of those masters degrees to white students.²⁰⁵ Again, this suggests that a remedy which places non-unique (unnecessarily duplicated) programs at an HBI is likely to have limited success in desegregating that campus.

The Mississippi settlement also required enhancements to Alcorn in mathematics, science, and computer science. Today, Alcorn offers a Bachelors in Mathematics and a

¹⁹⁵ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁹⁶ See Mississippi Agreement, *supra* note 85, at 6.

¹⁹⁷ See 2013 DEGREE BOOK, *supra* note 84, at 16-24.

¹⁹⁸ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

¹⁹⁹ See Mississippi Agreement, *supra* note 85, at 6.

²⁰⁰ See 2013 DEGREE BOOK, *supra* note 84, at 16-24.

²⁰¹ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

²⁰² See *id.*

²⁰³ See *id.*

²⁰⁴ See *id.*

²⁰⁵ See *id.*

Bachelors in Chemistry, each of which is available at every institution in Mississippi.²⁰⁶ Alcorn now offers a Bachelors in Computer Science, a degree which is also offered by MVSU, JSU, MSU, and USM.²⁰⁷ In 2012, there were no bachelors degrees in math or chemistry and only one in computer science awarded by Alcorn to white students.²⁰⁸ This demonstrates the inability of these types of core undergraduate programs to influence student choice. At the graduate level, the Masters in Computer Science now offered at Alcorn is likewise available at JSU, MSU, and USM.²⁰⁹ In 2012, Alcorn did not award any Masters in Computer Science to white students, again suggesting that duplicated programs are unlikely to lead to significant increases in white enrollment within those programs.²¹⁰

Alabama offers additional examples of how new but duplicated programs will not necessarily desegregate the HBIs.²¹¹ *Knight* also failed to place unique programs at AAMU and ASU, choosing to disregard concerns about duplication in favor of market demand. The decree allowed AAMU and ASU to develop their new programs in areas already occupied by the proximate TWIs. Specifically, *Knight's* remedial decrees provided that AAMU should be allowed to develop an engineering program and should receive preference for any new teacher education programs in the Huntsville area. *Knight I*, 787 F. Supp. at 1380; *Knight II*, 900 F. Supp. at 293-95, 315-17, 371-72. Each of these programs was duplicated by nearby TWIs. *Id.* at 293-295, 315-17.

²⁰⁶ See 2013 DEGREE BOOK, *supra* note 84, at 16-24.

²⁰⁷ See *id.*

²⁰⁸ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

²⁰⁹ See 2013 DEGREE BOOK, *supra* note 84, at 16-24.

²¹⁰ See NCES IPEDS Data Center, COMPLETION DATA (2011-2012).

²¹¹ See generally Pls.' App. 2 (summarizing the procedural history and remedies in *Knight* litigation).

The court in *Knight* explicitly considered the duplicative nature of the proposed engineering program at AAMU, but ultimately decided that high demand alone would attract white students to AAMU: “a quality engineering program at an HBI can also attract significant numbers of white students even when there is a high-quality, proximate PWI”.²¹² *Knight II*, 900 F. Supp. at 316. As discussed above, the 2011-2012 statistics on student completion in engineering programs at AAMU and UAH disprove *Knight*’s prediction that high-demand programs will attract other-race students even when duplicated at proximate TWIs.

The other remedial programs specifically ordered in *Knight* were similarly duplicative of programming at proximate TWIs: AAMU was given preference for creating new teacher education programs, but *Knight* allowed the proximate TWI to continue its already existing education programs, *id.* at 293-95, 315-17, 371-72; ASU would receive enhancement funds to develop an allied health program even though a proximate TWI had one program in this area, *id.* at 306, 370-71; ASU would have sole authority in Montgomery to offer a Masters in Accounting for a period of five years, after which time TWIs could duplicate the degree program. *Id.* at 371-72. Moreover, the court’s mandate that general preference be given to HBIs in developing new programs from 1991-1995 only emphasized that these programs be in “high-demand” and notably did not require that the new programs be non-duplicative. *Knight I*, 787 F. Supp. at 1380. In sum, *Knight*’s remedial decree failed to eliminate program duplication and failed to strategically add programs designed to enhance each HBI’s unique institutional identity.

²¹² The 1995 remedial decree does mandate that AAMU and UAH meet to coordinate their programs to minimize duplication, but also emphasizes that accreditation concerns should have ultimate priority. See *Knight II*, 900 F. Supp. at 371.

E. In rare circumstances, extremely high-demand and competitive professional programs offer strong desegregative potential for the HBIs – even when duplicated.

In a few rare circumstances, it may be that extremely high-demand and competitive programs at the HBIs still offer desegregative potential, even if those programs are duplicated at a TWI. This may be true where the demand for the program far exceeds the slots for admission and where the other institution which is offering that program is also a flagship institution with higher admissions standards.

For example, Morgan offers three graduate-level programs in architecture.²¹³ In 2013, 47.4% of the students enrolled in the Masters of Architecture program at Morgan identified as white. More importantly, approximately 72.7% of the students enrolled in the Masters in Landscape Architecture are white. In addition, there are more students enrolled in the bachelors program at Morgan than at the flagship, UMCP, highlighting the fact that the architecture program at Morgan is extremely high-demand. Together, the architecture programs at Morgan enrolled 38 students in 2013 who identified as white, which is approximately 42% of the total enrollment in those programs. This highlights the desegregative potential of *extremely* high-demand programs where the duplicated program is *only* offered at a competitive flagship institution where admission is highly competitive.

2013 White Student Enrollment in Undergraduate And Graduate Architecture Programs At Morgan State University and University Of Maryland College Park ("UMCP")

	Morgan State Total Enrollment	Morgan State White Enrollment	Morgan State % White Enrollment	UMCP Total Enrollment	UMCP White Enrollment	UMCP % White Enrollment

²¹³ Morgan and UMCP both offer a Masters in Landscape Architecture; a Masters in City, Community and Regional Planning and Architecture; and a general Masters in Architecture.

Bachelors - Architecture	259	35	13.5%	177	99	55.9%
Bachelors - Landscape Architecture	N/A	N/A	N/A	49	22	44.9%
Masters - Architecture	38	18	47.4%	64	42	65.6%
Masters - Landscape Architecture	22	16	72.7%	27	21	77.8%
Masters Architecture, City/Community / Regional Planning	30	4	13.3%	83	33	39.8%
Total	349	73	20.9%	400	217	54.3% ²¹⁴

This might also account for the high level of diversity in the UMES pharmacy program, which is also offered at the University of Maryland Baltimore (“UMB”). The UMES program is therefore unique to the region, but not unique in the state. As demonstrated by the table below, the level of white enrollment in the Doctorate of Pharmacy at UMES is nearly the equivalent of the percentage of white enrollment at UMB, although the overall enrollment at UMB is still higher.

2013 White Student Enrollment in Pharmacy Programs at University of Maryland Eastern Shore (“UMES”) and University of Maryland Baltimore (“UMB”)

²¹⁴ 2013 Undergraduate and Graduate Enrollment by Institution by Degree Program Provided By Maryland Higher Education Commission.

	UMES Total Enrollment	UMES White Enrollment	UMES % White Enrollment	UMB Total Enrollment	UMB White Enrollment	UMB % White Enrollment
Doctorate	166	49	29.5%	638	210	32.9% ²¹⁵

The enrollment demographics within these programs in Maryland may suggest that selected programs which are prestigious and high-demand may offer unusually strong desegregative potential for an HBI. While there are very few such programs, law is one example of a degree which is consistently both extremely high-demand and extremely competitive. As demonstrated by the table below, in many states, a law program at an HBI may attract meaningful levels of white enrollment even when there is another law degree available at a geographically proximate TWI.

Law Degrees Awarded to White Students at HBIs and Proximate TWIs 2012 – 2013

Institution	Total Degrees Awarded	Degrees Earned By White Students	% Degrees Earned By White Students
Louisiana			
Southern University Law Center (Baton Rouge)	217	73	33.6%
LSU Baton Rouge Paul Herbert Law Center (Baton Rouge)	218	157	72.0%
North Carolina			

²¹⁵ *Id.*

North Carolina Central University (NCCU)	167	66	39.5%
University Of North Carolina Law School (UNC Chapel Hill)	247	116	47.0%
Florida			
Florida Agricultural & Mechanical University (FAMU)	224	77	34.4%
Florida State University (FSU)	239	179	74.9%
Texas			
Texas Southern University (TSU)	161	31	19.3%
University Of Houston Law Center (Houston)	272	166	61.0% ²¹⁶

Together, the experience in these states seems to imply that in limited circumstances, a highly desirable *and* highly competitive degree may offer strong desegregative potential in spite of the fact that the program is duplicated. This has worked with respect to degrees in fields like architecture, pharmacy, and law but is less successful in fields such as engineering and business administration.

F. Joint programs can reinforce the desegregative effects achieved through other remedies, but on their own may not desegregate an institution.

Joint programs between a TWI and HBI may increase other-race enrollment at the HBI and may reinforce the desegregative effects achieved through other remedial measures. This is

²¹⁶ See NCES IPEDS Data Center, COMPLETION DATA (2012-2013).

particularly true where a joint graduate degree complements an established programmatic niche at an HBI which consists primarily of undergraduate programs.

However, the experience in Alabama demonstrates some of the limitations of joint or cooperative programming in terms of attracting other-race students to an HBI.²¹⁷ The court in Alabama encouraged cooperative programming between the schools in such programs as business, education, and allied health. *Knight I*, 787 F. Supp. at 1329-31, 1379-81; *Knight II*, 900 F. Supp. at 299-300. However, the cooperative arrangements described in *Knight* did not eliminate the duplicative degree programs between the institutions, but merely facilitated voluntary cross-enrollment and required some business and education majors to cross-enroll in two courses at the other institution. *Knight II*, 900 F. Supp. at 299-300.

These programs did not significantly increase white enrollment at the HBI: only 30 students at Auburn University at Montgomery (“AUM”), a TWI, enrolled in a course at ASU (an HBI) in the 1995 spring semester, and the court does not specify how many of these 30 students were white. *Id.* at 300. While the court in *Knight* interpreted these numbers to signify that cooperative programming offered some potential for desegregation, *id.*, current statistics that indicate ongoing racial identifiability between AUM and ASU demonstrate *Knight* erred in over-relying on such cooperative arrangements to desegregate the campuses. The enrollment statistics – AAMU with 5.1% white enrollment and ASU with 3.4% white enrollment – show that these cooperative programs have not sufficiently increased AAMU’s and ASU’s ability to attract other-race students.²¹⁸

²¹⁷ See generally Pls.’ App. 2 (summarizing the procedural history and remedies in *Knight* litigation).

²¹⁸ See ALABAMA STUDENT DATABASE.

G. Institutional mergers may have transformative desegregative potential and should be given serious consideration.

The courts have recognized that in specific circumstances, unnecessary program duplication may require an assessment of whether the maintenance of multiple institutions within an overlapping service area perpetuates segregation. Even *Fordice* anticipated the possibility that closing or merging institutions might be required in order to remedy the vestiges of discrimination in Mississippi's system of higher education. *Fordice*, 505 U.S. at 741-43 (“closure of one or more institutions would decrease the discriminatory effects of the present system” but the court was unable to say on the present record whether such action was constitutionally required).

On remand, the court in *Ayers* found that “the most segregative aspect of the State system of higher education is the maintenance of eight universities with differential admissions standards between the HWIs and HBIs, thereby maintaining the racial identifiability of the universities.” *Ayers II*, 879 F. Supp. at 1490. In addition to addressing admission policies, the district court required an institutional study to determine if institutional merger of Delta State University and MVSU was necessary to eliminate duplication in that region. *See id.* at 1495. While the court ultimately accepted the conclusion that merger was impracticable, the experience in Mississippi confirms that there may in fact be circumstances in which such a remedy may be required.²¹⁹

The experience in Tennessee also demonstrates that in certain circumstances institutional merger may be practicable, educationally sound, and necessary to remedy the vestiges of past

²¹⁹ *See generally* Pls.’ App. 4 (summarizing the procedural history and remedies in *Ayers* litigation).

discrimination in spite of anticipated disruption to the system.²²⁰ The plaintiffs in the original case sought to enjoin the proposed construction and expansion of the traditionally white University of Tennessee Nashville (“UTN”). *Sanders v. Ellington*, 288 F. Supp. 937 (M.D. Tenn. 1968).²²¹ The plaintiffs alleged, *inter alia*, that the State maintained racially segregated institutions contrary to the Fourteenth Amendment, and that the proposed expansion of UTN would perpetuate racial disparities between UTN and TSU. *Id.* at 939. The district court did not initially grant the injunction, but found that a dual system of higher education had been established by law and that Tennessee had failed to dismantle such a system by instituting race neutral admissions. *See id.* at 942-43.

The court held the State had an affirmative duty to dismantle its dual system of higher education and required a plan to desegregate higher education institutions across the state. *Id.* From 1968-76, the defendants submitted various plans and progress reports. *See Geier v. Blanton*, 427 F. Supp. 644, 646-56 (M.D. Tenn. 1977). The court repeatedly found that impermissible racial segregation continued to exist in Nashville at UTN and TSU. *See id.* The court directed defendants to revise their desegregation plans, emphasizing that the defendants ensure a “substantial white presence on the [TSU] campus”. *Id.* at 654 (internal quotation marks omitted). When satisfactory progress still had not been made by 1974, the court transferred all of the graduate educational programs to TSU, observing the most effective method of desegregating TSU appeared to be “the exclusive allocation of programs to it.” *Id.* at 649.

²²⁰ *See generally* Pls.’ App. 5 (summarizing the procedural history and remedies in *Geier* litigation).

²²¹ While the early decisions in *Geier* pre-date *Fordice*, the history is relevant to the determination that previous efforts to desegregate the HBI and TWI in Nashville had been unsuccessful and necessitated merger.

Given the lack of progress desegregating TSU, the court invoked its equitable powers to mandate a merger. *Id.* at 661. Previous reliance on joint, cooperative, and exclusive programs had not eliminated the competition between the schools. *Id.* at 656. Desegregation was stymied by the lack of centralized authority to resolve ongoing disagreements about program allocation, and the Tennessee Higher Education Committee tended to defer to the politically powerful UTN. *Id.* 656-57. Based on the educational and economic benefits of merger, most of the experts agreed that merger was the best long-range solution for desegregating the Nashville area. *Id.* at 657-59. The type of students that TSU needed to attract for a more diverse student enrollment – adult students who primarily commuted and took evening courses – were the type of students that UTN served. *Id.* at 652. In 1984, the parties entered a stipulation and settlement agreement merging UTN under TSU, which was later upheld by the Sixth Circuit. *See Geier v. Alexander*, 593 F. Supp. 1263, *aff'd*, 801 F.2d 799 (6th Cir. 1986).

The courts concede that institutional merger may be a “drastic” remedy, but it may offer one of the most effective ways of remedying the systemic competition fostered by unnecessary program duplication. *See Geier*, 427 F. Supp. at 660; *Ayers II*, 879 F. Supp. at 1490. The Tennessee district court noted that following the merger, TSU did see a drop in white student enrollment and white faculty. *Geier*, 593 F. Supp. at 1266. It found the deterioration at TSU “particularly disheartening,” observing that prior to the merger, black first-time freshmen represented 69.7% in 1976 but increased to 90.2% by 1983. *Id.* Yet the court did *not* reverse course. Instead, the district court retained jurisdiction to effectuate the decree and “modify the remedies if found to be inefficacious.” *Id.* at 1267. Today, TSU has an integrated campus with 24.5% white enrollment in fall 2013.²²² *See Pls.’ App.* 20.

²²² *See* TENNESSEE FACT BOOK, *supra* note 72.

The recent reorganization and restructuring of the higher education system in Georgia confirms that institutional merger and systemic realignment can be practicable and sound educational policy independent of the obligation to desegregate a system of higher education. While desegregation played no role in the Georgia mergers, program duplication and institutional duplication were considerations in the reorganization of that state's system of higher education.²²³ Starting in 2011, the University System of Georgia ("USG") has undertaken four mergers (consolidating eight institutions into four).²²⁴ Those mergers were approved in 2012,²²⁵ and USG recently approved two more mergers in January 2015 which will begin over the next year.²²⁶ The mergers have been substantial in scope and have varied in terms of the relationships between the merged institutions.²²⁷ Merged institutions have consistently been geographically proximate, but there is variation as to the degree of similarity between the two merged universities with regard to each university's scope, mission, and student population served.²²⁸

²²³ See *Regents Approve Principles for Consolidation of Institutions*, UNIVERSITY SYSTEM OF GEORGIA NEWSROOM, Nov. 8, 2011, http://www.usg.edu/news/release/regents_approve_principles_for_consolidation_of_institutions; *Serving our Students, Serving the State*, UNIVERSITY SYSTEM OF GEORGIA, <http://www.usg.edu/consolidation/> (last modified Feb. 17, 2015); GEORGIA BOARD OF REGENTS, RECOMMENDED CONSOLIDATIONS, UNIVERSITY SYSTEM OF GEORGIA, <http://www.usg.edu/docs/consolidations.pdf> (detailing mergers approved in 2012); GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE II, UNIVERSITY SYSTEM OF GEORGIA, Nov. 12, 2013, <http://www.usg.edu/docs/consolidations.pdf> (detailing merger finalized in 2015 between Kennesaw State University and Southern Polytechnic State University); GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE III, UNIVERSITY SYSTEM OF GEORGIA, Jan. 6, 2015, http://www.usg.edu/docs/GA_State-GPC_Consolidation.pdf (detailing the merger approved in 2015 between Georgia State University and Georgia Perimeter College).

²²⁴ See Laura Diamond, *Historic vote merges eight Georgia colleges into four*, ATLANTIC J. CONST., Jan. 8, 2013, <http://www.ajc.com/news/news/local/regents-give-final-ok-to-merge-georgia-colleges/nTqH4/>.

²²⁵ *Id.*

²²⁶ See *Board Approves Merger of Georgia State, Georgia Perimeter Colleges*, DIVERSE ISSUES IN HIGHER EDUCATION, Jan. 6, 2015, <http://diverseeducation.com/article/68701/>. See also *Report: Plans to Merge Georgia State U. With a Community College*, INSIDE HIGHER ED., Jan. 6, 2015, <https://www.insidehighered.com/quicktakes/2015/01/06/report-plans-merge-georgia-state-u-community-college>.

²²⁷ See GEORGIA BOARD OF REGENTS, RECOMMENDED CONSOLIDATIONS, *supra* note 215; GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE III, *supra* note 215. See also Diamond, *supra* note 216; *Report: Plans to Merge Georgia State U. With a Community College*, *supra* note 218.

²²⁸ *Id.*

Georgia merged institutions with similar programmatic missions, but it has also merged a four-year college with a two-year college²²⁹ and merged schools with distinctly different institutional missions and student populations (ranging in their level of college-preparedness).²³⁰ The scope and impact of the mergers has been significant, as demonstrated by the following numbers from the 2012 mergers: “the affected campuses teach more than 36,500 students – including more than 4,700 from metro Atlanta – and represent nearly 12% of the system’s total enrollment.”²³¹ The 2012 mergers decreased the number of state universities from 35 to 31 (eight institutions merged into four institutions).²³² With the two more mergers recently approved, the number of projected institutions will be under 30.²³³

In planning this systemic realignment, USG identified a six guiding principles which offer guidance here.²³⁴ These include the avoidance of the duplication of academic programs, the potential for economies of scale, and the objective of streamlining administrative services and maintaining quality.²³⁵ USG anticipates significant cost savings as a result of the consolidations, as well as administrative efficiency, economies of scale, increasing more comprehensive course

²²⁹ *Report: Plans to Merge Georgia State U. With a Community College*, *supra* note 218.

²³⁰ See GEORGIA BOARD OF REGENTS, RECOMMENDED CONSOLIDATIONS, *supra* note 215, at 12, 15; *Report: Plans to Merge Georgia State U. With a Community College*, *supra* note 218; *Board Approves Merger of Georgia State, Georgia Perimeter Colleges*, *supra* note 218.

²³¹ See *Diamond*, *supra* note 216.

²³² *Id.*

²³³ See *Board Approves Merger of Georgia State, Georgia Perimeter Colleges*, *supra* note 215; *Report: Plans to Merge Georgia State U. With a Community College*, *supra* note 218.

²³⁴ See *Serving our Students, Serving the State*, *supra* note 215. See also GEORGIA BOARD OF REGENTS, RECOMMENDED CONSOLIDATIONS, *supra* note 215, at 3; GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE II, *supra* note 215, at 3; GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE III, *supra* note 215, at 3.

²³⁵ See *id.*

programming, and consolidating resources to enhance responsiveness to regional needs.²³⁶ The two most recently approved mergers particularly emphasized that eliminating program duplication was a motivating factor for the merger.²³⁷ Additional anticipated benefits include increased collaboration between institutions, enhanced responsiveness to regional economic and development needs, and a coordinated and strategic approach to higher education.²³⁸

In fact, in 2011 the Maryland Board of Regents prepared a report analyzing a potential merger between the UMCP and UMB.²³⁹ That potential merger did not anticipate the absorption of one institution into another; instead it was proposed that a merged institution would improve the competitiveness of both.²⁴⁰ In reviewing that proposal, the State identified a number of considerations and criteria to assess the impact on the University System of Maryland (“USM”).²⁴¹ Those included the mission and quality of learning; the quality, reputation, and rankings of institutions; cultural and locational issues; and cost and administrative issues.²⁴²

Ultimately, the Board rejected the proposed merger after analyzing the projected risks and benefits.²⁴³ Even so, the consideration of this merger remains useful as an example of the

²³⁶ See *Serving our Students, Serving the State*, *supra* note 215. See also GEORGIA BOARD OF REGENTS, RECOMMENDED CONSOLIDATIONS, *supra* note 215, at 3,6, 8-9, 11-12, 14-15; GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE II, *supra* note 215, at 5; GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE III, *supra* note 215, at 5.

²³⁷ See GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE II, *supra* note 215, at 5; GEORGIA BOARD OF REGENTS, USG CONSOLIDATIONS: PHASE III, *supra* note 215, at 5.

²³⁸ *Regents Approve Principles for Consolidation of Institutions*, *supra* note 215.

²³⁹ UNIVERSITY SYSTEM OF MARYLAND BOARD OF REGENTS, RESPONSE TO THE 2011 JOINT CHAIRMEN’S LANGUAGE: BOARD OF REGENTS REPORT ON THE STUDY EXAMINING THE ADVANTAGES AND DISADVANTAGES OF MERGING UNIVERSITY OF MARYLAND, COLLEGE PARK AND UNIVERSITY OF MARYLAND, BALTIMORE, (Dec. 9, 2011), <http://www.usmd.edu/BORPortal/MergerStudy/UMB-UMCPMergerReport.pdf>.

²⁴⁰ *Id.* at 6.

²⁴¹ *Id.* at 2, A4-A7.

²⁴² *Id.*

²⁴³ *Id.* at 3, 29-31.

extent to which the disruption caused by a merger may be analyzed and managed. It is important to note that the purpose of that proposed merger was not desegregation, and merger may be more appropriate in circumstances where prior efforts to eliminate duplication may have failed.

VI. Eliminating unnecessary duplication is practicable and sound educational policy.

Courts must assess the practicability and soundness of educational practices when determining remedies as well as liability. *United States v. Louisiana*, 9 F.3d 1159 at 1164 (5th Cir. 1993), *adopted by Ayers*, 111 F.3d at 1192-93. However, as addressed above, under *Fordice* the state bears the burden of determining whether the segregative effects of a traceable policy or practice can be remedied through practicable and educationally sound practices. *Knight*, 14 F.3d at 1551-52 (noting that the burden with respect to the second and third inquiries under the *Fordice* test lies with defendants). In order for Maryland to show that existing duplication may not practicably be eliminated, it must show that its legitimate educational objectives cannot be accomplished through “less segregative means.”²⁴⁴ Again, this is a “substantial burden.” *Ayers*, 111 F.3d at 1213.

Courts will consider whether a remedy furthers higher education goals regarding college participation rates and quality of educational programs; aids in the creation of stronger institutions; provides incentives to “do right” with minimal court oversight; takes into account and works within normal political, educational, and administrative processes as far as possible; minimizes the collateral and unintended effects on a state’s system of higher education as far as possible; acknowledges that achieving and maintaining accreditation is crucial to institutions;

²⁴⁴ Memorandum Opinion at 23-24 (citing *Fordice*, 505 U.S. at 744 (O’Connor, J., concurring)).

maintains integration at the TWIs; and brings the state and its system of higher education into compliance with the Constitution, Title VI, and *Fordice*. See *Knight II*, 900 F. Supp. at 284-85.

Practicability contemplates not only the associated costs and benefits of a proposed remedy, but also the risks and returns. *Knight II*, 900 F. Supp. at 285. The courts have determined that a practicable remedy is that most likely to achieve the remedial purpose into the future. *Id.* The court should consider the “full range of all possible alternative remedies, including closure, when determining which would achieve the greatest possible reduction in the identified segregative effects.” *Knight*, 14 F.3d at 1541 (citing *Fordice*, 112 S. Ct. at 2743).

Remedies which may disrupt the system or produce systemic inefficiencies are not *per se* impracticable or inconsistent with sound educational policy. For example, in Alabama, the Eleventh Circuit reversed the lower court holding that the allocation of land grant funds between Auburn University and AAMU did not constitute a vestige of discrimination. See *id.* at 1551-52. The State argued that a remedy requiring the partial reallocation of land grant funds would lead to a research and extension system “somewhat less efficient than the one currently operating under Auburn’s monopoly”. *Id.* Even so, the Eleventh Circuit observed in that:

“The [district] court’s finding that Alabama’s current land grant system is ‘the most economically efficient means of delivering the services needed in aid of the state’s agricultural interest, does not necessarily resolve the question that is relevant under *Fordice*: whether, from among the full range of alternative remedies, including plaintiffs’ proposed remedy and closure, there are any practicable and educationally sound alternative remedies that would reduce or dismantle the identified segregative effects. In other words, even if it were true that partial reallocation of the land grant funds would result in a research and extension system somewhat less efficient than the one currently operating under Auburn’s monopoly, *it would not inescapably follow that such inefficiency would render the proposed modified system impracticable or educationally unsound.*”

Id. at 1551 (emphasis added) (internal citations omitted). Accordingly, the case was remanded to the district court to determine whether Auburn’s disproportionate share of land grant funds had ongoing segregative effects on student choice, and whether the full range of alternative remedies could be addressed through practicable and sound educational practices. *See id.* at 1551-52. When conducting that analysis, the Fifth Circuit reiterated that “the burden of proof lies with defendants.” *Id.* at 1552.

While university systems differ from K-12 education in important ways, the Supreme Court recognized that where a school district has been deliberately constructed and maintained to enforce racial segregation, a remedy may be “administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.” *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28 (1971). There are limits to “how far a court can go” in ordering a remedy, but the objective is to dismantle the dual school system. *Id.* In the end, a remedial plan designed to establish a unitary system of education will be judged by its effectiveness in correcting past constitutional violations. *See id.* at 25.

VII. In addition to remedying the effects of past duplication, Plaintiffs seek revision of the program approval process to prevent unnecessary duplication moving forward and a process to enforce compliance with the remedial plan.

Three sections of Maryland’s Code are relevant for assessing the MHEC’s process for regulating program duplication: Md. Code Ann., Educ. § 11-206 (“New, modified, discontinued duplicative programming”); Md. Code Ann., Educ. § 11-206.1 (“Proposals to establish or abolish programs”); Code of Maryland Regulations (“COMAR”) 13B.02.03.09. As noted above, the

Court has already determined that the regulatory process outlined in those statutes and regulations have essentially exacerbated the duplication which contributes to the racial identifiability of Maryland's HBIs.²⁴⁵

The current statutory regime gives MHEC the authority to assess and eliminate existing *unreasonable* duplication – as opposed to unnecessary duplication – within Maryland's higher education system, but it does not specifically mandate that MHEC do so. Under Md. Code Ann., Educ. §11-206(e)(4), MHEC “*may* make a determination that an *unreasonable* duplication of programs exists on its own initiative or after receipt of a request for determination from any directly affected public institution of postsecondary education.” (emphasis added). This power is permissive rather than mandatory, as reflected by the repeated use of the term “*may*” within the statute itself. When reviewing unnecessary duplication, the MHEC “*may*” take a number of steps including requiring any affected governing board to engage in negotiations or submit a plan to resolve the duplication. Md. Code Ann., Educ. 11-206(5)(i). Moreover, if MHEC is not satisfied by the plan it “*may* then seek to eliminate the duplication by revoking the authority of a public institution of postsecondary education to offer the unreasonably duplicative program.” Md. Code Ann., Educ. §11-206(5)(iv).

Maryland's regulations also fail to protect against discriminatory unnecessary program duplication. First, it uses the term “*unreasonable*” rather than “*unnecessary*” when describing duplicative programming to be eliminated, which suggests a different standard than that outlined in *Fordice*. See COMAR 13B.02.03.09. Furthermore, it is unresponsive to existing unnecessary duplication and is focused exclusively on prospective duplication, ignoring a state's obligation to

²⁴⁵ Memorandum Opinion at 50.

address existing unnecessary program duplication that was produced as a result of traceable policies or practices. As the Court observed, Maryland’s mechanisms are only “forward facing – they do not address the substantial duplication that existed since, essentially, the beginning of Maryland’s system of public higher education.”²⁴⁶

Perhaps more problematically, the current process functions independently of the State’s affirmative obligation to avoid unnecessary duplication which perpetuates ongoing segregative effects. In determining whether a program is unreasonably duplicative, MHEC is to consider a number of factors:

C. Determination of Duplication

- (1) In determining whether a program is unreasonably duplicative, the Secretary shall consider:
 - (a) The degree to be awarded;
 - (b) The area of specialization;
 - (c) The purpose or objectives of the program to be offered;
 - (d) The specific academic content of the program;
 - (e) Evidence of equivalent competencies of the proposed program in comparison to existing programs; and
 - (f) An analysis of the market demand for the program.
- (2) The analysis shall include an examination of factors, including:
 - (a) Role and mission;
 - (b) Accessibility;
 - (c) Alternative means of educational delivery including distance education;
 - (d) Analysis of enrollment characteristics;
 - (e) Residency requirements;
 - (f) Admission requirements; and
 - (g) Educational justification for the dual operation of programs broadly similar to unique or high-demand programs at HBIs.

COMAR 13B.02.03.09(C).

As the Court noted, in 2012 Maryland amended its regulations to specifically include an analysis of the “[e]ducational justification for the dual operation of programs which are broadly

²⁴⁶ *Id.*

similar to unique or high-demand programs at HBIs,' COMAR 13B.02.02.09(C)(2)(g)."²⁴⁷ This revised regulatory framework permits the State to approve a proposed program which has an "educational justification" rather than requiring it to consider whether there is a less segregative alternative available to meet the State's legitimate educational needs which is practicable and consistent with sound educational policy. COMAR 13B.02.03.09(C)(2)(g).

This framework creates a tension with the State's affirmative obligation under *Fordice*, which requires that once a traceable policy has been determined to have ongoing segregative effects, the State must assess whether there are practicable and educationally sound alternatives which have less segregative effects. *Fordice*, 505 U.S. at 731. The Court specifically rejected Maryland's approach to program approval, observing that "[t]o the extent the State offered any sound educational justification for existing duplication, it consistently focused on 'good' reasons for approving a particular duplicative program rather than a thorough analysis of whether there were less segregative means of obtaining the same goal as required by *Fordice*."²⁴⁸

In addition, the regulation does not specify how to balance or weigh the factors that MHEC is permitted to assess. Because this framework permits the State to consider the role and mission when analyzing duplication, COMAR 13B.02.03.09(C)(2)(a), there is little protection against mission creep between institutions. As the Court noted, "MHEC itself has recognized that '[m]ission creep' is a problem across the state's institutions of higher learning, undermining the competitiveness and uniqueness of each institution, not because the state's mission-

²⁴⁷ *Id.* at 52, n.12.

²⁴⁸ *Id.* at 56.

assignment policies need to be reformed, but because the state is accepting ‘program proposals exceed[ing] the boundaries of [institutional] missions.’”²⁴⁹

The 2001 consent decree in Tennessee offers one example of a revised program approval process specifically designed to protect the exclusivity of an HBI’s programmatic offerings.²⁵⁰ That decree obligated the Tennessee Board of Regents and the Tennessee Higher Education Commission to approve and terminate programs consistent with the state’s programming plan. *Geier v. Sundquist*, 128 F. Supp. 2d 519 at 534 (M.D. Tenn. 2001). In addition, the decree specifically required that any new program proposed by an institution be assessed to determine its potential impact on the desegregation of Middle Tennessee institutions. *Id.* The consent decree provided that:

1. In the exercise of these procedures, the [Tennessee Board of Regents] and [Tennessee Higher Education Commission] shall require of any new program proposal that an assessment of the program’s potential impact on the desegregation of Middle Tennessee institutions (universities and two-year schools) be made and that *no negative effect* be discernible. Program approvals must be consistent with an institution’s mission and not infringe or diminish the educational mission of any other institution.

Id. (emphasis added). The decree also required the State to “disclose to the parties those requirements it intends to put in place to ensure that a desegregation impact analysis is performed.” *Id.* at 534-35.

A desegregation impact analysis similar to that agreed to in Tennessee may offer greater protection against unnecessary duplication for the foreseeable future. At the very least, the

²⁴⁹ *Id.* at 29 (citing MHEC “Review of Mission Statements” (Jan. 11, 2012), PTX 866, at 19).

²⁵⁰ *See* Pls.’ App. 5 (summarizing the procedural history and remedies in *Geier* litigation).

program approval process in Maryland requires a more thorough analysis of unnecessary program duplication which takes into account the State's obligation to consider the extent to which a request by a TWI to offer a new program may not only duplicate a specific program or degree, but might infringe upon the programmatic niche established for an HBI.

To a large extent, much of the mission creep in Maryland has been produced by the ability of TWIs to offer programming which is similar to – even if not identical to – programs already offered by a geographically proximate HBI. One example of this is that despite the fact that Morgan was specifically authorized to specialize in computer engineering, MHEC permitted UMBC to offer a degree in electrical engineering which allowed that institution to compete for students who do not necessarily differentiate between specific degrees within a field or curricular niche.

Plaintiffs also request that an Independent Monitor or Monitoring Committee be established to monitor the program approval process and ensure full compliance with, and implementation of, the remedial proposal. Either a Monitoring Committee or an Independent Monitor was part of the remedial proposals in Mississippi (*Ayers II*, 879 F. Supp. at 1494 (Monitoring Committee)), Alabama (*Knight II*, 900 F. Supp. at 368-69 (Long Term Planning and Oversight Committee)), Louisiana (Louisiana Agreement at 24-25 ¶ 24 (Monitoring Committee)), and Tennessee (*Geier*, 128 F. Supp. 2d at 546 (Monitor)). Furthermore, given Maryland's longstanding tolerance for unnecessary duplication, it is essential for Plaintiffs to have the ability to challenge or appeal the approval of programs in court where it is believed that the program will unnecessarily duplicate a program or compromise its established and recognized curricular niche.

PLAINTIFFS' REMEDIAL RECOMMENDATIONS TO DISMANTLE MARYLAND'S DUAL SYSTEM OF HIGHER EDUCATION

Consistent with this Court's order and *Fordice*, Plaintiffs propose a variety of strategies to desegregate Maryland's HBIs. The recommendations of Dr. Allen and Dr. Conrad are summarized below, and are described in Appendix 1 to this document. As previewed above, given the finding that the State's program approval process failed to prevent (and indeed exacerbated) the segregation at Maryland's HBIs caused by unnecessary duplication, Plaintiffs seek first to reform the procedures by which institutions seek approval for the development and implementation of new programs, and to establish adequate mechanisms to ensure compliance with the remedial plan and prevent further unnecessary duplication.

Plaintiffs specifically recommend the following strategies to establish unique programmatic niches for Maryland's HBIs:

- Select enhancement of existing programs within each HBI's core areas of competency;
- Addition of new unique, high-demand programs at the HBIs consistent with identified programmatic niches;
- Targeted transfer and/or merger of programs as needed to refine those areas of expertise;
- Institutional merger of the University of Baltimore into Morgan State;
- Joint or collaborative programs between the HBIs and TWIs where appropriate; and
- A reconfigured role for University of Maryland University College and the delivery of on-line degrees within Maryland's public system of higher education.

To the extent Plaintiffs seek to create distinctive institutional identities by establishing programmatic niches and programmatic realignment, Plaintiffs offer a practicable and

educationally sound approach to desegregating Maryland's HBIs. Establishing distinctive niches of non-core, high-demand programs is essential to developing an institutional identity at the HBIs that will attract students of all races. Within each proposed niche, expansion of program offerings must occur at all four of the HBIs at the bachelors and masters degree levels.

The programmatic niches recommended for each institution by Dr. Allen and Dr. Conrad were informed by information submitted by the presidents of each of the HBIs. In addition, they anticipate the local and regional labor market demand and consider student demand. The specific programmatic niches for each HBI are described in more detail in Appendix 1, but are summarized below:

Morgan State University:

- Institutional merger of UB into Morgan
- Engineering and the Sciences
- Business and Entrepreneurship
- Urban Environment, Community Health, and Sustainability Studies

Coppin State University:

- Applied Aging Studies
- Criminal/Public Justice Administration/Public Safety and Forensic Studies

University of Maryland Eastern Shore:

- Engineering and Aviation Sciences
- Agriculture and Environmental Sciences
- Pharmacy, Nursing, and Physical Therapy

Bowie State University:

- Computer and Information Sciences/Networking Administration
- Nursing and Social Work

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court order into effect the remedial plan set forth in Appendix 1.

Dated: May 5, 2015

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THE COALITION FOR EQUITY AND
EXCELLENCE IN MARYLAND HIGHER
EDUCATION, INC., et al.,

Plaintiffs,

v.

Civil No. 06-2773-CCB

MARYLAND HIGHER EDUCATION
COMMISSION, et al.,

Defendants.

REMEDIAL PROPOSAL PREPARED BY

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THREE STRATEGIES FOR ELIMINATING THE VESTIGES OF MARYLAND'S DUAL SYSTEM

Three overarching strategies are proposed to eliminate the remaining vestiges of segregation in Maryland's system of higher education. The first strategy, which will require the State to restructure the process by which institutions propose and secure approval for new programs, is to develop a program approval process that ensures ongoing progress—from the present to the foreseeable future—toward Maryland becoming a unitary system of higher education by avoiding the introduction of new programs in the TWIs that unnecessarily duplicate programs at geographically proximate HBIs.

The second strategy is to cultivate the institutional identities of Maryland's HBIs by creating distinctive programmatic niches at each institution through establishing new high-demand programs, eliminating programs at the TWIs, and selectively transferring high-demand programs from TWIs to the HBIs within these niches. In so doing, Maryland must address existing inequality with respect to the number and degree level of program offerings between the TWIs and the HBIs. To these ends, programmatic niches are proposed, and for each niche new degree programs—especially high-demand, unique programs—that would bring distinctiveness to the program offerings at the HBIs that are proposed. It is also recommended that specific programs be phased out at the TWIs and transferred to the HBIs. Moreover, it is proposed that the University of Baltimore be merged with Morgan State University to ensure that Morgan's program offerings—at the bachelors, masters, and doctoral level—are consistent with its designation as the “premier public urban research university” in Maryland.

Within the programmatic niches proposed, expansion of program offerings must occur at all four of Maryland's HBIs at both the bachelors and masters levels. Moreover, both Morgan State and UMES should have their respective institutional identities enhanced at the doctoral level by the introduction of new doctoral programs. Finally, it is recommended that any new doctoral programs introduced at Coppin and Bowie should be jointly established with one or more of the three doctoral-granting TWIs in the State of Maryland.¹ It is further recommended that any new doctoral programs introduced at Frostburg State University and St. Mary's should be jointly established with one or more of Maryland's two doctoral-granting HBIs.

Establishing distinctive programmatic niches at Maryland's HBIs—especially programmatic niches which are comprised of unique (not duplicated at geographically proximate TWIs), non-core, high-demand programs—is fundamental to developing institutional identities that go beyond race and, in turn, attract not only white students but students regardless of race. It is these distinctive programmatic niches—as much as the specific programs housed within them—that often attracts students to HBIs. Put another way, students are often attracted to HBIs

¹ An exception should be the proposed Doctor of Nurse Practice (DNP), which has already obtained preliminary approval.

because of the identity of a cluster of unique programs (programmatic niche) which are variously allied and often offer overlapping courses and learning experiences across a broad field of study. (Undergraduate students frequently decide to pursue different majors than they had originally intended when they entered college—such as changing a major from Computer Science to Electrical Engineering.)

In accenting the importance of programmatic niches, it is important to emphasize that even though fewer students enroll in graduate study (at the masters, professional, and doctoral levels) than at the undergraduate level, students across degree levels are more likely to choose to enroll at an institution with a programmatic niche in which they are interested in studying *if* the institutions has distinctive programmatic niches at the masters and doctoral levels (as well as the bachelors level) that are not offered at geographically proximate institutions. Why? Programmatic niches at the graduate and professional levels tend to strengthen not only the institutional identities, but also the reputations of colleges and universities, which in turn enhances the likelihood of white students choosing to attend HBIs at both the undergraduate and graduate levels.

In summary, establishing new programs at the HBIs (especially unique, high-demand programs), eliminating programs at the TWIs that unnecessarily duplicate programs at the HBIs, and transferring high-demand programs from the TWIs to the HBIs—all within distinctive programmatic niches—will go a long way toward advancing a unitary and equal system of higher education in Maryland. In such a system, the HBIs would be able to develop distinctive institutional identities anchored in a meaningful number of unique, high-demand programs and achieve equality with respect to the program offerings at their peer institutions.

The third overarching strategy for desegregating Maryland's dual system is aimed at enhancing the quality of program offerings at the HBIs. To that end, several initiatives are proposed to strengthen program offerings at the HBIs, including the development of joint degree programs with TWIs.

Before elaborating on these three strategies, the consideration of potential programs to be established at or transferred to Maryland's HBIs should be guided by five criteria designed to maximize their effectiveness in desegregating these institutions:

1. Each program under consideration should contribute to strengthening a programmatic niche which enhances the distinctiveness of the institutional identity of the HBI.
2. Decision makers should consider local and regional labor market demand as well as current and long-term opportunities in establishing new programs and transferring programs, while sustaining the viability of programs at the HBIs.

3. There should be current and projected student demand for the program, which must include other-race students.
4. As appropriate, potential programs should complement programs at the same degree level and establish a sustainable pathway across degree levels.
5. Programs should not unnecessarily duplicate those at geographically proximate TWIs.

A. Develop a Program Approval Process that Ensures Progress toward a Unitary System

Program duplication—especially the absence of high-demand, non-core programs at Maryland’s HBIs—continues to be a serious problem in USM and has frustrated efforts to achieve a unitary public system of higher education. Time and time again, substantial progress in attracting white student enrollment—through the presence of unique, high demand programs offered at HBIs—has been reversed by the establishment of broadly similar programs at nearby TWIs. Given the choice between duplicated programs at TWIs and HBIs, white students have consistently chosen to pursue their degrees at TWIs.

Extensive written rules, guidelines and agreements exist which restrict TWIs from the establishment of academic programs that unnecessarily duplicate the offerings of proximate HBIs. Had these rules been strictly observed, applied and enforced by MHEC and the State, USM would today be much closer to desegregation and a unitary system. However, due to lax oversight and failure to restrict program duplication, Maryland has been unable to eliminate vestiges of the prior racially dual system of higher education. Progress has been slow, uneven, and often reversed. For example, Computer Science at Bowie and Business Administration at Morgan initially attracted significant white student enrollments but lost these students when duplicate programs opened at nearby TWIs.

Maryland knows the detrimental consequences of unnecessary program duplication at proximate TWIs with respect to attracting white student enrollment at HBIs. The State is also aware of the many written guidelines and agreements that restrict the creation and approval of such duplicative programs. What the State has lacked is the will and/or the ability to firmly and consistently prevent duplication of HBI academic programs by geographically proximate TWIs.

We therefore recommend creation of a program approval process that will ensure progress towards a racially unitary system of higher education in Maryland. In order to protect against and effectively eliminate program duplication this process must include strong oversight and certification mechanisms. Oversight should be provided by a court-appointed “Special Master” or by an “Experts Committee.” This oversight body should be charged with monitoring

and approving USM actions to create all new, transfer or modified academic programs at TWIs deemed to duplicate academic courses, programs, and programmatic niches or “Centers of Excellence” at HBIs. The oversight body should receive quarterly reports from MHEC and certify compliance with the court order governing program duplication. The initial term for the oversight body would be 15 years with Court option to renew and extend.

B. Cultivate the Institutional Identities of Maryland’s HBIs by Creating Distinctive Programmatic Niches Along with Expanding Program Offerings in These Niches

1. Create Distinctive Programmatic Niches by Establishing New High-Demand Programs

At a minimum, Maryland should establish at each HBI at least two programmatic niches of high-demand programs within five years. Within these niches a minimum of six new high-demand programs (including at least two programs at the graduate level) should be offered—including high-demand programs not offered at geographically proximate TWIs. It is imperative that at least two promising niches be initiated at each of the HBIs in order for them to establish an institutional identity distinct from the TWIs in overlapping service areas. Offering fewer than six new high-demand programs within each of these niches is highly unlikely to ensure that the HBIs have meaningful institutional identities—identities that will draw a diverse student body.

Introducing high-demand programs at the graduate level is important, particularly in professional fields. In the last several decades, masters degrees have become an important part of the landscape of higher education—roughly one masters degree is awarded for every three bachelors degrees. Moreover, masters programs in many professional fields are relatively low-cost compared to bachelors programs.

2. Create Distinctive Programmatic Niches by Eliminating Programs at TWIs and Transferring Programs from TWIs to HBIs

Remedying the vestiges of discrimination in Maryland’s dual system of higher education will require some transfer of programs and elimination of unnecessarily duplicated programs if there is to be a successful transition to a unitary and equal system. Specific programs to be eliminated in the TWIs or transferred from the TWIs to HBIs are proposed in this remedial plan. This plan includes the coordination and collaboration between UMUC and the HBIs to eliminate program duplication by UMUC and with respect to online, distance learning, and blended course and program offerings.

3. Elevate Morgan State University’s Identity as the “Premier Public Urban Research University” in Maryland by Merging the University of Baltimore with Morgan State

C. Enhance Program Offerings at the HBIs

1. Strengthen Current Program Offerings at the HBIs

The quality of existing programs at the HBIs should be assessed and initiatives undertaken to strengthen program quality in light of their revised missions and program offerings.

2. Establish Joint Programs

Joint programs between TWIs and HBIs—especially unique, high-demand programs—can enhance the program offerings at Maryland’s HBIs and increase their other-race enrollment. Where a TWI currently offers a very high-demand program not currently available at a nearby HBI, some consideration should be given to replacing current programs at the TWIs with “joint programs” in which the TWIs and the HBIs collaborate to build on the strengths of the faculty, staff, and facilities of the respective institutions. In most instances, this will require new resources (faculty, staff, student support, and facilities) at the HBIs to ensure that the programs are “joint programs.” While establishing joint programs can make a contribution to desegregation, it is important to emphasize that joint degree programs, by themselves, will clearly not be sufficient to achieve the goal of a desegregated, unitary system of public higher education in Maryland.

PROGRAMMATIC REALIGNMENT AT THE TWO HBIS IN THE BALTIMORE REGION: MORGAN STATE UNIVERSITY AND COPPIN STATE UNIVERSITY

D. Morgan State University: Two Recommendations

The first recommendation is the institutional merger of the University of Baltimore with Morgan. Plaintiffs stress that this recommendation deserves serious consideration by the Court as the most immediate and effective means of correcting the longstanding institutional and program duplication in the Baltimore region. Plaintiffs also propose enhancement of the institutional identity of Morgan by creating distinctive programmatic niches—in concert with expanding program offerings within these niches—that give expression to its designation as Maryland’s “premier public urban research university.”

Recommendation #1: Merge the University of Baltimore with Morgan State University

As observed by the Court, Maryland failed to execute its commitment to “avoid [] unnecessary program duplication” and to create “unique, high-demand programs at HBIs.”² In so doing, the State ignored the “independent segregative effects that unnecessary program duplication has had in Maryland.”³ In order for racial desegregation to occur at the HBIs, they “must offer programs not offered at TWIs.”⁴

Nowhere in Maryland is unnecessary program duplication greater than in the Baltimore region.⁵ In Baltimore alone, seven public institutions of higher education have overlapping service areas and directly compete for students. These institutions include the University of Baltimore, University of Maryland Baltimore County, Towson University, University of Maryland Baltimore, University of Maryland University College and two HBIs: Morgan State University and Coppin State University⁶. Major investments by the state over the past decade—such as expanding UB to include freshmen and sophomores and allowing the duplication of Morgan’s MBA program—only enhanced extensive duplication in the Baltimore area and the racial identifiability of Morgan and Coppin.

If the *de jure* system is to be dismantled, public higher education in this region must be transformed in ways that will reduce the extensive unnecessary program duplication and offer the HBIs programmatic niches and accompanying identities that differentiate them from the HWIs. Only then will they develop institutional identities that go beyond race. It is within this context that Plaintiffs propose the merger of UB with Morgan as the most effective means of dismantling the vestiges of segregation in the Baltimore region.

Combining Morgan with UB will establish Morgan as a comprehensive urban university with a distinctive identity. Although it is identified as the “premier public urban research university” in Maryland, Morgan currently has little mission distinctiveness—much less as an “urban university”—as reflected in its program offerings. Morgan currently offers few high-demand undergraduate and graduate programs that are often offered at many urban universities, and few non-core programs that are not duplicated at one or more of the TWIs in the Baltimore area. Merging UB with Morgan, along with adding select program transfers, would

² 2013 Opinion at 49.

³ *Id.* at 52

⁴ *Id.* at 52-53 (citing Conrad Expert Report II, PTX 70, at 5).

⁵ *See id.* at 45.

⁶ *See Pls.’ App.* 29

establish Morgan as the most distinctive public university in Baltimore, serving students of all races from the baccalaureate to the doctoral level.

By way of illustration, one major area of duplication between the two campuses is business. Both campuses have an extensive array of traditional programs in the field, with UB currently having numerous business specialties. As a single institution, the merged campus would not only be able to offer a full range of traditional business programs, but would also be inclusive enough to support numerous specializations.

In addition to elimination of unnecessary program duplication and the cultivation of a distinctive urban identity at the merged institution, there are a number of other advantages in merging the two campuses:

- The merged institution would be diverse in terms of the racial/ethnic and age composition of the student body and mix of full-time and part-time students. Combining these institutions would allow the merged institution to offer a much wider range of educational experiences for traditional and non-traditional students who would likely be the most racially and ethnically diverse in the state.
- Combining duplicated programs would strengthen the respective programs.
- According to residence data published by the coordinating board, Morgan and UB are the most popular choices of Baltimore residents attending a public four-year campus in Maryland. With the exception of Towson, a relatively small number of Baltimore residents enroll at suburban campuses. Because the appeal of a convenient, accessible urban campus is often strong for many white residents, the merged institution (Morgan) would serve a large, diverse, local student market that would ensure stability and provide for future growth.
- The locations of the two campuses complement one another. Morgan's campus is highly residential, away from downtown and not easily accessible by mass transit. UB is located near the business district and has excellent access to mass transit. Morgan's programs that are attractive but not convenient for working adults could be offered at the downtown site of the merged institution.
- Considerable savings would be realized by merging the campuses. Each campus would no longer need to maintain parallel central administrative infrastructures. Facilities could be coordinated to utilize buildings more efficiently and limit expenditures for duplicative facilities. The savings reallocated to operations and development could be substantial. Merger would contribute to economies of scale not currently possible at two separate institutions.
- Placing both campuses under the Morgan governing board would allow it to prioritize and focus on developing the merged institution. Morgan has benefitted from—and

would continue to benefit from—having its own governing board independent from competing interests.

- A merged campus would be well positioned to attain designation as a Carnegie High Research Activity University. This offers Baltimore an advantage it does not currently have in attracting external funding and professionals to the area.

While even with such a merger there would continue to be several other public campuses in the Baltimore region, the proposed merger of UB with Morgan would establish an institution significantly differentiated from the other public four-year campuses in the region.

Recommendation #2: Create Distinctive Programmatic Niches

Although designated the “premier public urban research university” in Maryland, Morgan State University has little mission distinctiveness as reflected in the relatively modest program offerings across degree levels. To enrich Morgan’s urban mission by making it a much more distinctive institution from the baccalaureate to the doctoral level, its revised mission would include clearly defined programmatic niches and would incorporate new high-demand programs in professional fields related to its urban mission to serve the needs of individuals of all races and contribute to the public good in the Baltimore metropolitan area.

Plaintiffs propose the establishment of three distinct programmatic niches in which to establish high-demand programs (especially high-demand programs that are unique) at the HBIs. For Morgan, programmatic niches in business and entrepreneurship; urban environment, community health, and sustainability studies; and engineering and the sciences—along with a joint program with the University of Baltimore Law School if UB is not merged into Morgan—would benefit from synergies with existing programs at Morgan and strengthen the institutional identity of Morgan.

a. Business and Entrepreneurship

Maryland should establish a programmatic niche in Business and Entrepreneurship at Morgan, which has long been a strength of this university. The Partnership Agreement specifically provided that Maryland will avoid unnecessary program duplication by the TWIs unless there is sound educational justification for the duplication of broadly similar programs. Even though Morgan had an MBA program, Maryland did not provide a sound educational justification for introducing the program when it approved the UB/Towson Joint MBA program in 2006. Maryland missed a golden opportunity to expand Morgan’s MBA into a world-class, diverse program that would have had a wide-ranging positive impact on the university, as well as burnishing the State’s reputation and economy. We therefore recommend the following:

Recommended New Programs in Business and Entrepreneurship

Marketing (PhD)
Finance (PhD)
Supply Chain Management (PhD)
Actuarial Science (MS)

Programs Recommended for Transfer from the University of Baltimore/Towson University

Masters of Business Administration and Online MBA (Merge with Morgan's MBA)

Recommended Joint Program with the University of Baltimore Law School
Business and Law (MBA at Morgan and JD at UB)

b. Urban Environment, Community Health, and Sustainability Studies

Urban environment, community health, and sustainability studies cuts across a wide range of fields of study. Programs in this area explore sustainable development, environmental policies, ethics, ecology, landscape architecture, city and regional planning, economics, natural resources, sociology, and anthropology, as well as ways these traditional disciplines interplay with one another in today's increasingly interconnected world. Advanced study could include specializations in sustainable urban policy applications, material development and application, and the implications of current technological, economic, and cultural trends. Significantly, introducing new programs in this niche would build on current program offerings at Morgan in city and regional planning, architecture, landscape architecture, and engineering. Aligning and developing curricula within currently offered programs, in concert with the addition of new programs at both the undergraduate and the graduate level, would go a long way in providing a programmatic niche at Morgan.

The twenty-first century world we live in is increasingly shaped by finite resources and, in response, many traditional disciplines of study in our colleges and universities are beginning to draw upon the expertise of those versed in sustainable practice. The effects of this are already apparent in Maryland and beyond. Maryland's Department of Labor, for example, anticipates significant growth in the "green sector," and is investing both state and federal resources in job development in a number of sustainable initiatives.⁷

Recommended New Programs in Urban Environment, Community Health, and Sustainability Studies

Bio-Environmental Science (MS)
Public Health (BS) with interdisciplinary concentrations in Health Sciences, Public Health Education, Health Services Administration, and Health Communications
Nutritional Forensics (BS)
Environmental Health (MS)
Health Policy and Management (MS, PhD)

⁷ See <http://www.dllr.state.md.us/greenjobs/>.

Social and Behavioral Science (MS, PhD)
Epidemiology (MS, PhD)
Biostatistics (MS)
Nutritional Science (MS)
Public Administration and Policy (MPA, PhD)

Programs Recommended for Transfer from UMUC

Community College Leadership (PhD)

The UMUC Doctorate duplicates the Morgan doctorate in Community College Leadership. Transferring the doctorate in Community College Leadership at UMUC to Morgan would combine with doctorates in the related fields of higher education and urban educational leadership to form a distinctive programmatic niche at Morgan consisting of unique, high-demand programs.

The program at Morgan in community college leadership is one of four interrelated programs in school and college educational administration and one of a total of 15 doctoral offerings at the university. The programs were unique among colleges in the Baltimore metropolitan area when approved; however, a program similar in course content and designed to prepare students for the same career fields as the Morgan program was subsequently established at the University of Maryland University College (UMUC).

The Maryland Higher Education Commission initially denied UMUC approval to offer a program in community college leadership on the grounds that it would be unnecessarily duplicative of the Morgan program. On appeal, the commission reversed itself by artificially restricting enrollment in the on-line, internet-based program to out-of-state students. This has to be one of the first times since 1954 that any state government permitted one of its public (or private) institutions of higher education to arbitrarily deny taxpayers of that state access to its programs and services.

This illustrates the larger problem of duplication that the UMUC as a public on-line operation presents for all state institutions of higher education. In addition to siphoning off students from the traditional campuses, UMUC deprives those institutions of important tuition funds. HBIs like Morgan are disproportionately impacted because of their limited program inventories, underfunding and under-development.

Recommended Joint Program with the University of Baltimore Law School
Law and Urban Environment and Sustainability Studies
(JD at UB and MS in Urban Environment and Sustainability Studies at Morgan)

c. Engineering and the Sciences

Morgan currently offers bachelors degrees in Civil Engineering, Electrical and Computer Engineering, and Industrial Engineering. It also offers a generic masters degree in Engineering (MEng), a doctorate in Engineering (DEng.), and a masters degree in Electrical Engineering. Yet, relatively few white students are now enrolling in these programs. UMBC's programs in Computer Engineering (BS, MS, and PhD) were all approved over Morgan's objections that they unnecessarily duplicated Morgan's programs in Electrical and Computer Engineering. In this context, it is important to emphasize that the alignment of engineering programs in public higher education in Maryland in the mid-1980s assigned civil engineering and electrical engineering exclusively to Morgan State University. With respect to these engineering programs, transferring them to Morgan would be consistent with that alignment of degree programs. Transferring such programs as UMBC's Computer Engineering programs (BS, MS, PhD) as well as UMBC's Electrical Engineering (BS, MS, PhD) and Civil Engineering (BS, MS, PhD) programs to Morgan would help to resolve this unnecessary program duplication (in a cost-effective manner) and add to the distinctiveness of Morgan's engineering offerings.

Recommended New Programs in Engineering and the Sciences

Data Sciences (MS)

Biomedical Science (MS)

Programs Recommended for Transfer from UMBC to Morgan

Computer Engineering (BS, MS, PhD)

Electrical Engineering (BS, MS, PhD)

Civil Engineering (BS MS, PhD)

Information Systems (BS, MS, PhD)

A State commission recommended in 1947 that an engineering program be established in Baltimore at the Morgan campus. Actual approval of an engineering program came in the early 1980s as Maryland fended off efforts by the U.S. Department of Justice to cut-off all federal funding to the State because of its lack of progress toward dismantling its dual system of higher education. The authority provided for the establishment of a programmatic cluster of programs, to include electrical, civil and industrial engineering. Each of the programs was unique among public institutions in the Baltimore metropolitan area and complemented Morgan's doctoral-granting, urban university, mission and its related emphasis on urban, built environment, studies. The engineering programs were foundational, providing considerable opportunity for expansion through interdisciplinary offerings. Morgan has also characterized engineering as a "signature program" by which the campus is identified, nationally recognized and differentiated.

Consistent with federal law and the 1985 desegregation agreement between the State and the U.S. Department of Education (Office of Civil rights), initial requests from the

University of Maryland Baltimore County (UMBC) to the Maryland Higher Education Commission for similar programs were repeatedly denied as illegal duplication between an HBI and a geographically proximate TWI. The commission granted as a compromise, the authority for UMBC to offer a degree in general engineering and for the University of Maryland College Park to offer on the UMBC campus programs in chemical and mechanical engineering. Division of the programs between the two campuses automatically denied Morgan the advantage of establishing unique, high demand programs across the various fields of engineering.

As state policy shifted during the late nineties and early 2000, MHEC reversed its earlier decision and allowed UMBC to duplicate Morgan's programs by offering civil, electrical, and computer engineering. The UMBC duplication has adversely impacted the operational efficiency and effectiveness of engineering education at Morgan, its competitiveness for students regardless of race; its attractiveness for funding from government agencies, private foundations and other philanthropists and its overall capacity to responding to the needs of students, business, government and general community. As a result, UMBC is now able to offer a much larger contingent of programs than Morgan, the institution originally designated to offer engineering education in Baltimore.

The court noted specifically, the State's development of UMBC and other TWIs rather than building on the success of the HBIs in Baltimore, and the harmful effects and illegality of historic and present-day unnecessary duplication. No area of the duplication is more representative of that harm than engineering. Therefore, reestablishing the uniqueness of those offerings through a transfer of programs is the only viable strategy for repairing the damage within the expressed goals and commitments of the state plan for higher education and without adversely affecting student access to the programs under consideration.

Recommended Joint Program with the University of Baltimore Law School

Law and Engineering

(JD at UB and MS in Urban Environment and Sustainability Studies at Morgan)

E. Coppin State University

Establishing programmatic niches, especially at the baccalaureate and masters levels in applied aging studies and criminal/public justice administration/public safety and forensic studies, would not only strengthen Coppin's institutional identity, but would build upon Coppin's existing programs to position it to better meet the needs of the urban community of Baltimore.

1. Programmatic Niches

a. Applied Aging Studies

Gerontology focuses on the human aging process and our aged human populations. Study in this and related fields will increasingly need to harness the knowledge and methods of the social sciences, psychology and the biological and health sciences to better support and improve the quality of life and experience of the aged. As our society becomes increasingly aged, many traditional disciplines are beginning to draw on the findings of scholars of gerontology while seeking to apply those lessons in interdisciplinary ways. Deliberately organizing a number of related disciplines under one interdisciplinary set of programs will promote greater understanding of the challenges facing our aging populations while simultaneously laying a solid foundation to solve those challenges through innovation and application of advanced scholarship.

Recommended New Programs in Applied Aging Studies

Nursing Education (MS) Clinical Research (BS)

Gerontology (BS)

Social Work (MSW)

Biology and Life Sciences (BS)

Exercise Science (BS)

Health (BS, MS)

Health Education (BS)

Healthcare Administration (BS)

Health Information Management (MS)

Telehealth (BS)

Recommended Joint Programs with UMBC

Doctor of Nursing Practice (DNP)

Nursing Practice (FN.)

Gerontology (MS)

b. Criminal/Public Justice Administration/Public Safety and Forensic Studies

Degree programs in criminal justice, public justice administration/public safety and forensic studies prepare professionals for a range of careers related to keeping society just and safe through extensive training in the enforcement of law. Such programs include correctional sciences, organizational and administrative strategies, leadership skills, and the latest forensic techniques. The most inclusive programs offer participants a solid background in the law and ethics. Criminal justice programs at the bachelors and masters levels are in high demand in Maryland and will continue to grow for the foreseeable future. Developing and expanding interdisciplinary and specialized offerings around existing criminal justice programs will attract students while fostering “communities of practice” in the field. Coppin is the most obvious place to develop this cluster of related degree programs. With the addition of select programs listed above, the current Criminal Justice/Safety Studies and Corrections/Criminal/Justice programs at Coppin could be expanded and enhanced to serve more

students, fill a niche labor need, and help Coppin to further develop its own identity within the system.

Recommended New Programs in Criminal/Public Justice Administration and Forensic Studies

Criminal Justice (BS with Certificate in Forensics)
Cybersecurity (BS)
Criminal Justice/Police Science (BS)
Corrections Administration (BS, MS)
Community Psychology (BS)
Forensic Psychology (BS)

Programs Recommended for Transfer from Towson University to Coppin State

Human Resources Development (BS)
Integrated Homeland Security Management (MS)
Forensic Science (MS)

The TU Human Resources Development BS program duplicates, or closely parallels, Coppin bachelors degree programs in management and management science. Transferring the TU Human Resources Development BS program to Coppin would also enhance the Coppin programs in: Job Development and Job Placement Services (Post BA Certificate), Vocational Evaluation, Work Adjustment (Post BA Certificate) and Human Services Administration (MA Joint with UB). Together these unique, high-demand programs would establish a cluster of excellence at Coppin.

Programs Recommended for Transfer from the University of Baltimore to Coppin State

Criminal Justice/Police Science (BS)

**PROGRAMMATIC NICHE FOR THE HBI ON THE EASTERN SHORE:
UNIVERSITY OF MARYLAND EASTERN SHORE**

F. University of Maryland Eastern Shore

While UMES is a land-grant institution, it offers relatively few high-demand programs associated with the mission of land-grant institutions. As a land-grant university, the overarching mission of UMES should focus on the teaching of engineering, science, agriculture, and military science without excluding the liberal arts. Yet, UMES offers few undergraduate and graduate programs in engineering, science, and agriculture. At the undergraduate level, UMES offers but a single degree in engineering (Aerospace Engineering, Computer Engineering, Electrical Engineering, and Mechanical Engineering are offered as specializations). At the

graduate level, UMES does not offer a single degree program in engineering at the masters or doctoral level.⁸

UMES offers only four undergraduate degree programs in the sciences (Aviation Sciences, Biology, Chemistry, and Environmental Sciences); five programs at the master's level in the sciences (Chemistry, Marine-Estuarine-Environmental Sciences, Toxicology, Professional Science, and Quantitative Fisheries and Resource Economics); and two PhD programs in the sciences (Marine-Estuarine-Environmental Sciences and Toxicology). In terms of degree programs in agriculture, UMES offers only one undergraduate degree program (Agriculture), one program at the masters level (Food and Agricultural Sciences), and one program at the doctoral level (Food Science and Technology).

Plaintiffs propose strengthening the institutional identity of UMES by significantly expanding program offerings (especially unique, high-demand programs, in three programmatic niches that are closely tethered to the land-grant mission of UMES: Engineering and Aviation Science, Agriculture and Environmental Sciences, and Health Sciences and Allied Health.) Establishing new degree programs in these three fields not offered at TWI Salisbury—especially high-demand programs from the bachelors to the doctoral level—is critical not only if UMES is to realize its land-grant mission, but also to ensure that UMES has programmatic uniqueness as reflected in its offering a meaningful number of high-demand programs that are not offered at the geographically proximate Salisbury.

1. Programmatic Niches

a. Engineering and Aviation Sciences

UMES would greatly benefit from more high-demand engineering programs across all degree levels if it is to embrace its land-grant mission. Of particular note, general engineering programs at the master's and doctoral level offer opportunities for interdisciplinary studies, such as linking engineering to environmental studies and agriculture to permit students to explore emerging and interdisciplinary fields of study that address real-world problems.

Recommended New Programs in Engineering and Aviation Science

Aerospace Engineering (BS)**

Civil Engineering (BS)**

Electrical Engineering (BS)**

Mechanical and Industrial Engineering (BS)**

b. Agriculture and Environmental Sciences

⁸ All Engineering programs are all housed in a single department that is located in the School of Business and Technology.

Three major challenges facing society are: (1) the increasingly technology-driven production of food; (2) identifying and managing sustainable sources of food, especially ocean-based food; and (3) preventing pollution of the environment and food sources. Programs in agricultural economics and food science/ technology, along with programs in aquaculture and the management of our water resources, addresses these challenges while giving UMES a growing niche in Agriculture. Moreover, programs in animal sciences; aquaculture; water, wetlands, and marine resources management; and veterinary science (such as a combined program with College Park) merit serious consideration.

Environmental Sciences include a range of rapidly expanding interdisciplinary fields. As a land-grant institution, UMES has the opportunity to build upon traditional fields and incorporate emerging fields of study that address the myriad challenges in managing and preserving our natural environment and resources. A wide variety of programs could be introduced at the bachelors, masters, and doctoral levels. For example, new masters programs in conservation biology and sustainable development; water, wetlands, and marine resources management; and rural sociology merit consideration.

At the doctoral level, a PhD in environmental studies program is highly recommended. Such a program would be an interdisciplinary program in which a student and her/his advisor could develop the student's program of study. For example, a student might combine basic courses in environmental studies with courses in engineering and social sciences. Students might pursue their studies in restoration ecology, agricultural economics, or energy resources. For example, UMES currently offers a PhD in Marine Estuarine-Environmental Science, with major emphasis on fisheries science, environmental molecular biology, and biotechnology. A PhD program in environmental studies would complement that program while having a separate identity anchored in an interdisciplinary focus that invites students to pursue advanced studies and research real-world problems.

Recommended New Programs in Agriculture and Environmental Sciences

Environmental Sciences (PhD)

Veterinary Technology (BS)**

c. Pharmacy, Nursing, and Physical Therapy

Today's rapidly changing demographics is putting new demands on our health care system, at least in terms of serving traditionally underserved populations—including women and geographically isolated low-income communities. UMES has the opportunity to be ahead of the curve in preparing the next generation of health practitioners to support our changing and underserved populations, especially in rural areas, by addressing the preeminent health care challenges they are facing. The new and transfer programs listed below would join with the currently strong unique, high-demand programs in pharmacy and physical therapy to form a

unique, high-demand cluster of academic programs with the domain of health sciences and health services.

Pharmacy, nursing and physical therapy represent very promising opportunities for the establishment of collaborative joint programs between UMES and Salisbury. As a rule the success of institutional collaborations depends on the identification of high student demand and the development of high quality academic programs. The best collaborative programs bring institutions together based on shared goals, mutual strengths, mutual interests and mutual respect. In other words, successful collaborative programs represent “win-win” propositions where each partner makes distinctive contributions and each receives clear benefits. The proposed collaborative programmatic niches of joint programs between UMES and Salisbury in pharmacy, nursing and physical therapy is an opportunity for the two institutions to combine their distinctive strengths in complementary areas into a “Center for Excellence” with several unique, high-demand academic programs.

UMES has robust unique high-demand programs in pharmacy and physical therapy; Salisbury also has very strong unique, high-demand programs in nursing and nursing practice. In recent years student demand has consistently exceeded the capacity of these three programs. It is also the case that employer and state demands continue to demand more graduates in these areas. Collaboration around these programs would add to UMES’ distinctive institutional identity as a Land Grant University and also raise the national academic prominence of UMES, Salisbury and the USM system. A successful collaboration between UMES and Salisbury in the areas of pharmacy, nursing and physical therapy would produce a final product where “the sum was greater than the parts.”

We recommend that UMES and Salisbury establish collaborative arrangements and joint programs under the umbrella of “Pharmacy, Nursing and Physical Therapy.” The State will need to upgrade faculty, staff and facilities in these programs to enhance their academic quality and to expand their capacity. It will also be necessary to enhance and upgrade affiliated academic programs that the core programs of “Pharmacy, Nursing and Physical Therapy” rely on for students, related courses, facilities and faculty e.g., UMES—toxicology, rehabilitation counseling rehabilitation counseling; Salisbury —respiratory therapy, applied health physiology, social work.

Collaborative arrangements and Joint Programs between UMES and Salisbury could be similar to the USM “Strategic Alliance” between UMCP and UMB (“Response to the 2011 Joint Chairmen’s Language: Board of Regents Report on the Study Examining the Advantages and Disadvantages of Merging UMCP and UMB, Dec 9, 2011). This model for cooperation provides for joint faculty appointments, combined research, technology transfer, shared facilities, expanded student educational options and shared budgets between USM institutions with maximum benefits for the state of Maryland. The study process that supported

creation of the Strategic Alliance confirmed the feasibility, advisability and practicability of such cooperative efforts with respect to relevant financial, academic, logistic, student, reputational and professional accreditation criteria.

Recommended New Joint Programs in Pharmacy, Nursing and Physical Therapy

- Applied Biology (MS)
- Rehabilitation Services (MA)
- Dietetics/ Nutrition (MA)
- Food Science and Technology (MA)
- Rehabilitation Psychology (MA)
- Environmental Health (BA, MA)
- Social Work (BSW, MSW)

PROGRAMMATIC NICHEs FOR THE HBI IN THE REGION WHICH INCLUDES PRINCE GEORGE’S COUNTY, MONTGOMERY COUNTY, AND CHARLES COUNTY: BOWIE STATE UNIVERSITY

G. Bowie State University

1. Programmatic Niches

a. Computer and Information Sciences/Networking Administration

Computer and information sciences/networking administration focus on current applications of computing, computer science, and information science and systems. Given the widespread use of these systems and their application in contemporary society, the range of specialization and level of study are limited only by our imagination. Advanced study in this area would include research aimed at theoretical advancement as well as application of knowledge and skills for the workplace.

According to the U.S. Department of Labor, as well as labor market journalists, computer sciences, information sciences, and network administration are among the fastest career growth areas in the nation. In Maryland, according to the State Department of Labor, five of the top eight growth careers are computer science or network related careers. At the present time and for the foreseeable future, computer and information sciences and related disciplines are among the most high-demand program offerings in the University of Maryland system. In fact, five of the seven TWIs examined in this study, and three of the four HBIs, offer at least a bachelors degree program in computer and information science. Offering new degree programs in interdisciplinary fields of study that are closely related to (and require) computer science (such computer systems analyst) not currently offered at Bowie would strengthen its programmatic identity and advance meaningful differentiation between computer science programs within the USM.

Recommended New Programs in Computer and Information Sciences/Networking Administration

Cyber Security and Information Assurance (BS)
Data Science (BS)
Network Technology (MS)
Computer Systems Analyst (BS)
Health Information Technology (BS)
Computer Science (MS, PhD)
Forensic Studies in Accounting (BS)

Programs Recommended for Transfer from the University of Baltimore to Bowie State
Management of Information Systems (PhD)

The UB doctorate in Management of Information Systems duplicates or overlaps with the following Bowie programs: Computer Science (PhD), Management Information Systems (MS), Database Management/ Artificial Intelligence (Post BS Certificate) and Bioinformatics (BS). The transfer would create a programmatic niche consisting of unique, high-demand programs.

b. Nursing and Social Work

Following national trends and implementation of the Affordable Health Care Act, increased emphasis has been placed on Wellness and Preventive Health. As a result specialties in Nursing and Social work will be in even greater demand for the foreseeable future.

Recommended New Programs

Nursing (MS)
Social Work (MSW)

H. ENSURE COORDINATION AND COLLABORATION BETWEEN UMUC AND THE HBIS TO ELIMINATE PROGRAM DUPLICATION AND DIRECT COMPETITION IN ONLINE, DISTANCE LEARNING, AND BLENDED COURSES AND PROGRAM OFFERINGS

I. Background and context

The University of Maryland University College (“UMUC”) is strategically positioned to advance the goal of creating a unitary system of public higher education in the state. UMUC is a leader in worldwide student enrollment among all four-year institutions in the US. In 2012, UMUC online programs enrolled over 34,000 Maryland students, second only to the flagship College Park in total student enrollment. When out-of-state students are subtracted

from the total enrollment at College Park, UMUC actually enrolls more Maryland students than any other state institution.

UMUC currently offers over 100 certificate, BA, MA and doctoral programs online and on-site at 21 locations in Maryland (e.g., Shady Grove, Hagerstown, Prince George's Community College, Eastern Shore Higher Education Center) to a largely non-traditional student body. UMUC online enrollment offers the diversity, access, and quality that represents the goal for all Maryland institutions of public higher education. UMUC students are non-traditional, 34% are black, 47% are minority students, 78% are adults employed full-time and 49% are working parents. UMUC represents a distinct opportunity and challenge among MHEC institutions. Nested in this context, Plaintiffs ask: How might UMUC's success in achieving diverse student enrollment; serving black/non-traditional student populations and demonstrated expertise in online/distance learning technologies, be leveraged to achieve a unitary system of public higher education in Maryland?

UMUC began as an evening college program at the University of Maryland in 1948. In 1959, this College of Special and Continuation Studies became UMUC, which gained independent university status in 1970 and joined the USM in 1988. Over the years, the role of UMUC in the Maryland system of higher education has been expanded and transformed, not only in enrollment and degrees awarded, but also in terms of independent institutional status. Notwithstanding the contributions of UMUC, its growth, expansion and redefinition constitutes "mission creep." Originally founded to support and supplement other MHEC universities through the vehicles of special and continuation studies, over the years UMUC has grown into a full-fledged independent competitor institution. As a result, UMUC now duplicates or overlaps with many academic and degree programs offered at other Maryland public universities. In these instances, UMUC competes directly with other universities with respect to the academic programs and degrees offered. Maryland's HBIs have been particularly hit hard by competition from UMUC.

It is clear that Maryland's public HBIs—particularly Bowie and Morgan—have been negatively affected by UMUC's "mission creep" in two major ways. One, the burden placed on the HBIs from UMUC's degree program expansion is reflected in numerous lost opportunities to establish unique, high-demand academic programs within distinctive programmatic niches. In numerous instances, the development of unique, high-demand academic and degree programs by HBIs has been precluded by location of these programs at UMUC. Two, the consequences for HBIs are evident in those instances in which UMUC established degree programs that duplicated or closely paralleled unique, high-demand academic programs already offered by HBIs. The creation of competitive degree programs at TWIs has consistently resulted in declining enrollments of White students at HBIs. In particular, establishment of a broadly similar academic program at UMUC has resulted over time in declining white student enrollment in similar programs at Morgan as students shift to UMUC.

The demonstrated and inevitable consequence of such direct competition between programs at UMUC and HBIs has been the increase of unnecessary program duplication and racial segregation among MHEC institutions. Ultimately, UMUC's duplication of unique, high-demand academic and degree programs offered by the HBIs has undermined efforts to create a unitary system of public higher education in Maryland.

J. Bowie State University and University of Maryland University Campus

No HBI has been more adversely affected by state policies regarding UMUC than Bowie. Forty years ago, Bowie's enrollment was 37% White. Bowie was by far the most integrated of all public four-year campuses in the state. Today, its White enrollment stands at only 4%. In 1972, Bowie had 1039 White students enrolled. Although White enrollment at the campus dropped to fewer than 600 by 1983, it rebounded to a high of 1223 in 1990. By 2000, White enrollment had again dropped to 665 and it has continued to drop since that time, which includes the period covered by the State's 2000-05 Partnership Agreement. Currently, there are only about 200 White students enrolled at Bowie.

Historically, Bowie has benefitted from its proximity to Washington, D.C. and government workers seeking to continue their education. It has also had a large market for teacher education due to its location within and near counties with large school systems. Its proximity to military bases further broadened its market. It has not been adversely affected by its proximity to College Park, which is more selective in both its undergraduate and graduate admissions and serves more traditional students at the graduate level.

While Bowie once complemented College Park's academic and degree programs, the ongoing expansion of program offerings at UMUC has led to UMUC becoming a direct competitor of Bowie, despite the fact that both campuses have been under the same governing board since 1988. Its primary focus since its founding has been to serve working adults, a group that has been the foundation of Bowie's graduate programs.

While UMUC's online offerings likely have a considerable impact throughout the state, the location of its campuses near Bowie where students take classes on site almost certainly has had an adverse impact on Bowie's enrollment of White students. Four major locations where UMUC also offers classes near the Bowie campus are Adelphi (UMUC headquarters), Largo, Laurel, and Prince George's Community College. Also nearby, but slightly further away, is the Dorsey Station Site. UMUC also offers courses at nearby Fort Meade and Andrews Air Force Base. Bowie no longer offers courses at the military installations in its region. It is not clear that approval of a program at UMUC by the coordinating board is restricted to a particular site. Significantly, because UMUC is a major profit center for the USM, the system has every incentive to maximize its enrollment regardless of whether Bowie is adversely affected.

Several programs that were earlier successful at Bowie are no longer successful in part because of the increased competition from UMUC. For example, Bowie’s undergraduate program in Computer Sciences had 364 majors in 1999, but now has only 87; the masters program in Computer Science has declined from 62 majors in 2001 to 18; and the masters program in Management Information Systems has declined from 157 to 65 over the same period. Meanwhile, these and other Computer Science programs offered by UMUC have experienced large enrollments in recent years. Below is a listing of UMUC’s Computer Science degree offerings, year approved by MHEC, and the fall 2012 enrollment.

Degree Level	Program Name	Year Approved	Fall 2012 Enrollment
Bachelors	Digital Media and Web Technology	2000	426
Bachelors	Computer Science	2000	872
Bachelors	Information Systems Management	2000	924
Bachelors	Computer and Information Science	2000	921
Bachelors	Computer Networks and Security	2000	1580
Bachelors	Cyber Security	2007	2182
Masters	Information Technology	2000	1779
Masters	Cyber Security	2009	1369
Masters	Cyber Security Policy	2010	176
Masters	Cyber Forensics & Cyber Investigation	2012	41
Masters	Software Engineering	1995	3

In addition, UMUC offers an even broader array of technology-related certificates at both the undergraduate and post-baccalaureate level. It is apparent that because UMUC’s computer-related program inventory is relatively comprehensive, it would be difficult for Bowie to find a meaningful segment of the market that is not being served. It also should be noted that five of the programs listed above were approved in 2000, the point at which Bowie began to

experience enrollment declines in its corresponding programs. Ten of the eleven programs were approved over a twelve year period from 2000 to 2012.

Similarly, the masters in Business and the masters in Administrative Management programs were once successful at Bowie. These no longer are high enrollment programs at Bowie. On the other hand, these programs are thriving at UMUC. Among other programs offered by UMUC that are related are: Accounting (BS), Management Studies (BA), Communication Studies (BA), Marketing (BA), Technology Management (Post BA Cert), Non-profit and Association Financial Management (Post BA Cert), Financial Management in Organizations (Post BA Cert), Accounting (Post BA Cert), Governance/Resource/Volunteer Management (Post BA Cert), Financial Management and Information Systems (Post BA Cert), Public Relations (Post BA Cert), Accounting and Financial Management (MA), Accounting and Information Systems (MA), and Non-profit and Association Management, concentration in management (MA).

The conclusion is clear: It is unlikely that Maryland can identify new high-demand programs for Bowie that are not currently offered at UMUC without rolling back and/or transferring the programs offered at nearby UMUC. The most realistic and substantive remedy for UMUC's encroachment on Bowie's academic and degree programs may be to concentrate on UMUC's on-site programs and the courses offered there to address program duplication. The sites in Maryland have been erected for a purpose, namely, to serve markets where UMUC can attract enrollment and make money. The discussion above about the overlap between Bowie and UMUC in certain program areas is partly based on the highly reasonable assumption that the UMUC sites around Bowie are taking away students who would have otherwise enrolled at Bowie. The State needs to collect data that would more definitively demonstrate whether this is in fact true.

K. Morgan State University and UMUC

The academic degree programs at UMUC also overlap substantially with academic program degree offerings at Morgan. In the following analysis, we detail selected instances of significant academic and degree program duplication between UMUC and Morgan. It is in the interests of all parts of the MHEC system, the State and the public to achieve better coordination of academic program offerings between UMUC and Morgan.

Significant Program Duplication Currently Exists Between UMUC and Morgan:

- a) UMUC: BA/BS programs in Accounting, Finance, Business Administration, Management Studies, Marketing, Human Resources Management, Health Services Management, and Public Safety Administration
Morgan: BA/BS programs in Accounting, Finance, Business Administration,

Management, Services and Supply Chain Management, Hospitality Management, Marketing, Health Administration

- b) UMUC: MS/MBA/MSM programs in Bio-Informatics (4 degree programs), Accounting and Financial Management, Accounting and Information Systems, Business Administration, Management (14 degree programs), Global MBA, Health Care Administration, International Management (4 degree programs)
Morgan: MA /MS /MBA programs in Professional Accountancy, Accounting, Finance, International Management, Management, Marketing Management, Marketing Research, Hospitality Management,
- c) UMUC: Doctorate in Management for Community College Policy and Administration
Morgan: Doctoral programs in Business Administration, Community College Leadership

As a point of departure in addressing the extensive duplication between UMUC and Morgan, UMUC should develop and implement in close collaboration a Morgan a model to ensure that the Business programs at Morgan State University are widely available to students across the state. UMUC would provide the technical assistance and support necessary to help Morgan develop and enhance its own technical platform for distance, online, and blended delivery of courses/ degree programs. UMUC would also grant Morgan full use and access to the established technical platforms UMUC currently uses to provide distance, online and blended courses for students, courses and degree programs. In addition, UMUC would no longer offer business courses and/or degrees since these compete with Morgan’s offerings in the area and are a disincentive for white students to enroll in Morgan’s business courses and degree programs. Instead, UMUC would partner with Morgan to jointly provide business courses under the direction of Morgan faculty, with degrees to be awarded exclusively by Morgan State University. The on-campus component of blended courses would only be available on Morgan’s campus and/ or be taught by Morgan faculty at locations around the state (e. g., MHEC Regional Higher Education Centers). Morgan would be able to develop “feeder relationships” with the many 2-year and 4-year business programs at Maryland TWIs and to provide pipeline opportunities for students from these programs to continue working toward MBA and PhD degrees in Business at Morgan.

L. UMUC Remedy Recommendations

UMUC operates the most innovative, far-reaching and effective online and blended learning platform (i.e., combination online or distance and on-site instruction) for higher education in Maryland. It is reasonable, therefore, to seek ways to expand the benefits of the UMUC platform to other universities in the system. At the same time, the goal should be to eliminate unnecessary program duplication and the waste of resources due to unnecessary program redundancy or duplication. This could be accomplished by redefining UMUC’s role

relative to other universities in the Maryland system. Along with transferring selected academic degree programs to Maryland's HBIs, UMUC should more closely coordinate and cooperate with other Maryland public higher education institutions—both the HBIs and TWIs—to jointly offer unique, high-demand academic degree programs that use online, distance learning and blended courses (e.g., combination online and on-site platforms).

Attempts to regulate UMUC and the HBI academic program duplication are greatly complicated by the current and swiftly evolving status of online technology. For instance, questions of proximity between academic programs at traditional TWIs and HBIs are relatively straightforward. It is relatively easy to calculate mileage between the HBI and TWI campuses, academic courses and/or programs to make an empirical determination about program duplication. In the case of online or distance programs, however, such determinations are infinitely more complex and elusive, given the reach and penetration of Internet technology. To what extent can UMUC's virtually delivered academic programs be seen as duplicating unique, high-demand programs delivered in traditional, classroom settings on the HBI campuses? Certainly the UMUC online academic courses and programs are universally available to any students who have internet access—even students sitting in the HBI campus libraries or classrooms. These are complex, evolving questions that will need to be resolved in future.

As a general way to proceed in the future, we propose that the Court accept and apply a four step process as a template for identifying and addressing questions of academic program duplication between UMUC and the HBIs in the Maryland system of public higher education:

1. Inventory academic program duplication between UMUC academic programs (in all forms of delivery--online, on-site or blended, i.e., combination online/on-site) and specific HBIs. This inventory should include assessments over time of enrollment trends in areas where there is academic program duplication between UMUC and the HBIs.
2. Develop, outline and implement plans to discontinue or modify UMUC academic programs that duplicate academic programs at HBIs. This should include plans to ensure UMUC supports the technology platforms at the HBIs for successful implementation of replacement online and blended academic programs.
3. Consider selected academic degree programs for transfer from UMUC to HBIs. The establishment of joint, academic and degree programs between UMUC and HBIs should also be considered.
4. Evaluate compliance and progress of efforts to eliminate program duplication between UMUC and the HBIs.

In addition, with respect to the specific cases of academic program duplication between Bowie and UMUC and Morgan and UMUC, we also recommend:

1. The State should be required to collect data about enrollments by program at each of UMUC's physical locations in Maryland and to treat these locations as any other campus would be treated. It would then be expected to oversee and control duplication with UMUC's physical centers the way duplication is supposed to be controlled among other campuses in close proximity by avoiding it. The fact that students taking face-to-face courses at UMUC are those most likely to otherwise have taken a face-to-face course elsewhere is very likely to effectively prevent unnecessary duplication between UMUC and proximate HBIs.
2. In addition, UMUC's on-line operations, where feasible, should utilize the courses and programs already offered by Maryland campuses. For a fee, UMUC should provide the technology platform for campuses to deliver coursework in their respective areas of uniqueness. This would reduce duplication of effort and provide both UMUC and the provider campus with income streams.
3. We recommend collaborations between UMUC, Bowie and Morgan in selected joint academic programs where, as "supporting partner," UMUC provides the technical expertise and technical platform for online/ distance/ blended courses. These distance learning courses would be supplemented by on-campus, direct contact programs at Bowie or Morgan, which would grant the earned degrees from these collaborative academic programs as the "primary partner."
4. Transfer degree programs in the field of Business (BS, MS, and PhD) and closely aligned fields from UMUC to Morgan. This recommendation is driven by the extensive duplication of academic degree programs between UMUC and Morgan in these areas. The recommendation is also based on the accumulated research and practice record which proves the integrative effects of locating (or relocating) unique, high-demand academic programs at HBIs.
5. Progress to this end will require the respective institutions to conduct detailed inventory of course and degree program offerings to identify areas of program overlap or duplication.
6. Plans should then be developed, outlined and implemented over three to five years to divide responsibilities between Morgan and UMUC such that final degree granting authority resides with Morgan. UMUC should support and supplement the Morgan's degree programs in Management, Business Management and closely aligned fields by providing the necessary technology platform for online and blended learning experiences.
7. Plaintiffs request that the Court require annual reports to evaluate compliance and progress toward implementation of this proposed realignment between Morgan and UMUC in course and program offerings in the fields of Management, Business Administration and allied areas.

Cooperation and coordination between Bowie, Morgan and UMUC would greatly facilitate the goal of creating a unitary, racially desegregated system of public higher education

in Maryland. One result would be to help cultivate distinctive programmatic identities at Bowie and Morgan. The effect would be to create and enhance clusters of unique, high-demand programs at BSU and MSU that will attract White student enrollment. A side benefit would be the enhancement of the quality of existing academic programs at both HBIs. Another benefit would be to ensure scarce financial, institutional, and other resources are used in the most effective and efficient manner possible.

Collaboration between UMUC, Bowie, and Morgan would also provide lessons and models for similar cooperation and coordination between UMUC and other campuses across Maryland's state system of higher education. Both Maryland's HBIs and TWIs would benefit from such collaboration with UMUC to more effectively and efficiently service the state's demand for high-quality, widely-accessible, and more affordable higher education.

CONCLUDING NOTE

This remedial proposal arises from the lawsuit Plaintiffs filed against the State of Maryland pursuant to Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. In an opinion dated October 7, 2013, the Court found Maryland liable for violating the Constitution through its policy of unnecessary program duplication and “strongly” suggested that the parties “enter mediation to attempt to generate a suitable plan to address this problem.”⁹

According to the Court's Opinion, the distinguishing feature of Maryland's Historically Black Institutions (HBIs) remains their “racial identifiability” (about 5% of the students at Maryland's HBIs are white). The Court found that the State has in place a policy—a policy rooted in its earlier officially segregated system—that continues to maintain the racial identifiability of Maryland's HBIs: a dual structure of higher education. This dual structure consists of widespread unnecessary program duplication between Maryland's Traditionally White Institutions (TWIs) and HBIs such that there is not meaningful program uniqueness at the HBIs. That is, there is an absence of a meaningful number of unique (not duplicated at geographically proximate TWIs), high-demand programs at the HBIs that would attract non-black students to these institutions by providing them with an institutional identity beyond race.

Therefore, the fundamental challenge that must be addressed in remedy is how to dismantle the dual structure of higher education in Maryland—a structure which ensures that the distinctive feature of Maryland's four HBIs is no longer their racially identifiability. To be successful the remedy must enlarge and enrich the institutional identities of the HBIs by establishing new unique, high-demand programs within distinct programmatic niches at all four of these institutions.

⁹ Coal. for Equity & Excellence in Maryland Higher Educ. v. Maryland Higher Educ. Comm'n, CIV. CCB-06-2773, 2013 WL 5550394 at *59 (D. Md. Oct. 7, 2013)(hereinafter 2013 Opinion).

Recent enrollment statistics for Maryland's Historically Black Institutions reveal formidable challenges with respect to dismantling the State's racially dual system of higher education. In 2013 white student enrollment was extremely low at Morgan State University (3%), Bowie State University (3%) and Coppin State University (1%). Meanwhile, white student enrollment for 2013 was 15% at the University of Maryland—Eastern Shore. It is revealing that White student enrollment was highest in unique, high-demand programs at University of Maryland- Eastern Shore: Special Education MA (64%), Ecology (60%), Education, Industrial Arts, Vocational and Technical Education MA (59%) and Business and Management (57%). White student enrollment was also highest in unique, high-demand programs at Morgan State University: Landscape Architecture (73%), Architecture (47%); and at Bowie State University: Secondary Education MA (38%). While some unique, high-demand programs at Maryland's HBIs are attracting significant numbers of white students, there are very few of these programs (an average of three at the HBIs)—far too few of these programs to accomplish the goal of dismantling the dual structure of higher education.

The experiences of other states that grappled with the challenges of dismantling racially dual systems of public higher education are instructive for Maryland. Tennessee was successful because of a merger plan which enhanced the capacity of Tennessee State University to offer unique, high-demand programs. These programs helped to dismantle the racially dual system of higher education by creating a distinctive academic identity—an identity anchored in a wide range of high-demand, unique (not duplicated at proximate TWIs) programs for this Historically Black Institution that attracted white student enrollment. In 2012 white students at Tennessee State University represented 24% of enrollment and 32% of degree recipients; other non-black students represented 10% of total student enrollment and 8% of all degree recipients.

The remedial plans in Mississippi, Alabama, and Louisiana had very limited success because none focused principally on dismantling the racially dual system of higher education by enhancing the programmatic identities of the HBIs as reflected in meaningful numbers of unique, high-demand programs and eliminating unnecessary program duplication. Even when new programs—including high-demand programs—were introduced in these three states, most of these programs were already offered at nearby TWIs (hence they were not “unique” programs).

As the Court is aware, the controversial Towson/UB MBA program is illustrative. The Morgan State MBA program attracted a critical mass of white students before the Towson/UB MBA was introduced. Since then, however, white student enrollment in Morgan's MBA program has declined precipitously. In 2013, 129 students were enrolled in Morgan's MBA program and only 2 of these 129 students were white students. Meanwhile, that same year, total student enrollment in the MBA program at UB was 677 and 308 (or approximately 45.5%) of those students were white. Towson's MBA program enrolled 233 students that same year, and 148 of those students (or approximately 63.5%) were white confirming that a

significant number of white students are pursuing their MBA at Towson and UB. Not insignificantly, the major programs at HBI Morgan State University that are currently attracting significant numbers of white students are unique, high-demand programs such as the bachelor's degree in Industrial Engineering (12% white students) and the bachelor's degree in Engineering Physics (20% white students).

While the task of realigning academic programs within the Maryland system of higher education may be characterized by some to be as disconcerting as was post-Brown integration, the creation of a unitary system of higher education in Maryland presents a unique opportunity. A unitary system of public higher education would advance a new vision for higher education that is aligned with several of Maryland's own higher education commissions and panels, which consistently called for elevating the status of Maryland's HBIs rather than creating or enhancing competing TWIs. The Court's decision opens up the possibility for transforming Maryland's higher education system into a 21st century model for public higher education.

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APPENDIX 2

ALABAMA

Summary of Remedies Implemented in Alabama

The United States along with African-American students and faculty commenced a suit in 1983 to enforce the Fourteenth Amendment and Title VI of the Civil Rights Act, challenging the State's maintenance of practices traceable to the *de jure* segregated era. The plaintiffs argued a number of policies were impermissibly segregative, including: admissions standards, funding and facility maintenance, program duplication, restrictive missions, and the underrepresentation of African-Americans in faculties and administrations. *See Knight v. Alabama*, 14 F.3d 1534, 1539 (11th Cir. 1994) (providing a procedural history of the case).

In 1991, the Alabama court found numerous “actionable vestiges of discrimination surviving” in Alabama’s system of higher education. *See Knight v. Alabama*, 787 F. Supp. 1030, 1367 (N.D. Ala. 1991) [hereinafter *Knight I*]. Such violations included: faculty and administrative employment, state funding for higher education, facilities at the HBIs, admissions policies, and program duplication. *Id.* at 1368.

After the Supreme Court’s decision in *Fordice, United States v. Fordice*, 505 U.S. 717 (1992), the Eleventh Circuit remanded the case to the district court for reconsideration under *Fordice*’s analytic framework. *Knight*, 14 F.3d at 1556-57.

On remand, the district court entered a new remedial decree in 1995 which, in addition to the prior vestiges, declared the State’s land-grant funding scheme to be unconstitutional. *See Knight v. Alabama*, 900 F. Supp. 272, 332-333 (N.D. Ala. 1995) [hereinafter *Knight II*]. The court fashioned a remedial decree that it hoped would “be most likely to achieve the remedial purpose into the future.” *Id.* at 285.

In 2006, the parties entered into a settlement agreement to resolve remaining issues and continue the desegregative programs. *See* Br. of U.S. as Plaintiff-Appellee, No. 07-10235-BB, 2007 WL 3690480 (11th Cir. 2007).

Altogether, the two court-ordered remedial decrees resulted Alabama’s two HBIs, Alabama State University (ASU) and Alabama A&M (AAMU), receiving a total of \$215 million in state funding to eliminate the vestiges of historical financial discrimination as a result of this litigation.¹ Br. of U.S. as Appellees 2007 WL 3690480 (11th Cir. 2007) at *11 (citing the 2005 Annual Report submitted to the court). The 2006 settlement further required the State to provide over \$33 million in capital funding to AAMU and ASU, and to support a request to the legislature for an additional \$12 million in capital funding for these two universities.² *See* Br. of U.S. as Plaintiff-Appellees at *13.

¹ Br. of U.S. as Appellees, No. 07-10235-BB, 2007 WL 3690480 (11th Cir. 2007) at *11 (citing the 2005 Annual Report submitted to the court).

² *Id.* at *13.

Overview of the remedies ordered that were ordered, and not vacated, by the 1991 remedial decree, the 1995 remedial decree, and 2006 settlement

- **Creation of the Alabama State University Trust for Educational Excellence**

The decree created an endowment program (the Trust for Educational Excellence) at both ASU and AAMU that would provide ASU and AAMU state funds of up to \$2 million on an annual basis, for fifteen years, to be used for educational purposes (*e.g.*, scholarships, endowment of department chairs, subsidizing faculty salaries). *Knight II*, 900 F. Supp. at 349-56.

The 2006 settlement required the State to continue to fund the Trusts for Educational Excellence established by the 1995 Remedial Decree under the terms and for the duration set forth in that decree.

- **Funding for Scholarships and Recruitment to desegregate the State's HBIs**

The decree ordered that for a period of ten years the State must provide \$1,000,000 to ASU and \$1,000,000 to AAMU on an annual basis to fund scholarships to assist in diversifying the universities' student bodies. ³ *Id.* at 356.

- **Restrictions Placed on the TWIs to Allow HBIs to Compete for Other-Race Students**

The 1995 remedial decree placed three restrictions on TWIs' expansion to allow HBIs to compete for other-race students.

First, the 1995 decree restrained and enjoined Calhoun State Community College (TWI) from increasing college enrollment at its Huntsville campus beyond 5% of its current levels of enrollment. *Id.* at 359. Furthermore, the court enjoined Calhoun State Community College from offering classes other than during the lunch hour, evenings, and weekends. *Id.*

Second, the 1995 decree restricted the expansion of two-year and technical colleges in Montgomery and Huntsville so as to help ASU and AAMU in their efforts to attract more non-minority students to their programs. *Id.* at 358-59. Specifically, the remedial decree enjoined and restrained the State from creating any new community or junior colleges in the regions currently occupied by HBIs. With regard to the three currently existing technical colleges in the area, the State was enjoined from expanding the schools in a manner outside of traditional trade school offering or in any manner which offers traditional courses which could be credited toward a bachelors degree at any community college, junior college or senior college in Alabama technical colleges in the regions of Huntsville or Montgomery. *Id.*

Third, the 1995 decree prohibited Troy State University (TWI) in Montgomery from any further expansion in Montgomery of its physical plant without first receiving the approval of the court and a finding that such addition or expansion will not adversely impact on desegregation of Alabama State University. *Id.* at 322.

- **Unification of the Alabama Cooperative Extension System and the Creation of an Associate Director for Urban Affairs and New Nontraditional Programs**

³ For some of the ordered remedial payments, the 1995 remedial order requires AAMU and ASU to first spend the remaining money appropriated by the "Title VI Program enhancement funds" which the 1994 state legislature specifically appropriated to AAMU and ASU to assist in overcoming the vestiges of *de jure* segregation. Specifically, the district court order explains that the existing budgeted line items for the Recruiting and Minority Scholarship money must be fully expended before ASU and AAMU can seek additional funds from the State pursuant to the decree. *Id.* at 358.

The 1995 decree unified the historically separate land grant functions of Auburn University (TWI) to coordinate the system and ensure AAMU would be a “full participant” in the system with regard to the allocation of responsibilities, salaries, and resources. *Id.* at 322-33, 360-68. The decree gave AAMU some unique functions and responsibilities within the land-grant programs such as investing AAMU with the responsibility of, *inter alia*, appointing the Associate Director for Urban Affairs and New Nontraditional Programs and providing this Director with headquarters on AAMU’s campus. *Id.* at 360-68. To cover the expenses of unifying the system, the decree allocated \$300,000 to AAMU and \$300,000 to Auburn University. Furthermore, for the life of the decree, the State was obligated to appropriate a base amount of \$1,000,000 each year to AAMU to fund the extension program and an additional 10% to this base amount, with an annual increase of 10%. *Id.* at 368.

- **Programming**

The court ordered remedies in both 1991 and 1995 to increase the number of high-demand programs at HBIs to attract non-minority students.⁴

Specifically, the 1991 remedial decree directed Alabama’s Commission on Higher Education (ACHE) to give the HBIs preference in the establishment of high-demand programs in either Montgomery or Huntsville if they could satisfy ACHE’s normal approval processes. *Knight I*, 787 F. Supp. at 1380. *See also Knight II*, F. Supp. 900 at 382. The 1991 decree specifically emphasized that AAMU should have preference for any new teacher education programs in the Huntsville area. *Knight I*, 787 F. Supp. at 1380. The 1995 decree ended the general preference for AAMU and ASU for high-demand programs, but mandated that ACHE not approve duplicative programs in the regions occupied by HBIs and that ACHE give preference for joint and cooperative efforts between institutions whenever doing so was educationally sound. *Knight II*, F. Supp. 900 at 372.

During the period of time that the HBIs had preference, AAMU submitted six program proposals and had two proposals approved: a Bachelors of Science in Technical Studies and a Masters in Social Work.⁵ *Id.* at 290-91. ASU had submitted degree proposals in four fields: doctoral programs in three fields of education, baccalaureate programs in four areas of allied health, a baccalaureate program in environmental science, and a Masters in Accountancy. None of the programs were approved by the time of the court’s 1995 remedial order. *Id.* at 290.

The 1991 decree encouraged the institutions to develop joint or cooperative programming between HBIs and TWIs. The 1991 remedial decree ordered CSCC and AAMU to convene a “Consent Decree Monitoring Committee” and the Committee on Cooperation to propose solutions to the problem of program duplication between the HBIs and TWIs, and the court specifically directed the committee to focus on establishing joint or cooperative programs. *See Knight I*, 787 F. Supp. at 1329-31.

The district court’s 1995 remedial order established additional high demand programs and degree offerings to be implemented at ASU and AAMU. *Knight II*, 900 F. Supp. at 370. Specifically, the 1995 decree authorized AAMU to establish an undergraduate mechanical and

⁴ The 1991 decree, *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991), though vacated and reversed in part by the Eleventh Circuit, ordered programmatic remedies that later courts left undisturbed, as described in this section.

⁵ The original 1995 decision states that AAMU submitted five program proposals, but the court later amended its 1995 remedial decree to provide this preference for a program that had already been prepared by AAMU under the 1991 decree’s provision for preference: a master’s program in science education. *Knight II*, 900 F. Supp at 382.

electrical engineering program, *Id.* at 371, and authorized ASU to establish a program in allied health. Furthermore, the court granted ASU sole authority in Montgomery to offer a Masters in Accounting for a period of five years, after which time proximate TWIs could duplicate the degree program. *Id.* at 372.

The court's 1995 remedial decree continued to emphasize the creation and exploration of cooperative programming between HBIs and TWIs. The 1995 decree specifically mandated that UAH (TWI) cooperate fully in the development of AAMU's engineering program to the extent possible and consistent with sound educational practices. *Knight II*, 900 F. Supp. at 371. The court anticipated that this cooperative programming would take the form particularly with respect to lower division courses. *Id.* at 371. The 1995 decision also applauded AUM and ASU for establishing a cooperative cross-enrollment program in business and education. *Id.* at 299-300. The court likewise praised the continued exploration of joint or cooperative programming between institutions in such fields as: a proposed joint PhD program in environmental science, a Ph.D in special education, and masters program in nursing (with an emphasis in the rural health field), music, social work, and a faculty exchange in allied health areas. *Id.* at 300. As an ultimate endorsement of joint and cooperative programming, the 1995 decree mandated that ACHE give preference for joint and cooperative efforts between institutions whenever doing so was educationally sound. *Id.* at 372.

The 2006 Settlement required the State to continue to fund the educational programs newly established at ASU under the 1995 decree for the duration of the period set forth in previous court orders. *See Br. of U.S. as Appellees* at *12-13.

- **Additional Capital Funding for HBIs Established by the 2006 Settlement**

The 2006 settlement additionally required the State to transfer \$7.3 million in capital funding to AAMU, and \$25 million in capital funding to ASU, to support the new educational programs ordered under the 1995 decree. *See Br. of U.S. as Plaintiff-Appellee* at *13. The settlement also acknowledged the State's agreement to request and support in the 2007-2008 education budget an appropriation to ASU of an additional \$11.9 million in capital funding, and an appropriation to AAMU of an additional \$365,000 in capital funding. *See Br. of U.S. as Plaintiff-Appellee* at *13.

- **Commitment to Other-Race Recruitment and Advertising**

The 1995 remedial decree required AAMU and ASU to budget a reasonable sum for advertising their schools to other-race students to enhance recruitment efforts. *Knight II*, 900 F. Supp. at 372-73.

- **Oversight**

The 1995 remedial decree created a court-appointed Long-Term Planning and Oversight Committee (the Committee). *Id.* at 368-69. The Committee would be responsible for assisting the court and parties in implementing the decree, advising the court and parties on the best method for implementing the new programs, strengthening the cooperative programs at proximate institutions, and any other requests made by the court. *Id.* at 369. The initial cost of the Committee would be borne by AAMU and ASU. *Id.*

In the 1995 remedial decree, the district court retained jurisdiction for an initial period of years, reserving the right to *sua sponte* extend the term of the decree if it deemed additional time was required to assure compliance. *Id.* at 374.

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APPENDIX 3

LOUISIANA

Summary of Remedies Implemented in Louisiana

The United States sued Louisiana in 1974 alleging that the State maintained racially discriminatory practices in higher education violating the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S.C § 2000d. *United States v. Louisiana*, 527 F. Supp. 509 (E.D. La. 1981). In 1981, the court entered a consent decree whereby Louisiana committed itself to modify its admissions and recruitment practices, address attrition rates, address program duplication, enhance the state's predominantly black institutions, and recruit other-race faculty and administration. *Id.* at 515. Prior to the termination of the 1981 consent decree, the parties filed cross-motions for summary judgment on the issue of liability: whether the State continued to maintain an unlawfully segregated system of higher education.

In 1988, the district court found ongoing liability on summary judgment, holding that Louisiana had failed to dismantle its racially dual structure and, moreover, that the 1981 consent decree had failed to remedy the constitutional violation which required the formulation of a new remedial decree. *United States v. Louisiana*, 692 F. Supp. 642, 648-650 (E.D. La. 1988). Following *Fordice* the district court initially adopted the special master's recommended remedial plan, which sought to remediate discriminatory policies and practices found in Louisiana's governance structure of higher education, open admissions policies, and existing program duplication. *United States v. Louisiana*, 811 F. Supp. 1151 (E.D. La. 1992). However, the Fifth Circuit vacated and remanded for a trial on the merits, explaining that that liability should not have been decided on summary judgment on the grounds, *inter alia*, that the court relied upon facts that remained in dispute for which a full trial was appropriate. *United States v. Louisiana*, 9 F.3d 1159 (5th Cir. 1993).

Prior to holding a trial on the remanded issues of governance, open admissions, and program duplication, the parties entered a Settlement Agreement in 1994 ("Agreement") to resolve all claims under the *Fordice*¹ standard with the exception of land grant issues. Agreement, *United States v. Louisiana*, No. 80-CV-3300 (E.D. La. Nov. 14, 1994). The Settlement set forth remedies related to the State's four HBIs: Southern University and Agricultural and Mechanical College in Baton Rouge (SUBR), Southern University at New Orleans (SUNO), Southern University at Shreveport (SUSBO), and Grambling State University (Grambling). The 1994 Agreement provided a maximum of \$48 million to create new programs at HBIs. Agreement at 15-16 ¶ 14.

Remedial Provisions of the 1994 Settlement Agreement Implicating HBIs

- **Addressing Existing Program Duplication**

The Agreement emphasized that questions of fact remained as to whether existing

¹ See *United States v. Fordice*, 505 U.S. 717 (1992).

program duplication should be eliminated. Agreement at 17 ¶ 16. The Agreement stated that program duplication would be addressed by its provisions that differentiated the missions of proximate institutions and by those that instituted a process for eliminating existing programs. Agreement at 17-18 ¶¶ 16-18.

The alleged mission-differentiation was articulated in Appendix A of the Agreement, which defined each institution's role, scope, and mission statement. However, a significant degree of overlap between HBIs' missions with their proximate institutions remained. *See* Agreement, App. A². For example, SUNO's (HBI) undergraduate areas of emphasis were defined primarily as business administration and elementary education, with additional emphasis in criminal justice, science, social work, and substance abuse. The proximately located UNO (TWI) similarly was defined as having undergraduate areas of emphasis in, *inter alia*, biology, business, and education. Agreement, App. A. As part of its efforts to differentiate missions, the Agreement also designated different tiers and admissions standards to proximate institutions. With regard to the HBIs, the Agreement raised SUBR from a four-year tier III university to a four-year tier II university and instituted admissions standards that were less selective than the proximate LSU (TWI). Agreement at 3-4 ¶ 4(a)(ii). The Agreement also raised SUNO from a four-year tier V institution to a tier IV institution, and affirmed SUNO would maintain less selective admissions criteria than the proximate TWI. Agreement at 5. ¶ 4(b)(ii). Finally the agreement maintained the tiers and admissions policies of SUSBO (HBI) and Grambling (HBI) but endowed the proximate TWIs with higher tiers and higher admissions standards. Agreement at 5-6 ¶¶ 4(c), 4(d).

The adopted program elimination process incorporated the Board of Regents 1993 Master Plan ("Master Plan"), which was included as Appendix E of the Agreement.³ The Master Plan articulated a four-step process to identify which duplicative programs would be examined for elimination. *See* Agreement, App. E. The first step removed from the pool of programs for elimination any core course offering such as those in the arts, humanities, or sciences. *Id.* The second step removed from elimination any program that was either necessary for an institution's mission, or sufficiently high in student demand to merit duplication, or served a different student base due to differing admissions standards. *Id.* The third step removed any program of high student interest and high demand from business and industry. *Id.* These initial three steps defined the pool of programs under consideration for elimination, restricting the number of programs that could be eliminated. *See id.* The fourth and final step mandated that the duplicative programs that remained in the pool for potential elimination would "be closely examined for closure" consistent with the commitment to avoid a "disproportionate effect on any [one] institution." *Id.* ¶¶ 17-18.

The Master Plan emphasized the importance of eliminating programs for the sake of fiscal responsibility and did not cite desegregation as a motivation for program elimination. *See* Appendix E at 78 (justifying program elimination on the grounds that "[f]ollowing a decade of budget reductions and continued higher education cutbacks, the Board of Regents must scale down higher education offerings"). The Agreement only considered segregative impact at one

² Appendix A, Role, Scope and Mission Statements for Louisiana's Public Institutions of Higher Education, The Master Plan for Higher Education, Board of Regents, State of Louisiana, April, 1994, pp. 18-32, Settlement Agreement at § 4.

³ Appendix E, Regents for Review of Academic Programs entitled "Elimination of Academic Programs While Broadening Access", The Master Plan for Higher Education, Board of Regents, State of Louisiana, April, 1994, 78-79; Settlement Agreement at § 17.

moment whereby it states that “[b]efore taking any action, however, the Regents shall also consider and issue a written analysis concerning the probable effect of such action on desegregation.” Agreement at 18 ¶ 18. Under this analytic structure, a duplicated program’s segregative impact did not prompt program elimination but served more as a potential bar to proposed elimination.

- **Governance**

While the 1994 Agreement set forth a variety of provisions to modify HBIs’ programming, mission designation, and facilities, the Agreement did not incorporate the district court’s order, though vacated pending trial, to consolidate the four different governing boards into one single statewide governing board. The district court observed that the evidence “suggests Louisiana’s multi-board arrangement has led to unnecessary and costly program duplication.” *United States v. Louisiana*, 718 F. Sup. 499, 508 (E.D. La. 1989). The district court strongly believed that Louisiana’s “excessive duplication” required the creation of a single governing board whose statewide perspective would enable it to minimize duplication through a program elimination or approval processes. *Id.* at 513. While the Agreement did invest limited authority in the State Board of Regents to eliminate programs under certain circumstances, the Agreement retained the system of four different governing boards. Agreement at 1 ¶ 1.

- **Development of New Programs at HBIs: \$48 Million**

The Agreement established a number of new programs at Louisiana’s HBIs. Agreement at 10-16 ¶¶ 13-14. The Agreement capped the costs of such programs at \$48 million over a ten year period. Agreement at 16 ¶ 14. The Agreement prohibited proximate TWIs from adding programs that would duplicate the newly developed HBI programs. Agreement at 10 ¶ 13.

SUBR (HBI): New Programs Awarded

The Agreement developed new programs at SUBR (HBI) and also articulated joint, dual, and cooperative programming between SUBR and the proximately located LSU (TWI). Specifically, the Agreement authorized implementation of four new doctorate programs at SUBR, among the following seven course options: PhD in Science and Mathematics Education; PhD in Biomedical Sciences; PhD in Public Policy; PhD in Nursing; PhD in Administration and Information Systems; PhD in Urban Forestry; PhD in Material Science. Agreement at 10-11 ¶ 13.

The Agreement further authorized the implementation of five new masters programs at SUBR: Master of Science in International Business; Master of Engineering; Master of Science in Physics; Master of Science in Urban Forestry; Master of Arts in Criminal Justice. Although the Agreement gave SUBR’s governing board the option of substituting accreditation of the SUBR School of Business or its Masters in Accountancy Program or both for a masters program listed previously of equivalent cost. Agreement at 11 ¶ 13.

The Agreement also authorized SUBR to establish four new baccalaureate and associate programs: Bachelor of Sciences in Actuarial Science; Bachelor of Arts in Criminal Justice; Bachelor of Sciences in Physical Therapy; Associate in Arts in Criminal Justice. Agreement at 11 ¶ 13.

SUNO (HBI): New Programs Awarded

The Agreement authorized SUNO to implement a new masters degree in criminal justice, which was already approved by the Board of Regents. Furthermore, SUNO was authorized to

develop and implement masters degree programs in the areas of: transportation; substance abuse; teaching; computer information systems. Agreement at 11-12 ¶ 13.

However, SUNO's governing board would have the option of substituting reaccreditation of SUNO's Masters of Social Work for one of the aforementioned programs at equivalent cost.

The Agreement also authorized SUNO to develop three centers, which would be self-supporting: a Community Resource Center; a Center for Community and Economic Development; a Center for African and African-American Studies. Agreement at 11-12 ¶ 13.

Grambling (HBI): New Programs Awarded

The Agreement authorized Grambling to develop and implement one doctoral program: an EdD in Curriculum and Instruction/Educational Leadership, in consortium with Louisiana Tech and Northeast. Agreement at 12-13 ¶ 13

Grambling was further authorized to offer two masters programs, Master of Sciences in Mass Communication and Master of Sciences in Nursing, in addition to seeking accreditation of its Masters of Business Administration.

Finally Grambling was authorized to establish four baccalaureate/associate programs: a BS in Banking/Insurance; a BS in Paralegal Studies; a BS in Criminalistics; an AS in Paralegal Studies. Agreement, at 12-13 ¶ 13.

Joint, Dual, and Cooperative Programming Between HBIs and TWIs

The Agreement formalized several ongoing joint, dual, and cooperative programs between proximate institutions, and encouraged the implementation of additional cooperative programs. The existing and proposed efforts were articulated in Appendices B⁴, D⁵, and F⁶.

- **Joint and Cooperative programs between LSU (TWI) and SUBR (HBI), Appendices, B, D, and F**

Appendix D of the agreement articulated a host of "Joint, Dual, and Cooperative Efforts" between LSU and SUBR within a number of colleges including the colleges of: Arts and Sciences, Basic Sciences, Business Administration, Education, Engineering, and Music. *See* Agreement, App. D.

As an additional means of cooperation, Appendix F of the Agreement articulated the agreement between LSU and SUBR to establish mechanisms aimed at increasing the number of SUBR graduates entering LSU's graduate programs and vice versa. *See* Agreement, App. F. Mechanisms included targeted recruitment efforts as well as giving preference to SUBR graduates when awarding enhanced assistantships, tuition waivers, and fellowships. *Id.*

Finally, and perhaps most significantly, Appendix B⁷ of the Agreement laid out a plan for a community college in Baton Rouge that would be jointly administered by LSU and SUBR, called the "LSU/SU Joint University Center" (University Center). *See* Agreement, App. B. Appendix B set forth the joint administration structure whereby half of the twelve member

⁴ Appendix B, The Initial Plan for the Community College in Baton Rouge entitled "LSU/SU Joint University Center Higher Education, Settlement Agreement at § 10.

⁵ Appendix D. Joint, Dual, and Cooperative Effects. Settlement Agreement at § 15.

⁶ Appendix F. Graduate Programs Articulation Agreement. Settlement Agreement at § 19.

⁷ Appendix B, Settlement Agreement at § 10.

advisory board would be members of LSU's Board of Supervisors while the other half would be comprised of members of SUBR's Board of Supervisors.

- **Joint and Cooperative Programs between UNO and SUNO, Appendix D**

The Agreement also incorporated as Appendix D an agreement between SUNO and UNO "to continue and enhance their joint, dual and cooperative efforts." Agreement, App. D at 7-10. The agreement provided that the schools would cooperate, in general, with regard to cross-registration, transportation, and recreation. They also agreed to collaborate in the following program areas: art education; journalism; physics/engineering; urban transportation; aging and gerontology; social work and public administration. *Id.*

Furthermore, both schools promised to expand course offerings to non-traditional students, including the addition of a General Studies degree at SUNO. Students would continue to cross-enroll in classes and UNO would provide SUNO space to teach classes on their satellite campuses. *Id.* at 8-9.

Finally, the agreement provided scholarships for other-race students at each school and created a joint committee to coordinate the existing and new program initiatives. *Id.* at 9-10

- **Joint and Cooperative Programming Between Proximate Law Schools: LSU and Southern, Appendix F**

The Agreement stated that LSU and SU would "develop and implement a structured arrangement which will channel graduates of each institution into graduate and professional programs of the other institution as other-race students." Agreement at 18 ¶ 19. Appendix F⁸ contained the full articulation agreement between the two schools. The Agreement's major provisions provided that LSU would recruit and support other-race enrollment through scholarships, enhanced recruitment efforts, flexible admissions standards, preferences for African-American candidates, and faculty appointments. Southern would invest in other-race recruitment efforts, reserve a number of other-race assistantships and fellowships, and develop professional and support networks for other-race students.

Furthermore, the Agreement formalized a series of joint and cooperative programming including: shared library facilities, joint degree programs, the appointment of a faculty member to direct and expand upon cooperative efforts between the law schools.

The Agreement also incorporated a second LSU-Southern agreement with regard to joint and cooperative programming through their law centers (LLC and SLC respectively). *See* Agreement, App. H.⁹ The agreement between law schools articulated three major commitments. First, the schools committed to improving the quality of Southern Law Center's (SLC) physical facilities and academic offerings. With regard to the latter, the agreement augmented SLC's curriculum by creating more programmatic support for bar preparation and legal writing skills. *Id.* at 1-2. Second, the schools committed to articulating the fundamental differences in the mission of the two schools. The agreement observed that SLC placed a greater focus on non-traditional students and also notes SLC's investment in its clinical programs. *Id.* at 3-5.

Third, the schools committed to increasing access of African-American students to LLC (through recruitment, scholarships, and various remedial and retention programs). *Id.* at 6-8.

⁸ Appendix F, Settlement Agreement at § 19.

⁹ Appendix H, The Law Centers in Baton Rouge, dated December 8, 1992, Source: State Response to Show Cause Order of Sept. 10, 1992, Regarding Merger of Law Schools, Settlement Agreement at § 21.

- **Exceptions to Admissions Criteria to Admit Other-Race Students**

As detailed above, the Agreement tiered proximate institutions' admissions criteria in an attempt to differentiate between proximate institutions' missions and avoid program duplication. Agreement at 7 ¶ 5. The Agreement did permit each institution to have 15% of its entering class set aside for admissions exceptions, 10% of which was to be used for admitting other-race students and the remaining 5% to be used for other institutional interests. Agreement at 8 ¶ 8.

- **Capital Outlay Funding**

The Agreement obligated the State to fund pending capital outlay projects which were not completed under the prior Consent Decree. Agreement at 18-19 ¶ 20.

- **Other-Race Recruitment And Retention**

The Agreement mandated that each state institution would develop a comprehensive program for recruitment and retention of other-race students, faculty, administrators, and staff. Such comprehensive programs were required to include: at least one admissions officer whose primary function is to recruit other-race students; the adoption of a written equal opportunity policy; a significant campaign to advertise the institution to prospective other-race students; the development of outreach programs to high schools in predominantly other-race areas; the establishment of other-race scholarships; and a plan to aggressively recruit qualified, other-race employees. Agreement at 20-24 ¶¶ 22, 23.

- **Oversight and Dispute Resolution**

The Agreement established a three-member committee ("Monitoring Committee") to monitor compliance, selected by the parties and subject to court approval. Agreement at 24-25 ¶ 24. The Monitoring Committee was tasked with filing annual evaluations with the court and providing advice and assistance to the parties to resolve a dispute.

The Agreement set an expiration date of December 31, 2005. Agreement at 27 ¶ 28.

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APPENDIX 4

MISSISSIPPI

Summary of Remedies Implemented in Mississippi

There are three public historically black institutions (“HBIs”) in Mississippi: Jackson State University is a comprehensive institution located in Jackson; Alcorn State University (“Alcorn”) is a regional institution located in the southwestern corner of the state; and Mississippi Valley State University (“MVSU”) is a regional institution in the Mississippi Delta. Following the U.S. Supreme Court decision in *United States v. Fordice*, 505 U.S. 717 (1992), the district court in Mississippi determined on remand that the State had not yet dismantled its formerly segregated system of higher education. *Ayers v. Fordice*, 879 F. Supp. 1419 (N.D. Miss. 1995) [hereinafter *Ayers II*]. After trial, the district court found traceable policies and practices related to undergraduate admissions, institutional missions, funding to the extent it was tied to mission, equipment and library allocations to the extent they follow mission, program duplication, separate land grant programs, and the continued operation of all eight universities. *Id.* at 1477.

The remedies adopted to desegregate the higher education system in Mississippi are primarily outlined in the district court’s 1995 remedial decree and 2001 settlement agreement, and are summarized below. *Ayers v. Musgrove*, No. 4:75CV009-B-D (N.D. Miss. Feb. 15, 2002).¹ As amended by the agreement, the remedies in Mississippi included a number of new and enhanced programs at each of the three HBIs. Between the remedial decree and settlement, the HBIs were to receive up to a total of \$516,980,000² in funds to support new and enhanced programs, specific capital improvements, other-race recruitment, and other-race scholarships. The most relevant aspects of the 1995 court decree and 2001 settlement are summarized below.

- **New and Enhanced Programs at the HBIs**

Both the court’s 1995 remedial decree and the later settlement anticipated a number of new and enhanced programs at the HBIs. In terms of programmatic enhancements, the 1995 decree required the Board to identify select programs in allied health not offered by the University of Mississippi Medical Center (“UMMC”) in Jackson or which might be jointly offered with UMMC to be implemented at JSU. *Ayers II*, 879 F. Supp. at 1494. A Doctorate in Social Work, a Masters and Doctorate in Urban Planning, and a Doctorate in Business Administration were to be placed at JSU. *Id.* The decree also ordered the Board to take whatever steps were necessary to vest complete institutional control of the Universities Center³ in Jackson at JSU. *Id.*

According to the 2001 agreement, the HBIs were to “develop, implement, strengthen,

¹ Unreported decision available online at www.casetext.com/case/ayers-v-musgrove-5.

² This amount does not include the additional \$4 million a year in matching funds to be provided to the ASU Small Farm Center pursuant to the 1995 remedial decree.

³ A number of TWIs offered extension programs in Jackson that competed with JSU. *Ayers v. Allain*, 674 F. Supp. 1523, 1542 (N.D. Miss. 1987) [hereinafter *Ayers I*]. Those were addressed in the state’s 1974 desegregation plan ultimately rejected by the U.S. Department of Education Office for Civil Rights (“OCR”). *Id.* at 1530.

review, and modify the programs identified” consistent with sound educational practices, the objective of desegregation, and resources available over time. *See* Settlement Agreement, *Ayers v. Musgrove*, No. 4:75CV009-B-D, 5 (2001) [hereinafter “Settlement”].⁴ The Settlement proposed a number of programs to be added or enhanced at JSU. These included a Doctorate in Business, a Masters and Doctorate in Urban Planning, a Doctorate in Social Work, a Bachelors in Civil Engineering, a Bachelors in Computer Engineering, a Bachelors in Telecommunications Engineering, a Masters and Doctorate in Public Health, a Bachelors in Health Care Administration, a Masters in Communicative Disorders, a Doctorate in Higher Education, a pharmacy initiative, a School of Allied Health, a School of Public Health, and a School of Engineering. JSU was also to receive enhancements in business and education. *Id.* at 8.

The 1995 remedial order gave Alcorn a Small Farm Development Center and a Masters in Business Administration at the ASU Natchez Center. *Ayers II*, 879 F. Supp. at 1483, 1486. The settlement then identified a number of additional programmatic additions and enhancements for Alcorn. These included a Masters in Accounting, a Bachelors in Finance, a Masters in Physician Assistants, a Masters in Biotechnology, a Bachelors in Computer Networking, a Bachelors in Environmental Science. The agreement specifically provided enhancements at Alcorn in the areas of nursing, teacher education, math and science (biology, chemistry, physics) and computer science. *See* Settlement at 6-8.

Because of a proposed merger between MVSU and Delta State University (“DSU”), MVSU did not receive additional programs until the 2001 settlement, by which time the Board had concluded and the district court had agreed that the merger was impracticable. *See Ayers v. Thompson*, 358 F.3d 356, 362 (5th Cir. 2004) (referencing procedural history prior to the appeal and district court decisions following 1997). The settlement established at MVSU a Bachelors in History, a Bachelors and Masters in Special Education, a Masters in Computer Science, a Masters in Bioinformatics, a Masters in Leadership Administration, and a Masters in Business Administration at the HBI. MVSU also received enhancements in biology, chemistry, computer science, math and special education. *See* Settlement at 7-8.

- **Funding For Programs: \$249,480,000 + \$4 Million Annual Matching Funds**

The 1995 remedial decree did not identify the actual level of funding necessary to implement court ordered programmatic enhancements, but it did note that the State must ensure the funding necessary to implement all measures outlined in the decree. *See Ayers II*, 879 F. Supp. at 1496. In addition, it ordered the State to provide up to \$4 million in annual matching funds for a new Small Farm Center at Alcorn mentioned above. *See id.* at 1486.

The settlement agreement provided a total of \$245,880,000 to be distributed between the institutions over 17 years on an annual basis, with each institution receiving a pro rata share outlined in the agreement and described below. Funding required to implement the agreement was not to supplant regular funding for the HBIs. *See* Settlement at 14-15. Finally, the agreement released \$3.6 million which had been previously frozen by the district court, to be allocated equally between Alcorn and MVSU for the implementation and enhancement of the identified programs. *Id.* at 17.

- **Capital Funding: \$90 Million**

⁴ Available at http://www.mississippi.edu/ayers/downloads/settlement_agreement_ayers.pdf.

The 1995 remedial plan provided a total of \$15 million to JSU in order to permit it to acquire land and enhance its campus. The settlement agreement identified a number of capital improvements for the HBIs. Between 2002 and 2006, the State agreed to provide \$15,000,000 per year for a total of \$75,000,000 to the Board for capital improvement projects identified by the agreement and allocated between the HBIs by the Board after consultation with the HBI presidents.⁵ *See id.* at 13. The later settlement provided an additional \$75 million to all three HBIs to complete specific capital improvement projects at each campus, which are referenced in more detail below. *See id.* at 16.

- **Endowments for Other-Race Scholarships and Diversity Programs: \$115 Million**

The 1995 order established a \$5 million endowment for JSU as well as for Alcorn (for a total of \$10 million combined) to fund other-race scholarships and diversity programs. *Ayers II*, 879 F. Supp. at 1495.

The settlement established a publicly funded endowment in the amount of \$70,000,000 over a 14 year period,⁶ which was to be managed by a seven person committee.⁷ *See Settlement* at 9. The income was to be allocated 28.3% to Alcorn, 43.4% to JSU, and 28.3% to MVSU and was to be used for other-race marketing and recruitment, including other-race recruiting personnel and other-race scholarships. The income could also be used for new academic programs and enhancements as provided for by the agreement. *See id.* at 9, 11.

The agreement also established a private endowment in the amount of \$35,000,000 over a 7 year period, which was to be managed by the same committee managing the public endowment.⁸ The income would be allocated between the three HBIs using the same pro rata percentages,⁹ and could be used for other-race marketing, recruitment and scholarships. *See id.*

- **Student Financial Aid: \$62.5 Million**

The settlement provided another \$6,250,000 over a 10 year period to supplement

⁵ Alcorn was to receive \$1.1 million for equipment for the new Masters in Business Administration, another \$9 million for a new fine arts center, \$3.5 million to repair and renovate Dumas Hall to assist its efforts to receive accreditation of its business program, \$1 million to purchase property to improve security and access to its Lorman campus, and another \$10.5 million for a biotechnology building. JSU was granted \$20 million for an engineering building and \$3.3 for the Allstate building. MVSU was to receive \$5 million for library enhancements, \$16.7 million for a science and technology building, \$3 million for landscape and drainage, and \$1.9 million for repairs and renovations. These estimates, and excess funds could support other capital projects at the institution but expenditures for these projects were not to exceed the amounts identified. *See Settlement* at 13.

⁶ The state legislature was to appropriate to the Board \$5,000,000 per year for 11 years, for a total of \$55,000,000. After that, a \$15,000,000 trust would be terminated through special appropriations of \$5,000,000 annually for three years either to the Board or the HBIs directly, if the HBIs reached specific other-race enrollment targets outlined in the agreement. If an HBI reached 10% other-race enrollment and sustained that for a period of three consecutive years, the Board was to transfer to the school the specified pro rata share of the existing principal of the public endowment. *See Settlement* at 10.

⁷ The committee was to consist of the presidents of the HBIs, the Commissioner of Higher Education, two Board members (the president and the president's designee), and another member to be agreed upon by the other members. *See Settlement* at 9.

⁸ The Board would control the private endowment until an HBI attained 10% other-race enrollment for three years, at which point the HBI would receive its pro rata share of the existing principal.

⁹ The principal was not to be invaded. *See Settlement* at 11.

financial aid to be used to improve student access to summer developmental education programs for those affected by financial considerations, so that eligibility would be based on student financial need. *See id.* at 4, 15.

- **Mission Designation: JSU Identified as a Comprehensive Institution**

Prior to the 2001 settlement agreement, JSU was identified as a regional institution serving the Jackson area. That designation was not altered by the remedial decree or subsequent court orders. *See generally Ayers v. Thompson*, 358 F.3d. 356. The agreement designated JSU as a comprehensive institution and noted that the programs and facilities enhancements identified within the agreement were consistent with that classification. Settlement at 17-18.

- **Oversight: Monitoring Committee and Ongoing Federal Jurisdiction**

The 1995 remedial plan established a Monitoring Committee to review the court ordered studies and reports required by the plan, and recognized that ongoing federal court supervision was necessary to ensure implementation of the order. *See Ayers II*, 879 F. Supp. at 1495.

Brief Procedural History of Ayers v. Fordice

In 1975, black citizens of Mississippi initiated a class action against various state officials alleging that the state's dual system of public higher education violated the constitution and federal civil rights statutes. After twelve years of unsuccessful negotiation, the case went to trial. The district court held that Mississippi had fulfilled its affirmative duty to eliminate its *de jure* segregated system by adopting race-neutral policies related to admissions, faculty and staff hiring, and resource allocation. *See Ayers v. Allain*, 674 F. Supp. 1523 (1987). A panel of the Fifth Circuit reversed and remanded, but on rehearing the Fifth Circuit vacated that decision and reinstated the district court findings of fact and conclusions of law. *See Ayers v. Allain*, 914 F.2d 676 (5th Cir. 1990) (*en banc*).

That decision was overruled by *United States v. Fordice*, 505 U.S. 717 (1992), which held that the adoption of race-neutral policies and practices had not dismantled the formerly dual system of higher education in Mississippi. The Supreme Court concluded that “[i]f policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound educational practices.” *Id.* at 729.

On remand, the district court determined that the State had not discharged its duty to dismantle a dual system of higher education. *See Ayers II*, 879 F. Supp. at 1419. Applying *Fordice*, the court found that a number of the State's traceable policies and practices had ongoing segregative effects, including those related to the provision of duplicative offerings between geographically proximate and racially identifiable institutions. *See id.* at 1477. The court entered a remedial plan with specific programmatic enhancements, funding, endowments, and other measures. *See id.* at 1494-96.

The district court found “without a doubt” that the arrested development of JSU was traceable to *de jure* segregation, and agreed in part with plaintiff's contentions that the lack of professional programs at JSU more likely than not affect its position and reputation vis-à-vis the white comprehensive universities, especially with respect to the “types of programs that promise the greatest degree of desegregation, e.g., pharmacy, law, engineering.” *Id.* at 1484. The court anticipated that the proposed funds to purchase adjoining land and enhance the campus would correct JSU's image. *See id.* at 1485.

In addition to the new and enhanced programs at JSU described above, the court ordered a study of programmatic enhancements which might ensure a “reasonable degree of desegregation” at JSU. *Id.* at 1486. This study was to determine the relative strengths and weaknesses of existing programs “with the express purpose of determining the nature and direction of those programs slated to be implemented, as well as further programmatic expansion at JSU, to best achieve the urban emphasis of its mission.” *Id.* at 1494-95. This included consideration of whether there was need for an additional law school at JSU, or whether one state law school placed at JSU would help enhance JSU, and whether an engineering school and a professional five-year pharmacy program should be placed at JSU.¹⁰ *See id.* at 1485.

The decree further directed that special funds up to an aggregate of \$15 million over no more than five fiscal years to fund property acquisition, campus entrances, security and grounds enhancement, and that income from the \$5 million endowment be used to fund “continuing educational enhancement and racial diversity, including recruitment of white students and scholarships for white applicants in a number and an amount determined by the court upon recommendation from the Monitoring Committee.” *Id.* at 1495. A \$5 million endowment trust was also to be created for the benefit of Alcorn.¹¹ *See id.*

In addition, the Board was to “take steps toward developing strong articulation agreements between JSU and surrounding community colleges within its service area” capable of ensuring “alteration in the percentage of students enrolled in upper division courses, thereby creating the potential of increasing its funding under the formula.” *Id.* at 1495.

With respect to Alcorn, in addition to the Masters in Business and Small Farm Development Center mentioned above, the court ordered the State to provide extension funds to match dollar-for-dollar federal funds up to an aggregate of \$4 million a year. *See id.* at 1486. The State was also to provide “special funding” for the business program, including “related capital improvement”. *Id.* at 1495.

The district court believed that “the most segregative aspect of the State system of higher education is the maintenance of eight universities with differential admissions standards between the TWIs and HBIs, thereby maintaining the racial identifiability of the universities,” *id.* at 1490, and that this continued to foster segregative choice in the Delta and perpetuated the racial identifiability of Mississippi Valley State University (“MVSU”). As a result, the remedial decree provided that the proposed consolidation of MVSU and Delta State University (“DSU”) be studied. *Id.* at 1495.

The court found that the Board’s existing program approval process was an “educationally sound way of managing duplication in the system,” and therefore presumed that uniform admissions, programmatic enhancements and funding would “realistically promise to obviate or lessen whatever segregative effects” produced by unnecessary duplication. *Id.* at 1486. Even so, a Monitoring Committee was established to ensure the implementation of the terms of

¹⁰ JSU does not currently offer law or pharmacy. *See* May 2013 Academic Program Inventory Degree Book (“2013 Degree Book”), Academic Programs Summary Chart A at 16-24, http://www.mississippi.edu/research/downloads/2013_degreebook.pdf

¹¹ The Board was authorized to control and account for the expenditure of funds outlined in the decree, but the court specifically provided that the State “shall provide the funding for all such measures ordered by this decree.” *Ayers II*, 879 F. Supp. at 1496.

the remedial decree.¹² Furthermore, the court retained jurisdiction over the implementation of the decree. *Id.* at 1496.

The remedial plan was later challenged by plaintiffs. The Fifth Circuit affirmed in part, reversed in part, and remanded for further proceedings. *See Ayers v. Fordice*, 111 F.3d 1183 (5th Cir. 1997). The court of appeals substantially affirmed the findings regarding the additional resources for the HBIs, but did instruct the lower court to reconsider new programs at Alcorn and MVSU. *See id.* at 1209-1225. The Fifth Circuit agreed that the original remedial decree should have required the consideration of adding new programs with the potential to desegregate MVSU and Alcorn. *Id.* at 1214.

Plaintiffs appealed the conclusion that new programs would not desegregate MVSU, and requested further relief with respect to Alcorn. *See id.* at 1212. The Fifth Circuit agreed that steps might be taken to desegregate MVSU in light of the district court holding that the HBIs in other states have been successful in integrating their student bodies through a variety of approaches and measures, although determining what those steps might be required further study. *See id.* at 1213. In particular, the court of appeals noted that the evidence presented below seemed to show that well-planned programs responsive to the particular needs and interests of local populations can help desegregate the HBIs. *See id.* at 1214.

Consequently, the lower court was ordered to clarify whether the proposed consolidation between MVSU and DSU offered an educationally sound and practicable means of desegregating the Delta. *See id.* at 1214, 1228. If not, the Board was to study other effective methods of desegregating MVSU, including the possibility of adding academic programs. *See id.* The Fifth Circuit acknowledged that “measures that have been successful in desegregating historically black institutions in other states may have the potential over the longer term to be effective also at Alcorn State.” *Id.* at 1214. As a result, it ordered that the previously ordered study of JSU also include an assessment of whether new academic or land grant programs might increase other-race enrollment at Alcorn. *See id.* at 1214, 1228.

After that decision, the district court conducted a number of hearings to review the implementation of its decree.¹³ By June 1998, it was determined that the proposed consolidation between MVSU and DSU was impracticable. Instead, the Board was ordered to study programs to be implemented at MVSU capable of attracting other-race students. *See Ayers*, 358 F.3d at 363. In October 1999, the district court considered the Board to be in full compliance with several of its obligations related to JSU. *See id.* By January 2001, the district court ordered that having found no unmet demand for additional legal education in the Jackson area, the Board need not establish a law school at JSU as part of its obligation to desegregate that institution. In addition, it was held that the existing pharmacy program at UM met the state need for pharmacy education so that the addition of such a program at JSU was neither feasible nor educationally sound. *See id.* at 364.

In 2001, the parties entered a settlement agreement which identified a number of additional program areas to be implemented or continued at each of the HBIs and funded over a seventeen year period.¹⁴ *See Ayers v. Musgrove*, No. 4:75CV009-B-D, 2002 WL 91895 (N.D.

¹² The Monitoring Committee was to consist of three objective persons with experience in higher education, agreed to by the parties and approved by the court. *Ayers II*, 879 F. Supp. at 1494.

¹³ While not all of the district court decisions appear to be reported, some are summarized in *Ayers v. Thompson*, 358 F.3d 356, 363 (5th Cir. 2004).

¹⁴ The specific new and enhanced programs for each HBI are identified above and are not listed again here.

Miss. Jan. 2, 2002). The court held several hearings and conferences regarding the proposal. *See id.*

When presented with the proposed settlement, the district court expressed concern about the high cost and long duration contemplated by the proposed agreement.¹⁵ *Id.* at *3. Even so, the court noted that it preferred all cases end in an agreement between the parties. *See id.* at *4. The district court ultimately approved the settlement after a fairness hearing and confirmation that the state legislature would fund the terms of the court approved settlement. *See id.* at *3. Dissatisfied with the scope of relief in that agreement, some of the private plaintiffs appealed that order and requested that the settlement be invalidated. Among other things, the appellants sought more funding and programs for the HBIs. *See Ayers*, 358 F.3d at 370-71 (2004). After determining that these issues had been addressed by prior court rulings, the Fifth Circuit affirmed the district court decision approving the settlement agreement after finding no abuse of discretion by the lower court. *See id.*

¹⁵ In an unreported order scheduling a hearing and directing notice to the proposed settlement class, the district court noted that the parties plan “acknowledges only in a cursory fashion the heart of this case, desegregation” and noted that “the true issue in this case, the issue upon which the case has been tried at every court hearing, is desegregation.” *See* D.E. 751, Scheduling Order, *Ayers v. Musgrove*, Civil Action No. 4:75CV009-B-D, 3 (N.D. Miss. May 8, 2001).

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APPENDIX 5

TENNESSEE

Summary of Remedies Implemented in Tennessee

The litigation to desegregate Tennessee's higher education system commenced when plaintiffs filed suit in 1968 to challenge the State's maintenance of a racially segregated system of higher education contrary to the Fourteenth Amendment. *See Sanders v. Ellington*, 288 F. Supp. 937 (M.D. Tenn. 1968). Specifically, plaintiffs sought to enjoin the proposed expansion of the University of Tennessee-Nashville Center (UT-N), a historically white institution (TWI), which would exacerbate racial disparities between UT-N and Tennessee State University (TSU), a historically black institution (HBI). *Id.* at 939. The district court did not initially grant the injunction, but found that Tennessee had maintained a dual system of higher education and its institution of an "open-door" admissions policy did not satisfy to its obligation to dismantle the discriminatory system. *Id.* at 942-43.

After finding liability, the district court ordered defendants to submit a plan to desegregate higher education institutions across the state. *Id.* at 943. From 1968 through 1976, the defendants submitted various desegregation plans and progress reports on the state's higher education institutions. *See Geier v. Blanton*, 427 F. Supp. 644, 646-56 (M.D. Tenn. 1977). The court repeatedly found that the desegregation of TWIs showed promising progress but that impermissible racial segregation continued to exist in Middle Tennessee with regard to TSU (HBI) which retained its racial identifiability, due in significant part to its competition with UT-N (TWI). *Geier*, 288 F. Supp. at 652. The court repeatedly directed defendants to revise their desegregation plans and took preliminary steps to increase white enrollment at TSU by transferring several specific programs from UT-N to TSU. *Id.* at 649.

When progress towards desegregating TSU remained insufficient by 1976, eight-years after the initial desegregation order, the court invoked its equitable powers by mandating a merger between TSU and UT-N to be completed by July 1, 1980. *Id.* at 600-61, *aff'd Geier v. Univ. of Tennessee*, 597 F.2d 1056 (6th Cir. 1979). The merger was implemented and the court retained jurisdiction to consider what further remedies might be required to dismantle the dual system. *Id.* at 651, 662; *see also Geier v. Alexander*, 593 F. Supp. 1263, 1267 (M.D. Tenn. 1984) (affirming court's ongoing jurisdiction over the matter). In 1984, the parties entered a Stipulation and Settlement Agreement to resolve remaining issues. *See Geier v. Alexander*, 593 F. Supp. 1263 (M.D. Tenn. 1984), *aff'd Geier v. Alexander*, 801 F.2d 799 (6th Cir. 1986).

In 1994 the defendants filed a motion to declare unitary status, which plaintiffs opposed. *See Br. of Plaintiffs*, 2003 WL 25745337, at *14 (describing procedural history). The parties recommenced negotiations and they entered a Consent Decree in 2001. *Geier v. Sundquist*, 128 F. Supp. 2d 519 (M.D. Tenn. 2001). The 1984 and 2001 settlements are described in further detail below.

Altogether, plaintiffs offered a "conservative estimate" that the total relief obtained by the litigation prior to the 2001 Consent Decree should be valued at more than \$320 million, an estimate that reflected the remedial actions pursuant to the 1984 Settlement as well as the prior, court-ordered merger. *Br. of Plaintiffs*, 2003 WL 25745337, at *15-16. The 2001 Consent

Decree provided additional relief in the amount of approximately \$75 million resulting in a total amount of approximately \$395 million awarded in remedial relief. Br. of Plaintiffs at *15-16.

Remedial Provisions of the 1984 Settlement: Approximately \$320 Million when Combined with the Court-Ordered Merger

- **TSU: Mission Enhancement, Programmatic Realignment, Facility Assessments, and Scholarships**

The Settlement elevated TSU's academic reputation by requiring remedial actions with regard to a physical facility assessment, mission-enhancement, and programmatic realignment. First, TSU's physical facilities would be assessed and a plan would be developed to accomplish all necessary renovations and new constructions within five years. *Geier v. Alexander*, 593 F. Supp. 1263 (M.D. Tenn. 1984). Second, the Settlement required the State Board of Regents (SBR) and the Tennessee Higher Education Commission (THEC) to develop a plan to endow TSU with a unique, specialized mission to ensure TSU could achieve status as the regional urban university for Middle Tennessee. *Id.* at 1272-73.

Finally, the Settlement required programmatic realignment through several remedial actions. First, for five years the State Board of Regents had to accord TSU first priority for all new graduate program proposals in the Middle of Tennessee. *Id.* at 1273. In addition to this priority, the Settlement placed limits on programming at the two proximate TWIs which were prohibited from proposing doctoral programs, and from seeing a net-increase in their masters degree programs during this five-year term. *Id.* Second, the State Board of Regents had to develop an Institute of Government at TSU and provide TSU consultants to assist in developing the new program, strengthening TSU's current program in public administration, and identifying new programs to offer. *Id.*

Beyond the actions specific to TSU, the Settlement required the two proximate TWIs and TSU to discuss detrimental program duplication and develop a plan for the realignment of certain specified programs in order to support TSU's enhanced mission. *Id.* In addition, the Settlement directed the three institutions to develop a plan to facilitate cross-enrollment between their institutions. *Id.* at 1274.

- **The Creation of a Desegregation Monitoring Committee and Benchmark Objectives**

The 1984 Settlement created the Desegregation Monitoring Committee to formulate a procedure for monitoring and reporting progress to the court on the desegregation of all institutions. *Id.* at 1268-69. The plans set forth "benchmark objectives" to be achieved by the end of each year. *Id.* at 1269. With regard to objectives at TSU, the 1993 interim objective would be set at 50% white full-time equivalent enrollment. *Id.* The long range objectives for the racial composition of students at TSU will be set on the same basis as the objectives are set at all other institutions in the state. *Id.*

- **Studies to Determine How Current Policies Should Be Revised to Promote Desegregation Among Higher Education Institutions**

The Settlement required defendants to conduct a number of studies to assess how policies exacerbated racial segregation and, relatedly, whether policy revisions would have a desegregative impact. Specifically, the Settlement ordered studies to examine: whether there was

a racial disparity in college enrollment and graduation rates by race; whether awarding other-race students tuition discounts, loans, scholarships, and/or other incentives would be feasible and effective at desegregating institutions; whether any institution projects an image as being racially identifiable; and whether there are any inequities in awarding public and private financial aid. *Id.* at 1269-70. If these studies revealed racial inequities, the Settlement directed the development of desegregation plans and/or modification of existing plans to more effectively dismantle the state's dual system of education. *Id.* at 1269-70.

- **Specific Actions With Regard to Revising Admissions Requirements, Recruitment Strategies, and Scholarship Awards to Promote Desegregation**

In addition to studies, the Settlement explicitly mandated that certain actions be taken with regard to admissions, recruitment and scholarships to dismantle the dual system of education. With regard to TSU, admissions requirements would be raised over a period of five years. *Id.* at 1270. Throughout the higher education system, the State Board of Regents and the University of Tennessee would monitor, develop and coordinate a statewide other-race recruiting program, utilizing bi-racial recruiting teams. *Id.* Finally, the Settlement included provisions to provide funding to promote the enrollment and retention of minority students in the state's graduate and professional schools. *Id.* at 1270-71.

- **Attracting Other-Race Faculty and Administrators to Institutions**

Under the Settlement, defendants agreed to develop programs to attract other-race faculty and administrators to the state's higher education institutions. *Id.* at 1272.

- **Jurisdiction and Further Relief**

Under the 1984 Settlement, the court retained jurisdiction to oversee the Settlement's implementation. *Id.* at 1274. Furthermore, plaintiffs could return to the court to request further relief if the normal budgetary processes did not provide sufficient funding to implement the Settlement's provisions, or to enforce compliance with the Settlement should defendants not proceed in good faith. *Id.* at 1269.

Remedial Provisions of the 2001 Consent Decree: Approximately \$75 million

- **TSU: Programmatic Development and Exclusivity**

The Consent Decree provided that, during the term of the agreement, if a public law school was to be established in Middle Tennessee, it must be established at TSU. *Geier*, 128 F. Supp. 2d at 531-32. Parties agreed that TSU would enter negotiations with the Nashville School of Law, a proximately located private institution, to discuss merger. *Id.* at 532. However, the State was not obligated to secure a merger agreement. *Id.*

In the event the discussions did not result in a merger, the Consent Decree provided funding for further programmatic development at TSU. *Id.* Specifically, if the merger did not occur the State agreed to provide TSU with up to \$5,000,000 in start-up funding for several new programs including: a new, high-demand doctoral degree in an area that would attract other-race students; start-up costs associated with establishing a College of Public Service and Urban Affairs, and one new program to be started therein; up to two new high-demand programs at the baccalaureate or masters level that would attract non-traditional students to TSU's downtown

Williams Campus. *See id.* The Consent Decree mandated that the programs created through this funding had to be non-duplicative of existing programs at proximate, public institutions. *Id.* at 532-33. Once approved, TSU must retain programmatic exclusivity in these areas. *Id.*

Moreover, the Consent Decree mandated that TSU maintain its current exclusivity in Middle Tennessee for all programs in which it enjoyed exclusivity as of the 2001 Consent Decree. *Id.* at 525. An exception could only be made if there was a demonstrated need for duplication and a showing that such duplication would not adversely affect the desegregation of TSU. *Id.*

- **Requirements Placed on the Proposed, Proximate Community College And Funding To Ensure TSU Could Attract Other-Race, Non-Traditional Students**

The Consent Decree ensured that if a proximate, community college was created it would not be subsumed or become a branch of an existing university, as such a structure could undermine TSU's ability to attract non-traditional students. *Id.* at 533. Furthermore, the Consent Decree mandated that TSU and any such community college must formulate articulation and transfer agreements. *Id.* Finally, the Tennessee Board of Regents was obligated to proactively ensure there were strong linkages between the community college and TSU, such as utilizing TSU faculty to teach community college students. *Id.* As a final measure to protect TSU's ability to attract non-traditional, other-race students, the state would provide funding to enable 350 community college students to transfer to TSU without increasing their tuition rates, as the difference in the tuitions would be supplemented by the state. *Id.*

- **Specific Restrictions and Agreements Related to Proximately Located Institutions**

Beyond granting TSU program exclusivity in already occupied areas, the Consent Decree limited the number of PhD programs that could be offered by Middle Tennessee State University (MTSU). As a general restriction, the Consent Decree only permitted MTSU to convert Doctorate of Arts programs to PhD programs if they were noncompetitive and non-duplicative of TSU's existing doctoral programs. *Id.* at 533-34. Furthermore, during the first two years of the Consent Decree MTSU could only convert three of its Doctorate of Arts programs to PhDs. *Id.* at 533-34. Finally, the number of MTSU's PhD programs could at no time exceed the number offered at TSU. *Id.* at 534.

As an additional restriction, the Consent Decree clarified that for the term of the agreement, MTSU could not offer courses for credit at any physical location in Davidson County. *Id.*

The Consent Decree also required three public institutions located in Middle Tennessee – TSU (HBI), MTSU (TWI), APSU (TWI) – to form a committee to encourage cross-enrollment between the institutions through the creation of coordinated calendars and transfer agreements. *Id.* In addition, the Consent Decree created committees to explore the expansion of cooperative extension and agricultural research programs between TSU (HBI) and UTIA (TWI). *Id.* at 545.

- **Approval Process for New Programs and Program Termination to Protect TSU's Program Exclusivity**

In addition to the general statement that TBR and THEC were obligated to approve and terminate programs consistent with the state's programming plan, the Consent Decree explicitly articulated the requirement that any new proposed program must undergo an assessment to determine its potential impact on the desegregation of Middle Tennessee institutions. *Geier*, 128

F. Supp. 2d at 534-35. To be approved, it was required that the program assessment showed “no negative effect be discernible.” *Id.* Moreover, it was required that the added program “not infringe or diminish the educational mission of any other institution.” *Id.*

- **TSU: Recruitment of Other-Race, Non-Traditional Students Through Advertising, Targeted Recruitment, and Revitalization of the Downtown Campus**

The Consent Decree directed TSU to develop and implement a plan to recruit other-race, non-traditional students. *Id.* at 524. The Consent Decree further mandated that TSU’s Dean of Admissions be provided with at least two recruiters, support staff, and the resources necessary to recruit other-race students. *Id.* As part of this larger effort, the Consent Decree specifically required TSU to strengthen its outreach to the local business community to better fulfill its mission as the major state-supported urban and comprehensive university in Middle Tennessee. *Id.* at 527.

Additionally the Consent Decree mandated a two-year public relations campaign targeting local, non-traditional students to increase awareness about TSU’s academic offerings. *Id.* at 524. The campaign would be funded jointly with the State contributing 65% of the costs, not to exceed \$400,000 over the two-year campaign period. *Id.* at 525.

The Consent Decree further mandated the revitalization of TSU’s Downtown Williams Campus as part of a major effort to attract more non-traditional students. *Id.* at 530-31. The State agreed to provide the capital funding necessary to renovate the Williams Campus. Furthermore, the State agreed to provide \$3,750,000 over five years to fund a scholarship program for local, non-traditional students to attend TSU. *Id.* at 530. Finally, the revitalization of the Williams Campus would include the development of new curriculum programs that would appeal to working, adult students. *Id.* at 531. The Consent Decree directed the TSU Committee to develop a plan and proposed budget to be submitted to the Monitor and all parties for approval. *Id.*

- **Establishment of the TSU Endowment for Educational Excellence**

The 2001 Consent Decree created the TSU Endowment for Educational Excellence which could be used for educational purposes, including: merit-based scholarships, faculty development, research grants and support, Chairs of Excellence and Centers of Excellence, support of lectures by nationally known authorities, the enhancement of library services, and/or management fees associated with the Endowment’s management. *Id.* at 525-26.

The State agreed to contribute \$1,000,000 annually to the Endowment for ten years and, additionally, match TSU’s privately raised funds up to \$10,000. *Id.* at 526. Thus, if TSU secures a full match of private funds, the provision cumulatively mandates the State provide TSU with \$20,000 for its endowment. *Id.*

- **TSU: Facilities Review**

The 2001 Consent Decree mandates a facilities review of TSU to determine whether the vestiges of discrimination have been removed. *Id.* at 527. The review should inform a report and recommendations for submission to the Monitor and parties of record. *Id.* If the parties are unable to agree on the appropriate course of action, the parties may raise the issues with the court. *Id.*

- **Oversight, Dispute Resolution, and Data Collection Under the 2001 Agreement**

The 2001 Consent Decree mandated the appointment of a Monitor to facilitate implementation of the Consent Decree's provisions and to mediate controversies in the event disagreements could be resolved without court action. The Consent Decree required the Monitor to "be committed to the removal of the vestiges of segregation" and the Consent Decree's objectives. *Id.* at 546. Additionally, the Consent Decree recommended the Monitor be permitted to seek the assistance of nationally-recognized experts, and also directed the Monitor to report to the court and the parties twice a year on the status of the implementation and the State's compliance with the Consent Decree. *Id.*

Throughout the various provisions, the Consent Decree structured a process to resolve disputes, which proceeded as follows: (i) when a provision required a report and recommendation, such materials would be delivered to the Monitor and parties of record; (ii) if the parties agreed on the course of action through mediation with the Monitor, the agreement would be filed with the court; (iii) if the parties did not agree, the Monitor had the discretion to call upon nationally recognized experts to better inform the mediation; (iv) if the parties still did not agree, the Monitor would so inform the court and file a recommendation for court action. *See, e.g., Id.* at 523-24, 528-31, 536, 541-44, 546 (describing the process to resolve disputes, repeated a total of twelve times throughout the Consent Decree). The Consent Decree provided that the State would be responsible for the reasonable costs of the Monitor. *Id.* at 546.

In addition to the Monitor's role, both parties retained the right to petition the court to review acts of alleged non-compliance, as long as the parties first attempted to resolve the dispute with the aid of the Monitor. *Id.* at 545-46.

To further ensure that all parties were appraised of the Consent Decree's implementation, the Consent Decree required the parties to agree upon the data that should be collected to measure the effects of the Consent Decree. *Id.* at 546-47. This data would be collected on an annual basis.

The court retained jurisdiction for five years, or for the period of time necessary to ensure full compliance with the Consent Decree's provisions. *Id.* at 547. After five years, the State could move the court for a declaration of unitary status at which time any party could file an opposition. *Id.*

- **Creation of a TSU Coordinating Committee**

The 2001 Consent Decree created the racially diverse "TSU Committee" composed of faculty, administrators, students, (traditional and nontraditional), and Davidson County business leaders who would be responsible for coordinating and implementing the various obligations imposed upon TSU. *Id.* at 522.

- **TSU: Administrative Enhancements**

The 2001 Consent Decree directed TSU to institute a study and develop a plan to improve TSU's admissions, financial aid, and registrar services to eradicate the policies that continued to foster segregation. *Id.* at 522-24.

- **TSU: Raising Admissions Standards**

TSU agreed to raise its admissions standards over the course of three years, with the caveat that the changes could not have an unacceptable detrimental effect on access for first-time freshmen wishing to attend TSU. *Id.* at 528-29. TSU would also assess post-admission support in an effort to enhance student retention rates. *Id.* at 529-30.

- **Additional Provisions**

The Consent Decree also contained a number of provisions to ensure predominantly white institutions enhanced their recruitment and retention of minority students and faculty, including: the establishment of two statewide committees dedicated to furthering the recruitment and retention of African-American faculty and administrators; funding for post-doctoral fellowship programs and scholarships for minority students; a promise to maintain existing affirmative action guidelines in hiring practices; a study on how to enhance minority enrollment and retention, and proposed plan to enhance such efforts. *Id.* at 537-45.

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APPENDIX 6

**2012- 2013 Student Enrollment by Race
Bowie State University**

	Students Enrolled - - 2013	White Students (By Type) -- 2013	% White
Total	5,561	201	3.6%
Associates	N/A	N/A	N/A
Bachelors	4,358	103	2.4%
Masters	1,099	89	8.1%
Post -Baccalaureate / Masters Certificate	18	2	11.1%
Professional	N/A	N/A	N/A
Doctorate	86	7	8.1%

Total Number Of Programs	50
No. Where 8 Or More White Students Enrolled In 2013	6*
Percent	14.0%

Programs Where 8 Or More White Students Were Enrolled In 2013	Total	White Students	% White
Bachelors - Nursing	647	17	2.6%
Masters - Nursing	132	13	9.8%
Bachelors - Business Management And Administration	737	13	1.8%
Masters - Psychology For Counseling	345	12	3.5%
Masters - Education, Student Personnel	55	10	18.2%
Masters - Secondary Education, General	24	9	37.5%

*Undecided, Undeclared, or Unknown programs were not included

“N/A” refers to program not available.

Source: Data provided by the State of Maryland - 2013 enrollment

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APPENDIX 7
2012- 2013 Student Enrollment by Race
Coppin State University

	Students Enrolled -- 2013	White Students Enrolled -- 2013	% White
Total	3,382	51	1.5%
Associates	N/A	N/A	N/A
Bachelors	2,925	40	1.4%
Masters	443	10	2.3%
Post Masters Certificate	15	1	6.7%
Professional	N/A	N/A	N/A
Doctorate	N/A	N/A	N/A

Total Number Of Programs	51
No. Where 8 Or More White Students Were Enrolled In 2013	1
Percent	2.0%

Programs Where 8 Or More Students Were Enrolled In 2013	Total Students	White Students	% White
Bachelors - Nursing	719	10	1.4%

“N/A” refers to program not available.

Source: Data provided by the State of Maryland - 2013 enrollment

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APPENDIX 8

**2012- 2013 Student Enrollment by Race
Morgan State University**

	Students Enrolled -- 2013	White Students Enrolled (By Type) -- 2013	% White
Total	7,546	256	3.4%
Associates	N/A	N/A	N/A
Bachelors	6,252	126	2.0%
Masters	732	74	10.1%
Post Masters Certificate	N/A	N/A	N/A
Professional	N/A	N/A	N/A
Doctorate	562	56	10.0%

Total Number Of Programs	84
No. Where 8 Or More White Students Were Enrolled In 2013	8
Percent	9.5%

Programs Where 8 Or More Students Were Enrolled In 2013	Total	White Students Enrolled	% White
Bachelors - Architecture	259	35	13.5%
Doctorate - Educational Administration	285	30	10.5%
Masters - Architecture	38	18	47.4%
Masters - Landscape Architecture	22	16	72.7%
Bachelors - Civil, Construction, And Transportation Engineering	204	15	7.4%
Bachelors - Foods And Nutrition	83	11	13.3%
Bachelors - Electrical, Electronics, And Communications	476	10	2.1%
Bachelors - Nursing	427	9	2.1%

“N/A” refers to program not available.

Source: Data provided by the State of Maryland - 2013 enrollment

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APPENDIX 9

**2012- 2013 Student Enrollment by Race
UM - Eastern Shore**

	Students Enrolled -- 2013	White Students Enrolled -- 2013	% White
Total	4,220	634	15.0%
Associates	N/A	N/A	N/A
Bachelors	3,530	409	11.6%
Masters	270	82	30.4%
Post Masters Certificate	N/A	N/A	N/A
Professional	257	96	37.4%
Doctorate	163	47	28.8%

Total Number Of Programs	53
No. Where 8 Or More White Students Enrolled In 2013	26*
Percent	52.8%

Programs Where 8 Or More White Students Were Enrolled In 2013	Total	White Students	% White
Professional – Pharmacy	166	49	29.5%
Professional - Physical Therapy	91	47	51.6%
Bachelors – Ecology	57	34	59.6%
Bachelors - Hotel And Restaurant Management	167	27	16.2%
Bachelors - Biology, General	409	26	6.4%
Bachelors - Other, Business And Management	46	26	56.5%
Bachelors - Engineering Technologies	121	24	19.8%
Bachelors - Physical Education	243	24	9.9%
Doctorate Research/Scholarship - Interdisciplinary/Transfer Studies	86	22	25.6%
Bachelors - Engineering, General	137	21	15.3%

Programs Where 8 Or More White Students Were Enrolled In 2013	Total	White Students	% White
Bachelors - Home Economics, General	204	21	10.3%
Bachelors - Law Enforcement And Corrections	439	21	4.8%
Masters - Education, Student Personnel	83	20	24.1%
Bachelors - Special Education, General	40	17	42.5%
Doctorate Research/Scholarship - Educational Administration	41	17	41.5%
Bachelors - Other, Health Professions	176	16	9.1%
Masters - Education, Industrial Arts, Vocational, And Tech Education	22	13	59.1%
Bachelors - Agriculture, General	49	11	22.4%
Bachelors - English, General	160	10	6.3%
Bachelors - Transportation And Public Utilities	65	10	15.4%
Masters - Special Education, General	14	9	64.3%
Bachelors – Accounting	102	8	7.8%
Bachelors - Business Management And Administration	183	8	4.4%
Bachelors - Chemistry, General	47	8	17.0%
Bachelors - Other, Interdisciplinary/Transfer Studies	164	8	4.9%
Bachelors - Sociology	190	8	4.2%

*Undecided, Undeclared, or Unknown programs were not included

“N/A” refers to program not available.

Source: Data Provided By the State Of Maryland - 2013 Enrollment

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APPENDIX 10

Morgan State Engineering Enrollment 2013

	Total Enrolled	Number Of Enrollments - White	Percentage Of Enrollments - White
Bachelors - Civil, Construction, And Transportation Engineering	204	15	7.4%
Bachelors - Electrical, Electronics, And Communications	476	10	2.1%
Bachelors - Industrial And Management Engineering	119	4	3.4%
Bachelors - Engineering Technologies	29	3	10.3%
Masters - Engineering, General	54	3	5.6%
Doctorate Research/Scholarship - Engineering, General	61	3	4.9%
Total	943	38	4.0%

Source: 2013 Undergraduate and Graduate Enrollment by Institution by Degree Program
Provided By Maryland Higher Education Commission.

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APPENDIX 11

UMBC Engineering Enrollment 2013

	Total Enrolled	Number Of Enrollments - White	Percentage Of Enrollments - White
Bachelors - Mechanical Engineering	543	323	59.5%
Bachelors - Other, Engineering	326	161	49.4%
Bachelors - Chemical Engineering	281	129	45.9%
Bachelors - Engineering, General	171	95	55.6%
Masters - Other, Engineering	69	37	53.6%
Masters - Mechanical Engineering	32	15	46.9%
Masters - Electrical, Electronics, And Communications	15	7	46.7%
Masters - Chemical Engineering	5	2	40.0%
Masters - Civil, Construction, And Transportation Engineering	8	2	25.0%
Doctorate Research/Scholarship - Electrical, Electronics, And Communications	34	11	32.4%
Doctorate Research/Scholarship - Mechanical Engineering	38	11	28.9%
Doctorate Research/Scholarship - Chemical Engineering	23	5	21.7%
Doctorate Research/Scholarship - Other, Engineering	18	4	22.2%
Doctorate Research/Scholarship - Civil, Construction, And Transportation Engineering	11	2	18.2%
Post-Baccalaureate Certificate - Other, Engineering	11	6	54.5%
Post-Baccalaureate Certificate - Chemical Engineering	3	1	33.3%
Total	1588	811	51.1%

Source: 2013 Undergraduate and Graduate Enrollment by Institution by Degree Program
 Provided By Maryland Higher Education Commission.

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APPENDIX 12

**2011 – 2012 Degrees Awarded by Race
Alabama A & M**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	752	61	8.1%
Bachelors	532	14	2.6%
Masters	195	45	23.1%
Post Masters Certificate	14	1	7.1%
Professional	N/A	N/A	N/A
Doctorate	11	1	9.1%

Total Number Of Programs	70
No. Where 4 Or More White Students Received Degrees In 2012	4
Percent	5.7%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Masters - Secondary Education And Teaching	26	12	46.2%
Masters - Social Work	43	11	25.6%
Masters - Language/Pathology	9	6	66.7%
Masters - Elementary Education And Teaching	7	4	57.1%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion Data

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APPENDIX 13

**2011 – 2012 Degrees Awarded By Race
Alabama State**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	789	44	5.6%
Bachelors	542	9	1.7%
Masters	184	19	10.3%
Post Masters Certificate	20	0	0.0%
Professional	N/A	N/A	N/A
Doctorate	43	16	37.2%

Total Number Of Programs	49
No. Where 4 Or More White Students Received Degrees In 2012	4
Percent	8.2%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Doctorate - Physical Therapy/Therapist	33	13	39.4%
Masters - Teacher Education, All Levels	60	6	10.0%
Masters - Educational/Instructional Technology	7	4	57.1%
Masters - Occupational Therapy/Therapist	11	4	36.4%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion Data

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APPENDIX 14

**2011 – 2012 Degrees Awarded By Race
Alcorn State (MS)**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	561	73	13.0%
Associates	22	8	36.4%
Bachelors	380	38	10.0%
Masters	161	27	16.8%
Post Masters Certificate	0	0	0.0%
Professional	N/A	N/A	N/A
Doctorate	N/A	N/A	N/A

Total Number Of Programs	38
No. Where 4 Or More White Students Received Degrees In 2012	6
Percent	15.8%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Bachelors - Registered Nursing/Registered Nurse	59	18	30.5%
Masters - Elementary Education, Teaching	23	13	56.5%
Bachelors - Elementary Education, Teaching	17	11	64.7%
Masters - Registered Nursing, Nursing Administration, Nursing Research And Clinical Nursing, Other	21	9	42.9%
Associates - Registered Nursing/Registered Nurse	22	8	36.4%
Bachelors - Accounting	17	4	23.5%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion
Data

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APPENDIX 15

**2011 – 2012 Degrees Awarded By Race
Mississippi Valley**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	473	28	5.9%
Associates	N/A	N/A	N/A
Bachelors	345	20	5.8%
Masters	128	8	6.3%
Post Masters Certificate	N/A	N/A	N/A
Professional	N/A	N/A	N/A
Doctorate	N/A	N/A	N/A

Total Number Of Programs	37
No. Where 4 Or More White Students Received Degrees In 2012	2
Percent	5.4%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Bachelors - P.E. Teaching And Coaching	35	7	20.0%
Bachelors - Biology/Biological Sciences, General	20	4	20.0%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion
Data

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APPENDIX 16

**2011 – 2012 Degrees Awarded By Race
Jackson State (MS)**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	1,559	108	6.9%
Associates	N/A	N/A	N/A
Bachelors	1,064	41	3.9%
Masters	412	51	12.4%
Post Masters Certificate	23	3	13.0%
Professional	N/A	N/A	N/A
Doctorate	60	13	21.7%

Total Number Of Programs	86
No. Where 4 Or More White Students Received Degrees In 2012	10
Percent	11.6%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Masters - Social Work	53	9	17.0%
Masters - Communication Sciences And Disorders, General	19	8	42.1%
Masters - Public Health, General	34	6	17.6%
Bachelors - Accounting	74	6	8.1%
Bachelors - Biology/Biological Sciences, General	97	6	6.2%
Masters - Computer And Information Sciences, General	7	4	57.1%
Masters - City/Urban, Community And Regional Planning	10	4	40.0%
Masters - Engineering, General	11	4	36.4%
Bachelors - Civil Engineering, General	17	4	23.5%

Bachelors - Computer Engineering, General	18	4	22.2%
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“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion Data

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APPENDIX 17

**2011 – 2012 Degrees Awarded By Race
Grambling State (LA)**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) - -2012	% White
Total	897	24	2.7%
Associates	16	0	0.0%
Bachelors	686	15	2.2%
Masters	197	6	3.0%
Post Masters Certificate	2	0	0.0%
Professional	N/A	N/A	N/A
Doctorate	6	3	50.0%

Total Number Of Programs	63
No. Where 4 Or More White Students Received Degrees In 2012	1
Percent	1.6%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Bachelors - Registered Nursing/Registered Nurse	103	15	14.6%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion
Data

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APPENDIX 18

**2011 – 2012 Degrees Awarded By Race
Southern University and Agricultural and Mechanical College at Baton Rouge (LA)**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	1,137	42	3.7%
Associates	N/A	N/A	N/A
Bachelors	798	12	1.5%
Masters	294	25	8.5%
Post Masters Certificate	3	0	0.0%
Professional (Law School Data Not Reported)	0	0	0.0%
Doctorate	43	5	11.6%

Total Number Of Programs	77
No. Where 4 Or More White Students Received Degrees In 2012	3
Percent	3.9%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Masters - Vocational Rehabilitation Counseling/Counselor	24	10	41.7%
Masters - Family Practice Nurse/Nursing	35	9	25.7%
Bachelors - Registered Nursing/Registered Nurse	67	5	7.5%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion Data

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APPENDIX 19

**2011 – 2012 Degrees Awarded By Race
Southern University at New Orleans (LA)**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	468	15	3.2%
Associates	27	3	11.1%
Bachelors	304	4	1.3%
Masters	153	9	5.9%
Post Masters Certificate	0	0	0.0%
Professional	N/A	N/A	N/A
Doctorate	N/A	N/A	N/A

Total Number Of Programs	28
No. Where 4 Or More White Students Received Degrees In 2012	1
Percent	3.6%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Masters - Social Work	109	6	5.5%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion
Data

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APPENDIX 20

**2011 – 2012 Degrees Awarded By Race
Tennessee State**

	Degrees Conferred 2012	Degrees Conferred To White Students (By Type) --2012	% White
Total	1,642	492	30.0%
Associates	139	83	59.7%
Bachelors	963	176	18.3%
Masters	404	167	41.3%
Post Masters Certificate	64	17	26.6%
Professional/Doctorate (Not Split Up In Data)	72	49	68.1%

Total Number Of Programs	80
No. Where 4 Or More White Students Received Degrees In 2012	36
Percent	45.0%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Associates - Registered Nursing/Registered Nurse	103	56	54.4%
Bachelors - Teacher Education, Multiple Levels	121	39	32.2%
Masters - Audiology/Audiologist And Speech-Language Pathology/Pathologist	49	38	77.6%
Masters - Registered Nursing/Registered Nurse	61	38	62.3%
Associates - Dental Hygiene/Hygienist	36	27	75.0%
Doctorate - Physical Therapy/Therapist	30	26	86.7%
Masters - Occupational Therapy/Therapist	25	18	72.0%
Bachelors - Registered Nursing/Registered Nurse	60	16	26.7%
Doctorate - Educational Leadership And Administration, General	22	14	63.6%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Masters - Curriculum And Instruction	32	11	34.4%
Bachelors - Criminal Justice/Law Enforcement Administration	66	11	16.7%
Bachelors - Psychology, General	82	10	12.2%
Masters - Business Administration And Management, General	23	9	39.1%
Masters - Elementary Education And Teaching	12	8	66.7%
Bachelors - Dental Hygiene/Hygienist	15	8	53.3%
Bachelors - Civil Engineering, General	13	7	53.8%
Bachelors - Respiratory Care Therapy/Therapist	24	7	29.2%
Bachelors - History, General	14	6	42.9%
Post Masters - Educational Leadership And Administration, General	24	6	25.0%
Bachelors - Health And Physical Education/Fitness, General	25	6	24.0%
Masters - Psychology, General	31	6	19.4%
Bachelors - Early Childhood Education And Teaching	7	5	71.4%
Masters - Agriculture, General	18	5	27.8%
Bachelors - Business/Managerial Economics	25	5	20.0%
Bachelors - Accounting	26	5	19.2%
Doctorate - Psychology, General	6	4	66.7%
Post Masters - School Psychology	6	4	66.7%
Bachelors - General Studies	7	4	57.1%
Masters - General Studies	8	4	50.0%
Masters - Counselor Education/School Counseling And Guidance Services	9	4	44.4%
Post-Baccalaureate Certificate - Family Practice Nurse/Nursing	10	4	40.0%
Masters - Special Education And Teaching, General	15	4	26.7%

Programs Where 4 Or More Students Received Degrees In 2012	Total	White Graduates	% White
Masters - Public Administration	20	4	20.0%
Bachelors - Political Science And Government, General	21	4	19.0%
Bachelors - Family Resource Management Studies, General	28	4	14.3%
Bachelors - Biology/Biological Sciences, General	48	4	8.3%

Source: National Center for Education Statistics' IPEDS Data Center - 2011-2012 Completion Data

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APPENDIX 21

Alcorn State Programs by Race Pursuant to 2001 Settlement Agreement - Enrollment Fall 2013

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Shows Available on Website?	Identical program available?	Similar, but not identical, program?
Bachelors - Registered Nursing/ Registered Nurse ¹	86	24	27.9%	Yes	DSU, MUW, USM, UMMC	
Bachelors - Biology / Biological Sciences, General ⁴	700	22	3.1%	Yes	DSU, MUW, MVSU, JSU, MSU, UM, USM	MUW - BA, UM - BA
Masters - Registered Nursing, Nursing Administration, Nursing Research and Clinical Nursing, Other ¹	61	17	27.9%	Yes	DSU, UMMC	
Masters - Business Administration	54	14	25.9%	Yes	DSU, MVSU, JSU, MSU, UM, USM	
Associates - Registered Nursing / Registered Nurse ¹	67	12	17.9%	Yes	MUW	
Masters - Teacher Education ²	68	9	13.2%	Yes	DSU, MVSU, JSU	
Masters - Biology/Biological Sciences, General ⁴	25	4	16.0%	Yes	JSU, MSU, UM, USM	
Masters -	36	3	8.3%	Yes	JSU,	

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Shows Available on Website?	Identical program available?	Similar, but not identical, program?
Computer and Information Sciences, General					MSU, USM	
Bachelors - Mathematics, General ⁴	23	2	8.7%	Yes	DSU, MUW, MVSU, JSU, MSU, UM, USM	MUW - BA, MSU - BA, UM - BA
Bachelors - Computer and Information Sciences, General	13	1	7.7%	Yes	MVSU, JSU, MSU, UM, USM	UM - BA
Masters - Biotechnology	12	0	0.0%	Yes		
Bachelors - Computer Networking ³	49	0	0.0%	Yes		
Bachelors - Chemistry, General ⁴	42	0	0.0%	Yes	DSU, MUW, MVSU, JSU, MSU, UM, USM	MSU - BA, UM - BA
Masters - Accounting ⁵	N/A	N/A	N/A	Yes	MUW, MVSU	DSU - BBA, JSU - BBA, MSU - BAccy, UM - Baccy, USM - BSBA
Bachelors - Finance	N/A	N/A	N/A	No		
Masters - Finance	N/A	N/A	N/A	No		
Masters - Physician	N/A	N/A	N/A	No		

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Shows Available on Website?	Identical program available?	Similar, but not identical, program?
Assistants						
Bachelors - Environmental Science ⁶	N/A	N/A	N/A	Yes		
Total	1236	108	8.7%			

¹Under general nursing category.

²For this teacher education category, the program titled, "Teacher Education, Multiple Levels - Masters" seemed to fit best. There are also the following teacher programs - Elementary Education and Teaching - Bachelors, Elementary Education and Teaching - Masters, Elementary Education and Teaching - Post Master's certificates, and Secondary Education and Teaching - Masters.

³The computer networking bachelors is titled, "System, Networking, and LAN/WAN Management/Manager"

⁴This fits under the mathematics and sciences (biology, chemistry, physics) category.

⁵There is an accounting bachelors, but not masters

⁶Titled "Environmental Biology"

“Shows as Available on Website” refers to a specific program is shown as available on that institution’s website.

“Identical Program Available” refers to the exact same program being offered at the listed other institution(s).

“Similar, but Not Identical” refers to a similar program being offered at the listed institution(s), but not the exact same program.

Source: Alcorn State University 2012 - 2013 Fact Book; Office of Institutional Research and Assessment - Fall 2012 Enrollment Data, pp. 61 – 70 and Mississippi Public Universities – Academic Year 2010-2013 Degrees Awarded and Top-Ten Degrees

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APPENDIX 22

**Jackson State Programs by Race Pursuant to 2001 Settlement Agreement – Enrollment
Fall 2013**

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Shows Available on Website?	Identical program available?	Similar, but not identical, program?
Bachelors - Civil Engineering	176	32	18.2%	Yes	MSU	UM - BSCE
Bachelors - Computer Engineering	248	20	8.1%	Yes	MSU	
Bachelors - Business Administration	322	14	4.3%	Yes	ASU, DSU, MSU, UM	MUW - BS, MVSU - BS, USM - BS, USM - BSBA
Masters - Communicative Disorders	37	12	32.4%	Yes		
Masters - Public Health	119	9	7.6%	Yes	USM	
Doctorate - Urban Planning	49	9	18.4%	Yes		
Bachelors - Health Care Administration	250	7	2.8%	Yes		MSU - BAT
Doctorate - Higher Education	76	6	7.9%	Yes	UM, USM	
Masters - Business Administrators	52	5	9.6%	Yes	ASU, DSU, MVSU, MSU, UM, USM	
Doctorate - Business Administrators	28	5	17.9%	Yes	MSU, UM	
Doctorate - Social Work	39	4	10.3%	Yes		
Post-Masters Certificate -	23	3	13.0%	No	MSU,	DSU - EdD, MSU

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Shows Available on Website?	Identical program available?	Similar, but not identical, program?
Education General ¹					USM	- EdD, UM - EdD, USM - EdD
Masters - Urban Planning	17	2	11.8%	Yes		
Bachelors - Telecommunications Engineering	2	0	9%	Yes		
Doctorate - Public Health	N/A	N/A	N/A	Yes		
Mississippi Interinstitutional Pharmacy Initiative ²	N/A	N/A	N/A	No		
Masters - Civil Engineering	N/A	N/A	N/A	No		
Masters - Computer Engineering -	N/A	N/A	N/A	No		
Masters - Telecommunications Engineering	N/A	N/A	N/A	No		
Total	1436	128	8.9%			

¹There are 24 other education-related programs.

²No programs related to pharmacy.

“Shows as Available on Website” refers to a specific program is shown as available on that institution’s website.

“Identical Program Available” refers to the exact same program being offered at the listed other institution(s).

“Similar, but Not Identical” refers to a similar program being offered at the listed institution(s), but not the exact same program.

Source: Jackson State University - Enrollment Data by Discipline, Ethnicity, and Gender, Fall 2013 and Mississippi Public Universities – Academic Year 2010-2013 Degrees Awarded and Top-Ten Degrees.

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APPENDIX 23

**MS Valley State Programs by Race Pursuant to 2001 Settlement Agreement - Enrollment
Fall 2013**

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical program available?	Similar, but not identical, program?	Shows Available on Website?
Bachelors - Biology	188	10	5.3%	ASU, DSU, MUW, MVSU, MSU, UM, USM	MUW - BA, UM - BA	Yes
Masters - Business Administration	40	4	10.0%	ASU, DSU, MVSU, MSU, UM, USM		Yes
Masters - Bioinformatics	15	2	13.3%			Yes
Bachelors - Chemistry	16	2	12.5%	ASU, DSU, MUW, MVSU, MSU, UM, USM	MSU - BA, UM - BA	Yes
Bachelors - Computer Science	78	1	1.3%	ASU, MVSU, MSU, USM	UM - BA, UM - BSCS, USM - BS	Yes
Bachelors - Mathematics	55	1	1.8%	ASU, DSU, MUW, MVSU, MSU, UM, USM	MUW - BA, MSU - BA, UM - BA	Yes
Bachelors - History	19	0	0.0%	ASU, DSU, MUW, MVSU, MSU, UM,		Yes

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical program available?	Similar, but not identical, program?	Shows Available on Website?
				USM		
Masters - Special Education	5	0	0.0%		DSU - MEd, MVSU - MS, MSU - MS, USM - Med	Yes
Masters - Computer Science ¹	N/A	N/A	N/A			No
Masters - Leadership Administration	N/A	N/A	N/A			No
Total	416	20	4.8%			

¹There is a computer science bachelors, but not masters

“Shows as Available on Website” refers to a specific program is shown as available on that institution’s website.

“Identical Program Available” refers to the exact same program being offered at the listed other institution(s).

“Similar, but Not Identical” refers to a similar program being offered at the listed institution(s), but not the exact same program.

Source: Mississippi Valley State Fact Book 2013-2014 - Fall 2013 Enrollment data, pp. 37-39 and Mississippi Public Universities – Academic Year 2010-2013 Degrees Awarded and Top-Ten Degrees

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APPENDIX 24

**Fall 2014 Enrollment in Academic Programs Placed at Grambling State University
Pursuant to 1994 Settlement Agreement**

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical Program?	Shows as Available on Website?
Masters - Nursing / Registered Nurse ¹	46	16	34.8%	Southern U A&M, McNeese State, Nicholls State, Northwestern State, Southeastern Louisiana U, U of L Lafayette	Yes
Masters – Nursing/ Family Practice Nurse ¹	2	2	100.0%	LSU Health Sciences Center (NO), Southern U A&M, Southeastern Louisiana U	Yes
Bachelors - Criminalistics ²	406	2	0.5%	LSU Alexandria, LSU Shreveport, Southern U A&M, SUNO, McNeese, Northwestern State, Southeastern LU, U of L Lafayette, U of L Monroe	Yes
Doctorate - Educational	10	1	10.0%	LSU A&M, LSU Shreveport,	Yes

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical Program?	Shows as Available on Website?
Leadership				Southern U A&M, Louisiana Tech U, McNeese State, Nicholls State, Northwestern State, Southeastern Louisiana U, U of L Lafayette, U of L Monroe, UNO	
Masters - Mass Communications	26	0	0.0%	LSU A&M, Southern U A&M	Yes
Bachelors - Paralegal Studies	2	0	0.0%	McNeese	No
Doctorate - Curriculum and Instruction	0	0	0.0%		Yes
Masters - Business Admin ³	0	0	0.0%		No
Bachelors - Banking/Insurance	N/A	N/A	N/A		No
Associates - Paralegal Studies	N/A	N/A	N/A		No
Total	502	21	4.2%		

¹Both of these programs could fit under the general "Masters in Nursing" mentioned in the agreement.

²The program title according to IPEDS is, "Criminal Justice/Safety Studies"

³Institution does not offer a master's in business but does offer a bachelor's in business.

indicates that the program is available at the institution

“N/A” refers to program not available.

“Shows as Available on Website” refers to a specific program is shown as available on that institution's website.

“Identical Program Available” refers to the exact same program being offered at the listed other institution(s).

“Similar, but Not Identical” refers to a similar program being offered at the listed institution(s), but not the exact same program.

Source: Statewide Student Profile System - Student Headcount Enrollment by Student Major - Fall 2014-2015.

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APPENDIX 25

**Fall 2014 Enrollment in Academic Programs Placed at Southern University at New Orleans
Pursuant to 1994 Settlement Agreement**

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical Program?	Shows as Available on Website?
Masters - Social Work	265	11	4.2%	LSU A&M at Baton Rouge, Southern U A&M, Grambling, Northwestern State U, Southeastern LU, U of Louisiana (Monroe)	Yes
Masters - Criminal Justice	99	0	0.0%	Southern U and A&M (Baton Rouge), Southern University at Shreveport, Grambling, McNeese State U, University of Louisiana (Lafayette), University of Louisiana (Monroe)	Yes
Masters - Transportation	N/A	N/A	N/A		No
Masters - Substance Abuse	N/A	N/A	N/A		No

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical Program?	Shows as Available on Website?
Masters - Teaching	N/A	N/A	N/A		No
Masters - Computer Information Systems	N/A	N/A	N/A		Yes
Total	364	11	3.0%		

indicates that the program is available at the institution

“N/A” refers to program not available.

“Shows as Available on Website” refers to a specific program is shown as available on that institution’s website.

“Identical Program Available” refers to the exact same program being offered at the listed other institution(s).

“Similar, but Not Identical” refers to a similar program being offered at the listed institution(s), but not the exact same program.

Source: Statewide Student Profile System - Student Headcount Enrollment by Student Major - Fall 2014-2015

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APPENDIX 26

Fall 2014 Enrollment in Academic Programs Placed at Southern University and Agricultural and Mechanical College at Baton Rouge Pursuant to 1994 Settlement Agreement

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical Program?	Shows as Available on Website?
Bachelors - Criminal Justice	367	5	1.4%	LSU Alexandria, LSU Shreveport, SUNO, Grambling, McNeese, Northwestern State, Southeastern LU, U of L Lafayette, U of L Monroe	Yes
Doctorate - Science and Mathematics Education ¹	35	2	5.7%		Yes
Doctorate - Public Policy ²	44	2	4.5%		Yes
Doctorate and/or Masters - Urban Forestry ³	46	1	2.2%		Yes
Masters - Criminal Justice	70	1	1.4%	SUNO, Grambling, McNeese, U of L Lafayette, U of L Monroe	Yes
Doctorate - Nursing - Nursing Science ⁴	12	0	0.0%	LSU Health Sciences Center (NO)	Yes

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical Program?	Shows as Available on Website?
Doctorate - Nursing - Nursing Practice ⁴	6	0	0.0%	LSU Health Sciences Center (NO), Northwestern State, Southeastern LU, U of L Lafayette	Yes
Masters - Engineering	40	0	0.0%	Louisiana Tech U, McNeese, U of L Lafayette	Yes
Masters - Physics ⁵	0	0	0.0%		Yes
Doctorate - Biomedical Sciences	N/A	N/A	N/A		No
Doctorate - Administration and Information Systems	N/A	N/A	N/A		No
Doctorate - Material Science	N/A	N/A	N/A		No
Masters - International Business	N/A	N/A	N/A		No
Bachelors - Actuarial Science	N/A	N/A	N/A		No
Bachelors - Physical Therapy ⁶	N/A	N/A	N/A		No
Associates - Criminal	N/A	N/A	N/A		No

	Total Enrolled	Number of Enrollments - White	Percentage of Enrollments - White	Identical Program?	Shows as Available on Website?
Justice					
Total	620	11	1.8%		

¹There is a program titled, "Teacher Education and Professional Development, Specific Subject Areas, Other" but it is unclear if this specifically includes Science and Mathematics Education

²Program titled "Public Policy Analysis, General" in Statewide Student Profile System

³Institution offers both a Masters and a PhD in Urban Forestry, but enrollment data is only reported for both degrees combined graduate

⁴Both of these programs could fit under the general "PhD in Nursing" mentioned in the agreement.

⁵Institution does not offer a masters in Physics but does offer a bachelors in Physics

⁶Institution offers a bachelors in vocational rehabilitation and recreational therapy, but not explicitly physical therapy.

"N/A" refers to program not available.

"Shows as Available on Website" refers to a specific program is shown as available on that institution's website.

"Identical Program Available" refers to the exact same program being offered at the listed other institution(s).

"Similar, but Not Identical" refers to a similar program being offered at the listed institution(s), but not the exact same program.

Source: Statewide Student Profile System - Student Headcount Enrollment by Student Major - Fall 2014-2015

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APPENDIX 27

Alabama A & M and Univ. Alabama Huntsville Engineering Completion by Race 2011 - 2012

	AA&M Total	AA&M White	AA&M White %	AA&M Black	AA&M Black %	UAH Total	UAH White	UAH White %	UAH Black	UAH Black %
Bachelors - Civil Engineering, General	15	2	13.3%	13	86.7%	30	24	80.0%	1	3.3%
Bachelors - Mechanical Engineering	24	1	4.2%	23	95.8%	141	124	87.9%	5	3.5%
Bachelors - Mechanical Engineering, Related Technologies	4	1	25.0%	3	75.0%	N/A	N/A	N/A	N/A	N/A
Masters - Industrial Technology, Technician	6	1	16.7%	4	66.7%	N/A	N/A	N/A	N/A	N/A
Masters - Engineering, Other	4	0	0.0%	4	100.0%	1	0	0.0%	1	100.0%
Bachelors - Electrical And Electronics Engineering	34	0	0.0%	34	100.0%	46	26	56.5%	9	19.6%
Bachelors - Electrical And Electronics Engineering, Technology, Other	6	0	0.0%	5	83.3%	N/A	N/A	N/A	N/A	N/A
Bachelors - Industrial Technology, Technician	6	0	0.0%	6	100.0%	N/A	N/A	N/A	N/A	N/A
Bachelors - Chemical	N/A	N/A	N/A	N/A	N/A	13	7	53.8%	3	23.1%

	AA&M Total	AA&M White	AA&M White %	AA&M Black	AA&M Black %	UAH Total	UAH White	UAH White %	UAH Black	UAH Black %
Engineering										
Bachelors - Computer Engineering, General	N/A	N/A	N/A	N/A	N/A	0	0	0.0%	0	0.0%
Bachelors - Computer Engineering, General	N/A	N/A	N/A	N/A	N/A	39	34	87.2%	1	2.6%
Bachelors - Engineering, Other	N/A	N/A	N/A	N/A	N/A	3	3	100.0%	0	0.0%
Bachelors - Industrial Engineering -	N/A	N/A	N/A	N/A	N/A	15	9	60.0%	3	20.0%
Masters - Aerospace, Aeronautical And Astronautical/ Space Engineering	N/A	N/A	N/A	N/A	N/A	7	5	71.4%	0	0.0%
Masters - Computer Engineering, General	N/A	N/A	N/A	N/A	N/A	11	9	81.8%	0	0.0%
Masters - Engineering, General	N/A	N/A	N/A	N/A	N/A	125	91	72.8%	4	3.2%
Doctorate - Aerospace, Aeronautical And Astronautical/S pace Engineering	N/A	N/A	N/A	N/A	N/A	1	1	100.0%	0	0.0%
Doctorate - Civil Engineering,	N/A	N/A	N/A	N/A	N/A	1	0	0.0%	0	0.0%

	AA&M Total	AA&M White	AA&M White %	AA&M Black	AA&M Black %	UAH Total	UAH White	UAH White %	UAH Black	UAH Black %
General										
Doctorate - Computer Engineering, General	N/A	N/A	N/A	N/A	N/A	1	1	100.0%	0	0.0%
Doctorate - Electrical And Electronics	N/A	N/A	N/A	N/A	N/A	4	2	50.0%	0	0.0%
Doctorate- Engineering, Other	N/A	N/A	N/A	N/A	N/A	2	0	0.0%	0	0.0%
Doctorate - Industrial Engineering	N/A	N/A	N/A	N/A	N/A	6	4	66.7%	0	0.0%
Doctorate - Mechanical Engineering -	N/A	N/A	N/A	N/A	N/A	1	0	0.0%	0	0.0%
Post- Baccalaureate Certificate - Computer Engineering, General	N/A	N/A	N/A	N/A	N/A	1	0	0.0%	0	0.0%
Total	99	5	5.5%	97	93.3%	448	340	75.9%	27	6.0%

“N/A” refers to program not available.

Source: National Center for Education Statistics' IPEDS Data Center - Completion 2011-2012
Data

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APPENDIX 28

Law Degrees Awarded to White Students at HBIs and Proximate TWIs 2012 – 2013

Institution	Total Degrees Awarded	Degrees Earned By White Students	% Degrees Earned By White Students
Louisiana			
Southern University Law Center (Baton Rouge)	217	73	33.6%
LSU Baton Rouge Paul Herbert Law Center (Baton Rouge)	218	157	72.0%
North Carolina			
North Carolina Central University (NCCU)	167	66	39.5%
University Of North Carolina Law School (UNC Chapel Hill)	247	116	47.0%
Florida			
Florida Agricultural & Mechanical University (FAMU)	224	77	34.4%
Florida State University (FSU)	239	179	74.9%
Texas			
Texas Southern University (TSU)	161	31	19.3%
University Of Houston Law Center (Houston)	272	166	61.0%

Source: National Center for Education Statistics' IPEDS Data Center - Completion 2012 - 2013 Data

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APPENDIX 29

Institution	Abbreviation
Alabama	
Alabama A&M	AAMU
Alabama State University	ASU
Auburn University	AU
Auburn University at Montgomery	AUM
Calhoun State Community College	CSCC
Calhoun State Community College at Huntsville	CSCC-H
Jacksonville State University	JSU
Livingston University	LU
Troy State University at Montgomery	TSUM
University of Alabama at Birmingham	UAB
University of Alabama at Huntsville	UAH
University of Northern Alabama	UNA
Louisiana	
Delgado Community College	DCC
Elaine P. Nunez College	EPNCC
Grambling State University	Grambling
Louisiana State University and Agricultural and Mechanical College	LSU
Louisiana State University at Alexandria	LSUA
Louisiana State University at Eunice	LUSE
Louisiana State University at Shreveport	LSUS
Louisiana Tech	LA Tech
Northeast Louisiana University	NLU
Southern University and Agricultural and Mechanical College at Baton Rouge	SUBR
Southern University at New Orleans	SUNO
Southern University at Shreveport	SUSBO

Institution	Abbreviation
Maryland	
Bowie State University	Bowie
Coppin State University	Coppin
Frostburg State University	Frostburg
Morgan State University	Morgan
St. Mary's College of Maryland	St. Mary's
Towson University	Towson
University of Baltimore	UB
University of Maryland, Baltimore	UMB
University of Maryland, Baltimore County	UMBC
University of Maryland, College Park	College Park/ UMCP
University of Maryland Eastern Shore	UMES
University of Maryland University College	UMUC
Mississippi	
Alcorn State University	Alcorn
Delta State University	DSU
Jackson State University	JSU
Mississippi State University	MSU
Mississippi University for Woman	MUW
Mississippi Valley State University	MVSU
University of Mississippi	UM
University of Mississippi Medical Center	UMMC
University of Southern Mississippi	USM
Tennessee	
Austin Peay State University	APSU
East Tennessee State University	ETSU
Middle Tennessee State University	MTSU
Tennessee State University	TSU
Tennessee Technological University	TTU
University of Memphis	UM

Institution	Abbreviation
University of Tennessee	UT
University of Tennessee Chattanooga	UTC
University of Tennessee Institute of Agriculture	UTIA
University of Tennessee Knoxville	UTK
University of Tennessee Martin	UTM
University of Tennessee Nashville	UTN