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October 1, 2021

The Honorable Suzanne Goldberg
Acting Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Ave SW
Washington, D.C. 20202

Dear Assistant Secretary Goldberg:

We write regarding state treatment of public Historically Black Colleges and Universities (HBCUs) in the nearly 30 years since the *United States v. Fordice*¹ decision. As you know, *Fordice* recognized that vestiges of *de jure* segregation remained in policies of the public higher education system and placed the onus on states “to reform such policies ‘to the extent practicable and consistent with sound educational practices.’”² We are concerned that some states may not be in compliance with *Fordice*’s requirements, a potential violation of federal law resulting in unequal treatment of public HBCUs, their faculty, students, and alumni.

In the nearly 30 years since the *Fordice* decision, states have attempted to comply with the decision, often with the involvement of the Office for Civil Rights (OCR).³ Many states entered into settlement agreements with OCR, defining what actions should be taken to come into compliance with *Fordice* and establishing timelines for such compliance.⁴ Many of these plans went through multiple iterations over decades, and most, if not all, of these agreements have either expired or are no longer enforced by OCR.⁵

However, there is ample evidence that some states have still not lived up to the requirements of *Fordice*. In Maryland, students and alumni of Maryland’s public HBCUs only recently secured a \$577 million settlement from the State of Maryland as of result of traceable to *de jure* segregation.⁶ In Tennessee, a bipartisan legislative commission acknowledged decades of discrimination against Tennessee State University, one of the state’s HBCUs, regarding funding disparities between the school and its predominantly white land-grant counterpart.⁷ It is important

¹ 505 U.S. 717 (1992).

² *Coal. for Equity & Excellence in Md. Higher Educ. v. Md. Higher Educ. Comm’n*, 295 F. Supp. 3d 540, 547-48 (2017) (citing *Fordice* at 729).

³ Based on research conducted for the Committee by the Congressional Research Service.

⁴ *Id.*

⁵ *Id.*

⁶ Danielle Douglas-Gabriel & Ovetta Wiggins, “Hogan signs off on \$577 million for Maryland’s historically Black colleges and universities,” WASH. POST, Mar. 24, 2021.

⁷ Ailsa Chang et al., “Theft At A Scale That Is Unprecedented: Behind The Underfunding Of HBCUs,” NAT’L PUB. RADIO, May 13, 2021.

The Honorable Suzanne Goldberg

October 1, 2021

Page 2

to note that both of these states had already completed processes that were intended to eliminate the vestiges of *de jure* segregation from state public higher education policy: Tennessee under a consent decree dismissed in 2006, and Maryland under a Partnership Agreement with OCR created in 2000.⁸ But in the bench trial opinion in the Maryland case, a district court judge noted that there was ambiguity as to whether Maryland had met its obligations under the Partnership Agreement.⁹ The state had asked OCR to make such a determination in 2006 and never received a response from OCR.¹⁰

The process that public HBCUs must undertake to seek redress in these cases is unnecessarily burdensome. The 2021 Maryland settlement had its genesis in a suit brought fifteen years earlier; the Tennessee funding disparity issue dates to at least the 1950s.¹¹ OCR is uniquely positioned to intervene in this piecemeal and prolonged process to ensure all public HBCUs receive the treatment they are due under the law. We respectfully request that your office:

- (1) Review the status of any partnership or settlement agreements between OCR and a state established to ensure compliance with requirements of *Fordice* and share the results of that review with the Committee;
- (2) Determine if each state in question met the requirements of such agreement at the time of the agreement's conclusion;
- (3) Investigate whether conditions *currently exist* in any state that either entered into an agreement with OCR or was subject to a federal consent decree in the wake of *Fordice* that would suggest the continued existence of education policies that have their genesis in vestiges of *de jure* segregation; and
- (4) If such conditions are determined to exist in the investigations outlined in (3), immediately begin oversight of such states to eliminate such policies, up to and including the use of consent decrees and settlement agreements to compel performance by the states.
- (5) Brief the Committee on any preliminary findings from OCR's review and update the Committee upon closure of any related investigation.

Please send all official correspondence and information relating to this request to Rasheedah Hassan, the Committee's Chief Clerk at Rasheedah.Hassan@mail.house.gov.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chair
Committee on Education and Labor



FREDERICA S. WILSON
Chair
Higher Education and Workforce Investment
Subcommittee

Cc: The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor

Cc: The Honorable Gregory F. Murphy, M.D., Ranking Member, Higher Education and Workforce Investment Subcommittee

⁸ Based on research conducted for the Committee by the Congressional Research Service.

⁹ See *Coal. for Equity & Excellence in Md. Higher Educ. v. Md. Higher Educ. Comm'n*, 977 F. Supp. 2d 507, 518 (2013).

¹⁰ *Id.*

¹¹ Douglas-Gabriel, *supra* note 6; Chang, *supra* note 7.