

**COMMITTEE ON EDUCATION AND LABOR  
UNITED STATES HOUSE OF REPRESENTATIVES**

**Hon. George Miller, Chairman**

**HEARING ON**

**“AMERICA’S BLACK COLLEGES AND UNIVERSITIES:  
MODELS OF EXCELLENCE AND CHALLENGES FOR THE FUTURE”**

**Thursday, March 13, 2008, 10:00 a.m.**

**Room 2175, Rayburn H.O.B.**

**STATEMENT OF DR. EARL S. RICHARDSON, PRESIDENT  
MORGAN STATE UNIVERSITY**

Chairman Miller and distinguished members of the Committee, I am deeply honored to be a part of this panel and I thank you for the opportunity given me to share my thoughts and perspectives on the continuing efficacy of Historically Black Colleges and Universities as well as the continuing need for the federal government to oversee and enforce the effective compliance of the several states with applicable civil rights laws as pertaining to students especially served by these institutions. At this point and time in our nation’s long, bloody journey towards equal justice under law and civil rights for all regardless of race and color – particularly with respect to equal educational opportunity – I can think of no more urgent matter for which this Committee should convene a hearing.

As pertaining to public education, we are now 54 years into the implementation and enforcement of the mandate of *Brown v. Board of Education*, which implementation and enforcement, I might add, was to be done “with all deliberate speed.” While we would be disingenuous if we failed to acknowledge that significant progress has been made, we would also be irresponsible if we were to conclude that the promise of *Brown* has been fully realized – or even partially realized – for a vast number of low-income,

minority students in this country, particularly in the South where segregation and discrimination on the basis of race was institutionalized by law. That unrealized promise is this: public education, “where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

With respect to public higher education in particular, we are also now 35 years past the seminal *Adams v. Richardson* cases seeking some sense of accountability from what is now the United States Department of Education, Office for Civil Rights, to enforce compliance of the states with *Brown* and other governing law, including Title VI of the Civil Rights Act of 1964, at the college and university levels. Moreover, we are 16 years past the landmark decision in *United States v. Fordice* imposing affirmative obligations on former *de jure* segregated states to dismantle their dual systems of higher education and eliminate the vestiges of segregation to the extent practicable. Of great significance here is the obligation of states, such as Maryland where I live and serve, to affirmatively act to remedy all policies and practices traceable to its prior system of segregated education and to eliminate any such present or continuing policies and practices that foster discrimination or perpetuate conditions indicative of the prior dual system.

Again, I believe that most states can fairly report significant progress in some facets of dismantling their prior segregated systems. In other facets, however, progress has been painfully slow. And regrettably, in key areas there has been nothing short of recalcitrance on the part of states with respect to their affirmative obligations. Instead of progress in recent years, in some instances there has been a trending backwards. These areas include academic program development, operating budgets and facility upgrades

where Historically Black Institutions remain less-developed, chronically underfunded and disadvantaged in the struggle to level the playing field in the competitiveness of all public colleges and universities in attracting students of varying academic achievement levels, backgrounds, race and ethnicity.

Let me emphasize first, however, that in the face of continuing challenges, the value of Historically Black Institutions continues to rise in astounding ways, maximizing both the choice of students of all races who seek higher learning in their communities and the efficiency of public institutions that offer opportunities for higher learning on their behalf.

In a public statement issued earlier this year, the presidents of Maryland's four Historically Black Institutions of Higher Education, of which Morgan State University is one, documented this value and the continuing relevance of these institutions in meeting the critical educational needs of the citizens of the State. For example, these institutions account for 64% of African American undergraduates enrolled in the State's public four-year institutions. That enrollment includes many high-achieving high school graduates as well as a significant number of students not eligible for admission to more selective institutions. The best prepared students enrolled at the Historically Black Institutions graduate at the same rates or better than similar students at other public institutions.

The Historically Black Institutions also do remarkably well in graduating other students, though many are forced to drop out or stop out for a period of time because of unmet financial needs or other academic difficulties often related to their economic circumstances and the need to work full-time jobs. Reports of the Maryland Higher

Education Commission clearly establish a direct correlation between unmet financial need and low retention rates.

Moreover, the Historically Black Institutions have been productive beyond their enrollment percentages. In 2006, they accounted for 56% of the bachelor's degrees awarded to African Americans by traditional public four-year campuses, 49% of the master's degrees awarded to African Americans, and 55% of the doctorate degrees awarded to African Americans. In the critical fields of the sciences, engineering and education, the Historically Black Institutions awarded 52% of the bachelor's degrees in computer science awarded to African Americans by traditional public four-year campuses, 50% of the degrees in education, and 64% of the degrees in health fields.

At the master's level, the Historically Black Institutions accounted for 35% of the degrees in computer science awarded to African Americans, 55% of the degrees in education, 60% of the degrees in health, and 44% of the degrees in engineering (with only one HBI awarding degrees in the discipline).

The significance of the Historically Black Institutions in degrees awarded to African Americans is even more pronounced at the doctoral level where, in 2006, they produced 75% of the degrees in education awarded to African Americans by traditional four-year public institutions, 60% of the degrees in engineering, and 100% of the degrees awarded in the health fields.

These outcomes in Maryland clearly demonstrate that the Historically Black Institutions serve a valuable mission and provide a unique contribution to educating the citizens of the State and nation in a manner that is not possible by relying alone upon the Traditionally White Institutions. The HBIs have great potential for educating students

across the spectrum of academic achievement; however, their value is especially evident with respect to those low-income, minority students who have been sorely underserved by public schools in their communities and who do not meet the criteria of the more selective public universities. To those isolated from educational and economic opportunity because of poverty and other socioeconomic circumstances, the Historically Black Institutions remain critical to the hope of finding opportunities to break through what otherwise might seem to be insurmountable barriers on the way to higher learning and enhanced opportunities to participate in the economies of their state, nation and world. Many of these students receive their opportunities at the Historically Black Institutions and thrive when the doors are opened to them.

All of this substantiates the promise of developing a unitary system of education in our states, free of the stain of discrimination and segregation that officially beset us in the past and that will surely, if not fully remedied, thwart our progress into the future – a system where an excellent and equitable public education “is made available to all on equal terms.”

Despite their effectiveness, efforts to enhance Maryland’s Historically Black Institutions have been slow and exceedingly limited. Each campus continues to grapple with operating budgets that, though increasing over the years, fail to close the historic funding gap between these institutions and the Traditionally White Institutions in the State. Each campus continues to have very serious capital needs for renovation and replacement of existing buildings, as well as new facilities and equipment. Each campus faces disadvantages in the development of high demand academic programs that are not unnecessarily duplicated at geographically proximate Traditionally White Institutions.

All of which hinders their ability to attract new students and otherwise accomplish their significant roles and missions.

Of great importance to addressing and resolving these remaining gaps and disparities is the fact that African Americans, Hispanics and other minorities now constitute the majority enrollment in Maryland's public elementary and secondary schools. These students represent, in large part, the pipeline from which the future workforce for the State's knowledge-based economy will be drawn. Sadly, this new majority also represents the greatest deficits in high school achievement as well as in bachelor's, master's and doctoral degree production. Addressing this condition must be among the highest priorities of the State and, because of their proven effectiveness – even in the face of great disparities and neglect – the Historically Black Institutions will continue to be invaluable assets and resources in meeting these challenges. It is absolutely counter to the State's best interests to limit or otherwise fail to enhance or develop these institutions. In doing so, the State would only limit choices, opportunity and access to higher education for African American, Hispanic and other minority students. It is long past time to maximize the human capital potential of all the citizens of our State through the enhancement of the Historically Black Institutions in a unitary system of higher education.

We have confronted these challenges and fought these battles on many fronts over a period of several decades now. We have long pursued a course leading toward the legal and moral standard of comparability and competitiveness of the Historically Black Institutions and their Traditionally White counterparts through litigation, administrative oversight and enforcement, legislation and other means of advocacy and public policy.

While State efforts to enhance the Historically Black campuses have made these institutions much better than they were decades ago, the institutions still are far short of achieving parity with the majority campuses, a major principle of federal desegregation law. In some states, including Maryland, federal oversight has failed to apply the enforcement necessary to bring the states into compliance with the applicable federal law. As a result, often in the face of recalcitrance by the states, disparities and problems remain. And comparability and competitiveness remain an elusive mandate which states are all too willing to ignore. Worse, the mere passage of time has become the justification for doing nothing more to achieve this parity. This simply cannot be acceptable.

In 2008, the State of Maryland remains under the jurisdiction and oversight of the United States Department of Education, Office for Civil Rights, with respect to its equal educational opportunity obligations under federal law. This formal oversight began as early as 1969 when what is now called “OCR” notified Maryland that it was one of ten states operating a racially segregated system of higher education in violation of Title VI and applicable federal desegregation law. Over a period of several years, Maryland worked toward the development of a plan for dismantling its discriminatory dual system and eliminating the vestiges of segregation. In 1976, however, after OCR advised Maryland of its concerns with the State’s implementation of its plan, Maryland was granted an injunction prohibiting OCR from instituting enforcement action to terminate Maryland’s federal financial assistance unless certain conditions were met. Negotiations between OCR and the State resumed over the development and implementation of a new desegregation plan, and a consent decree ending the litigation was entered in 1982.

In all, formal plans or “Agreements” between OCR and Maryland were executed in 1980, 1985 and 2000. The 1985 plan was accepted by OCR as meeting the requirements of Title VI so long as the State implemented the plan in good faith. Its principle objectives were (1) the continued integration of Maryland’s Traditionally White Institutions through a portfolio of enrollment goals, recruitment measures, retention efforts, and affirmative action plans, and (2) the enhancement of Maryland’s Historically Black Institutions to ensure that they were comparable to and competitive with the Traditionally White Institutions with respect to operating budgets, capital facilities and new academic programs. The plan explicitly incorporated many of the provisions of the 1980 plan, including goals, commitments and measures in undergraduate accessibility, graduate and first-professional accessibility, enrollment in specific disciplines in which African American students were underrepresented, student financial aid, employment, and representation on governing boards.

While the State submitted annual reports to OCR through May 1991 asserting compliance with the plan, OCR never conducted a compliance review or issued a ruling or notification as to whether Maryland had achieved good faith satisfaction of the plan and complete compliance with Title VI.

In 1992, the Supreme Court issued its landmark *United States v. Fordice* decision setting forth the legal standards imposed on former *de jure* segregated systems of higher education. Subsequently, in 1994, OCR issued its *Notice of Application of Supreme Court Decision* applying the *Fordice* standards to all pending Title VI evaluations of statewide higher education systems with OCR-accepted desegregation plans that had expired, including Maryland. Included in the Notice was OCR’s position that states may



not place an unfair burden upon African American students and faculty in the desegregation process and that state systems of higher education may be required to strengthen and enhance their Historically Black Institutions. No evaluation, however, was conducted and it wasn't until 1999 that OCR initiated efforts with the State to establish a partnership for the purpose of improving the educational opportunities of African Americans in Maryland's public institutions of higher education and ensuring compliance with the State's obligations under *Fordice* and other applicable federal law, including Title VI and the progeny of *Brown v. Board of Education*.

That Partnership Agreement, executed in 2000 for a stated period of five years, remains in place to date with little or no enforcement measures imposed upon the State by OCR. Also in place are the legal standards articulated in the Agreement and which form the basis for the Agreement, imposing affirmative obligations on the State to dismantle its prior dual system of higher education and eliminate the vestiges of segregation to the extent practicable, including present policies or practices traceable to the prior dual system that continue to foster discrimination or perpetuate segregated conditions indicative of the prior dual system.

Of the several obligations and commitments of the State of Maryland set forth in the Partnership Agreement, of most significance are these: (1) developing high-demand academic programs at the Historically Black Institutions and ensuring that they are not unnecessarily duplicated at nearby institutions – thereby expanding mission and program uniqueness and institutional identity at the Historically Black Institutions; and (2) designing and implementing measures which ensure that the Historically Black

Institutions are comparable to and competitive with the Traditionally White Institutions in all facets of their operations and programs.

Each commitment is firmly grounded in governing federal law and set forth in detail sufficient to accomplish the stated task and ensure compliance with such law. Each commitment is set forth to ensure that the Historically Black Institutions are enhanced and empowered to provide equal opportunity for a quality education to all students who choose to attend them and to enable them to compete for and be attractive to students regardless of race. As may be necessary, these commitments include enhancing:

the distinctiveness of the Historically Black Institutions' programmatic missions;

the uniqueness and mix of quality academic programs that are not unnecessarily duplicated at proximate Traditionally White Institutions;

operational funding consistent with the mix and degree level of academic programs, support for the development of research infrastructure, and support consistent with the academic profile of students;

lower student-faculty ratios appropriate to support their missions;

the expanse, functionality and architectural quality of physical facilities;

the appearance, attractiveness and ambiance of campus and surrounding public infrastructure, including roads, lighting and public transportation; and

funding to support students' quality of campus life.

In no instance, however, has the State been held to demonstrate implementation of either or any of these commitments, nor has the State been reviewed as to its compliance with its obligations under the Agreement and governing federal law. It is my position, based upon a substantial record, that in large measure the State has yet to meet its obligations under the Agreement and, in fact, that it has affirmatively acted, in some instances, in

violation of its obligations under the Agreement and applicable law. Documented instances of unnecessary duplication of academic programs are noted, in particular.

In light of these circumstances and due, at least in part, to the lack of enforcement activities on the part of OCR, the Historically Black Institutions and other interested or affected parties are, in essence, forced to pursue relief in other venues, including courts and legislatures. An institution's options to pursue a judicial remedy, however, are extremely limited and, in some instances, are non-existent without the enactment of legislation authorizing the pursuit of judicial review. This has prompted the repeated proposal of legislation in the Maryland General Assembly over the past three years that would allow a Historically Black Institution to seek judicial review of decisions of the State, through the Maryland Higher Education Commission, approving the unnecessary duplication of existing programs at the institution by a geographically proximate Traditionally White Institution. In each instance to date, the legislation has failed to be enacted. This leaves the State's decision making process for the approval of academic programs without a judicial check, even though such decisions are to be made within the context of governing State and federal civil rights laws.

At least one private coalition has filed a law suit in federal district court to challenge the State's decisions, actions or non-actions with respect to the unnecessary duplication of academic programs and other obligations under the OCR Partnership Agreement and applicable State and federal law. But the Historically Black Institutions themselves are left without a remedy to pursue. This only serves to underscore the significant and detrimental impact of OCR's non-enforcement activities upon Historically

Black Institutions and the students who choose to attend them. It is a profoundly disturbing problem that needs to be addressed.

OCR's failure to act also opens the door for the State to attempt to address related issues through other political measures that may or may not give deference to the existing obligations set forth in the Partnership Agreement. For example, the Maryland General Assembly has recently created the *Commission to Develop the Maryland Model for Funding Higher Education*. The Commission has determined that it will attempt to define what it means for a Historically Black Institution to be comparable to and competitive with a Traditionally White Institution and what it might take to achieve that status from a budgetary point of view. While there is potential for progress from such an endeavor, the Historically Black Institutions remain concerned that the Commission's analysis of the issue is going forth without a clear commitment to define the task under the Partnership Agreement and within the parameters of the specific obligations of the State of Maryland under federal civil rights law. At the very least, it is an attempt by the State to fill the void caused by OCR's failure to enforce the terms and conditions of the Agreement or to conduct a meaningful review of the State's compliance with federal law.

These are just some of the issues I wish to bring to your attention today. I am hopeful that my thoughts and perspectives are of some help to the important work of this Committee. In summary, I emphasize the remarkable and, at times, immeasurable value of the Historically Black Institutions and their continuing validity in this nation's long struggle for equal educational opportunity and excellence in education for all of its citizens. I also emphasize the significant need for active and continued oversight from the federal government, enforcing upon the states compliance with their obligations under

federal law. In the end, OCR can and must be a much more effective means by which any continuing policy or practice that fosters discrimination or perpetuates conditions indicative of the prior dual systems of higher education are eliminated root and branch and by which the Historically Black Institutions are, at long last, made comparable to and competitive with their Traditionally White counterparts.

Thank you for your consideration. I am happy to respond to any questions or otherwise provide you with further information.