

Written Testimony before the  
Maryland Higher Education Commission Program Approval Process (PAP) Workgroup  
Tuesday, December 19, 2023

GENTLEPERSONS:

I am Sharon Blake, testifying on behalf of the Maryland HBCU Advocates (the Advocates) to provide recommendations relative to the Maryland Higher Education Commission (MHEC) Program Approval Process. The Maryland HBCU Advocates wish to acknowledge and thank you for allowing public discourse. As advocates, we recognize the long hours, the hard work, and thoughtful exchange which led to crafting the draft set of recommendations and final report you will put forth to the Maryland General Assembly to improve and adjust the Maryland Higher Education Commission Program Approval Process.

To that end, the Maryland HBCU Advocates respectfully submit the following recommendations for the Legislative Workgroup's consideration and approval:

**Recommendation No. 1 - Duplication Criteria**

Recommendation 16 in the PAP Workgroup report proposes that the department (and, by implication, MHEC as well) “*make the distinction between unreasonable and unnecessary duplication*” in its analyses. This wording, unfortunately, is too subtle and needs strengthening, as explained below.

While the PAP Workgroup report cites the *Fordice* decision (which the Advocates certainly welcome) in support of the distinction that is referred to, it is actually the *Coalition for Equity* decision that is more directly-relevant because the District Court Judge *specifically found* that the State of Maryland, and MHEC in particular, “*must be conscious of the court’s remedy in deciding whether to approve future program requests.*” (*Coalition* decision at p. 69) This strongly connotes that MHEC should begin substituting “*unnecessary program duplication*” as the proper criterion to apply (and not unreasonable program duplication) **when one of the objecting institutions is a Maryland TBI (Traditionally Black Institution) that is claiming detrimental program duplication.**

Hence, the issue of which criterion to apply goes beyond mere recommended regulatory reform. It is now a matter of the State’s duty to comply with the court decision.

**Recommendation:**

The Maryland HBCU Advocates therefore propose the following statement be added to workgroup Recommendation 16:

*The Department of Education and MHEC, in considering an objection from a TBI claiming harmful program duplication, must no longer apply “unreasonable program duplication” and instead should apply “unnecessary program duplication” as the legally appropriate criterion of review, in such circumstances.*

### **Recommendation No. 2 - Mission Statement**

The Advocates are grateful that the PAP Workgroup report acknowledges (at p. 1 of the report) that MHEC should consider adopting “*more developed metrics for mission statement review*” and we also applaud the workgroup’s suggestion that “*For instance, MHEC could be **considering factors such as the unique contributions that historically Black colleges and universities (HBCUs) make to the State and to the country.***”

### **Recommendation:**

In light of the foregoing considerations, the Advocates therefore respectfully propose that MHEC go further to ensure all institutions of higher learning align their Mission Statements and practices to demonstrate the following, and that each Maryland State institution of higher learning include within its Mission Statement the following declaration.

*“As a Maryland State institution of higher learning, [name of Institution] is committed to ending unnecessary program duplication within the Maryland system of higher education.”*

### **Recommendation No. 3 - Judicial Review of MHEC Decisions**

The PAP Workgroup report regrettably makes no mention of subsection (5) of COMAR Section 13B.02.03.28, Section I, which currently declares, “*The decision of the Commission is **final, and is not subject to reconsideration by the Commission or review by any administrative or judicial body.***”

It should be noted that the PAP Workgroup report does not discuss whether other U.S. states have similar legal provisions with respect to non-reviewability of final decisions by agencies comparable to MHEC. As a matter of general administrative law and practice, this immunity from judicial review is highly irregular. [See the Administrative Procedure Act, § 10-201 et seq. of the State Government Article and, more particularly, its “Declaration of policy,” specifically,

*“The purpose of this subtitle is to:*

*“(1) ensure the right of all persons to be treated in a fair and unbiased manner in their efforts to resolve disputes in administrative proceedings governed by this subtitle; and*

*“(2) promote prompt, effective, and efficient government.”]*

### **Recommendation:**

The Maryland HBCU Advocates therefore respectfully, but strongly urge that subsection (5) be rescinded and be replaced with the wording set forth below.

*A decision by the Commission, after reconsideration of its initial decision in the matter, shall be final. Final decisions shall be subject to review in accordance with the State Administrative Law Article.*

Thank you for considering the Maryland HBCU Advocates' input toward the final set of recommendations that will be delivered to the Maryland General Assembly. Should there be a need for additional information, we are available to discuss in detail our recommendations.

Respectfully Submitted:

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