

## **Executive Summary: Recommendations from the Marylanders HBCU Advocates**

**Recommendation No. 1.** Amend MHEC’s regulations governing “*Objections for In-State Higher Education Program Review*” to include a General Policy Statement along the following lines:

### **General Policy Statement on MHEC’s Review of Higher Education Program Duplication.**

*“MHEC affirms that, in proceedings before it in which Maryland historically white and historically black institutions of higher education are disputing alleged harmful program duplication relating to a proposed new program, MHEC is obligated to bear in mind Maryland’s ongoing legal commitment to end definitively its long history of unnecessary program duplication within its system of higher education, as mandated by the U.S. District Court in The Coalition for Equity and Excellence in Maryland Higher Education, et. al., v. Maryland Higher Education Commission, et al., 977 F. Supp. 2<sup>nd</sup>, 507 (D. Md. 2013).”*

Accordingly, in its review of such proceedings, MHEC’s high priority policy goals, among others, will be to:

- (i) prevent to the greatest extent possible unnecessary duplication of HBI programs, in order*
- (ii) promote equity for HBIs in the marketplace of Maryland’s institutions of higher education, as reflected in the U.S. District Court’s findings and decision <sup>1</sup> and as buttressed by Section 10-214 of the Education Article of the Code of Maryland;” <sup>2</sup> and*
- (iii) remain mindful of the synergy between the effects of MHEC’s program duplication decision-making and the State of Maryland’s commitments entered into with the U.S. Department of Education’s Office of Civil Rights in their December, 2000 “Partnership Agreement.” (OCR Partnership Agreement, PTX 4, at 4.)*

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**Recommendation No. 2.** When MHEC is asked to approve a new proposed program submitted by a traditionally white institution (TWI), and a historically black institution (HBI) has filed a formal written objection to that proposal, MHEC shall in good faith apply

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<sup>1</sup> *The Coalition for Equity and Excellence in Maryland Higher Education*, in which the Court held, in part, that “*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 of racial discrimination*” and also that “*MHEC has not effectively addressed unnecessary program duplication.*” [at 977 F.Supp.2d 539] [Emphasis added].

<sup>2</sup> In 2021 the Maryland General Assembly passed Senate Bill 1/ House Bill 1, now codified in Section 10- 214 of the Education Article of the Code of Maryland.

the “*unnecessary duplication*” standard of review, which the U.S. District Court<sup>3</sup> identified as the appropriate standard in such circumstances, in lieu of applying its “*unreasonable duplication*” standard of review that may be applicable in other circumstances.

MHEC’s current Regulation provides:

[MD Code Reg 13B.02.03.06](#) (Current through Register Vol. 50, No. 12, June 16, 2023)

*A program proposal shall address the following areas:*

A. . . .;

B. . . .;

C. . . .;

D. *Reasonableness of program duplication*, if any;

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**Recommendation No. 3.** *As a corollary to Recommendation No. 2*, when MHEC is applying the Court-approved standard (i.e., “*unnecessary duplication*”) in evaluating a TBI’s objection to a new program, MHEC should resolve any reasonable doubt in favor of upholding the objection, as a precautionary measure to ensure that Maryland continues to comply fully with both the letter and the spirit of the U.S. District Court’s decision and its progeny.

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**Recommendation No. 4.** The Legislative Work Group should review the legislative history of COMAR Section 13B.02.03.28 (entitled “*Commission’s Decision*”), Section I, subsection (5), with a view to rescinding the current text of subsection (5) and replacing it with a new provision that would permit judicial or other appropriate review of all or certain MHEC decisions, in accordance with applicable Maryland law and regulations.

**Subsection (5) currently provides:**

5) The decision of the Commission is final, and is not subject to reconsideration by the

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<sup>3</sup> *The COALITION FOR EQUITY AND EXCELLENCE IN MARYLAND HIGHER EDUCATION, et al. v. MARYLAND HIGHER EDUCATION COMMISSION, et al.*, in which the Court held, in part, that “*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 [of racial discrimination]*” and also that “*MHEC has not effectively addressed unnecessary program duplication.*” [at 977 F.Supp.2d 539] [Emphasis added].

Commission or review by any administrative or judicial body.

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**Recommendation No 5.** In its overall administration of program reviews, MHEC should actively promote, throughout Maryland's system of higher education, acceptance of the tenet that TWIs, TBIs, and the general public are all "*mutual stakeholders*" in the process of:

- (i) ridding Maryland of the vestiges of *de jure* discrimination at its institutions of higher education and
- (ii) instilling widespread recognition of the invaluable contributions that TBIs continue to make to this State and to this country.

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**Recommendation No. 6.** Former Education Secretary, Dr. James D. Fielder, set forth "*Guidance Regarding Objections for In-State Academic Program Review*" in his October 1, 2020 letter addressed to MHEC's president. **This 2020 Guidance should be interpreted and applied more broadly, so that both MHEC and the Secretary's Office staff do not consider themselves obligated to limit their analysis to only one of the four objection criteria listed, if in fact there are other relevant criteria from the list that should also inform an MHEC program duplication decision, such as criterion 4 (see below).**

The current relevant clause from Secretary Fielder's letter is:

"The Secretary or an institution may file **an objection to implement a proposed program based on at least one of four criteria:**

1. Inconsistency of the proposed program with the institution's approved mission
2. Not meeting a regional or Statewide need consistent with the State Plan
3. Unreasonable<sup>1</sup> program duplication which would cause demonstrable harm to another institution
4. Violation of the State's equal educational opportunity obligations under State and federal law."

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**Recommendation No. 7.** The Advocates further recommend that the overall guidance given in Secretary Fielder's October 1, 2020 letter be reviewed by the current Secretary and, as appropriate, amended to emphasize Recommendation 6 and be updated in other respects to ensure that current guidance corresponds to program duplication revisions that result from this Legislative Work Group's study and report(s).

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**Recommendation No. 8.** The current list of 16 “*Criteria for a Full Program Review*” in COMAR Section 13B.02.03.06 should be reviewed to determine if that list can be pared down to a smaller number and also subdivided and re-organized into more coherent groupings according to subject matter, in descending priority order. [The MD HBCU Advocates have prepared a suggested subdivision and re-organized format.]

**The current list comprises the following sixteen “Criteria”:**

- A.** Centrality to mission and planning priorities, relationship to the program emphasis as outlined in the mission statement and an institutional priority for program development;
- B.** Critical and compelling regional or Statewide need as identified in the State Plan;
- C.** Quantifiable and reliable evidence and documentation of market supply and demand in the region and service area;
- D.** Reasonableness of program duplication, if any;
- E.** Relevance to the implementation or maintenance of high-demand programs at HBIs;
- F.** Relevance to the support of the uniqueness and institutional identities and missions of HBIs;
- G.** Adequacy of curriculum design, program modality, and delivery to related learning outcomes, consistent with Regulation 10 of this chapter;
- H.** For public institutions, adequacy of articulation and transfer planning, consistent with Regulation 10 of this chapter;
- I.** Adequacy of faculty resources, consistent with Regulation 11 of this chapter;
- J.** Adequacy of library resources, consistent with Regulation 12 of this chapter;
- K.** Adequacy of physical facilities, infrastructure, and instructional equipment, consistent with Regulation 13 of this chapter;
- L.** Adequacy of financial resources with documentation, consistent with Regulation 14 of this chapter;
- M.** Adequacy of provisions for evaluation of program, consistent with Regulation 15 of this chapter;
- N.** Consistency with the Commission’s minority student achievement goals;
- O.** Relationship to low productivity programs identified by the Commission;
- P.** Adequacy of distance education programs under Regulation 22 of this chapter.

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**Recommendation No. 9.** Urge MHEC, pursuant to its existing regulatory authority, under [MD Education Code § 11-106 \(2022\)](#), to create an Advisory Council on “*Program Duplication in Higher Education.*”

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**Recommendation No. 10.** Again, pursuant to MHEC’s authority, under [MD Education Code § 11-106 \(2022\)](#) and in conjunction with Recommendation 9, urge MHEC to also appoint an “*advisory committee that represents various groups in the higher education community*” (such as the Maryland HBCU Advocates) who “*may make recommendations to the Commission on matters of statewide importance that affect their constituencies.*”

*Respectfully submitted to the Maryland Legislative Work Group on Program Duplication  
by the Maryland HBCU Advocates*

Date: October 23, 2023