A matter of diversity, equity and necessity: The tension between Maryland's higher education system and its historically Black institutions over the OCR agreement

Robert T. Palmer, PhD
Ryan J Davis, University of Maryland - College Park
Marybeth Gasman, PhD, University of Pennsylvania
A Matter of Diversity, Equity, and Necessity: The Tension between Maryland’s Higher Education System and its Historically Black Colleges and Universities over the Office of Civil Rights Agreement

Robert T. Palmer  State University of New York at Binghamton
Ryan J. Davis  University of Maryland, College Park
Marybeth Gasman  University of Pennsylvania

Eighteen years after the Supreme Court rendered its decision in Fordice, many states have complied somewhat or not at all to its mandates. This has been particularly evident in Maryland, where the presidents of historically Black colleges and universities (HBCUs) are pressuring the state to fulfill its commitment with the Office of Civil Rights (OCR), stemming from Fordice, to make HBCUs comparable to their White peers. While Maryland has declared that it has complied with its OCR agreement by preventing unnecessary program duplication between HBCUs and White institutions, investing more money into HBCUs, and increasing racial diversity on all of its public campuses, leaders of the State’s HBCUs charge Maryland with not fully honoring its commitment. In this article, the authors will discuss Maryland’s collegiate desegregation plan, stemming from the Supreme Court’s decision—U. S. v. Kirk Fordice, and explain the tension resulting from the HBCUs leaders’ accusations of Maryland’s lack of commitment to this agreement.

Keywords: HBCUs, equity, diversity, and Fordice

Although recent articles in national (e.g., Dechter, 2008; Thernstrom & Thernstrom, 2007) and local (e.g., Abdullah, 2008) newspapers have continued to question the relevance of historically Black colleges and universities (HBCUs), new scholarship (Gasman et al., 2007; Hubbard, 2006; Kim & Conrad, 2006; Minor, 2008a; Palmer & Gasman, 2008) has helped answer this question by supporting the earlier research of HBCU scholars (Allen, 1992; Brown, 2001; Davis, 1994; Fleming, 1984; Fries-Britt & Turner, 2002; Gasman, 2005; Gurin & Epps, 1975; Kim, 2002). Questions about the importance of HBCUs have been particularly noticeable in Maryland, where the presidents of these institutions are pressuring the State to fulfill its commitment with the Office of Civil Rights (OCR) of the U. S. Department of Education, stemming from Fordice (United States v. Fordice, 1992) to make HBCUs comparable to their White peers, enabling them to attract non-minority students. Meanwhile, local media outlets are using every opportunity to point out the perceived insignificance of these institutions, noting poor retention and graduation rates, but neglecting to consider the remedial education that many of these institutions must provide due to neglect at the primary and secondary level (see Dechter, 2008).

Despite the decline in the number of Black students attending HBCUs over the years, as many have opted to attend predominantly White institutions (PWIs), prompted by several government initiatives (i.e., Brown v. Board of Education, 1954; Civil Right Act of 1964, and the implementation of the federal aid program), researchers have consistently argued that Black institutions foster a supportive and nurturing environment (Berger & Milem, 2000; Brown, Bertrand, & Donahoo, 2001; Fries-Britt & Turner 2002; Minor, 2008a; Outcalt & Skewes-Cox, 2002; Palmer & Gasman, 2008; Seifert, Drummond, & Pascarella, 2006). Black students at these
institutions are more satisfied, engaged in the community, and well-adjusted (Allen, 1992; Fleming, 1984; Fries-Britt & Turner; Harper, Carini, Bridges, & Hayek, 2004; Pascarella & Terenzini, 2005).

Research has also shown that Black students on HBCU campuses exhibit positive psychosocial adjustments, cultural awareness, and increased confidence (Allen, 1992; Fleming, 1984; Fries-Britt & Turner, 2002). These students, according to Fleming (1984), experience more contact with faculty, greater satisfaction with their academic lives, and exhibit higher career aspirations. Fleming also explained that intellectual development is more positive for Blacks in Black colleges. Moreover, research has indicated that the HBCU experience propels more Blacks into graduate and professional degree programs (Allen, 1991, 1992; Brown et al., 2001; Brown & Davis, 2001; Garibaldi, 1997; Minor, 2008a; Perna, 2001; Roebuck & Murty, 1993; Wenglinsky, 1996).

Although less than 3% of the nation’s colleges and universities are HBCUs, they enroll 16% of Black students at the undergraduate level. They also award nearly 30% of all baccalaureate degrees as well as 20% of all first professional degrees (Allen, Jewell, Griffin, & Wolf, 2007). These institutions have managed to provide access to a cadre of talented and motivated Blacks and have a rich legacy of producing charismatic leaders who valiantly advocated for societal change for all and served as positive role models to many Blacks (Minor, 2008a; Palmer & Gasman, 2008). Interestingly, HBCUs have been effective in accomplishing these feats with a lack of resources in terms of infrastructure, resources, and operating budgets compared to their White counterparts (Kim, 2002; Palmer & Gasman, 2008). Although Brown (2001) explained that there is a lack of clarity about what constitutes state compliance with Fordice, Gasman and colleagues (2007) explained that the implications of Fordice could propel states to provide additional financial resources to HBCUs to upgrade facilities and make the faculty salaries comparable with those at PWIs, which would help them better compete with their PWI counterparts. Maryland, in conjunction with the Office of Civil Rights (OCR), has followed Gasman and colleagues’ interpretation of Fordice; however, the leaders of the State’s HBCUs charge Maryland with not fully honoring its commitment. In this article, Maryland’s collegiate desegregation plan, stemming from the Supreme Court’s decision—U. S. v. Fordice, and the tension resulting from the HBCUs leaders’ accusations of Maryland’s lack of commitment to its agreement will be discussed and explained.

Although this article is specifically centered on Maryland’s OCR agreement, it is important to discuss this issue of lack of compliance with Fordice because leaders of HBCUs in other states are grappling with similar circumstances (Minor, 2008a, 2008b). More specifically, while their states may have a different agreement with the OCR than the one Maryland has or possibly none at all, many states have invested little to no effort in complying with the mandates of Fordice. As such, public HBCUs remain unfunded and to a large extent, institutions of higher education remain segregated along racial and ethnic lines. Therefore, discussing this issue has implications for the competitiveness of HBCUs and college desegregation. In the following section the authors will review literature on college desegregation. Subsequently, Maryland’s OCR agreement stemming from Fordice and its claim that the State has fulfilled its agreement will be discussed. Furthermore evidence will be presented from the leaders of Maryland’s HBCUs accusing the state of non-compliance with its OCR agreement. After which, the authors will present recommendations for practice and policy.

**REVIEW OF LITERATURE ON COLLEGIATE DESSEGREGATION**

Large-scale desegregation efforts did not manifest on most college and university campuses until President Lyndon B. Johnson signed the Civil Rights Act of 1964 (Brown, 1999, 2001, 2002; Perna et al., 2006; Stefkovich & Leas, 1994), which was intended to eliminate discrimination based on race, color, religion, sex, or national origin. The law granted the federal government the authority to advocate, through legislation, on the behalf of individuals who were discriminated
against. Specifically, Title VI of the Civil Rights Act of 1964 curtailed the spending of federal funds in segregated schools and colleges.

*Adams v. Richardson* (1972) was a continuation of Title VI of the Civil Rights Act of 1964 (Fleming, 1976; Vera 1989). According to Brown, Ricardo, and Donahoo (2004), this case emanated from 10 states and eventually included nineteen southern states (Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and West Virginia) that maintained segregated and discriminatory higher education systems. Perna and colleagues (2006) argued that the goal of the plaintiffs was to force the Secretary of the Department of Health, Education, and Welfare (HEW) to enforce institutional compliance with Title VI.

In July 1977, the federal court mandated that HEW devise guidelines for states with segregated systems, when preparing desegregation plans for compliance of Title VI. The court also stipulated that states must attain racial diversity for faculty and students not just at PWIs, but also HBCUs (Roebuck & Murty, 1993). According to Brown (2001), neither Title VI nor *Adams* had a widespread impact on the desegregation of public colleges and universities. In fact, *Adams* was eventually dismissed “with the *Women’s Equity Action League v. Cavazos* (1990) . . . ruling that plaintiffs lacked a private rights of action against a federal agency” (Brown, 1999, p. xvii).

The issue of collegiate desegregation reappeared in *United States v. Fordice* (1992). *Fordice* stemmed from Mississippi’s efforts to continue *de jure* segregation in its public university system by maintaining universities segregated along racial lines (Stefkovich & Leas, 1994). In 1975, James Ayers, along with other plaintiffs, filed a lawsuit against Kirk Fordice, the Governor of Mississippi, for racial discrimination in the state university system (Gasman et al., 2007). During the time that Ayers filed the litigation, there were vast differences in the mission statements, admission standards, and state financial allocation between the state’s HBCUs (Alcorn State University, Jackson State University, and Mississippi Valley State University) and its five PWIs (University of Mississippi; Mississippi State University, Mississippi University for Women, University of Southern Mississippi, and Delta State University).

In 1992, *Fordice* reached the United States Supreme Court (Brown, 1999). The Court identified four policies traceable to the vestiges of *de jure* segregation. The first of these had to do with the use of the American College Testing program (ACT), which seemed to have discriminatory intent because admissions to any Mississippi State university was based on those scores. Blacks did not perform well on this test and the minimum score needed for acceptance was higher at PWIs compared to HBCUs thereby excluding many Blacks from attending the PWIs.

Another policy weighed by the Supreme Court was “Mississippi’s classification scheme for institutional mission” (Stefkovich & Leas, 1994, p. 413). Three of the PWIs were designated as “flagship” universities, which determined their university’s mission statements and funding levels, consequently providing these institutions with more financial resources. HBCUs, however, had limited missions as well as funding. The third policy that the Court questioned was the unnecessary duplication of programs at PWIs and HBCUs. The Court emphasized that such duplication was linked to *de jure* segregation (Brown, 1999; Stefkovich & Leas, 1994).

The fourth policy that emerged was the need to maintain all of the state institutions in Mississippi. According to Stefkovich and Leas (1994), the Court did not explicitly indicate the likelihood of abandonment of HBCUs. Brown (2001) echoed this sentiment by stating that despite general misconceptions or interpretations, *Fordice* does not propose merging or closing HBCUs. The Supreme Court returned *Fordice* to a federal district court in Mississippi and charged it with developing a new desegregation plan (Hebel, 2004). The Court mandated that Mississippi pay for new academic programs, construction, and start an endowment for the state’s HBCUs. According to Gasman and associates (2007), Mississippi agreed to provide $503 million over a 17-year period to the state’s HBCUs; most of the money would have to be used to enhance programs and facilities at these institutions. Mississippi also required the HBCUs to recruit and retain at least 10% of non-Black students for three consecutive years. Until such time,
the HBCUs would not be allowed to control their share of financial resources earmarked for the recruitment of non-Black students (Brown, 2002; Gasman et al., 2007; Hebel, 2004. The OCR has applied *Fordice* to states whose collegiate desegregation plan had expired or that continue to be monitored for having policies traceable to the vestiges of *de jure* segregation in higher education (Florida, Kentucky, Maryland, Ohio, Pennsylvania, Texas, and Virginia). Despite such application, Brown (2001) explained that there is tremendous ambiguity regarding what constitutes compliance with *Fordice*, hindering many states from achieving compliance measures. Specifically he stated:

The Courts have established the doctrine of requiring states to take all reasonable and educationally sound steps to eliminate policies and practices that are traceable to prior dual system and perpetuate segregation by race. It is this ambiguity that prevents many states from establishing and attaining achievable compliance goals. (Brown, 2001, p. 53)

Notwithstanding the Supreme Court’s lack of clarity about factors indicating compliance with *Fordice*, Brown (2001) pointed out that many states have placed a paucity of emphasis on “restructuring areas where program duplication exists or where there is disparity among institutional mission assignments” (p. 52). However, according to Maryland’s OCR agreement, aside from agreeing to prevent unnecessary program duplication between HBCUs and PWIs, the State also agreed to enhance the educational opportunities and infrastructures of the HBCUs by increasing their funding level according to their mission statements (Maryland Higher Education Commission, MHEC, n.d.). The goal of these initiatives is to not only make the HBCUs more effective in providing a quality education to Black students attending these institutions, but also to make the campuses more attractive to non-Black students, and comparable with their PWI counterparts.

**MARYLAND’S HIGHER EDUCATION SYSTEM AND DESEGREGATION INITIATIVES**

Maryland’s public postsecondary system includes 16 community colleges, 13 public four-year institutions and two public research centers. The state also has 24 independent four-year institutions, three independent two-year colleges, and 128 private career schools (MHEC, n.d.). The HBCUs in Maryland consist of Bowie State University, Coppin State University, the University of Maryland, Eastern Shore, and Morgan State University. The initial three HBCUs and public PWIs, such as Towson University, University of Baltimore, University of Maryland College Park, University of Maryland, Baltimore County, and Frostburg University, are all under the University System of Maryland (USM). Therefore, these institutions are governed by a Board of Regents with a Chancellor as the chief executive officer. Morgan State University and St. Mary’s College of Maryland are not governed by USM. These institutions have their own independent governing boards (MHEC, n.d.).

The Maryland Higher Education Commission is the central higher education coordinating and planning agency for all postsecondary institutions in Maryland. Created in 1988, by the Maryland General Assembly, MHEC serves as a liaison between state government and respective higher education governing boards (MHEC, n.d.). The primary function of MHEC is to ensure the growth and development of Maryland’s higher education system. In 1969, the OCR informed Maryland that it was one of the states in violation of Title VI; it was operating a racially segregated system of higher education. As such, Maryland worked to develop a plan to dismantle its *de jure* system of higher education. In 1976, Maryland was informed that its plan submitted to the OCR was unsatisfactory (MHEC, n.d.). Six years later, the OCR resumed negotiations with Maryland regarding the development of a new desegregation plan. In 1985, Maryland developed and submitted a statewide desegregation plan titled, *A Plan to Assure Equal Postsecondary Educational Opportunity* (MHEC, n.d.). This plan, which the OCR accepted, as demonstrating compliance with Title VI, focused on diversifying the state’s PWIs through
enrollment and recruitment initiatives (MHEC, n.d.). It also aimed to enhance the state’s HBCUs, making them comparable and competitive with their White counterparts by investing in these universities’ capital funds, operating budgets, and the creation of new academic programs (MHEC, n.d.). During the plan’s implementation, Maryland reportedly submitted yearly progress reports to the OCR, highlighting their accomplishments. According to the MHEC, when the plan expired, without further intervention from the OCR, the state purportedly continued to improve educational opportunities across its institutional types, according to state and federal law (MHEC, n.d.).

When the Supreme Court issued its decision in 1992 regarding Fordice, the OCR applied the Fordice standards not only to states being monitored for compliance with federal law prohibiting discrimination in public higher education, but also to states, such as Maryland, whose OCR collegiate desegregation plan had expired. Based on the Fordice decision, Maryland entered into a new agreement with the OCR to improve the educational opportunities for Blacks attending its HBCUs and to enhance the appearance of the HBCUs so they could attract students of all races (MHEC, n.d.). Maryland also agreed to eliminate unnecessary academic duplication between HBCUs and PWIs that were in close geographical proximity. Furthermore, Maryland aimed to improve campus climate for Blacks attending PWIs by hiring and recruiting Blacks at all levels, recruiting and retaining minority students at PWIs, and providing need-based financial assistance programs for Blacks to access and complete graduate or professional schools. This agreement originated in early 2000 and was set to expire in 2005 (MHEC, n.d.).

MARYLAND’S COMMITMENT TO FORDICE

In a letter that Kevin O’Keefe and Calvin W. Burnett, (former chairman of MHEC and former Maryland Secretary of Education, respectively) sent to the OCR in 2006, Maryland expressed that it had fully complied with the agreement it entered into with the OCR regarding Fordice, although the OCR has yet to rule the state compliant (Perna et al., 2006). O’Keefe and Burnett (2006) indicated that the number of Black students attending HBCUs and PWIs had grown exponentially between 1999 and 2004. While they acknowledged that students with low academic achievement (e.g., students with low standardized test scores and high school grade point averages) still encountered significant barriers to accessing higher education, they did not attribute this to vestiges of a dual higher education system. O’Keefe and Burnett also described changes to need-based financial aid. MHEC asserted that Maryland increased its need-based financial aid from $40.2 to 66.7 million. In addition, they detailed a number of policy changes to their Campus-Based Educational Assistance Grant, which supports first-time and low-income students (O’Keefe & Burnett (2006). They also described their efforts to expand a part-time grant program, which supports low-income students who are not able to enroll in college full-time.

Furthermore, O’Keefe and Burnett (2006) explained through a multi-year grant, called “Access and Success,” that Maryland focused on increasing the retention and graduation rates at HBCUs by strengthening collaborative relationships among administration, enrollment management, and teaching and learning practices. As a result of this initiative as well as changes to its need-based financial aid policies and program, Maryland indicated that the six-year graduation rate of Black students on public four-year campuses has grown significantly. O’Keefe and Burnett noted that three of the four HBCUs experienced a similar trend.

O’Keefe and Burnett (2006) also emphasized that Maryland has improved the campus climates for Black students attending public PWIs. In addition to hiring and recruiting Black faculty, administrators, and staff, Maryland required that its public institutions develop diversity statements and strategic goals. Interestingly, while O’Keefe and Burnett acknowledged efforts to improve campus climate for Blacks at PWIs, some may question the veracity of this, particular since Podberesky v. Kirwan (1994) prompted University of Maryland at College Park to dismantle its Benjamin Banneker Scholarship, a racially based scholarship program. As such,
some may view this as Maryland violating its agreement with the OCR to racially diversify the campuses of PWIs. However, MHEC noted that due to the 14th Amendment, Title VI, and federal case law (e.g., Regents of the University of California v. Bakke, 1978) the scholarship was made available to all races. Understandably, this may be viewed as Maryland violating its agreement with the OCR because it takes the emphasis off the recruitment of Black students. However, MHEC explained that Maryland can only do what is in its purview to fulfill its commitments with the OCR.

Aside from the aforementioned aspects that O’Keefe and Burnett (2006) has pointed out that Maryland has done to comply with its OCR, they further indicated that the state took seriously its effort to avoid unnecessary program duplication. The state asserted that by developing coherent, consistent, and unbiased policies of program review and approval, they have avoided unnecessary program duplication. Moreover, they explained that by denying programs, particularly doctoral programs, to PWIs and granting approval to HBCUs, Maryland has been able to greatly enhance the competitiveness of HBCUs, increasing their ability to diversify the racial composition of their student bodies.

Furthermore, O’Keefe and Burnett (2006) noted that Maryland has placed a concerted effort on making its HBCUs comparable to the state’s public PWIs. Specifically, they explained that changes were made to the physical appearances and facilities of all HBCU campuses to support the institution’s mission and program. In addition, O’Keefe and Burnett noted that HBCUs were provided additional state funding for operational enhancement and grant funding initiatives, they also pointed out that Maryland provided a total of $330 million to the four HBCUs to support capital development. Based on Maryland initiatives, O’Keefe and Burnett (2006) found that the state has not only fulfilled, but exceeded its agreement with the OCR to create parity between the HBCUs and their White counterparts. Notwithstanding the assertion that Maryland has fulfilled its commitment with the OCR, O’Keefe and Burnett (2006) indicated that the state will continue to monitor and assess the needs of HBCUs. Specifically, they noted, “The State is committed to capital improvement as needed by the HBCUs to support their academic programs and to improve and maintain their competitiveness. [MHEC] . . . will monitor the needs of the HBCUs on an ongoing basis” (p. 13).

HBCUs Leaders Challenge Maryland’s Assertion of Full Compliance

An article by Avery, Burnim, Richardson, and Thompson (2008), four presidents of Maryland’s HBCUs, wrote and published in The Washington Post, acknowledged that the state had acted on many of the commitments in the letter O’Keefe and Burnett sent to the OCR. However, they asserted that Maryland had not fully complied with the OCR agreement to make the HBCUs comparable to its PWIs, which, in a sense, hampers their ability to diversify the racial makeup of their student body. They explained:

Efforts to enhance Maryland’s Black institutions have been slow and exceedingly limited. All of the HBCU campuses have serious capital needs for renovation or replacement of existing buildings as well as for new facilities and equipment. This hinders our efforts to compete and attract new students, widening the historical gap between HBCUs and their public White peer institutions. (Avery et al., para. 4)

According to Avery and colleagues, the persisting disparities between state HBCUs and PWIs meant that Maryland must be resolute in its effort to create parity between its public HBCUs and PWIs. Minor (2008a) supported the four college presidents’ perspective by stating that many in the HBCU community believed that the additional financial resources many states have provided to their Black colleges, as a result of Fordice, are not sufficient in making Black institutions comparable to their White counterparts. Minor asserted that “large and continual investment in public [HBCUs] is necessary to bring about institutional equity” (2008a, p. 32). The HBCUs in Maryland are proactively working to ensure that the state provides continual
financial support to bring about comparability between its Black and White colleges. For example, Maryland lawmakers introduced Senate Bill 867, which seeks to mandate that the state provides equal and consistent funding to its four-year HBCUs and PWIs in all aspects of their operation and program budgets (C. Jackson, personal communication, March 5, 2008). Although the present status of this proposed legislation is unknown, HBCUs in Maryland contend that their institutions need to be funded consistently with the state PWIs to increase the efficacy of their comparability and competitiveness in attracting White students (Hebel, 2001).

The HBCU leaders also contended that Maryland has not fully honored its agreement with the OCR to prevent unreasonable program duplication between Black and White institutions in close geographic proximity. This became a heated issue when MHEC, despite strong opposition from Morgan State University’s (MSU) administrators, approved a joint MBA program proposed by Towson University and University of Baltimore, two public White universities (Schultz, 2007). MSU’s president, Earl Richardson, was particularly opposed to the MBA program, deeming it an unnecessary program duplication, which could possibly divert students and funding from his institution (Jaschik, 2006, 2007). In congressional testimony to the House Committee on Education and Labor, MSU’s president stated that his MBA program had lost students due to the promulgation of the joint program, making it difficult for the university to increase its racial diversity on campus (Powers, 2008). More specifically, MSU noted:

[MSU’s] MBA was approved in 1969 and by 1974, it enrolled 234 students. Fifty-four of the students were White. Once duplication of the program . . . overall enrollment in the MBA declined to 28 in 2006 with no White enrollees. These dramatic declines in both number and diversity of the enrollment undermine the viability and vitality of a very important sector of our public higher education system. Likewise, the potential richness of Maryland’s multiracial and multicultural population is significantly diminished. (Morgan State University Office of Public Relations, 2009, para. 13)

The duplicated MBA has provoked outrage and anger from stakeholders of HBCUs in Maryland, resulting in a bill, which was approved by the state senate, allowing MSU to appeal the state’s decision in circuit court (Schultz, 2007). Although Robert Ehrlich, then Governor of Maryland, vetoed the bill, stakeholders of Black colleges in Maryland threatened to use court intervention to mediate this issue. Furthermore, Lezli Baskerville, then the president of the National Association for Equal Opportunity in Higher Education (NAFEO), an advocacy organization for Black colleges, emphasized that if the duplicated MBA program was not dismantled, it would be an egregious violation of Maryland’s partnership with the OCR to protect HBCUs and the diversity of their student body (Jaschik, 2007). According to Schmidt (2007a), despite MSU’s decry of the joint MBA program impinging on Maryland’s commitment, the OCR has declined to intervene.

The issue of program duplication emerged once again in Maryland when the University of Maryland University College (UMUC) petitioned MHEC with a proposal to implement an online doctorate program in Community College Administration. Initially, MHEC denied UMUC’s proposal because MSU has a similar program; therefore, it would be in violation of Maryland’s agreement with the OCR to prohibit program duplication (Morgan State University Office of Public Relations, 2009). However, MHEC later rescinded its decision and approved UMUC’s doctoral program with the stipulation that it would only be available to out-of-state students. Nevertheless, MSU objected to the commission’s decision to approve UMUC’s doctorate program and specifically noted:

The concept of a publicly supported university such as UMUC offering a program to everyone except the taxpayers who support it is unsound. Equally unsound is the idea that a state-supported traditionally White institution would be approved to duplicate an existing program at a public historically Black campus, which state and federal law clearly prohibits. It does not matter that the UMUC program is an on-line program, particularly in an age when all campuses have the capacity to offer programs on campus, at satellite sites, on-line, in state and out-of-state (Morgan State University Office of Public Relations, 2009, para. 10)
Furthermore, MSU noted:

The harm done to Maryland’s four historically Black institutions by past and present-day decisions similar to that made in Towson University and University of Maryland University College programs is pervasive and compelling. Morgan and other historically Black institutions are far more segregated now than they were forty years ago. In 1972, 43% of graduate enrollment at historically Black institutions was White, and a year later that percentage had increased to 53 percent. In 2006, it was 14 percent. For the same period, the percentage of White enrolled in graduate and professional education statewide, and who attended public HBCUs, declined from 8% to 2 percent. (Morgan State University Office of Public Relations, 2009, para. 12)

Maryland is not the only state accused of non-compliance with the obligations of the laws of college desegregation. According to scholars (Jaschik, 2007; Minor, 2008a; Schmidt, 2007b; Pluviose, 2006), NAFEO is exploring legal options against states that have neglected or partially honored the mandate from the OCR to apply the legal standards of *Fordice* to spur collegiate desegregation. Therefore, while this article is centered on HBCUs in Maryland, it is applicable to other states.

**DISCUSSION**

Eighteen years after the Supreme Court rendered its decision in *Fordice*, many states have yet to fully comply with that legislation. While Brown (2001) has asserted that there is ambiguity about how states should comply with *Fordice*, Gasman and colleagues (2007) has explained that if states complied with the implications of *Fordice*, this could result in more financial resources being invested into public HBCUs to make them comparable with their PWI counterparts. Maryland, however, has articulated a clear agenda with OCR in order to satisfy the mandates of *Fordice*. Specifically, the state agreed to prevent unnecessary program duplication between HBCUs and PWIs and change institutional mission assignments. Furthermore, it has agreed to invest more money into the operational and capital budgets of HBCUs and increase racial diversity on all public campuses under its auspice.

Despite such initiatives, HBCU leaders in Maryland delineate that the state has not fulfilled its commitment to the OCR. In particular, the leaders explained that not only are there still vast disparities in resources between Maryland’s HBCUs and PWIs, but also, they argued that the state has not honored its commitment to prevent unreasonable program duplication, although it feels that it has (MHEC, n.d.). Interestingly, while the approval of the MBA program as well as the doctorate in Community College Administration has garnered significant public outcry from proponents and leaders of HBCUs in Maryland, a perusal of the academic program inventories of HBCUs and PWIs in geographic proximity reveal the prevalence of such unreasonable duplication.

Furthermore, although Maryland has declared that it will continue to invest in the operation and capital budgets of their HBCUs if, and when, the OCR acknowledges that Maryland has honored it agreement, many HBCU leaders are in disbelief (C. Jackson, personal communication, March 5, 2008). In fact, Minor (2008a) echoed this sentiment by explaining “the structure of most desegregation settlements in higher education are finite, meaning once payments have been made or certain benchmarks are met, the funding is concluded” (p. 26). The HBCU leaders’ disbelief is supported by a report released by the National Governors Association which showed that state support for higher education is expected to decline as states experience revenue shortfalls (National Governors Association, 2007, National Governors Association & National Association of State Budget Officers, 2007). Because of the incomparability and public duplications, Maryland’s public HBCUs are facing tremendous difficulties in attracting new students—particularly White students.
To encourage state leaders in Maryland to fully comply with one of the aspects in their OCR commitments, specifically, to make the state HBCUs comparable to their White peers, HBCUs administrators have argued that since Maryland, like many states, is experiencing a change in its demographics— with a decline of the White population and a burgeoning minority population—it is Maryland’s responsibility to make these institutions comparable if it wants to have highly skilled and educated citizens to lead the state’s economy (C. Jackson, personal communication, March 5, 2008). In this sense, HBCU leaders have shifted the basis of their argument from a lack of compliance with a legal decree to a concern about the state’s economic prosperity and competitiveness. Perna and associates (2006) and Minor (2008a) echoed this perspective. Specifically, Minor contended that during this time of concern with access to postsecondary education, training a diverse and globally competitive workforce, “the need to increase support of [HBCUs] now extends beyond issues of equity, social justice, or past discrimination. It is now a matter of meeting public needs and producing educated citizens that contributes to advancing communities” (p. 32).

**Recommendations for Practice and Policy**

Although leaders of HBCUs in Maryland have acknowledged that the state has invested in these universities, HBCU leaders assert the current funding level is not sufficient to create parity between public HBCUs and PWIs, hindering their efforts to not only attract high-achieving Black students, but also non-minority students, specifically White students. Stakeholders of HBCUs in Maryland should advocate and pressure the state to fund HBCUs and PWIs equally with the same mission statement. This may require Maryland to revamp its higher education funding formula. As previously noted, institutions that are designated as research-oriented and have the most students—typically PWIs—receive the bulk of state funding. This is certainly the case in the State of Maryland. Maryland should permanently adopt additional measures to ensure that all colleges with similar mission designations are funded fairly. If such an adoption is not implemented, it is likely that once Maryland feels as though it has invested sufficiently into its HBCUs, as required by its agreement with OCR, it may not continue to adequately invest in these institutions on the expiration of its desegregation plan. This would, without a doubt, mitigate the relevancy of *Fordice*, as the state’s HBCUs would remain under funded and their ability to attract White students would be severely hindered.

In addition to using the changing demographics of Maryland and concerns about maintaining its economic productivity as leverage to encourage Maryland to create equity in the amount of funding provided to HBCUs compared with their White counterparts, HBCU stakeholders should also use the demise of affirmative action in higher education, which would likely shift more minorities to HBCUs (Gasman et al., 2007; Palmer, 2010), as leverage for encouraging Maryland to provide fair and equitable funding to HBCUs. Furthermore, stakeholders of HBCUs should also hold the OCR accountable for ensuring that it properly monitors states, such as Maryland with college desegregation plans. According to researchers, OCR has adopted a laissez-faire approach with respect to ensuring that states comply with the mandates emanating from *Fordice* (Brown, 1999, 2001, 2002; Gasman et al., 2007; Perna et al., 2006; Schmidt, 2007b). If stakeholders were proactive and pressured the OCR to carry out its responsibilities, the OCR may more likely take swift action against those states in violation of their collegiate desegregation plans.

Maryland, similar to many states, has a number of colleges and universities for its size. Baltimore, a large metropolitan area, in Maryland has more than 10 colleges and one community college. Notwithstanding the number of institutions in Baltimore, concern stems from the state’s public four-year PWIs, which are in close proximity to its HBCUs, and its present unreasonable program duplication. Although MHEC acknowledged having systematic policies and procedures for academic program approval, this method appears to be ineffective. MHEC should revamp its policies and procedures because very little is known about its program approval decision-making.
process, which should include more transparency so stakeholders are better aware and informed. Furthermore, MHEC should encourage institutions, particularly public four-year PWIs in close proximity of their HBCU counterparts, to implement an academic program that has been thoroughly researched to ensure that it does not pose an unnecessary duplication and is valuable to the state’s economy. Enforcing these or similar procedures will demonstrate Maryland’s unwavering commitment to its OCR agreement and display its concern that HBCUs truly enhance their ability to effectively compete and racially diversify their campuses.

Although focused specifically on the HBCUs in Maryland, many of the recommendations, particularly those mentioned earlier, may be beneficial to other public HBCUs in states grappling with similar circumstances. If the OCR has not issued clear and defined standards to states about what constitutes compliance with Fordice, they should. Consequently, states should begin to invest financially in their public HBCUs.

Additionally, some research (e.g., Jaschik, 2007; Schmidt, 2007b) has shown that the Bush administration may not have been deliberate about ensuring that OCR monitors states for compliance with the mandates of Fordice. President Barack Obama appears to be a strong proponent of HBCUs; therefore, OCR may be more intentional in monitoring states for compliance Fordice, which may help to make HBCUs comparable with their PWI counterparts and facilitate their ability to help attract non-minority students. Now more than ever, stakeholders of HBCUs must be proactive in advocating and putting pressure on the OCR to ensure state compliance with Fordice.

CONCLUSION

Although OCR has not certified Maryland as compliant with its OCR agreement, Maryland has asserted that it has complied with its agreement. Nonetheless, HBCU leaders are adamant that Maryland has not. Specifically, they note that the state’s HBCUs are still underfunded compared to their PWI counterparts, which hinders their ability to attract White students. Furthermore, the HBCU leaders indicate that despite Maryland’s claim that it has avoided unnecessary program duplication, it is still a major issue, as illustrated by the joint MBA approved by two public White universities in close proximity to MSU, and more recently with the UMUC’s on-line doctoral program in Community College Administration. While this article highlights the issues that leaders of HBCUs in Maryland are having with the state as it relates to the agreement it established with the OCR, research has shown that HBCUs in other states are grappling with similar problems. As such, these authors have proposed recommendations that may be applicable not only to HBCUs in Maryland, but also to other states thereby, providing the necessary financial resources to enhance HBCUs and furthering the racial diversification of higher education.

REFERENCES

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**AUTHORS**

ROBERT T. PALMER is Assistant Professor, Student Affairs Administration at the State University of New York at Binghamton. RYAN J. DAVIS is a doctoral student in the Department of Education Leadership, Higher Education, and International Education at the University of Maryland, College Park. MARYBETH GASMAN is Professor, Higher Education Division at the University of Pennsylvania in Philadelphia.

All comments and queries regarding this article should be addressed to Rpalmer@binghamton.edu