



October 17, 2013

James D. Schultz, Esquire
General Counsel
Governor's Office of General Counsel
225 Main Capitol Building
Harrisburg, PA 17120

RE: Current Students, Prospective Students, Alumni, Current Faculty, Prospective Faculty, Current Staff, and Prospective Staff of Cheyney University of Pennsylvania (all individually and also all on behalf of persons similarly situated) v. Commonwealth of Pennsylvania Governor Tom Corbett, Acting Commonwealth of Pennsylvania Secretary of Education Dr. Carolyn Dumaresq, Pennsylvania State System of Higher Education (PASSHE) Acting Chancellor Dr. Peter Garland, PASSHE Chancellor Frank T. Brogan, PASSHE Board of Governors Chairman Guido M. Pichini, et al.

Dear Mr. Schultz:

I submit this in response to your October 3, 2013 letter, which was a reply to my September 23, 2013 correspondence on behalf of Heeding Cheyney's Call (HCC).

At the outset, I sincerely thank you for your statement that you are "open to a meaningful dialogue about the mission and future of Cheyney University" and also that you "look forward to establishing a process by which concerns regarding Cheyney are reviewed... with the hope of developing a strategic plan that will assure... viability and success into the future for the university and its students." Accordingly, I will contact you to schedule timely and substantive meetings with you and all pertinent decision-making entities whom you represent.

However, I would be remiss if I failed to express HCC's concern about the tone of your letter, which seemed, at various points, condescending, patronizing, paternalistic, misleading, casuistical, and dismissively non-responsive.

While HCC and its legal team (including counsel who has more than 20 years of state and federal civil and criminal trial experience) appreciate the obvious advantages of negotiation over litigation, we find it quite disdainful to have been admonished that "A forthright discussion about these issues would be more beneficial than lengthy and costly litigation over 'claims' of discrimination, which 'clearly' are not supported by the facts and would not advance higher education in Pennsylvania- at Cheyney or elsewhere" and that "should... (we) choose litigation,... (you) are prepared to provide the court with... (certain) information." You then listed several averments, which, with all due respect, are misleading, incomplete, inaccurate, and erroneous.

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For example, the first contention that “Cheyney currently receives almost three times as much in state appropriations ‘per student’ as the other thirteen universities within PASSHE” is mathematically and fundamentally flawed. As an illustration, if a school with a student population of one receives \$100 from the Commonwealth, it could be disingenuously argued that that school gets more “per capita” than a school with a student population of ten that receives \$300 from the Commonwealth. The former would get \$100 “per capita” while the other would get only \$30 “per capita.” However, in total dollars, the latter nonetheless has gotten more than three times the former. Additionally, this “per capita” characterization deceptively ignores the vastness of the larger school’s facilities and resources relative to the smaller school’s.

The second contention that “Cheyney is in the midst of several major capital projects, including a new residence hall and state-of-the-art science building funded entirely by a \$70 million commitment made by the Governor and PASSHE” completely disregards the fact that the two (so-called) new buildings on campus are the first in about 30 years while the 13 traditionally white institutions continued and continue to build genuinely new ones. By the way, the living conditions in the older dormitories on Cheyney’s campus are, in a word, deplorable. In fact, that very same word was used in an official 2010 report to describe some of the university’s physical facilities. Furthermore, because of the antiquated sewer system, hot water is often unavailable for days at a time for students in the dormitories and for employees throughout the campus.

The third contention that “The Commonwealth’s investment of \$118,000 ‘per pupil’ in capital projects at Cheyney is more than ‘ten times’ that of the other PASSHE universities” is not only delusory but is also based on fuzzy math and is therefore absolutely incorrect. Moreover, it suffers from a malady similar to that of the first contention.

The fourth contention (as well as the fifth and sixth contentions) sets forth questionable numbers and, more important, implies that Cheyney’s problems are internally created. Assuming *arguendo* that the problems are internal, the legal concept of agency would hold the Governor, the Commonwealth’s Secretary of Education, and PASSHE liable because, *inter alia*, the university’s deficit has increased during the past five years from about \$4.5 million to approximately \$14 million and beyond. Someone is responsible for that. Is it the appointee who caused and repeatedly exacerbated the problem or is it the appointer who was aware of, but repeatedly condoned, it- or are both responsible?

And the summarizing assertion that “This level of assistance has not been provided to ‘any’ other PASSHE institution” is just plain wrong.

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Apart from that, it was hoped that you would have responded specifically to the seven itemized points raised in the aforementioned September 23 missive. Unfortunately, that was not done. Nothing was mentioned about the inequitable funding formula except a vague reference to "performance funding and 'other' standards." Neither was anything said about the 1999 OCR Agreement, the secondary education programs, the austerity measures, nor the duplication of programs. In addition, nothing was stated about the serious concerns regarding- and the strong opposition to- current plans to replace certain members of Cheyney's Council of Trustees.

As a result, a particularized response to each of the seven points is respectfully requested because I would like to be able to clearly explain the Governor's unambiguous position to HCC's active supporters, including, most notably, the nation's premiere civil rights organization- i.e., the NAACP- along with the Pennsylvania Legislative Black Caucus, numerous Congressmen, State Senators, State Representatives, City Councilpersons, civic leaders, clergy members, and media outlets.

While litigation is not preferred, in part because it is concededly lengthy, it certainly would not be as lengthy as the 44 years since this Commonwealth was officially found by the precursor to the US Department of Education in 1969 to have been one of ten states operating a racist system of higher education, the 33 years since a successful racial discrimination lawsuit was filed in 1980, the 30 years since the Commonwealth (for the first time ever) submitted a formal racial desegregation plan in 1980, and the 14 years since the Commonwealth in 1999 signed the agreement with the US Department of Education's Office for Civil Rights in order to resolve then-unresolved and still-unresolved issues regarding Title VI of the Civil Rights Act of 1964 and also regarding the Equal Protection Clause of the Fourteenth Amendment to the US Constitution..

In connection with this litigation issue, you indicated that I had "referenced a similar process in Maryland that has been going on for more than seven years." Although I actually did not reference such in my September 23 communication, I will now. As you know, the plaintiffs in that Coalition For Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission case- a case that included allegations of racial discrimination remarkably analogous to those raised by HCC- achieved a victory on October 7 when US District Judge Catherine C. Blake ruled that the state had violated the constitutional and civil rights of the students at the four Historically Black Institutions (HBIs) by "unnecessarily duplicating" their programs at nearby Traditional White Institutions (TWIs). A likely remedy, she proclaimed, will include "expansion of mission and program uniqueness and institutional identity at the HBIs..." and she continued by making clear that it is also "likely that the transfer or merger of select high demand programs from (TWIs) to HBIs will be necessary." In addition, she pointed out that "each HBI... (should have available) a "programmatically niche of... areas

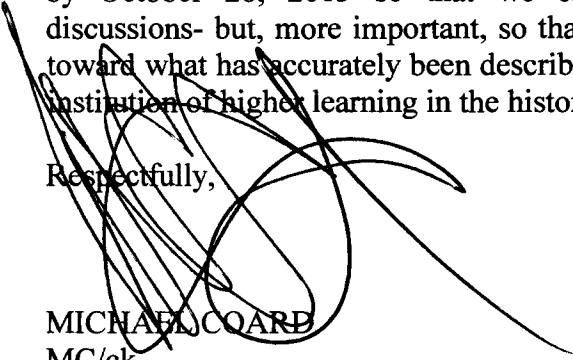
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of excellence in at least two high-demand clusters within the next three or four years..." with such niches including, "among others, Green Sustainability Studies, Computer Sciences, Aging Studies, and Health Care Facilities Managements." And in regard to the formula funding issue, she wrote that a "state's 'funding formula' is a traceable (and thereby unlawful) policy... (when) it is rooted in or (is) a continuation of the funding practices that disadvantaged HBIs during (a state's) de jure era..." Accordingly, she noted- pursuant to the US Supreme Court's 1992 Fordice decision- that a state "is... liable for inequities that flow from current (funding formula) 'policies rooted in the prior system.'" Although Maryland ostensibly had not engaged in such "prior-to-current" racial funding inequities, Pennsylvania is arguably a much different story.

This is evidenced in many reputable academic circles and can be found in, e.g., the meticulous research of scholars such as, but not limited to, James B. Stewart in his "Effects of Public Policy Conflicts and Resource Allocation" as well as Beverly Lindsay and Manuel J. Justiz in their "The Quest for Equity in Higher Education."

I thank you for your bona fide willingness to discuss this matter with the goal of a timely and mutually beneficial resolution. And I request your reply this letter, if at all possible, by October 28, 2013 so that we can expeditiously begin candid and forthright discussions- but, more important, so that there can finally be a genuine and major move toward what has accurately been described as "parity through equity" for the oldest Black institution of higher learning in the history of the United States of America.

Respectfully,



MICHAEL COARD
MC/ck

cc: The Presidents of The 14 State-Owned Universities