

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BENNETT COLLEGE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO. 1:19-cv-00883-SDG
THE SOUTHERN ASSOCIATION)	
OF COLLEGES AND SCHOOLS)	
COMMISSION ON COLLEGES)	
INC.,)	
)	
Defendant.)	
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**THE SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS
COMMISSION ON COLLEGES, INC.’S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

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Defendant the Southern Association of Colleges and Schools Commission on Colleges, Inc. (“SACSCOC”) hereby files this Reply in Support of its Motion Summary Judgment (Dkt. 78).

I. INTRODUCTION

Nothing in the Response (Dkt. 90) filed by Plaintiff Bennett College (“Bennett”) alters the fundamental reality of its claims in this case that, at most, Bennett takes issue with the good faith judgment exercised by the SACSCOC’s Appeals Committee in denying Bennett’s appeal from the revocation of Bennett’s SACSCOC membership. Under established precedent governing review of accreditation decisions, such disagreements are insufficient to support Bennett’s claims, and SACSCOC is entitled to summary judgment. *Wilfred Acad. of Hair & Beauty Culture v. S. Ass’n of Colls. & Schs.*, 957 F.2d 210, 214 (5th Cir. 1992) (“Courts are not free to conduct a *de novo* review or to substitute their judgment for the professional judgment of the educators involved in the accreditation process.”); *Hiwassee Coll., Inc. v. S. Ass'n Of Colleges And Sch.*, 531 F.3d 1333, 1335 n.4 (11th Cir. 2008) (courts review “only whether the decision of an accrediting agency such as [SACS] is arbitrary and unreasonable or an abuse of discretion and whether the decision is based on substantial evidence”) (citation omitted).

Rather than present evidence demonstrating any impropriety on behalf of SACSCOC, Bennett has—regrettably—chosen to litter its brief with unfounded accusations of “animus” towards HBCUs. Bennett fails to cite a shred of evidence that SACSCOC treated Bennett with any “animus” whatsoever. Bennett makes these inflammatory accusations without elucidating how such purported “animus” led to the revocation of its membership, or citing a single authority that supports such a claim. Bennett’s baseless assertions of “disparate treatment” are therefore little more than a red herring.

Bennett’s generalized complaints about SACSCOC’s “policies and procedures” also fail to create a material issue of fact preventing summary judgment. Even setting aside the deference that SACSCOC is due in applying its own rules and the previous instances in which this Court has found those rules to be fair, Bennett continues to push for an interpretation of the Appeals Procedures that would divest SACSCOC of any discretion in evaluating appeals. This interpretation is contrary both to the plain language of SACSCOC’s rules and to common sense.

Bennett also attempts to muddy the waters of this case by making a number of unsupported assertions regarding Bennett’s financials that purport to show that Bennett’s condition had improved in the months between the December 2018 Board meeting and the date of the Appeals Hearing. According to Bennett, this

“improvement” mandated a remand to the Board. Nothing in SACSCOC’s rules and procedures requires remand upon a showing of simple “improvement” in financial condition. Bennett’s disagreement with SACSCOC’s assessment of UNAEP falls well short of meeting Bennett’s burden to show that SACSCOC’s decision was arbitrary, capricious, or unsupported by evidence.

SACSCOC remains entitled to summary judgment on all of Bennett’s claims.

II. ARGUMENT AND CITATION TO AUTHORITY

A. Bennett’s Desperate Assertions Of Disparate Treatment Are Baseless And Cannot Support Any Claim Against SACSCOC.

Bennett’s resort to nakedly accusing SACSCOC of animus towards HBCUs improperly shifts Bennett’s own burden to SACSCOC, is entirely devoid of evidentiary support, and is legally irrelevant to the instant claims.

1. Bennett ignores its own burden on summary judgment.

The premise of Bennett’s “disparate treatment” argument is that it is SACSCOC’s burden to prove that SACSCOC has not acted with “animus” towards HBCUs. *See* Dkt. 90 at 22 (stating that SACSCOC has not met its “burden to show that SACSCOC’s [sic] treats HBCUs fairly”). This is fundamentally incorrect and misstates the standard. Bennett is the Plaintiff in this case, and Bennett bears the burden at summary judgment to present evidence supporting its claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (“Where the nonmoving party will bear

the burden of proof at trial on a dispositive issue, . . . [Rule 56] requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’”) (citation omitted).

2. *Bennett’s claims of “disparate treatment” are entirely unsupported by record evidence.*

The lack of evidence supporting Bennett’s claims of disparate treatment is striking. Indeed, Bennett goes so far as to imply that SACSCOC employs a “racially discriminatory accreditation process” without including a *single citation* to the record. *See* Dkt. 90 at 7. What little “evidence” Bennett cites to elsewhere is, at best, anecdotal and untethered to Bennett’s claims.

First, Bennett cites to a 2015 blog post that is not credited to any author and that was posted on the website of a third-party “think tank” called “New America” (the “New America Post”). *See* Dkt. 90 at 22 n.19. The New America Post was never disclosed by Bennett in discovery, and for the most part, it simply contains the unnamed author’s opinion on “challenges facing HBCUs.” *See* Ex. A.¹ But even if the New America Post were properly considered as evidence, the point for which Bennett cites to the blog post—that “HBCUs make up 13% of SACSCOC’s

¹ A PDF copy of the New America Post is attached as Exhibit A.

membership but receive 25% of SACSCOC’s sanctions”—is not relevant. Dkt. 90 at 22. The percentage of HBCUs that are sanctioned by HBCUs has nothing to do with whether SACSCOC properly handled *Bennett’s* accreditation. And, absent any effort by Bennett to tie broader HBCU sanctions to improprieties in SACSCOC’s procedures, it has nothing to do with whether SACSCOC provides its institutions with a fair process. As courts regularly hold in the employment discrimination context, “statistics without an analytic framework are virtually meaningless.” *Evans v. McClain of Ga., Inc.*, 131 F.3d 957, 963 (11th Cir. 1997); *see also Purdee v. Pilot Travel Centers, LLC*, 2010 WL 11537596, at *1 (S.D. Ga. Jan. 20, 2010) (“Raw statistics, unaccompanied by expert analysis of their relationship to the disputed issue, generally are found to be irrelevant.”).

If anything, the New America Post disproves the very point for which Bennett cites it. The New America Post points to a number of challenges faced by HBCUs, ranging from decreasing enrollment to the lack of “a cohesive strategy among HBCU presidents.” Ex. A at 8. Nowhere, however, does the New America Post point to SACSCOC’s rules as problematic, much less assert that they are biased.

Second, Bennett cites to a letter from Dr. Belle Wheelan,² SACSCOC’s

² Bennett’s own witnesses conceded that Dr. Wheelan herself harbors no bias against HBCUs, *See* Dkt. 92, Dawkins Dep. at 153:5-12, excerpts attached as Exhibit B (“I

President, to Dr. Michael Lomax, President of the United Negro College Fund (the “Wheelan Letter”). Dkt. 90 at 22 n.20. Bennett cites the Wheelan Letter to support its point that, over the past *thirty years*, 13 HBCUs have been dropped from SACSCOC membership. Neither the Wheelan Letter, nor Bennett’s brief, goes into detail as to *why* those institutions were dropped, how those institutional cases reflect on SACSCOC’s rules, or what a thirty-year-old decision could possibly have to do with whether Bennett is entitled to proceed with its claims in this case. *See Ex. C.*³

Third, Bennett cites to testimony from Deborah Hall, a SACSCOC volunteer, as purported evidence of her “personal bias” against HBCUs. This inflammatory allegation is both inappropriate and is nowhere reflected in Ms. Hall’s actual testimony. As an initial matter, Bennett states that Ms. Hall’s testimony “is just one example of the testimony elicited in discovery” showing SACSCOC volunteers’ animus towards HBCUs. Dkt. 90 at 23. This statement is false. There is no testimony showing that any SACSCOC representative harbored animus against HBCUs. And notwithstanding Bennett’s argument that it “pursued questions” about discrimination in depositions, *Bennett cites to no such testimony*. Dkt. 90 at 21.

think Belle wants every institution in SACS to be treated fairly.”). Bennett never deposed Dr. Wheelan.

³ A copy of the Wheelan Letter is attached as Exhibit C.

Assertions of racial animus and discrimination cannot be based on innuendo and speculation. For Bennett to make such an assertion is improper.

Ms. Hall's testimony is also far from evidence of "bias," either by Ms. Hall individually or SACSCOC as whole. The snippets Bennett includes in its brief are from a discussion of federal funding that is available to "historically Black colleges and universities and other minority-serving institutions," but not to other institutions. *See* 20 U.S.C. § 1067q. It is a fact that HBCUs have access to this funding, and Ms. Hall's acknowledgment of that is not evidence of "bias." Moreover, when directly asked whether Bennett's status as an HBCU impacted the C&R Committee's review of Bennett, the unequivocal answer was "no." *See* Dkt. 66, Hall Dep. at 73:7-16.⁴ Bennett also fails to acknowledge that it has not even challenged the decision reached by Ms. Hall's committee. Ms. Hall was on the December 2018 C&R Committee, *not* the Appeals Committee that is the subject of this case. *See* SACSCOC's Resp. Pl.'s Inter. No. 3.⁵

Finally, the fact remains that SACSCOC continues to accredit 74 HBCUs, all of which are regularly reviewed by their peers, who exercise their professional judgment in determining compliance with the *Principles*. *See generally* Johnson

⁴ Excerpts attached as Exhibit D.

⁵ Attached as Exhibit E.

Decl.⁶ In addition to the 74 HBCUs that remain accredited with SACSCOC, at least 12 HBCUs who were previously placed on sanctions similar to Bennett were subsequently able to remedy the identified deficiencies and regain full SACSCOC accreditation. *Id.* ¶ 6.

3. *Bennett fails to tie its allegations of bias to any claim against SACSCOC.*

Finally, Bennett’s allegations of bias have no bearing on its claims here. For one, it is not at all clear—either from Bennett’s complaint or the instant briefing—what point Bennett is trying to make. Bennett fails to tie its allegations to any legal claim or to cite a single authority that holds that naked allegations of racial bias in the accreditation context are actionable. The only thing that is clear from Bennett’s briefing is that its strategy is to throw as many unsupported allegations of bias against the wall and hope that one of those allegations will stick and save its case. But such scattershot allegations are not sufficient to prove anything. *E.g. Comcast Corp. v. Nat’l Ass’n of African Am.-Owned Media*, 18-1171, 2020 WL 1325816, at *3 (U.S. Mar. 23, 2020) (affirming dismissal of claim of racial bias in contract procurement where plaintiff could not show that alleged bias was the “but for” cause of its injuries).

⁶ The Declaration of G. David Johnson is attached as Exhibit F.

Moreover, Bennett’s allegations of “bias” are, at best, abstract and unrelated to its claims against SACSCOC. Bennett does not present evidence of any “bias” in the Appeals Procedures or the Appeals Committee whose decision it now challenges. Indeed, Bennett does not point to any rule or procedure—appeals related or not—that it contends to be discriminatory or suggest how that rule or procedure should be changed. Bennett asserts only that, because SACSCOC has previously removed HBCUs from membership, it was improper for SACSCOC to remove Bennett. This, of course, fails to support any conceivable claim. *E.g.*, *Howard v. BP Oil Co., Inc.*, 32 F.3d 520, 524 (11th Cir. 1994) (“Anecdotal information is no substitute for meaningful statistical analysis.”).

It is also notable that, to the extent Bennett actually believes SACSCOC is “biased,” the information on which that belief is based was available long before Bennett lost its accreditation. As Bennett recognizes, it is not the first HBCU to have lost its accreditation with SACSCOC and, according to Bennett, the evidence of SACSCOC’s “bias” goes back thirty years. Yet Bennett nonetheless fought tooth-and-nail to remain a member of what it now alleges is a discriminatory organization. Bennett’s after-the-fact complaints of bias should therefore be disregarded. *E.g.*, *McKinney v. Pate*, 20 F.3d 1550, 1562 (1994) (holding that a plaintiff is aware of may waive claims of bias if it fails to object at the time of the challenged decision).

B. It Remains Undisputed That The Appeals Committee Appropriately Exercised Its Judgment In Denying Bennett's Appeal.

The judgment exercised by the Appeals Committee has been well-tread in briefing so far, and SACSCOC will not re-hash its entire position here. Several points from Bennett's response brief, however, merit addressing.

First, given Bennett's shotgun claims of SACSCOC's bias against HBCUs, it is notable that of the seven persons hearing Bennett's appeal, four were from HBCU's: Hearing Officer Thomas (Florida A&M University, Dkt. 70, Thomas Dep. 7:8-14); Panel Members Brown (Kentucky State University, Dkt. 65, Brown Dep. 9:17), Belton (Southern University and A&M College, Dkt. 64, Belton Dep. 12:22), and Sias (formerly of Kentucky State University, Dkt. 40, Appeal Trans. at 32-33).

Second, notwithstanding Bennett's characterization of Bennett Board member Kimberly Ripberger's testimony, the fact remains that Bennett is not challenging the underlying Board decision from December 2018, and its sole challenge is to the subsequent decision of the Appeals Committee. Dkt. 90 at 10.

Third, it is not SACSCOC's position that the Appeals Committee's decision is incapable of review by this Court, as Bennett implies. Dkt. 90 at 11. SACSCOC's point is that the same evidence that supports the unchallenged Board decision to revoke Bennett's accreditation supports the Appeals Committee's decision to affirm the Board, and because Bennett has not challenged the Board decision, it cannot now

say that the Appeals Committee’s decision was not based on “substantial evidence.” Bennett (or any other college) could still show, however, that the *Board’s* decision was wrong or that the Appeal’s Committee’s evaluation of Bennett’s new evidence was “arbitrary and capricious.” Bennett simply has not done so here.

Fourth, SACSCOC has not “ignore[d] all the evidence that Bennett submitted with its appeal.” Dkt. 90 at 12. In fact, it is *Bennett* that ignores that evidence. Bennett acts as if the *only* new evidence it submitted with its appeal was related to fundraising and interest forgiveness—evidence which SACSCOC has addressed. *See* Section II.B, *infra*; Dkt. 78-1 at 19-20. But Bennett also submitted *other* facially unverifiable evidence that it ignores in its briefing here. *See* Dkt. 78-1 at 18.

Finally, Bennett twists itself in knots over whether “material” evidence is evidence that “would” change an accreditation outcome or “could” change an accreditation outcome, but this is a distinction without a difference. Dkt. 90 at 20. Either way, the members of the Appeals Committee were required to assess how any new, verifiable evidence demonstrated Bennett’s compliance with the *Principles*, which is the exact kind of professional judgment that is entitled to deference from the Court. *Thomas M. Cooley Law Sch. v. Am. Bar Ass’n*, 459 F.3d 705, 713 (6th Cir. 2006) (“Recognizing that the standards of accreditation are not guides for the layman but for professionals in the field of education . . . great deference should be

afforded the substantive rules of these bodies.”) (citation omitted). And though SACSCOC disputes whether the testimony of Appeals Committee members is relevant at all, to the extent the Court wishes to consider it, the Appeals Committee approached the “materiality” question in the exact manner that Bennett asserts it should have: “[Material] would mean that [the evidence] would need to speak to undoing the basis for which the original decisions were made. It would have to be *capable* of changing that decision.” Dkt. 65, Brown Dep. at 22:7-13⁷ (emphasis added); *see also* Dkt. 64, Belton Dep. at 45:5-19⁸ (“[M]aterial evidence was whether or not they could demonstrate that they, in fact, had the financial resources.”).

C. Bennett’s Misleading And Unsupported Complaints About UNAEP Fail To Save Bennett From Summary Judgment.

Bennett attempts to manufacture a material issue of fact by disputing SACSCOC’s assessment of UNAEP and, in doing so, Bennett again makes clear that its claims really boil down to the simple fact that it disagrees with the professional judgment of the Appeals Committee.

Bennett argues that “a UNAEP score of zero—or even a negative UNAEP score—does not conclusively mean a school is out of compliance.” *See* Dkt. 90 at

⁷ Excerpts attached as Exhibit G.

⁸ Excerpts attached as Exhibit H.

14. Regardless whether that is true,⁹ it is inconsequential whether the Appeals Committee was *permitted* to determine that Bennett's submissions were material. A UNAEP score of zero (or less than zero) does not mean that the Appeals Committee was *required* to reach that result and remand Bennett's claims.

Similarly, when Bennett takes issue with the way SACSCOC calculated Bennett's UNAEP, what it is really complaining about is what SACSCOC's counsel argued to the Appeals Committee, not what the Appeals Committee actually found. Bennett had an opportunity to respond to those arguments at the Appeals Committee level and, indeed, made essentially the same arguments it makes now, *i.e.*, that deposits held by a bond trustee and the value of certain artwork should be considered in the UNAEP calculation. *See* Dkt. 78-41 and 78-43. The Appeals Committee was thus provided with Bennett's reasoning as to why it felt its UNAEP number should be higher and, nevertheless, found that as a whole the evidence Bennett submitted did not warrant disturbing the Board's conclusion. In other words, Bennett once again ignores the fact that it received a fair *process* and takes issue with the *result*—the exact kind of challenge that courts repeatedly reject in the accreditation context. *Wilfred Acad.*, 957 F.2d at 214 (“Courts are not free to conduct a *de novo* review or

⁹ A school with a UNAEP score of zero would have no resources to support operations. *See* Dkt. 40, Appeal Trans. 87:11-15.

to substitute their judgment for the professional judgment of the educators involved in the accreditation process.”) (citation omitted).

Moreover, Bennett’s claim that “SACSCOC never once mentioned to Bennett that UNAEP would be a significant factor in its evaluation of whether Bennett was in compliance with the Principles,” Dkt. 90 at 14, is false and a misrepresentation of the record. President Dawkins testified that Bennett has “always known it needed to have a positive UNAEP.” Dkt. 92, Dawkins Dep. 37:6-10.¹⁰ Dr. Dawkins also admitted that at least as early as January 11, 2017, SACSCOC was informing the Board, through her, that UNAEP was at a significantly negative number which seriously impacted the institution’s financial stability and was causing it to be out of compliance. *Id.* at 108:3-9; 163:6-11. Further, at a meeting of the Bennett Board of Trustees on September 16, 2017, Bennett’s then-Vice President for Business and Finance and Technology discussed UNAEP with the Board as an element of demonstrating financial stability under the *Principles*. Dkt. 77-1, Flamer Dep. 47:20-48:4.¹¹ And at a Board meeting on November 10, 2018, a consultant for Bennett

¹⁰ Every annual notification to Bennett of its deficiencies beginning in 2015 included a requirement to submit “a statement of financial position of unrestricted net assets, exclusive of plant and plant-related debt, which represents the change in unrestricted net assets attributable to operations for the most recent year.” Dkt. 78-20, AR at P3, P6, P9, and P13.

¹¹ Excerpts attached as Exhibit I.

flagged for the Board that a challenge for Bennett in demonstrating compliance with the *Principles* would be that UNAEP remains negative. *Id.* at 59:16-62:1.

D. Bennett Fails To Address the Other Fatal Flaws In Its Claims Against SACSCOC.

SACSCOC's will not rehash its position on waiver and damages here. Several observations regarding Bennett's response to these arguments are, however, notable. *First*, Bennett fails to identify a single point in the record where it asked the Appeals Committee for a remand. *Second*, Bennett concedes SACSCOC's argument that damages are altogether *unavailable* as a remedy for Bennett's claims, arguing only that it did not abandon that relief. *Compare* Dkt. 78-1 at 25 *with* Dkt. 90 at 25. *Finally*, contrary to Bennett's assertion, Ms. Ripberger did not testify as to the "types of damages" Bennett had suffered. Dkt. 90 at 25. She testified that she was not aware of any "financial damages that Bennett is seeking," and that she "assumed" that enrollment had declined because of the lawsuit based on what "she read in the media." Ripberger Dep. at 42:5-11; 43:7-44:2.

III. CONCLUSION

For the foregoing reasons, SACSCOC respectfully requests that the Court grant SACSCOC's Motion for Summary Judgment [Dkt. 78] and direct that judgment be entered in SACSCOC's favor.

Respectfully submitted, this 23rd day of March, 2020.

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RULE 7.1(D) CERTIFICATION

The undersigned counsel certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C).

/s/ J. Matthew Brigman

J. Matthew Brigman

Georgia Bar No. 254905

Counsel for Defendant

CERTIFICATE OF SERVICE

This is to certify that I have this day I electronically filed the foregoing **THE SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS COMMISSION ON COLLEGES, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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Exhibit A

Historically Black Colleges and Universities (HBCUs)

Historically Black Colleges and Universities (HBCUs) are institutions of higher learning established prior to 1964 with the education of black Americans as their primary mission. Many were founded and developed in an environment of post-slavery segregation when most postsecondary institutions were not open to young people of color.

In 1862, the U.S. Congress passed the Morrill Land-Grant Act giving federal land to states for the purpose of opening colleges and universities to educate farmers, scientists and teachers. Of the institutions of higher education created under this significant investment at the federal level, only one, Alcorn State University in Mississippi, was open to blacks and thus designated as a black land-grant college. Not until 1890, with the passage of the second Land-Grant Act, were states required to open their Land-Grant institutions to black students or allocate monies to black institutions that could serve as alternatives to their white counterparts. This led to the creation of 16 exclusively black institutions, most of them public schools. Throughout the years that followed, the Freedmen's Bureau, black churches and the American Missionary association founded many of the additional institutions that would later become HBCUs.

Over time, enrollment at HBCUs increased, as did financial support from the government and private foundations. Still, finances were a challenge for these institutions, and for the students they served, until they received federal designation and support in 1965 under the Higher Education Act. Today, HBCUs are funded under Title III-B of the Higher Education Act. This program was created to bolster HBCUs' capacity and ensure that they provide a full range of postsecondary opportunities for young black Americans. Title III-B authorizes both mandatory and competitive funds for undergraduate, graduate and professional programs at eligible institutions "to strengthen academic, administrative, and fiscal capabilities."

Title III

HBCUs are represented in Part B of Title III of the Higher Education Act. There are seven sections to the “Strengthening Historically Black Colleges and Universities” section of the law:

- [§ 1060. Findings and purposes](#)
- [§ 1061. Definitions](#)
- [§ 1062. Grants to institutions](#)
- [§ 1063. Allotments to institutions](#)
- [§ 1063a. Applications](#)
- [§ 1063b. Professional or graduate institutions](#)
- [§ 1063c. Reporting and audit requirements](#)

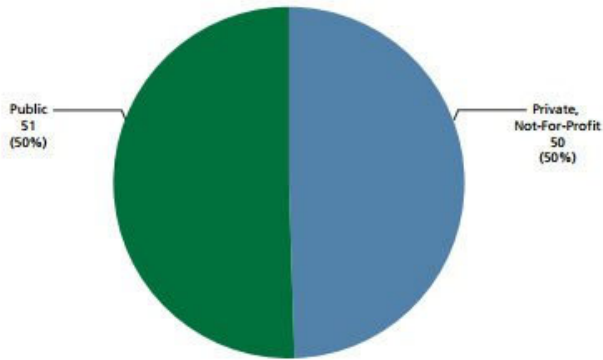
In particular, the findings and purposes of the law acknowledge that HBCUs have contributed to the effort to attain equal opportunity in postsecondary education for black, low-income and educationally disadvantaged Americans; that state and federal governments discriminated in the allocation of land and financial resources to support black public institutions under the Morrill Act of 1862; that the current state of black colleges is partly attributable to this discriminatory practice; and, that financial assistance, especially for physical plants, financial management, academic resources and endowments are necessary to rectify past practices and help decrease future dependence on federal funds.

Types of Institutions

While HBCUs are connected in mission and history, they are not a monolith. There is incredible diversity within the sector with regard to institution type: 87% of HBCUs are four-year institutions, 51% are public, 17% are land grant institutions, 10% are research institutions, 23% are masters universities, 48% are baccalaureate universities, 4% are seminaries and 2% are medical schools. Together HBCUs enroll over 300,000 students.

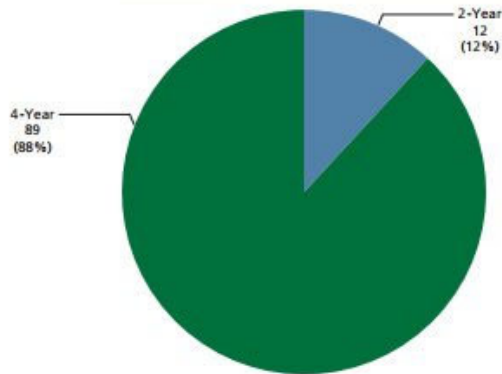
The three figures below illustrate this institutional breakdown:

FIGURE 2: HISTORICALLY BLACK COLLEGES AND UNIVERSITIES BY SECTOR, 2011



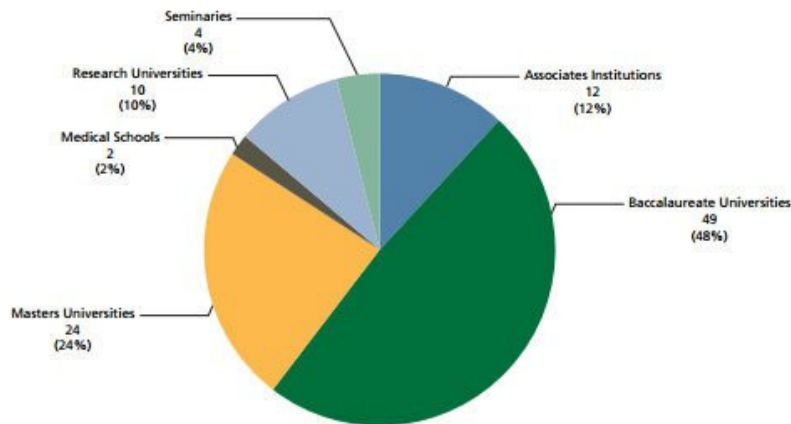
Source: National Center for Education Statistics, Integrated Postsecondary Education Data System, 2011. Data compiled by the Association of Public and Land-Grant Universities.

FIGURE 1: HISTORICALLY BLACK COLLEGES AND UNIVERSITIES BY LEVEL, 2011



Source: National Center for Education Statistics, Integrated Postsecondary Education Data System, 2011. Data compiled by the Association of Public and Land-Grant Universities.

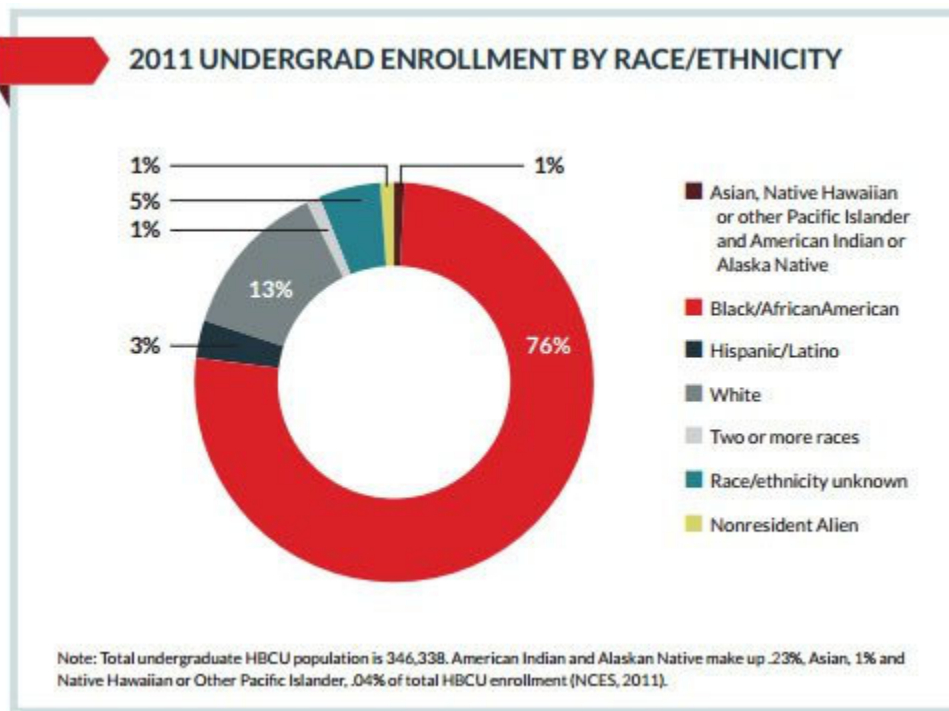
FIGURE 3: HISTORICALLY BLACK COLLEGES AND UNIVERSITIES BY BASIC CARNEGIE CLASSIFICATION, 2011



Source: National Center for Education Statistics, Integrated Postsecondary Education Data System, 2011. Data compiled by the Association of Public and Land-Grant Universities.

Demographics

There are currently more than 100 HBCUs in 19 states, and while they were originally founded to educate black students, over time their student bodies have become more racially diverse. In 2011, non-black students made up 19% of enrollment. Still, the majority of students (76%) served by HBCUs are African Americans.



In addition to serving a high proportion of students of color, HBCUs also serve a high percentage of low-income students. Over 70% of students attending HBCUs receive Pell Grants.

HBCUs are clustered mostly in the South and Southeast with Alabama, Georgia and North Carolina having the highest concentration of these institutions. Because many HBCUs were founded after the Civil War during widespread segregation, they are clustered where the need for institutions that were willing to serve black students was greatest.

Click [here](#) for a complete list of HBCUs and their locations.

Changes in Enrollment

From 2000-2010, HBCUs saw dramatic changes in enrollment. The percentage of Asian students more than doubled, Latino student enrollment increased by 90%, American Indian student enrollment increased by 56% and white student enrollment increased by 55%. As a whole, enrollment increased by 42% (mostly at public institutions; a trend seen at non-black institutions as well). Then, in 2011, enrollment declined by 14%, eras-

ing much of the increase made in the prior ten years. Scholars believe this may have been due to the changes in the Parent PLUS loan criteria (see [Challenges Facing HBCUs](#) below) as well as increased options at non-black colleges for students of color.

Given the 2011 drop in enrollment, the relevancy of HBCUs has recently become the focus of much inquiry (some of these discussions will be explored below). Many argue that without HBCUs and their contributions in awarding degrees to African-American students, America cannot produce enough highly skilled workers. Despite their relatively small enrollment and graduation numbers compared to non-black institutions, HBCUs produce 16% of all bachelor's degrees earned by African-Americans, 25% of all bachelor's degrees in education earned by African-Americans and 22% of all bachelor's degrees in STEM fields earned by African American students.

HBCU Funding

HBCUs in good standing (not under any formal sanction from their accrediting body) receive an annual allocation through Title III of the Higher Education Act (HEA) to support their programming efforts. This formula takes into consideration three sets of data: the number of an institution's Pell Grant recipients, graduates and graduates who go on to graduate or professional school. In the 2011 allocation, HBCUs received \$236,991,068 in total funding, which went to 96 institutions. HBCU funding is only one piece of a larger allocation of Minority Serving Institution (MSI) funds. In FY2013, all MSI programs under the HEA were appropriated \$776 million; these funds were distributed to more than 960 institutions.

The allowable uses for HBCU funds are as follows:

- Student services;
- Faculty and staff development;
- Purchasing or renting educational and laboratory equipment;
- Constructing or renovating instructional facilities;
- Tutoring or counseling students to improve academic success;
- Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary or secondary school;
- Establishing community outreach programs that encourage elementary and secondary students to develop academic skills and interest to pursue a postsecondary education;

- Education designed to improve the financial literacy and economic literacy of students and families;
- Acquiring property to improve campus facilities; and,
- Using up to 20% of the grant award to establish or increase an institution's endowment.

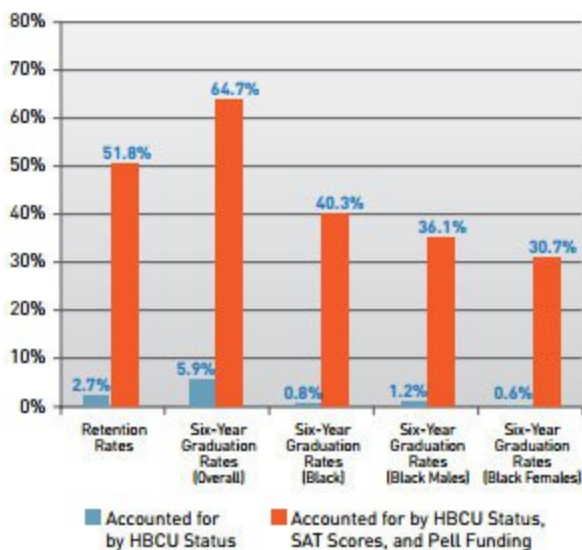
Impact of HBCUs

Though, 22% of HBCUs have graduation rates that exceed the national average for African-Americans at all institutions of higher education (42%), overall, HBCU graduation rates are low (30%). However, recent research indicates that HBCU graduation rates compare favorably with other (non-black) institutions when student-level factors are taken into consideration (e.g. low-income students, first-generation students and students whose pre-college education was inadequate). A recent report from the United Negro College Fund states that "...were HBCUs and non-HBCUs to enroll demographically identical populations of students, HBCUs would retain and graduate students at higher rates than their counterparts."

While retention rates are also low at HBCUs (about 60%), once again, research suggests that when controlled for SAT scores and Pell status, which many argue are proxies for socioeconomic status and academic preparedness, HBCU retention rates are on par with or even surpass non-HBCUs.

Differences among students might indeed explain the disparities in both graduation and retention rates given that HBCUs and non-HBCUs are not serving identical student populations. HBCUs primarily serve low-income, first-generation students (nearly 3 in 5 students) and over 25% of HBCUs are open admission institutions (compared with 14% of non HBCUs). Researchers have found that academic preparedness and socioeconomic status account for over 50% of students' likelihood to persist into the second year of college. These same factors also account for 64.7% of students' likelihood of graduation. Using only HBCU status to predict retention rates did not result in a statistically significant difference between HBCUs and non-HBCUs.

Figure 2. Proportion of Academic Outcomes Accounted For by HBCU Status, SAT Scores and Pell Funding, 2009



Source: FDPRI analysis of data from the U.S. Department of Education, National Center for Educational Statistics, 2010.

While standard graduation and retention rates may be a complex and sometimes controversial measure of impact, it is clear that HBCUs have a significant impact on black professional and educational success, particularly in the Science, Technology, Engineering, and Mathematics (STEM) fields. HBCUs are responsible for producing:

- 18% of ALL engineering degrees earned by African American students;
- 31% of ALL biological science degrees earned by African American students;
- 31% of ALL mathematics degrees earned by African American students;
- 21% of ALL business and management degrees earned by African American students;
- 42% of ALL agricultural science degrees earned by African American students;
- and,
- 17% of ALL health profession degrees earned by African American students.

Beyond STEM impact, a study in 2011 indicated that black graduates of black colleges have a career advantage over black graduates of other colleges in terms of employment rates, salary and other measures of career success (for example, doctors or lawyers who worked in low-income communities got credit for their success in the metric). Furthermore, HBCU students report more frequent and favorable relationships with their professors, earn higher college grades, report greater gains in critical and analytical thinking, and are more likely to earn a graduate or professional degree than their black

peers at predominantly white institutions. Scholars cite the mission and history of HBCUs as the reason for these greater impacts on graduates.

Challenges Facing HBCUs

While there are real and demonstrated positive impacts associated with attending HBCUs; these institutions and their students also face real and demonstrated challenges as well. Some of the most prominent and most common are:

- ***Tightened credit eligibility for the Parent PLUS loans***

Since the Parent PLUS loan program was modified in 2011 to tighten credit eligibility, many families have found it difficult to obtain a Parent PLUS loan. In the fall of 2012, 14,616 students at HBCUs learned that their parents' applications for PLUS loans were rejected under this tightened eligibility. As a result, HBCU enrollment dropped and HBCUs lost an estimated \$168 million from students who were not able to finance their education.

- ***A lack of academic preparedness and a need for remedial education***

Data indicates that a high proportion of black students begin their postsecondary careers in remedial courses, particularly when they are enrolled at HBCUs. Because of the low success/passage rates associated with these courses many states are questioning their efficacy and are reducing funding for these courses or outright prohibiting them at four-year public colleges. As a result, HBCUs and other minority-serving institutions are left to educate and support students who are academically under-prepared in other ways and/or with very limited resources.

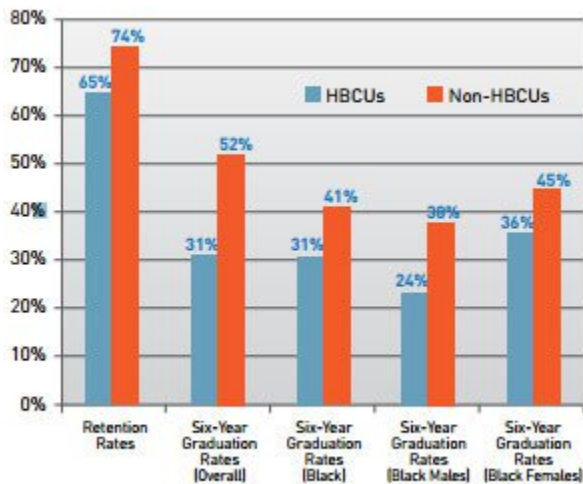
- ***An absence of collective action among HBCU leadership***

While some HBCUs boast visionary leaders guiding their individual campuses to success, there are issues HBCUs face as a group, including HBCU appropriations and changes in federal student aid policy. Many HBCU advocates argue that without a cohesive strategy among HBCU presidents to work through a variety of issues and advocate for their support together, success by individual colleges cannot be sustained in the long term.

- ***Low retention and graduation rates***

Some research indicates that when socioeconomic status and academic preparedness are taken into consideration, HBCU graduation rates equal or surpass those of their predominantly white institutional peers; without this consideration, HBCU graduation rates are more than 21 points lower than their peer institutions, and retention rates are 9 points lower than those of non-HBCUs. The figure below illustrates these findings.

Figure 1. HBCU Performance Gaps, 2009



Source: FDPRI analysis of data from the U.S. Department of Education, National Center for Educational Statistics, 2010.

- ***High debt burdens***

Financially, HBCU graduates are more likely than graduates of other colleges to complete their degrees with student loan debt and greater amounts of debt. Half of all HBCU graduates from 2000-2014 reported graduating with more than \$25,000 in loan debt, while only 34% of predominantly white college graduates reported similar debt levels. Only 22% of HBCU graduates left school with no debt, compared to 39% of graduates at non-HBCUs. These differences can be explained in part by the fact that nearly 78% of all HBCU grads now take on loans to finance their education, compared to just over 60% of their peers at predominantly white institutions. What's more, black college graduates are 17 points more likely to graduate with debt than white college graduates.

Below is a breakdown of undergraduate student loan debt by race:

Undergraduate Student Loan Debt, by Race: 2000-2014 Graduates

Approximately how much money did you borrow in student loans to obtain your undergraduate degree?

	2000-2014
	%
BLACKS	
No loans	22
\$1-\$25,000	28
More than \$25,000	50
WHITES	
No loans	39
\$1-\$25,000	28
More than \$25,000	34
TOTAL	
No loans	37
\$1-\$25,000	28
More than \$25,000	35

Feb. 4- March 7, 2014

Figures adjusted for inflation in 2014 dollars

GALLUP

- Issues with Accreditation In 1928, the Southern Association of Colleges and Schools (SACS) began to formally accredit HBCUs. Since then, many HBCUs have faced challenges maintaining their accreditation. Between 1998 and 2013, SACS put 29 HBCUs on warning and 20 on probation; it revoked the accreditation of four HBCUs. HBCUs make up 13% of SACS membership yet constitute 25% of SACS sanctions. It is critical for HBCUs to meet accreditation requirements in order to maintain eligibility for federal financial aid for their students and families.

Reflections on HBCU Reform Advocates, researchers and the HBCU community grapple with how HBCUs can move forward in a productive and sustainable way. Many ask how these institutions might be more impactful. To this end, many reforms have been suggested by HBCU and MSI researchers and scholars, some of which are mentioned below. At the very least, there appears to be general agreement that because HBCUs serve as

unique access centers for a diverse set of low-income, first-generation students, conversations about their strengths and weaknesses should not be deficit-based but instead take into account the successes HBCUs have with the students they serve and the challenges inherent in serving those students.

Among the suggestions for reform found in the literature:

- ***Strengthen Institutional Governance***

Improving the internal government structures of HBCUs will help level the playing field with other institutions. This could be accomplished by re-examining the makeup and reach of governing boards, improving faculty professional development, strengthening enrollment management and implementing more effective student supports. Given their stark financial realities, HBCUs would also likely benefit from finding innovative ways to increase the efficient use of their current funds. This could be achieved by finding and applying best practices in higher education governance and institutional management. Institution strengthening may also involve employing new methods for faculty recruitment.

- ***Grow Enrollment and Resources***

Because HBCUs have traditionally been dependent on tuition dollars, they need to grow enrollment to ensure their financial futures. In addition to broadening recruitment and increasing diversity (see next bullet point), one way to raise enrollment involves strengthening the pipelines between the K-12 system and HBCUs to increase the number of African-American students who are eligible and prepared to participate in postsecondary education. Increasing retention will also stabilize enrollments and revenue by ensuring students persist year to year.

Institutions can also increase available funding by increasing alumni giving and finding major corporate and foundation donors. They could also make a case to state and federal governments that additional funds are necessary to address the unique needs of HBCU students.

- ***Embrace Diversity***

Many suggest that a key to maintaining enrollments and financial solvency will be to embrace racial diversity on HBCU campuses. HBCUs may want to consider becoming cen-

ters of access for a more diverse set of students including Latino, American Indian, Asian, white and international students. This will require reflection on how HBCU culture and climate may be affected. HBCU missions may need to be clarified, restated or updated to adequately serve new and additional groups of students.

- ***Improve Student Outcomes***

While HBCUs' impact on STEM outcomes is impressive, there is a clear need to improve their overall graduation and retention rates. This will require developing strategies that provide students who are Pell-eligible and first-generation college goers with strong supports. These supports may include focusing curricula on areas of strength at particular institutions and building a talented faculty around those areas. HBCUs have been criticized for offering too many majors without sufficient quality control on courses and faculty.

Student outcomes may also be improved by using data in a more consistent and meaningful way to track student progress and provide additional support (i.e. remedial education) to struggling students. Additionally, boosting student advising and development so that students are connected to real work and research opportunities while in school can also drive at better academic outcomes. Many advocates will say there is another layer here—engaging the media to tell a more complete and fair story with regard to outcome measures (for instance, reporting graduation rates and retention rate comparisons controlled for income status).

- ***Improve the Perception and Transparency of HBCUs***

Improved internal and external communication about the successes and challenges HBCUs face would help to identify HBCU champions; institutions that could then inform stakeholders (e.g. prospective students and families, current students, alumni, policy-makers) about the positive progress at HBCUs. Key to improved communication is the willingness to present accessible and up-to-date information about institutional outcomes and struggles. While many HBCUs may be concerned that increased transparency could illuminate additional problems, transparency could also help them share their narrative in a more compelling way. This in turn could lead to greater public and financial support. As one HBCU scholar has pointed out, “institutions of higher education have not excelled at transparency, but HBCUs need to embrace this challenge, both because they

have no choice and because it will help combat misperceptions, engage potential partners, and facilitate a stronger fiduciary role on the part of trustees and agencies.”

Student voices are an important piece of the HBCU story. The excerpt below, from an HBCU grad and current high school counselor shows why:

“It is very empowering to find yourself in a situation where you are in the majority. All of a sudden, you are no longer a Black person, you are a person. You do not question whether or not the treatment you received and/or the grade you were given were a result of race because race becomes a non-issue. You are exposed to a spectrum of people of color who are successful, which is contrary to the portrayal of minorities, specifically African-Americans, in the mainstream media...You find yourself surrounded by professional, credentialed people of color, Ph.D.s, professors, deans, administrators, scholars, etc., who are brilliant and worldly.”

NCES Fast Facts on HBCUs: <http://nces.ed.gov/fastfacts/display.asp?id=667>

Congressional Record Service: MSIs in HEA

Repositioning HBCUs for the Future: <http://www.aplu.org/document.doc?id=4943>

The exact number can be difficult to determine given changes in accreditation status of some HBCUs.

The Changing Face of Historically Black Colleges and Universities:

http://www.gse.upenn.edu/pdf/cmsi/Changing_Face_HBCUs.pdf

HBCUs Facing the Future: <http://www.fordfoundation.org/pdfs/library/facing-the-future.pdf>

[Congressional Record Service: MSIs in HEA](#)

Understanding HBCU Retention and Completion: http://www.uncf.org/fdpri/Portals/o/Understanding_HBCU_Retention_and_Completion.pdf

Understanding HBCU Retention and Completion: http://www.uncf.org/fdpri/Portals/o/Understanding_HBCU_Retention_and_Completion.pdf

Tiffany Jones, SEF Presentation at PNPI's MSI Seminar in Atlanta, GA (October 2014).

What follows is a brief PLUS Loan primer, from [The Parent Trap: Parent PLUS Loans and Intergenerational Borrowin](#): "Congress created the Parent PLUS Loan program in 1980, primarily to help middle- and upper-middle- income families access funds to send their children to expensive private colleges. Initially, the loan was capped at \$3,000 per academic year (about \$8,500 in today's dollars) with an aggregate limit of \$15,000 (about \$42,500 in today's dollars). In 1992, lawmakers removed PLUS loan limits, allowing parents to borrow up to the full COA of colleges. At the same time, in order to protect parents, they restricted eligibility to parents without an adverse credit history. Today, Parent PLUS loans are more like private loans than federal student loans. PLUS loans have a relatively high interest rate—a fixed rate of 7.9 percent for the 2012-13 academic year. And because of its relatively high origination fee of 4.2 percent, the loan's annual percentage rate (APR) is over 9 percent. Interest starts accruing once the loan is disbursed, and parents can either start making payments right away or defer them until the student drops below half-time status. Students don't have to undergo a credit check to access federal student loans because loans made to students are a direct investment in building their human capital. Presumably, once the student graduates, he will be able to obtain a job and have the resources to pay back the investment the federal government made. Since loans to parents do not assume increased wages, they have to meet a minimum credit standard to qualify. The credit check for a PLUS loan is more lenient than the one that a private lender would conduct. Instead of considering a parent's income or ability to repay the loan, it looks only at a parent's adverse credit history. And the absence of any credit history is not considered a sign of an adverse credit history. In fact, up until 2011-12 it was easier for parents to apply for a loan than it was for a student, as parents did not have to fill out the Free Application for Federal Student Aid (FAFSA) to

obtain a PLUS loan. Additionally, PLUS loans have no cap—parents can borrow up to the full COA for an institution. This is a stark contrast with federal Stafford loans, which are capped at between \$5,500 and \$7,500 a year for dependent students. COA can include many factors, but usually consists of: tuition and fees; room and board; books and supplies; transportation; and loan fees. The average COA per year at a public four-year school in 2011-12 was \$23,200, compared with \$43,500 at private, nonprofit institutions, and \$29,000 at for-profit institutions. Like other student loans, Parent PLUS loans are seldom dischargeable in bankruptcy. But even more dangerous for borrowers, they also don't normally qualify for some of the most flexible repayment options designed to help struggling borrowers, like IBR. As a result, parents who find themselves in over their heads on PLUS loan debt can be forced to make difficult decisions like delaying retirement or may even face Social Security garnishment. Even though the PLUS loan program was established to help middle- and upper-middle income families, the program has expanded substantially over time to provide access to credit for lower and moderate-income parents to send their children to expensive colleges. The enormous growth of the program happened after the peak of the Great Recession in 2009, at a time when family net worth diminished while college prices soared. According to The Chronicle of Higher Education, the government issued \$10.6 billion of Parent PLUS loans in 2011, \$6.3 billion more in inflation-adjusted dollars than it did in 2000. During that time, the number of families served almost doubled to approximately one million in 2011. And since many colleges use Parent PLUS loans to fill the gap between what they charge and the federal, state, and institutional aid their students receive, parents turned toward these easily available loans to ensure their children could attend the college of their dreams.”

The Parent Trap: Parent PLUS Loans and Intergenerational Borrowing: <http://education.newamerica.net/sites/newamerica.net/files/policydocs/Corrected-20140110-ParentTrap.pdf>

MSIs in Developmental Education: <http://files.eric.ed.gov/fulltext/ED529085.pdf>

Repositioning HBCUs for the Future: <http://www.aplu.org/document.doc?id=4943>

Understanding HBCU Retention and Completion: http://www.unconf.org/fdpri/Portals/o/Understanding_HBCU_Retention_and_Completion.pdf

Black College Grads More Likely to Graduate with Debt: <http://www.gallup.com/poll/176051/black-college-graduates-likely-graduate-debt.aspx>

Repositioning HBCUs for the Future: <http://www.aplu.org/document.doc?id=4943>

HBCUs Facing the Future: <http://www.fordfoundation.org/pdfs/library/facing-the-future.pdf>

Myths About Attending a Historically Black College: http://www.schoolguides.com/collegesearch/myths_about_attending_a_historically_black_college.html

Exhibit B

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF GEORGIA
 3 ATLANTA DIVISION
 4 CIVIL ACTION NO. 1-19-cv-00883-MHC
 5 BENNETT COLLEGE,
 6
 7 PLAINTIFF,
 8
 9 V.
 10 THE SOUTHERN ASSOCIATION OF
 11 COLLEGES AND SCHOOLS
 12 COMMISSION ON COLLEGES,
 13 INC.,
 14 DEFENDANT.
 15
 16 Charlotte, North Carolina
 17 Tuesday, August 27, 2019
 18
 19 Deposition of PHYLLIS WORTHY DAWKINS,
 20
 21 a witness herein, called for
 22 examination by counsel for the
 23 Defendant, in the above-entitled action,
 24 pursuant to agreement, the witness being
 25 duly sworn by Mary Lynn Fuller, Court
 Reporter and Notary public in and for
 the State of North Carolina, taken at
 Alston & Bird, 101 South Tryon Street,
 Suite 4000, Charlotte, North Carolina,
 beginning at 9:37 a.m.

1 APPEARANCES OF COUNSEL
 2
 3 On behalf of the Plaintiff:
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 5 Jahnisa Tate Loadhold
 6 Alston & Bird
 7 One Atlantic Center
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 25

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1 P R O C E E D I N G S
 2 (EXHIBIT NOS. 3-10 WERE MARKED.)
 3 (EXHIBIT NOS. 13-37 WERE MARKED.)
 4 PHYLLIS WORTHY DAWKINS,
 5 having been duly sworn,
 6 testified as follows:
 7 THE COURT REPORTER: Just give
 8 -- each counsel just announce your name
 9 and what party you represent and then
 10 deposing counsel may begin.
 11 MR. MCKEE: I'm Pat McKee. I
 12 represent defendant Southern Association
 13 of Colleges and Schools Commission on
 14 Colleges.
 15 MS. McDONALD: And I'm Letitia
 16 McDonald, also representing the
 17 defendant.
 18 MS. LOADHOLT: I'm Jahnisa
 19 Loadholt. I represent Bennett College,
 20 the plaintiff.
 21 MR. DICKERSON: And Derin
 22 Dickerson on behalf of Bennett College.
 23 THE COURT REPORTER: Okay.
 24 Thank you. Deposing counsel may begin.
 25 DIRECT EXAMINATION

Page 37

1 net assets excuse of value of the art
 2 collection and plant and assets is an
 3 element of financial stability. Isn't
 4 that true?
 5 A. That's the way it's listed here, yes.
 6 Q. So at least at this point the college
 7 certainly knew it needed to have
 8 positive UNAEP?
 9 A. Sure. It's always known it needed to
 10 have a positive UNAEP.
 11 Q. Okay. So it wasn't a surprise then,
 12 was it?
 13 A. It was a surprise that it was used as
 14 one of the many financial indicators for
 15 financial stability.
 16 Q. Yet it was certainly listed by the
 17 college here in its own minutes in 2017?
 18 A. Uh-huh. But it was a surprise that
 19 SACS used it as the primary indicator in
 20 the end towards fiscal stability.
 21 Q. Is that what your understanding is, it
 22 was the primary indicator?
 23 A. That's the way it appeared to fall out.
 24 That's how we raised our money for the
 25 Stand with Bennett Campaign based on the

Page 38

1 UNAEP.
 2 Q. If you'll go back up to the middle
 3 paragraph that begins with Mr. Summers.
 4 A. Uh-huh.
 5 Q. Do you see that?
 6 A. Yeah.
 7 Q. Now, I'm going to try to read this
 8 sentence without making a mistake. See
 9 if I do that.
 10 Mr. Summers provided
 11 information about how the initial June
 12 15 million funding would address SACSCOC
 13 financial stability issue. Mr. Summers
 14 also addressed the student recruiting
 15 scholarship funding, student
 16 recreational activities, and other
 17 concerns. Do you see that?
 18 A. Uh-huh.
 19 Q. Did I read that correctly?
 20 A. Yes.
 21 Q. What was the initial June 15 million
 22 funding?
 23 A. That was expected funding from the Wish
 24 List.
 25 Q. Okay. And that never happened?

Page 39

1 A. Never happened.
 2 Q. The last sentence of that is, the
 3 college is required to show SACS two
 4 consecutive years of fiscal stability to
 5 qualify for removal of the probation
 6 sanction. Do you see that?
 7 A. Uh-huh.
 8 Q. Where did that come from?
 9 A. The old standard that talks about you
 10 have to have -- you need to show a
 11 trend.
 12 Q. Okay. So that was the college's
 13 understanding?
 14 A. Yes.
 15 Q. Okay.
 16 A. From the old standard.
 17 Q. Okay.
 18 A. But let me just say it -- it was not an
 19 understanding under the new standard.
 20 Q. Is it your understanding that the
 21 standards changed?
 22 A. Yes, they were a little bit more
 23 flexible in the new standard.
 24 Q. Okay.
 25 A. Okay.

Page 40

1 Q. So it changed to the better then?
 2 A. We thought. Yes, we thought it was for
 3 the better.
 4 Q. Let me ask you to take a look at
 5 Defendant's Exhibit 9, which is the next
 6 one.
 7 A. Uh-huh.
 8 Q. Ask you if you recognize this document?
 9 A. Okay. I --
 10 Q. Do you --
 11 A. -- recognize the discussion.
 12 Q. Is it fair to say that this is a copy
 13 of the board of trustees' minutes of the
 14 joint meeting of the executive and
 15 governance committee September 15, 2017?
 16 A. It's fair to say that.
 17 Q. Thank you. Were you at that meeting?
 18 A. Yes.
 19 Q. Okay. Let me direct your attention to
 20 the -- the first paragraph of that where
 21 it states, Board Chair Gladys Robinson
 22 called the meeting to order at 12:35
 23 p.m.
 24 A. Uh-huh.
 25 Q. The governance committee met jointly

Page 105

1 accreditation; correct?

2 A. That's correct.

3 Q. That was the first instance of the --

4 of the last group of sanctions in which

5 the institution was placed on probation?

6 MR. DICKERSON: Object to

7 form.

8 Q. Do you understand what I'm saying?

9 A. Yes, I understand.

10 Q. The -- The institution was placed on --

11 The institution was on probation for two

12 years before it was dropped from

13 membership; is that right?

14 A. Yes.

15 Q. And my question is: Is this the first

16 year?

17 A. Yes.

18 Q. Okay. This is 2017?

19 A. Yes.

20 Q. They went through 2017, 2018. December

21 of 2018 is when they were dropped?

22 A. December of 2018, yes.

23 Q. Okay. So this would have been the

24 first of --

25 A. Yeah, I know --

Page 106

1 Q. -- the two annual probations?

2 A. Yeah, then we got another letter in

3 January 2018, right.

4 Q. Right, okay.

5 A. Okay.

6 Q. So direct your attention down to the

7 third indented paragraph. Given the

8 financial challenges of the institution,

9 it appears that the governing board has

10 not exhibited its due diligence in its

11 financial responsibility and oversight.

12 Do you see that?

13 A. Uh-huh.

14 Q. What, if anything, did the board do in

15 the ensuing two years to fulfill its

16 responsibility for financial oversight?

17 A. They tried a number of strategies

18 through the institution advancement

19 committee from contacting specific

20 foundations in Greensboro to assisting

21 me with some contacts. So a variety of

22 different things.

23 Q. But it is true that as of the time the

24 institution was dropped from

25 accreditation, even the board chair

Page 107

1 expressed ignorance as to what the

2 meaning of UNAEP was; isn't that true?

3 A. I -- I wouldn't say meaning. Just

4 wasn't -- With the -- She wasn't

5 familiar with it in -- in terms of how

6 it was being used at that time, okay.

7 Q. If you'll flip to the next page --

8 A. Uh-huh.

9 Q. -- and you'll see under CS 310.1,

10 financial stability, there are a number

11 of paragraphs. I'll direct your

12 attention to the third -- one, two,

13 three -- third paragraph which provides,

14 unrestricted net assets fell from 5

15 million FY 2014 to 2.9 million FY 2015

16 to 481,841 in FY 2016. The institution

17 reports unrestricted net assets

18 exclusive of plant and plant-related

19 debt on a supplemental schedule to the

20 audit at a negative 1.8 million FY 2015

21 and a negative 4.3 million in FY 2016.

22 Do you see that?

23 A. You're talking about one, two, three?

24 Q. Yes, ma'am.

25 A. Uh-huh. Yes.

Page 108

1 Q. Do you see that?

2 A. Yes.

3 Q. So at least as early as January 11,

4 2017, SACSCOC was informing the board

5 through you that UNAEP was at a

6 significantly negative number and this

7 seriously impacted the institution's

8 financial stability; isn't that true?

9 A. The way it's stated here, yes.

10 Q. If you'll turn to the next page, page 3

11 of the letter, please.

12 A. Uh-huh.

13 Q. And the third paragraph beginning

14 federal regulations. Do you see that?

15 A. Uh-huh.

16 Q. It says federal regulations and

17 commission policy stipulate that an

18 institution must demonstrate compliance

19 with all the requirements and standards

20 of the principles of accreditation

21 within two years following the SACSCOC

22 board of trustees' initial action on the

23 institution or the institution must be

24 removed from membership. Do you see

25 that?

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1 Brewton-Parker in Atlanta, when they
 2 produced additional resources, they got
 3 remanded back. So there is bias in the
 4 -- the peer-review process of SACS.
 5 So Belle Wheelan is different
 6 from the peer reviews. She's not on the
 7 team, okay. So, yes, I think Belle
 8 wants every institution in SACS to be
 9 treated fairly, but she doesn't control
 10 the onsite teams or the off-site teams
 11 in their interpretations of these
 12 standards.
 13 **Q. My question was bias, and you --**
 14 A. Yeah.
 15 **Q. -- gave me a long --**
 16 A. It's bias.
 17 **Q. -- answer about inconsistency. Where**
 18 **is -- What is -- What is --**
 19 A. That's --
 20 **Q. -- the basis for the bias?**
 21 A. A lack of interpretation and common
 22 under -- a common interpretation of the
 23 standards.
 24 **Q. And that's what you call biased?**
 25 A. Yes.

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1 **Q. Okay.**
 2 A. And I would also say bias in terms of
 3 more UNCF or HBCUs are called on the
 4 standards than non-HBCUs.
 5 **Q. And what is your basis for saying that?**
 6 A. Almost at every visit, we're called,
 7 and I would question whether SACS has
 8 gone back and looked at everybody's
 9 UNAEP across the board. Do you keep raw
 10 data on that, and are you calling it the
 11 same way against HBCUs versus non-HBCUs?
 12 But it's just interesting that almost on
 13 every -- at the end of every board
 14 meeting of SACS or every SACS
 15 conference, there are HBCUs being called
 16 out for wanting probation or threatening
 17 removal.
 18 **Q. Do you believe that HBCUs should be**
 19 **held to a different standard?**
 20 A. No, but I'm not sure if 13.1 -- in the
 21 interpretation of a UNAEP for 13.1
 22 should be the same formula for all
 23 institutions, regardless of endowments,
 24 operating budgets because we're all
 25 different institutions with different

Page 155

1 challenges.
 2 And in Bennett's case, as in
 3 many HBCUs, with financial stability, we
 4 also have other sources of funds like
 5 Charter 3, the deferment, and other
 6 sources of funds. So I think we may
 7 need to revisit how we calculate the
 8 UNAEP and we may need to revisit some of
 9 the other standards that may -- may --
 10 other components that may support
 11 financial stability.
 12 **Q. So you believe that HBCUs should have**
 13 **different standards?**
 14 A. I'm not saying just HBCUs. I would
 15 also include independent colleges and
 16 private colleges.
 17 **Q. If you --**
 18 A. We cannot be compared to a Duke with
 19 the same standard.
 20 **Q. Do you believe you were?**
 21 A. I don't know if we were or not. All
 22 I'm saying is that this just appears to
 23 be bias in the institution review
 24 process, that we're called more than any
 25 other group. Had that same committee

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1 been at another institution, be it at a
 2 white institution, would it have been
 3 called?
 4 **Q. So are you saying that there is a**
 5 **racial bias?**
 6 A. There appears to be some racial or
 7 economic bias in terms of how SACS --
 8 how many calls SACS have made against
 9 HBCUs, the percent. We only have 101,
 10 and SACS has about -- what -- what --
 11 the majority of the colleges and
 12 universities are under SACS. And when
 13 you look at that 101 against the -- the
 14 total number of SACS institution and you
 15 look at the percent of the number of
 16 HBCUs called against non-HBCUs, you'll
 17 see a high ratio.
 18 **Q. You have made that study?**
 19 A. We have printed that study. And when I
 20 say "we," I mean you -- we are --
 21 Bennett's a UNCF institution, and we
 22 have data to support that kind of stuff.
 23 **Q. When --**
 24 THE COURT REPORTER: Which is
 25 what? I'm sorry?

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1 Q. It is in every audit report; right?

2 A. Right.

3 Q. She should have known that, shouldn't

4 she?

5 A. Uh-huh.

6 Q. Yes?

7 A. Collectively -- Yes, but I think her

8 shock was over the fact that now it's

9 becoming an issue. When you look at

10 even the table we had, we were just

11 looking at, the UNAEP has had a negative

12 for a number of years, even when we

13 weren't on probation and we weren't

14 called to be on probation or a warning,

15 even with negative UNAEP.

16 And I suspect, I don't know,

17 there are institutions with negative

18 UNAP -- AEP that are not on probation

19 because I've told you some of my

20 colleagues, and some of them have

21 negative UNAEPs and they're not on

22 probation.

23 Q. It says there, Trustee Anicetti said

24 that the concept of UNAEP was, quote,

25 sprung on us, adding that if someone

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1 would have said UNAEP to us earlier, we

2 would have had six months to raise --

3 raise 5 million, not 30 days. Do you

4 see that?

5 A. Yeah.

6 Q. Well, the fact of the matter is I've

7 shown you exhibit after exhibit that

8 shows that UNAEP was raised by

9 SACSCOC --

10 A. Uh-huh.

11 Q. -- at least two years prior to the

12 drop; isn't that correct?

13 A. That's correct.

14 Q. Okay. So Trustee Anicetti was

15 completely wrong that UNAEP was sprung

16 on us; isn't that true?

17 A. Yeah, and I'm just going to say in

18 context, while they may have seen it,

19 they just didn't -- they may not have

20 collectively over years realized the

21 impact of year after year of a negative

22 UNAEP when there were years when we had

23 a negative UNAEP and we were -- we did

24 not have a warning or probation --

25 Q. But UN --

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1 A. -- and so --

2 Q. Pardon me. Excuse me. I didn't mean

3 to interrupt you.

4 A. So it's just a matter in context how it

5 was perceived. Yeah.

6 Q. But you've testified that you went over

7 with the board all of those letters from

8 SACSCOC saying you've got a negative

9 UNAEP and it's causing you to be out of

10 compliance?

11 A. That's right, yes.

12 Q. Let me show you Defendant's 28, please,

13 the next exhibit. Do you see that?

14 A. Uh-huh.

15 Q. What is that?

16 A. That's the reimbursement from our

17 deferment payment -- after the -- of --

18 the deferment was approved on March

19 23rd, 2018, when President Trump signed

20 the deferment into law. We had already

21 paid, and by the time -- it was signed

22 into law March 23rd, 2018, it was

23 implemented about June 28th.

24 Institutions were notified that they

25 were going to receive it, the

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1 deferments. So by the time the end of

2 June, we had already paid for that year.

3 And so this was the reimbursement from

4 our payment minus the escrow and

5 replacement funds and fees.

6 So we still have to pay those

7 on an annual basis for the next six

8 years.

9 Q. So this is a board action item for a

10 board meeting dated January 12th, 2019,

11 concerning that amount that you just

12 mentioned; is that right?

13 A. That's correct. That was the

14 reimbursement of the principal and the

15 interest.

16 THE COURT REPORTER:

17 Reimbursement of what? I'm sorry?

18 THE WITNESS: The principal

19 and the interest.

20 Q. And you received a reimbursement of

21 \$1.1-million, correct --

22 A. That's --

23 Q. -- approximately?

24 A. -- correct, on December 21st.

25 Q. But at that point, you had already

Exhibit C



March 7, 2019

Dr. Michael Lomax
President
United Negro College Fund
1805 7th Street, NW
Washington, DC 20001

Dear Dr. Lomax:

I am writing to you in response to comments you made yesterday at the luncheon celebrating the 75th anniversary of the United Negro College Fund (UNCF). I watched a video of your presentation where you expressed concerns about the decision made by the Board of Trustees of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) regarding the accreditation of Bennett College and other member institutions. You also took the opportunity to quote comments – out of context – that I made in a recent publication to justify the fifth priority in UNCF's legislative agenda. It is for those two reasons I am writing to you today.

First of all, as reported in the *Inside Higher Ed* article you quoted, I did say that many more small and private institutions would either close or lose accreditation over the next ten years; however, I am not the first or only observer of this phenomenon. As a matter of fact, yesterday morning's *Inside Higher Ed* identified three colleges in Connecticut, New Hampshire, and Vermont, all of which are outside of my region, that announced impending closings at the end of this academic year. Additionally, in another article in the December 20, 2017, edition of *Inside Higher Ed*, Dr. Alvin Schexnider, a former HBCU president in the Southern region, mentioned that the former president of Morehouse College, your own *alma mater*, said in 1986 that, "History has shown that the private black college experiences a very slow death...you will have an increasing number of weak private colleges lose accreditation, and they will lose enrollment, and then they will lose financial stability...."

Second, for you to suggest that the fact that I, as President of an accrediting body, making the statement would bias the 77-member SACSCOC Board members' decision-making is beyond absurd and I'm offended for them. I assure you, the institutional presidents and public representatives are quite capable of making their own decisions. Moreover, their deliberations are equitable and in accordance with our established *Principles of Accreditation* and processes.

The reality is that institutions similar to Paine College and Bennett College with small endowments, decreasing enrollments, mounting debts, and high tuition discount rates will not be able to meet accreditation standards of ANY accreditor recognized by the U.S. Department of Education, not just those of SACSCOC. These crippling factors debilitate smaller institutions long before they undergo the accreditation review process. Incidentally, every institution SACSCOC has removed from membership has failed during litigation to demonstrate that the Commission did not follow its procedures OR that institutions were treated unfairly.



Dr. Michael Lomax
March 7, 2019
Page 2

Given their history, the majority of Historically Black Colleges and Universities (HBCUs), are disproportionately located within the SACSCOC region. While they constitute approximately 74% of all HBCUs in the United States, they only constitute 9% of the membership that comprises SACSCOC. Additionally, in the 14.5 years that I have been CEO of SACSCOC, we have only dropped a total of 10 institutions and the majority of those were not HBCUs.

Furthermore, in the last 30 years, the Commission has dropped a TOTAL of 30 institutions of which 13 were HBCUs. I am perplexed, therefore, that you would propose that SACSCOC has made a concerted effort to adversely affect the accreditation of HBCUs. If that were the case, how do you explain the fact that 64, or 85%, of our HBCU members currently MEET and MAINTAIN compliance with our accreditation standards?

I must tell you how extremely disappointed I am that you chose to make your statements without ever contacting me to either gather facts about the accrediting process or to express any concerns you had about our accreditation process, or me personally. As higher education colleagues, my wish is that we would speak frankly to each other, BEFORE, misquoting one another in public.

I am taking this opportunity to copy members of the United States Congress, and the CEOs of both NAFEO and The Thurgood Marshall Fund who were reportedly in attendance at the luncheon, as well as the Presidents of all HBCUs located in the Southern region and members of the SACSCOC Board of Trustees so that they have a balanced view of these issues.

As always, I am available to discuss any issue you have related to the process used to accredit institutions within the Southern region, and regional accreditation in general.

Sincerely,

A handwritten signature in cursive script that reads "Belle S. Wheelan".

Belle S. Wheelan, Ph.D.
President

BSW:rb

cc: The Honorable Robert Scott
The Honorable Alma Adams
The Honorable Tim Kaine
Dr. Harry Williams
Ms. Leslie Baskerville, J.D.
Presidents of SACSCOC member HBCUs
Members of SACSCOC Board of Trustees
Members of the Council of Regional Accrediting Commissions (C-RAC)
Inside Higher Ed

Exhibit D

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BENNETT COLLEGE,)

)

Plaintiff,)

) CIVIL ACTION FILE

vs.)

) NO: 1:19-CV-00883-SDG

THE SOUTHERN ASSOCIATION)

OF COLLEGES AND SCHOOLS)

COMMISSION ON COLLEGES,)

INC.,)

)

Defendant.)

DEPOSITION OF DEBORAH HALL
ATLANTA, GEORGIA
WEDNESDAY, OCTOBER 23, 2019

REPORTED BY: TANYA L. VERHOVEN-PAGE,
CCR-B-1790

FILE NO. 169642

October 23, 2019
10:05 a.m.

Deposition of
DEBORAH HALL, held at the offices
of King & Spalding, LLP, 1180 Peachtree
Street, Atlanta, Georgia before
Tanya L. Verhoven-Page, Certified Court
Reporter and Notary Public of the State of
Georgia.

APPEARANCES OF COUNSEL

On behalf of the Plaintiff:

ALSTON & BIRD
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
BY: KRISTI RAMSAY, ESQ.
BY: JAHNISA LOADHOLT, ESQ.

On behalf of the Defendants:

LAW OFFICE OF PATRICK W. MCKEE
19 Spring Street
Newnan, Georgia 30263
BY: PATRICK MCKEE, ESQ.

KING & SPALDING
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
BY: LETITIA MCDONALD, ESQ.

- - -

I N D E X

WITNESS: DEBORAH HALL

Examination Page
BY MS. RAMSAY 6

EXHIBITS:

Hall Deposition Exhibit	Description	Page
Exhibit 1	Deposition notice	8
Exhibit 2	Document bearing Bates numbers SACSCOC_002573 through SACSCOC_002655	18
Exhibit 3	Document bearing Bates numbers SACSCOC_005444 through SACSCOC_005457	30
Exhibit 4	Document bearing Bates number SACSCOC_002857	41
Exhibit 5	Document bearing Bates number SACSCOC_002658	41
Exhibit 6	Document bearing Bates number SACSCOC_002158	41

EXHIBITS:

Hall Deposition Exhibit	Description	Page
Exhibit 7	Document bearing Bates numbers SACSCOC_001927 through SACSCOC_001933	46
Exhibit 8	Document bearing Bates numbers SACSCOC_001574 through SACSCOC_001628	52
Exhibit 9	Document bearing Bates numbers SACSCOC_004340 through SACSCOC_004369	53
Exhibit 10	Document bearing Bates number SACSCOC_004277	76
Exhibit 11	Document bearing Bates numbers SACSCOC_004479 through SACSCOC_004555	79
Exhibit 12	Document bearing Bates numbers SACSCOC_002752 through SACSCOC_002663	83
Exhibit 13	Document bearing Bates numbers SACSCOC_003158 through SACSCOC_003319	85

1 D. HALL

2 So, again, the peer for Bennett would be
3 the same peer that I would have. I consider myself a
4 peer of Bennett at LaGrange College or even at
5 Brevard College, because we're a small private. The
6 only difference being we're coeducational instead of
7 female. But we still play by the same rules and play
8 in the same sandbox as each other, and our enrollment
9 would be similar. Our endowments may or may not be
10 similar.

11 Q Are you familiar with the term HBCU?

12 A Oh, yes.

13 Q Have you ever done a site visit at an
14 HBCU?

15 A Many.

16 Q Are you aware of any issues that HBCUs
17 face that schools that are not HBCUs would not face?

18 A You know, that's a very interesting
19 question, and issues being defined in a couple
20 different ways. I will tell you that I have been on
21 HBCU visits over my years that I only wished I had
22 the funding that some of the HBCUs have. So I think
23 there's also -- there's sometimes a privilege that's
24 given to an HBCU, frankly, that I may not be able to
25 provide -- to be provided. So I've been jealous of

1 D. HALL

2 some of the Federal funding. So from that
3 standpoint, I've been somewhat jealous.

4 But on the other side, you know, I -- I
5 serve on the board of an insurance company that was
6 founded -- it's a nonprofit founded for Methodist,
7 Presbyterian, Lutheran and American Baptist
8 institutions. And it was founded because, at the
9 time, back in the '60s, HBCUs had a very difficult
10 time finding insurance, and so it was founded for
11 that particular purpose.

12 And that's our key market, is to assist
13 any institution. Not just an HBCU, but any
14 institution that might not be able to go out into the
15 market and find good market insurance. So I say that
16 because it was founded for HBCUs.

17 The special challenges that an HBCU might
18 have, I'd say -- in a sense I don't know -- I can't
19 think of a challenge that they would have that I
20 wouldn't have. I still have to look for student
21 enrollment, I have to manage my discount rate, I have
22 to manage my expenses and, you know, tend to my
23 graduates and my donors. So --

24 Q What did you mean by HBCUs have a
25 privilege?

1 D. HALL

2 A I remember visiting an institution at one
3 particular time and looking at the Federal funding
4 they were receiving -- I don't remember title -- I
5 don't remember the Federal funding, but once they
6 received it, they were able to continue that funding
7 for a number of years.

8 And I just remember standing there
9 thinking, I wish that we could apply for that funding
10 at my institution. But it was only for HBCUs to
11 obtain and so we couldn't. So that was my -- at the
12 time my institution was struggling. I remember
13 thinking I only wish I could provide -- be provided
14 that Title IV funding, or whatever it was at the
15 time.

16 Q Do you think that HBCUs are similarly
17 situated in terms of finances?

18 A I don't think that matters whether it's
19 an HBCU or a regular -- a small institution. I think
20 a small institution with small enrollment has a
21 difficult time operating. It doesn't matter what
22 their background is.

23 Q Do you think that LaGrange is a peer of
24 Bennett?

25 A I would say it is a peer of Bennett from

1 D. HALL

2 the standpoint of we're Methodist affiliated and
3 we're a small college. So we would be a peer, just
4 like my old school at Brevard, to name a peer.

5 Q And what is the endowment at --

6 A Our endowment is about \$60 million.

7 Q Do you think that the committee should
8 consider any unique circumstances of HBCUs when
9 assessing whether or not they meet the financial
10 resources standard?

11 A No, I do not.

12 Q Did the fact that Bennett is an HBCU come
13 up in any of the discussions that you recall about
14 its accreditation status?

15 A I don't recall it coming up. That would
16 be unusual.

17 Q Who was a peer of Bennett that was on the
18 C&R committee that you were on?

19 A You know, I don't know the background.
20 I'd have to look at the detail behind each one of
21 those.

22 I would look at anybody there that had an
23 enrollment of, you know, less than maybe 1500
24 students is a small institution, that's private. You
25 know, that would be -- and I say that because that

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BENNETT COLLEGE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO. 1:19-cv-00883-MHC
THE SOUTHERN ASSOCIATION)	
OF COLLEGES AND SCHOOLS)	
COMMISSION ON COLLEGES,)	
INC.,)	
)	
Defendant.)	

**RESPONSES AND OBJECTIONS TO PLAINTIFF BENNETT COLLEGE’S
FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rule of Civil Procedure 33, Defendant The Southern Association of Colleges and Schools Commission on Colleges, Inc. (“Defendant” or “SACSCOC”) hereby serves its responses and objections to Plaintiff Bennett College’s (“Plaintiff” or the “College”) First Set of Interrogatories.

GENERAL STATEMENT

SACSCOC’s responses are made subject to and without waiver of any questions or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence or for any other purpose, of any of the information referred to or of the responses given herein, or of the subject matter thereof in any

proceeding, including the trial of this action or any other subsequent proceeding; and said responses are made specifically subject to the right to object to any proceeding involving or relating to the subject matter of the Interrogatories responded to herein.

SACSCOC has not completed its investigation of the facts related to this case. SACSCOC answers these Interrogatories based on its present knowledge, the documents and things presently in their possession, and the analysis they have now completed, and SACSCOC reserves the right to later supplement or amend its answers and objections to these Interrogatories.

By making these responses, SACSCOC does not concede that the information given is properly discoverable or admissible. SACSCOC reserves the right to object to further discovery regarding the subject matter of the Interrogatories.

OBJECTIONS TO INSTRUCTIONS

SACSCOC objects to all Instructions as overly broad and unduly burdensome to the extent they set forth guidelines that differ from obligations imposed upon by the Federal Rules of Civil Procedure, the Local Rules of this Court, or any other pertinent Orders that the Court has entered or may enter in the case. SACSCOC will comply with the protocols agreed to by the parties and set

forth in those Orders and as set forth in the Federal Rules of Civil Procedure and the Local Rules and Standing Order of this Court.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify all institutions that SACSCOC placed on probation or warning for failure to comply with Comprehensive Standard 3.10.1 (Financial stability), Core Requirement 2.11.1 (Financial resources and stability), and/or Core Requirement 13.1 (Financial resources) of the *Principles of Accreditation* in the past 10 years. For each institution, state whether the school was subsequently removed from probation, removed from warning, or removed from membership.

RESPONSE TO INTERROGATORY NO. 1:

Pursuant to Federal Rule of Civil Procedure 33(d), SACSCOC is producing the minutes of the SACSCOC Board of Trustees for the 10 years preceding the filing of this lawsuit (*i.e.*, 2/22/2009 to 2/22/2019) in which information responsive to Interrogatory No. 1 may be found.

INTERROGATORY NO. 2:

Describe in detail all Communications (including the time and manner of each Communication) relating to SACSCOC's consideration of the additional information Bennett provided with respect to its finances following the December 9, 2018 decision to revoke its accreditation.

RESPONSE TO INTERROGATORY NO. 2:

SACSCOC objects to Interrogatory No. 2 as requesting information protected by the attorney-client privilege or attorney work-product doctrine.

SACSCOC is withholding information on the basis of this objection to the extent such information exists. SACSCOC also objects to this interrogatory as facially overbroad and unduly burdensome since it is entirely overlapping with Bennett's Request for Production No. 2, which asks SACSCOC to produce the same communications that this Interrogatory asks SACSCOC to "describe in detail." SACSCOC will produce documents subject to and in accordance with its objections and responses to Request for Production No. 2.

INTERROGATORY NO. 3:

Identify all of SACSCOC's employees, agents, board members, off- and on-site reaffirmation review committee members, or representatives (by name, job title, and employer) that were involved in any manner in evaluating, analyzing, reviewing, managing, supervising, adjudicating, or deciding to revoke Bennett's accreditation and/or sustain that decision on appeal, including but not limited to members of the C&R Committee, Group B, and the Appeals Committee. Include a description of the role each person played.

RESPONSE TO INTERROGATORY NO. 3:

SACSCOC objects to this request as overbroad and unduly burdensome because it seeks information that is burdensome to compile and not relevant to the claims in this case. Bennett's sole claim is that it should have been reinstated to SACSCOC membership based on new information it submitted in connection with its February 2019 appeal of the SACSCOC Board's decision to remove Bennett from membership. Bennett has not made any challenge to the Board's underlying

accreditation decision or any prior decisions of SACSCOC to place Bennett on warning or probation. There is therefore no basis to require SACSCOC to comb through years of dated material to identify “all . . . agents, board members, off- and on-site reaffirmation review committee members, or representatives (by name, job title, and employer) that were involved in any manner in evaluating, analyzing, reviewing, managing, supervising, adjudicating, or deciding to revoke Bennett’s accreditation.”

Subject to and without waiving these objections, based on a reasonable search, SACSCOC identifies the following individuals that were involved in SACSCOC’s evaluation of Bennett, subject to individual recusals:

Special Committee 2017

- Dr. William T. Abare – President, Flagler College
- Dr. Charlotte Carter – Vice President, Academic Affairs & Biology Professor, Stillman College
- Mr. W. Glenn Culley – Vice President, Business Affairs & Finance, Hampden-Sydney College
- Dr. David M. Gring – Senior Vice President, Myers McRae Executive Search

- Ms. Leanne Smith – Vice President, Financial & Business Services Baptist Memorial College of Health Science
- Staff Representative: Dr. Michael T. Hoefler

Special Committee 2018

- Dr. Haywood L. Strickland – President, Wiley College
- Dr. Douglas G. Barlar – Music Department Chair, Florida College
- Eric A. McDonald – Vice President for Business Affairs Spartanburg Methodist College
- Dr. Maurice W. Scherren – President, Newberry College
- Staff Representative: Dr. Michael T. Hoefler

December 2017 C&R (Group B)

- Timothy P. McNamara – Professor of Psychology, Vanderbilt University
- Jo Allen – President, Meredith College
- Elizabeth M. Bejar – Vice Provost for Academic Affairs, Florida International University
- Ronnie L. Booth – President, Tri-County Technical College
- Trina Boteler – Executive Vice President, Chattahoochee Technical College
- John S. Capps – President, Central Virginia Community College
- Kandi W. Deitemeyer – President, Central Piedmont Community College

- Ruth S. Feiock – Assistant Vice President, Planning & Programs, Florida State University
- W. Briggs Hopson, III, Esq. – Mississippi State Senator for District 23 & Attorney, Teller, Hassell & Hopson
- Brenda S. Kays – President, Kilgore College
- Flavius C. Killebrew – President Emeritus/Professor of Biology, Texas A&M University - Corpus Christi
- S. Craig Long – Performance Solutions by Milliken Fellow, Milliken Corporation
- Michael C. Maxey – President, Roanoke College
- Joseph (“Jay”) A. Morgan – President, Morehead State University
- M. David Rudd – President, The University of Memphis
- Maurice W. Scherrens – President, Newberry College
- Patricia G. Sims – Dean, College of Education, Athens State University
- SACSCOC Staff: Dr. Michael T. Hoefler and Barry D. Goldstein

December 2018 C&R (Group B)

- Rev. Larry Hostetter – President, Brescia University
- Dr. Rebecca G. Adams – Professor of Sociology and Gerontology, University of North Carolina at Greensboro

- Dr. J. Bradley “Brad” Creed – President, Campbell University
- Dr. George T. French, Jr. – President, Miles College
- Mr. John D. Grosskopf – President, North Florida Community College
- Dr. Peter G. Jordan – President, Tarrant County College-South Campus
- Dr. Dennis F. King – President, Asheville-Buncombe Technical Community College
- Dr. N. Kevin Krane – Vice Dean for Academic Affairs/Chief Clinical Nephrology, Tulane University
- Dr. Russell J. Mumper – Vice Provost for Academic Affairs, University of Georgia
- Dr. Ingrid Thompson-Sellers – President, South Georgia State College
- Dr. Alissa L. Young – President, Hopkinsville Community College
- Eli Phillips – Vice President for Business & Finance, Birmingham-Southern College
- David D. Collins – Vice President for Finance and Administration East Tennessee State University
- Mark E. Coleman – Vice President for Administration and Finance, Lindsey Wilson College
- Dr. Susan Graybeal – King University

- SACSCOC Staff: Patricia Donat, Dr. Michael T. Hoefer, Linda Thomas-Glover

C&R Group B Members for the Hearing on the Record (December 2018)

- Rev. Larry Hostetter – President, Brescia
- Dr. Peter G. Jordan – President, Tarrant County College-South Campus
- Dr. N. Kevin Krane – Vice Dean for Academic Affairs/Chief Clinical Nephrology, Tulane University
- Dr. Russell J. Mumper – Vice Provost for Academic Affairs, University of Georgia
- Dr. Ingrid Thompson-Sellers – President, South Georgia State College
- Dr. Alissa L. Young – President, Hopkinsville Community College
- Dr. John S. Smarrelli, Jr. – President, Christian Brothers University
- Deborah “Deb” Hall – Vice President for Finance & Operations, LaGrange College
- Mark E. Coleman – Vice President for Administration & Finance, Lindsey Wilson College

Members of the February 2019 Appeals Committee

- Ms. Shira Thomas, Hearing Officer – Interim General Counsel, Florida A&M University

- Dr. Virginia Carson – President Emerita, South Georgia State College
- Dr. Ray L. Belton – President-Chancellor, Southern University and A & M College at Baton Rouge
- Dr. M. Christopher Brown II – President and CEO, Kentucky State University
- Dr. M. Dwaine Greene – President, Georgetown College
- Dr. Martha D. Saunders – President, The University of West Florida
- Dr. Mary Evans Sias – President (Retired), Kentucky State University

Current/Former Staff of SACSCOC

- Dr. Belle S. Wheelan – President
- Dr. Larry Earvin – Chief of Staff
- Dr. Steven M. Sheeley – Senior Vice President
- Ms. Donna Barrett – Director of Institutional Finance
- Dr. Michael T. Hoefler – Vice President
- Ms. Shelia Luke – Coordinator
- Dr. Barry D. Goldstein – former Vice President
- Dr. Michael S. Johnson – former Senior Vice President and Chief of Staff

- Ms. Carol A. Luthman – former Director of Legal and Governmental Affairs, and Commission Support

INTERROGATORY NO. 4:

Identify any consultants that SACSCOC has hired or retained to advise it regarding the revocation of Bennett’s accreditation. For each named consultant, identify the nature and scope of the services rendered by such attorney or consultant to SACSCOC.

RESPONSE TO INTERROGATORY NO. 4:

Other than its counsel in this litigation, SACSCOC has not hired or retained any third-parties to advise SACSCOC in connection with the revocation of Bennett’s accreditation.

INTERROGATORY NO. 5:

Identify all rules, manuals, guidelines, standards, protocols, and criteria, whether published or internal, which SACSCOC used or relied upon, or were or are available to SACSCOC to use or rely upon, in evaluation, analyzing, or reviewing the decision to revoke Bennett of its accreditation and sustain that decision on appeal.

RESPONSE TO INTERROGATORY NO. 5:

SACSCOC relied on the *Principles of Accreditation* and the Appeals Procedures of the College Delegate Assembly in connection with its decision to remove Bennett from membership and to sustain that decision on appeal.

INTERROGATORY NO. 6:

State all of the reasons why SACSCOC revoked the accreditation of Bennett.

RESPONSE TO INTERROGATORY NO. 6:

SACSCOC objects to this request on the grounds that the request for “all of the reasons” for SACSCOC’s action is one of the central subjects of ongoing discovery in this case and SACSCOC reserves the right to supplement its response to this interrogatory as discovery progresses. SACSCOC further objects to the false premise that SACSCOC “revoked the accreditation of Bennett.” SACSCOC did not “revoke the accreditation of Bennett,” but instead removed Bennett from SACSCOC membership. Bennett may or may not remain accredited through other means.

Subject to and without waiving its objections, SACSCOC states that, by a vote of its Board of Trustees, SACSCOC removed Bennett from membership because Bennett failed to comply with Core Requirement 13.1 (Financial resources) of the *Principles of Accreditation* and because Bennett had exhausted its maximum probationary period of two years, as set forth in SACSCOC Policy.

INTERROGATORY NO. 7:

Describe in detail the legal theory or theories and factual bases that support SACSCOC’s position that the financial information Bennett provided following

the December 9, 2018 decision to revoke its accreditation was neither new, material, nor verifiable.

RESPONSE TO INTERROGATORY NO. 7:

SACSCOC objects to this interrogatory as improperly requesting that SACSCOC set forth the full basis for its position in this lawsuit at the outset of discovery. SACSCOC is continuing to evaluate the legal and factual bases for its position and reserves the right to supplement Interrogatory No. 7 following the conclusion of discovery in this case. SACSCOC is not withholding information on the basis of this objection. SACSCOC further objects to the false premise that SACSCOC “revoked the accreditation of Bennett.” SACSCOC did not “revoke the accreditation of Bennett,” but instead removed Bennett from SACSCOC membership. Bennett may or may not remain accredited through other means.

Subject to and without waiving its objections, SACSCOC states that the financial information provided to the Appeals Committee by Bennett was not material because, even taking into account the information that had not previously been provided to the SACSCOC Board, Bennett still would not have been in compliance with Core Requirement 13.1 (Financial resources) of the *Principles of Accreditation*.

INTERROGATORY NO. 8:

Identify all of the institutions that have previously claimed to have submitted new, material, and verifiable information in hearings before SACSCOC's Appeals Committee in the past 10 years. For each such instance, describe the alleged new and verifiable information that was submitted, and state whether the Appeals Committee agreed that the information was "new and verifiable," whether the Appeals Committee determined that the information was "material to the Board's adverse decision," why the Appeals Committee reached those conclusions, and what action the Appeals Committee took in light of those conclusions (e.g., remand to the Board of Trustees, affirmance of the Board of Trustees' decision to remove institution from membership, reversal of the Board of Trustees' decision to remove institutions from membership).

RESPONSE TO INTERROGATORY NO. 8:

SACSCOC objects to this request as overbroad and disproportionate with the needs of discovery in this case. The sole issue raised in Bennett's Amended Complaint is whether the information that Bennett submitted to the Appeals Committee demonstrated Bennett's compliance with the *Principles*. Documentation submitted to SACSCOC by other institutions over the prior ten years has little, if no, bearing on the question of Bennett's compliance with the *Principles*. Moreover, SACSCOC does not have readily accessible records containing all information which institutions have submitted to it over the past ten years nor does it have readily accessible records reflecting the positions taken by each of those institutions on appeal. SACSCOC is not withholding information on this basis of this objection.

Subject to and without waiving its objections, and pursuant to Federal Rule of Civil Procedure 33(d), SACSCOC is producing the minutes of the SACSCOC Board of Trustees meetings for the 10 years preceding the filing of this lawsuit (*i.e.*, 2/22/2009 to 2/22/2019) which represents the best source from which the information sought by this Interrogatory may be discovered.

INTERROGATORY NO. 9:

Identify instances when SACSCOC has considered unaudited financial statements when making a decision about an institution's compliance with Comprehensive Standard 3.10.1 (Financial stability), Core Requirement 2.11.1 (Financial resources and stability), and/or Core Requirement 13.1 (Financial resources) of the *Principles of Accreditation*. If so, describe the information that was submitted, identify the name of the institution that submitted the information, and identify what actions SACSCOC took with respect to the institution.

RESPONSE TO INTERROGATORY NO. 9:

SACSCOC objects to this request as overbroad and disproportionate with the needs of discovery in this case. The sole issue raised in Bennett's Amended Complaint is whether the information that Bennett submitted to the Appeals Committee demonstrated Bennett's compliance with the *Principles*. Documentation submitted to SACSCOC by other institutions over the prior ten years, including whether that information was audited or unaudited, has little bearing on the question of Bennett's compliance with the *Principles*. Moreover, SACSCOC does not have readily accessible records containing all information

which institutions have submitted to it over the past ten years nor does it have readily accessible records reflecting the positions taken by each of those institutions on appeal. SACSCOC is not withholding information on this basis of this objection.

Subject to and without waiving its objections, and pursuant to Federal Rule of Civil Procedure 33(d), SACSCOC is producing the minutes of the SACSCOC Board of Trustees meetings for the 10 years preceding the filing of this lawsuit (*i.e.*, 2/22/2009 to 2/22/2019) which represents the best source from which the information sought by this Interrogatory may be discovered.

INTERROGATORY NO. 10:

Identify all Historically Black Colleges and Universities (“HBCUs”) that SACSCOC has sanctioned in the past 10 years. For each institution, please provide the following:

1. Name of the institution
2. Date of the sanction and the reason for the sanction.
3. Date SACSCOC removed the institution from sanction, if any.
4. The identity of the off-site reaffirmation review committees’ members, including the institutions each member represented.
5. The identity of the on-site reaffirmation review committees’ members, including the institutions each member represented.

RESPONSE TO INTERROGATORY NO. 10:

SACSCOC objects to this request as overbroad and disproportionate with the needs of discovery in this case. The sole issue raised in Bennett’s Amended Complaint is whether the information that Bennett submitted to the Appeals Committee demonstrated Bennett’s compliance with the *Principles*. The identity of HBCUs previously “sanctioned” (which SACSCOC interprets to mean placed on warning or probation) by SACSCOC has no bearing on the question of Bennett’s compliance with the *Principles*. Moreover, SACSCOC does not have readily accessible records reflecting the identity of all “reaffirmation review committees’ members, including the institutions each member represented” over the past ten years. SACSCOC is not withholding information on this basis of this objection.

Subject to and without waiving its objections, and pursuant to Federal Rule of Civil Procedure 33(d), SACSCOC is producing the minutes of the SACSCOC Board of Trustees, Executive Council, and other subcommittee meetings for the 10 years preceding the filing of this lawsuit (*i.e.*, 2/22/2009 to 2/22/2019) which represents the best source from which the information sought by this Interrogatory may be discovered.

INTERROGATORY NO. 11:

Describe any efforts SACSCOC makes to ensure that off-site reaffirmation review and on-site reaffirmation review committees are composed of individuals representing HBCUs when the institution under review is an HBCU.

RESPONSE TO INTERROGATORY NO. 11:

SACSCOC objects to this request as overbroad and disproportionate with the needs of discovery in this case. The sole issue raised in Bennett’s Amended Complaint is whether the information that Bennett submitted to the Appeals Committee demonstrated Bennett’s compliance with the *Principles*. Whether SACSCOC “ensure[s] that off-site reaffirmation review and on-site reaffirmation review committees are composed of individuals representing HBCUs when the institution under review is an HBCU” is not relevant to that question and is otherwise not a relevant inquiry in this case. SACSCOC has no obligation to ensure that individuals “representing” HBCUs are involved in reaffirmation committees, but instead focuses on ensuring that persons knowledgeable of the type of institution being reviewed participate, whether that be an HBCU or some other institution. SACSCOC is not withholding information on this basis of this objection.

Subject to and without waiving its objections, SACSCOC states that it undertakes substantial efforts to ensure that representatives of HBCUs are included

in accreditation decisions for other HBCUs. This is reflected by the fact that representatives of HBCUs were involved in the decision to remove Bennett from membership, including the decision to deny Bennett's appeal which was made by a panel that included four HBCU representatives.

INTERROGATORY NO. 12:

Identify each Person who prepared or assisted in SACSCOC's responses to these Interrogatories.

RESPONSE TO INTERROGATORY NO. 12:

In addition to its counsel in this case, Donna Barrett and Rosalind Fuse-Hall assisted SACSCOC in preparing responses to these interrogatories.

Respectfully submitted, this 29th day of July, 2019.

/s/ Patrick W. McKee

Patrick W. McKee

Georgia Bar No. 494325

pwmckee@mckeelaw.com

LAW OFFICE OF PATRICK W.

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Letitia A. McDonald

Georgia Bar No. 489430

Lohr Beck-Kemp

Georgia Bar No. 828063

J. Matthew Brigman
Georgia Bar No. 254905
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tmcdonald@kslaw.com
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mbrigman@kslaw.com
(404) 572-4600 (telephone)
(404) 572-5139 (facsimile)

*Attorneys for Defendant The Southern
Association Of Colleges and Schools
Commission on Colleges, In*

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the responses to the foregoing interrogatories are true and correct to the best of my knowledge, information, and belief.

Executed on: 7/25/19

Belle S. Wheeler

By:

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing **RESPONSES AND OBJECTIONS TO PLAINTIFF BENNETT COLLEGE'S FIRST SET OF INTERROGATORIES TO DEFENDANT SACSCOC** by depositing a true and correct copy of the same in the U.S. Mail, postage prepaid, and by email service, on the below counsel of record:

Derin B. Dickerson
derin.dickerson@alston.com
Gavin Reinke
gavin.reinke@alston.com
Kristi Ramsay
kristi.ramsay@alston.com
ALSTON & BIRD, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

Jahnisa P. Tate
jahnisa.loadholt@alston.com
ALSTON & BIRD, LLP
The Atlantic Building
950 F Street, NW
Washington, D.C. 20004-1404

This 29th day of July, 2019.

/s/ Letitia McDonald

Letitia A. McDonald
Georgia Bar No. 489430

Exhibit F

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BENNETT COLLEGE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO. 1:19-cv-00883-MHC
THE SOUTHERN ASSOCIATION)	
OF COLLEGES AND SCHOOLS)	
COMMISSION ON COLLEGES)	
INC.,)	
)	
Defendant.)	
<hr style="border: 0.5px solid black;"/>		

DECLARATION OF DR. G. DAVID JOHNSON

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is G. David Johnson, and I am the Provost and Senior Vice President for Academic Affairs at the University of South Alabama in Mobile, Alabama. I also serve as the Chair of the Board of Trustees of the Southern Association of Colleges and Schools Commission on College's ("SACSCOC" or the "Commission"), and in that capacity I have knowledge of the matters at issue in this action. I am competent to testify to the matters herein, and I make the following statements based upon my personal knowledge and investigation.

2. SACSCOC's current membership consists of 792 colleges and universities in the eleven states in the Southern region of the United States. Of these 792 member institutions, 74 are designated as HBCUs. SACSCOC appreciates the breadth of unique institutions within its membership, which, in addition to HBCUs, includes seminaries, small liberal arts institutions, major research universities, and various types of specialized institutions with individualized missions.

3. The SACSCOC Board of Trustees endorses and affirms that the SACSCOC review process (as laid out in the affidavit of Dr. Michael Hoefler filed in support of SACSCOC's Motion for Summary Judgment on February 7, 2020 at Dkt. 78-8) is applied consistently and equally across the entirety of its membership.

4. Overall, the SACSCOC review process is built upon the concept of "peer review." Thus, representatives from SACSCOC member institutions (who are each "peers" to one another since they are part of a common membership in an accrediting body) review each other for compliance with the *Principles*.

5. Given the diversity of SACSCOC's membership and the multitude of ways that compliance with the *Principles* can be demonstrated by an individual institution, the review process is inherently flexible and depends upon the professional judgment of the reviewers.

6. During the 2009–2019 time period, which includes the time period during

which Bennett was under review and which is at issue in this action, 12 other HBCUs have been placed on sanctions but ultimately removed from sanctions after they demonstrated compliance with the finance-related *Principles* which Bennett challenges here as being discriminatory toward HBCUs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of March 2020.



Dr. G. David Johnson

Exhibit G

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

-----X
BENNETT COLLEGE, :
Plaintiff, : Case No.
v. : 1:19-CV-00883-SDG
THE SOUTHERN ASSOCIATION :
OF COLLEGES AND SCHOOLS :
COMMISSION ON COLLEGES, INC., :
Defendant. :
-----X

Deposition of CHRISTOPHER BROWN, PH.D
January 9, 2020
Atlanta, GA
9:53 a.m.

Job No.: 175003
Pages: 1 - 92
Reported by: Giselle Mitchell-Margerum, RPR, CRI,
CCR

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2 Deposition of CHRISTOPHER BROWN PH.D,
 3 held at the offices of:
 4
 5
 6 KING & SPALDING LLP
 7 1180 Peachtree Street NE
 8 Atlanta, GA
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 10
 11
 12 Pursuant to agreement, before Giselle
 13 Mitchell-Margerum, RPR, CRI, CCR.
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2 A P P E A R A N C E S
 3 ON BEHALF OF PLAINTIFF:
 4 ALSTON & BIRD
 5 GAVIN REINKE, ESQ
 6 KRISTI RAMSAY, ESQ
 7 1201 West Peachtree Street
 8 Atlanta, GA 30309
 9
 10
 11 ON BEHALF OF DEFENDANT:
 12 Law Office of Patrick W. McKee
 13 PATRICK MCKEE
 14 19 Spring Street
 15 Newnan, Georgia 30263
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1 C. BROWN
 2 I would be. No.
 3 Q. Okay. Is there a difference between
 4 verifiable information and verified information?
 5 A. Well, I took Latin, so the root word
 6 would be the same. So the answer would be no.
 7 Q. Okay. What does it mean for financial
 8 information to be material to the reason for the
 9 Board's decision?
 10 A. It would mean that it would need to
 11 speak to undoing the basis for which the original
 12 decisions were made. It would have to be capable
 13 of changing that decision.
 14 Q. And is that the definition that the
 15 Appeals Committee used in its evaluation of
 16 Bennett College?
 17 A. Yes.
 18 Q. Where does that definition come from?
 19 A. All of the definitions come from the
 20 principles in the handbook.
 21 Q. By "principles," you mean principles of
 22 accreditation?
 23 A. Principles of accreditation.
 24 Q. In its evaluation of Bennett College,
 25 did the Appeals Committee evaluate whether the

1 C. BROWN
 2 information Bennett College presented would
 3 actually change the Board's decision?
 4 A. Could you restate that question?
 5 Q. Sure. So, I think you just testified
 6 that "material" means that it has to be capable of
 7 changing the Board's decision. Right?
 8 A. Yes.
 9 Q. Okay. So in its evaluation of Bennett
 10 College, did the Appeals Committee actually make a
 11 determination about whether the information that
 12 Bennett College presented demonstrated compliance
 13 with the principles of accreditation, or not?
 14 A. I'm not sure I'm answering --
 15 understanding your question. The Appeals
 16 Committee looked at the question of whether there
 17 was new and verifiable information. And if there
 18 were new and verifiable information, would that
 19 information be material to changing the original
 20 decision.
 21 And so, I'm not -- the question is a
 22 contrapositive. So I want to answer it correctly,
 23 but I'm not sure exactly what you're asking.
 24 Q. Sure. And I'll try to break it down and
 25 clarify.

1 C. BROWN
 2 A. Yes.
 3 Q. So, the Appeals Committee looked at
 4 information that Bennett College presented in its
 5 appeal, to determine whether that information is
 6 new and verifiable. Correct?
 7 A. That's correct.
 8 Q. Okay. And then, if new and verifiable
 9 information is presented, the next step is, is
 10 that new and verifiable information material to
 11 the Board's decision. Right?
 12 A. Yes.
 13 Q. And I think you said, that means, is it
 14 capable of changing the Board's decision. Is that
 15 right?
 16 A. Yes.
 17 Q. Okay. So, does the Appeals Committee
 18 actually make an assessment about whether the
 19 institution would be in compliance with the
 20 principles of accreditation, if the new
 21 information is considered?
 22 A. No. The Appeals Committee only answers
 23 the one -- the -- they answer one question. "Is
 24 there new and verifiable information that would be
 25 material to changing the situation."

1 C. BROWN
 2 Well, there are two questions. The
 3 first question that we really ask is, "Did SACSCOC
 4 violate its principles?" And then -- that's the
 5 primary question of any appeal. Did SACSCOC
 6 violate its principles. Period.
 7 Now, because Bennett was removed from
 8 membership solely on finances, they were eligible
 9 for a second route of appeal, or second line of
 10 questioning, which, was there new and verifiable
 11 information, since the Board's decision, that
 12 would lead to -- or that could possibly lead to a
 13 different decision.
 14 And then that's where you get "new and
 15 verifiable."
 16 Q. And, I guess that the distinction
 17 between "would lead to a different decision," and
 18 "could possibly lead to a different decision," is
 19 what I'm trying to get at. Because those are two
 20 different things. Right?
 21 A. Well, if you have it, I can read it. I
 22 don't have it in front of me. So, if you're
 23 asking -- if it says "would" or "could," let me
 24 reread the letter that you gave for Exhibit 2.
 25 [Witness perused document]

Exhibit H

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BENNETT COLLEGE,)
)
Plaintiff,)
) CIVIL ACTION FILE
vs.)
) NO: 1:19-CV-00883-SDG
THE SOUTHERN ASSOCIATION)
OF COLLEGES AND SCHOOLS)
COMMISSION ON COLLEGES,)
INC.,)
)
Defendant.)

DEPOSITION OF DR. RAY BELTON
ATLANTA, GEORGIA
TUESDAY, NOVEMBER 12, 2019

REPORTED BY: TANYA L. VERHOVEN-PAGE, CCR-B-1790
JOB NO: 170836

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November 12, 2019
9:59 a.m.

Deposition of
DR. RAY BELTON, held at the offices
of King & Spalding, LLP, 1180 Peachtree
Street, Atlanta, Georgia before
Tanya L. Verhoven-Page, Certified Court
Reporter and Notary Public of the State of
Georgia.

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APPEARANCES OF COUNSEL

On behalf of the Plaintiff:

ALSTON & BIRD
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309
BY: GAVIN REINKE, ESQ.
BY: JAHNISA LOADHOLT, ESQ.

On behalf of the Defendants:
LAW OFFICE OF PATRICK W. MCKEE, LLC
19 Spring Street
Newnan, GA 30263
BY: PATRICK MCKEE, ESQ.

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R. BELTON
ATLANTA, GEORGIA; TUESDAY, NOVEMBER 12, 2019
9:50 A.M.

Thereupon --
DR. RAY BELTON,
called as a witness, having been first duly sworn,
was examined and testified as follows:

EXAMINATION
BY MR. REINKE:
Q Good morning, Dr. Belton. My name is
Gavin Reinke, and I represent Bennett College in this
lawsuit.
A Okay.
Q Could you please state and spell your
full name for the record.
A Yes. My name is Ray Belton. That's
B-e-l-t-o-n.
Q Thank you.
Have you ever had your deposition taken
before?
A I have.
Q How many times?
A I would have to give you an approximate

Page 42

1 R. BELTON
 2 audited financial statements.
 3 Q And you know that based on your
 4 experience?
 5 A Yes. Based on my -- yes -- engagement
 6 with C&R.
 7 Q So based on your participation as a
 8 member of the C&R committee?
 9 A Based on my participation as a member of
 10 the Board and subsequent -- and based on my
 11 participation as a member of C&R.
 12 Q During the Appeals Committee's
 13 deliberations, did you have any conversations with
 14 anyone at SACS about what it means for financial
 15 information to be new or verifiable?
 16 A No, no.
 17 Q Did you have any conversations with other
 18 members of the Appeals Committee about what it means
 19 for financial information to be new and verifiable?
 20 A Prior to?
 21 Q During the deliberations?
 22 A Yes, we discussed that.
 23 Q What did you discuss during the
 24 deliberations about what it means for financial
 25 information to be new and verifiable?

Page 44

1 R. BELTON
 2 Q Okay. Let's take a look back at that
 3 last paragraph. Subsection B on page SACSCOC_002723,
 4 and it refers to new and verifiable financial
 5 information that's material to the Board's adverse
 6 decision, right?
 7 A Yes.
 8 Q And I think you just mentioned that
 9 material component.
 10 As a member of the Appeals Committee, did
 11 you have an understanding of what it means for
 12 financial information to be material to the Board's
 13 adverse decision?
 14 A Yeah, the -- yes, based on my
 15 interpretation, because there was a question of
 16 financial resources, what I interpreted material to
 17 be, whether or not you had responded to that
 18 question, whether you provided information sufficient
 19 and material to affirm that you have the requisite
 20 financial resources to support the programs and
 21 services of the institution.
 22 Q So I just want to be sure that I
 23 understand, and correct me if I'm mischaracterizing
 24 you because I'm not trying to do that.
 25 A I'm not going by definition. I'm just

Page 43

1 R. BELTON
 2 A I think, during the hearing itself, there
 3 was a question about what was verifiable or not.
 4 That was the basis of the appeal.
 5 Q And did the Appeals Committee ultimately
 6 reach a conclusion about whether the information that
 7 Bennett College provided was new and verifiable?
 8 A Yes.
 9 Q What was that conclusion?
 10 A That it was not.
 11 Q And how did the Appeals Committee come to
 12 reach that conclusion?
 13 A I think at the end of the day, I think
 14 there was a -- there was not an audited financial
 15 statement that was presented to the -- to the Appeals
 16 Committee showing evidence of verifiability.
 17 Q Was there anything else that led the
 18 Appeals Committee to conclude that the information
 19 that Bennett College presented was not new and
 20 verifiable?
 21 A I think there was some question about --
 22 there was just a lot of discussion, as I recall, with
 23 regard to the issue of material, whether or not
 24 Bennett offered sufficient evidence of resources and,
 25 as I recall, evidence of sustainability.

Page 45

1 R. BELTON
 2 going by my interpretation.
 3 Q And that's all I'm asking you about,
 4 right?
 5 So is it fair to say that it's your
 6 understanding that, for financial information to be
 7 material to the Board's adverse decision, that it has
 8 to support reversing the Board's decision?
 9 A Well, I thought in terms of new and
 10 verifiable information in this case having to do with
 11 whether or not the institution had the burden to
 12 demonstrate that it has sufficient financial
 13 resources to support the institution, and so my --
 14 what -- I guess what I was being guided by in terms
 15 of material evidence was whether or not they could
 16 demonstrate that they, in fact, had the financial
 17 resources in terms of this new information to, in
 18 effect, support the programs and services of the
 19 institution.
 20 Q And when you say support the programs and
 21 services of the institution, what do you mean by
 22 that?
 23 A Well, I mean, I'm speaking -- to me,
 24 that's in alignment with the role of the institution
 25 to provide for students programs and services that

Exhibit I

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF GEORGIA
 3 ATLANTA DIVISION
 4 CIVIL ACTION NO. 1-19-cv-00883-MHC

5 BENNETT COLLEGE,
 6
 7 PLAINTIFF,
 8
 9 V.
 10 THE SOUTHERN ASSOCIATION OF
 11 COLLEGES AND SCHOOLS
 12 COMMISSION ON COLLEGES,
 13 INC.,
 14 DEFENDANT.

15 Greensboro, North Carolina
 16 Tuesday, September 10, 2019

17 Deposition of LATONYA FLAMER,
 18
 19 a witness herein, called for
 20 examination by counsel for the
 21 Defendant, in the above-entitled action,
 22 pursuant to agreement, the witness being
 23 duly sworn by Mary Lynn Fuller, Court
 24 Reporter and Notary public in and for
 25 the State of North Carolina, taken at
 Bennett College, 900 East Washington
 Street, Greensboro, North Carolina,
 beginning at 10:05 a.m.

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1 INDEX TO EXAMINATIONS AND EXHIBITS
 2

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5 * * *	
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1 APPEARANCES OF COUNSEL
 2

3 On behalf of the Plaintiff:

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 5 Alston & Bird
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 8 Atlanta, GA 30309
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10 On behalf of the Defendant:

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 12 King & Spalding
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 14 Atlanta, GA 30309
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Page 4

1 P R O C E E D I N G S
 2
 3 LATONYA FLAMER,
 4 having been duly sworn,
 5 testified as follows:
 6 DIRECT EXAMINATION

7 BY MS. BECK-KEMP:

8 **Q. Please state your name for the record.**

9 A. Latonya Flamer.

10 **Q. My name is Lohr Beck-Kemp, and I**
 11 **represent The Southern Association of**
 12 **Colleges and Schools Commission on**
 13 **Colleges. And is it okay if I refer to**
 14 **that organization today as SACSCOC or**
 15 **SACS?**

16 A. Yes.

17 **Q. Okay. So before we start, I want to go**
 18 **over a couple of deposition ground rules**
 19 **with you. I think you said earlier that**
 20 **you have not been deposed before; is**
 21 **that correct?**

22 A. Yes.

23 **Q. Okay. So you understand that you've**
 24 **taken an oath to testify truthfully here**
 25 **today, just as though we were in court;**
correct?

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1 comprehensive standard 3.10.1. Do you
 2 see that?
 3 A. Yes.
 4 Q. Do you know what CR2.11.1 and
 5 comprehensive standard 3.10.1 are?
 6 A. Yes.
 7 Q. What are they?
 8 A. They are SACS standards specifically
 9 surrounding the financial standing of
 10 the college.
 11 Q. The minutes also state CR2.11.1 - the
 12 institution has a sound financial base
 13 and demonstrated financial stability to
 14 support the mission of the institution
 15 and the scope of programs and services.
 16 Do you see that?
 17 A. Yes.
 18 Q. Is that your understanding of what that
 19 core requirement states?
 20 A. Yes.
 21 Q. In the second bullet under CR2.11.1
 22 states statement of financial position
 23 of unrestricted net assets exclusive of
 24 plant assets and plant-related debt. Do
 25 you see that?

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1 A. Yes.
 2 Q. Do you know what that refers to?
 3 A. Yes.
 4 Q. What does it refer to?
 5 A. The calculation of the unrestricted net
 6 assets excluding the plant assets and
 7 plant-related debt.
 8 Q. Is that sometimes referred to the
 9 acronym UNAEP?
 10 A. Yes.
 11 Q. What are unrestricted net assets?
 12 MR. REINKE: Objection to
 13 form. You can answer.
 14 A. They are the net assets that can be
 15 used for the operation of the college.
 16 Q. And what are restricted net assets?
 17 MR. REINKE: Same objection.
 18 You can answer.
 19 A. The -- The net assets that can only be
 20 used per the donor, donor restrictions
 21 on funds that were given.
 22 Q. Are there different types of restricted
 23 net assets?
 24 A. Yes.
 25 Q. And what are those different types?

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1 A. There are temporarily restricted net
 2 assets which are only restricted for a
 3 particular period of time or until a
 4 particular objective is achieved, and
 5 then there are permanently restricted
 6 net assets.
 7 Q. And what are permanently restricted net
 8 assets?
 9 MR. REINKE: Objection to
 10 form. You can answer.
 11 A. Permanently restricted net assets are
 12 typically endowments where the actual
 13 gift is restricted in perpetuity.
 14 Q. Isn't it fair to say that UNAEP is a
 15 way of calculating how much money the
 16 college has to operate on a daily basis?
 17 MR. REINKE: Objection to
 18 form. You can answer.
 19 A. Yes.
 20 Q. So from these board minutes, it looks
 21 like Mr. Summers discussed UNAEP with
 22 the board as an element of financial
 23 stability in September 2017; correct?
 24 MR. REINKE: Objection to
 25 form. You can answer.

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1 A. Yes.
 2 Q. So the college knew at this point in
 3 September of 2017 that it needed to have
 4 positive UNAEP; right?
 5 MR. REINKE: Objection to
 6 form. You can answer.
 7 A. Yes.
 8 MS. BECK-KEMP: I'm marking
 9 this Defendant's Exhibit No. 3.
 10 (EXHIBIT NO. 3 WAS MARKED.)
 11 Q. Do you know what this document is?
 12 A. According to the title, it's a board of
 13 trustees meeting via teleconference
 14 call.
 15 Q. And what date is on it?
 16 A. Monday, March the 5th, 2018.
 17 Q. If you turn to the page that has 119 on
 18 it, there's a heading that says
 19 president's report, and under that it
 20 says President Phyllis Worthy Dawkins
 21 presented the fundraising report. She
 22 summarized that Bennett needs
 23 \$4.2-million by June 30th, 2018. Do you
 24 see that?
 25 A. Yes.

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1 as current liabilities and not as
 2 long-term liabilities. Do you see that?
 3 A. Yes.
 4 Q. Do you agree that normally all
 5 liabilities due on demand are classified
 6 as current liabilities and not as
 7 long-term liabilities?
 8 MR. REINKE: Objection. You
 9 can answer.
 10 A. Yes.
 11 Q. You mentioned that this -- the special
 12 committee is from -- was from fall of
 13 2018, correct, that this --
 14 A. Yes.
 15 Q. -- report comes from?
 16 The college maximized its line
 17 of credit in fall of 2018; right?
 18 A. Yes. Uh-huh.
 19 Q. All right. Let's turn to the next
 20 page. And there's a chart, and just --
 21 let's look at the paragraph that's right
 22 under the chart. It says, about halfway
 23 through that paragraph, the college has
 24 included in its calculation of assets
 25 available for operations certain

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1 deposits held by the bond trustee under
 2 the terms of the bond covenants.
 3 The special committee informed the
 4 institution in this report that it was
 5 not proper to include the reserves held
 6 by the bond trustees in Bennett's assets
 7 in calculation of UNAEP; right?
 8 MR. REINKE: Objection to
 9 form. You can answer.
 10 A. Not based on my reading of the
 11 paragraph.
 12 Q. The bond reserve funds that this refers
 13 to, they could not be used for general
 14 operations of the institution; right?
 15 A. No. I'm sorry, but which way am I
 16 answering it? They --
 17 THE COURT REPORTER: You
 18 said --
 19 A. -- they --
 20 THE COURT REPORTER: -- I'm
 21 sorry what?
 22 THE WITNESS: I'm sorry. I
 23 said, no, but which way am I answering
 24 that question.
 25 A. They can be used for general operations

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1 relative to the properties securing the
 2 bonds.
 3 Q. So they could be used for expenses
 4 related to the property securing the
 5 bonds --
 6 A. Yes.
 7 Q. -- right?
 8 A. Uh-huh.
 9 Q. But they couldn't be used for something
 10 unrelated to those properties, such as
 11 payroll, for example?
 12 A. Correct.
 13 MS. BECK-KEMP: I'm marking
 14 this Defendant's Exhibit 7.
 15 (EXHIBIT NO. 7 WAS MARKED.)
 16 Q. Do you know what this document is?
 17 A. I'm reading it as summary minute --
 18 minutes from the board of trustees
 19 meeting.
 20 Q. What date is on it?
 21 A. Saturday, November the 10th, 2018.
 22 Q. If you look under the heading roll
 23 call, it says, staff present included,
 24 and your name is listed there. Do you
 25 see that?

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1 A. Yes.
 2 Q. Do you recall being present at this
 3 meeting?
 4 A. Yes.
 5 Q. What do you recall about this meeting?
 6 A. Just that it was -- it was our meeting
 7 where we brought in two consultants to
 8 speak about the SACS on-site committee
 9 report. It was the board of trustees
 10 meeting.
 11 Q. And what consultants are you referring
 12 to?
 13 A. Dr. Joseph Silver and Mr. Gerald
 14 Hector.
 15 Q. Who is Dr. Joseph Silver?
 16 A. He is a consultant, specifically a SACS
 17 consultant, that has helped us with our
 18 reports in the past, reviewing,
 19 providing suggestions.
 20 Q. How long has Dr. Silver acted as a
 21 consultant for Bennett College?
 22 A. I don't recall.
 23 Q. Do you know if Dr. Silver is still
 24 presently acting as a consultant for
 25 Bennett College?

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1 A. My understanding is no.

2 Q. Who is Mr. Gerald Hector?

3 A. He is an individual who has assisted in

4 the past with just -- with reading our

5 reports and providing comments.

6 Q. And do you know how long Mr. Hector

7 provided that assistance to Bennett

8 College?

9 A. No.

10 Q. Do you know if Mr. Hector is presently

11 providing assistance to Bennett College?

12 A. No.

13 Q. You don't know?

14 A. I don't know.

15 Q. All right. If you turn to the next

16 page, the fourth paragraph down that

17 starts with Gerald Hector said he was

18 offering a perspective from 50,000 feet.

19 Do you see that?

20 A. Yes.

21 Q. Okay. So a couple sentences in it says

22 he, and it appears that it's referring

23 to Gerald Hector. Suspected that the

24 challenge will be that the UNAEP remains

25 negative. Do you see that?

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1 A. Yes.

2 Q. Do you recall Mr. Hector flagging this

3 challenge related to UNAEP for the

4 board?

5 A. No.

6 Q. At this time, did you know -- or at

7 this time was it your understanding that

8 UNAEP was a challenge for Bennett

9 College?

10 MR. REINKE: Objection to

11 form. You can answer.

12 A. Yes, but more so from the standpoint

13 that everything that happens financially

14 impacts UNAEP.

15 MS. BECK-KEMP: Okay. I'm

16 marking this Defendant's Exhibit No. 8.

17 (EXHIBIT NO. 8 WAS MARKED.)

18 Q. Do you recognize this document? And

19 feel free to flip through it.

20 A. Yes.

21 Q. What is this document?

22 A. It appears to be Bennett's response to

23 the on-site special committee's report.

24 Q. And what is the date on this response?

25 A. November the 15th, 2018.

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1 Q. Did you help prepare any portion of

2 this response?

3 (INTERRUPTION.)

4 MR. REINKE: Let's go off the

5 record for a second.

6 (RECESS.)

7 THE COURT REPORTER: All

8 right. Back on at 11:49. You can

9 continue.

10 MS. BECK-KEMP: Would you mind

11 reading back my last question?

12 THE COURT REPORTER: It'll

13 take me just a minute to --

14 MS. BECK-KEMP: Okay.

15 That's --

16 THE COURT REPORTER: -- to

17 find it --

18 MS. BECK-KEMP: -- fine. I

19 think I had a --

20 THE COURT REPORTER: -- off

21 the phone.

22 MS. BECK-KEMP: -- question

23 pending.

24 (THE REQUESTED PORTION OF THE RECORD

25 WAS READ BACK AS REQUESTED.)

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1 Q. Okay. You can answer.

2 A. Yes.

3 Q. And what portion -- portion or portions

4 did you help prepare?

5 A. On page SACSCOC_001762, I would have

6 prepared the chart. On SACSCOC_001767,

7 and I would have prepared figure 3.0.

8 On SACSCOC_001772, I believe I prepared

9 figure 4.0. SACSCOC_001779 figure 5.0,

10 figure 6.0. SACSCOC_001782, table 8.0

11 again is the -- is the operating

12 budget --

13 THE COURT REPORTER: I'm

14 sorry, table what?

15 A. Table 8.0 is the operating budget that

16 I assisted in preparing.

17 SACSCOC_001785, which is table 9.0, the

18 three-year operating budget projection,

19 I would have assisted in preparation of

20 that. And, again, I did not write the

21 report, but I would have assisted in

22 reviewing and editing the report.

23 Q. Okay. So you would have -- you would

24 have assisted in reviewing and editing

25 this report?