



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 2, 2009

Honorable Steve Beshear
Governor of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601

Dear Governor Beshear:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its review of Kentucky's performance under the Partnership Agreement between the Commonwealth of Kentucky and the U.S. Department of Education, Office for Civil Rights (Agreement). OCR and Kentucky entered into the Agreement on January 24, 2000 and OCR agreed in November 2005 to amend the agreement to permit construction of a new dormitory. The Agreement included activities to be carried out by the Commonwealth of Kentucky and its eight public universities to address the requirements of Title VI of the Civil Rights Act of 1964, as set forth by the U.S. Supreme Court in *United States v. Fordice*, that Kentucky eliminate the vestiges of the formerly *de jure* segregated system of higher education.

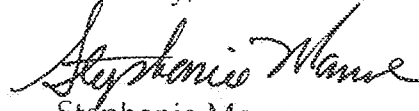
Enclosed please find the Final Report on the Commonwealth of Kentucky's Implementation of the Partnership Agreement between the Commonwealth of Kentucky and the U.S. Department of Education, Office for Civil Rights (Report), a draft of which we shared with you in October 2008 for your review and comment. In addition to the historical and legal foundation of the Agreement, the Report summarizes OCR's monitoring of the commitments, details Kentucky's accomplishments in meeting each commitment and describes OCR's assessment of these efforts. Finally, the Report states OCR's findings and conclusion that the Commonwealth is in compliance with Title VI and its implementing regulation with respect to the issues addressed in the Agreement.

Thank you for your cooperation and the cooperation shown to OCR by Kentucky staff and university officials. I would like to take this opportunity to thank Dr. Richard A. Crofts, Interim President for Kentucky's Council on Postsecondary Education (CPE), the

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members and staff of CPE, and the members of CPE's Committee on Equal Opportunities. In addition, we are particularly grateful for the assistance provided by Sherron Jackson, CPE's Assistant Vice President for Finance and Equal Opportunity and Dennis Taulbee, CPE's General Counsel.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Monroe".

Stephanie Monroe
Assistant Secretary
Office for Civil Rights

Enclosure

**Final Report on the Commonwealth of Kentucky's Implementation of the
Partnership Agreement between the Commonwealth of Kentucky and the U. S.
Department of Education, Office for Civil Rights
January 2, 2009**

On January 24, 2000, the U.S. Department of Education, Office for Civil Rights (OCR) entered into a partnership agreement (the Agreement) with the Commonwealth of Kentucky. The Agreement addressed the Commonwealth's affirmative duty under Title VI of the Civil Rights Act of 1964 (Title VI)¹ and *U.S. v. Fordice*² to dismantle vestiges of its formerly *de jure* racially segregated higher education system. The Agreement was entered into pursuant to OCR's enforcement authority under Title VI and the implementing regulation.³

OCR has monitored Kentucky's implementation of the commitments it made in the partnership Agreement. Through its monitoring activities, which will be detailed more fully below, OCR has determined that the Commonwealth has met its commitments under the Agreement and is closing its monitoring of the Agreement as of the date of this report.

In this report, OCR sets forth the basis for its determination and highlights Kentucky's accomplishments in performing its obligations to meet its commitments under the Agreement. In addition to the historical and legal background of the Agreement, this report summarizes OCR's monitoring of the Agreement's commitments, details the Commonwealth's accomplishments in meeting each commitment and sets forth OCR's findings and conclusions.

I. History of OCR's Relationship with the Commonwealth Regarding Higher Education Desegregation Issues

The Commonwealth's system of public higher education includes eight public universities:

- Eastern Kentucky University
- Kentucky State University (the state's one HBCU)
- Morehead State University
- Murray State University
- Northern Kentucky University
- University of Kentucky
- University of Louisville
- Western Kentucky University

¹ 42 U.S.C. 2000 *et seq.*

² 505 U.S. 717 (1992).

³ 34 C.F.R. Part 100

The Kentucky Council on Postsecondary Education (CPE) is the statewide coordinating agency for higher education. CPE submits budget proposals to the Governor for the development of the Commonwealth's budget, who, in turn, submits a state budget to the General Assembly, which passes a budget every two years. The Committee on Equal Opportunities (CEO), a committee within CPE, oversees the Commonwealth's desegregation and equal opportunities plans for postsecondary education.

In 1981, the Office for Civil Rights notified the Commonwealth that it was operating a racially segregated system of higher education in violation of Title VI of the Civil Rights Act of 1964. Kentucky developed a comprehensive five-year plan (the Plan) designed to provide the remedial activities necessary to meet the mandates of Title VI for public institutions of higher education in Kentucky. The Plan included a wide range of affirmative measures and activities designed to eliminate past discrimination in three areas of higher education, as described in the Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education issued by OCR in 1978. Those areas were:

- Disestablishment of the dual system and enhancement of Kentucky's historically black university, Kentucky State University (KSU).
- Desegregation of student enrollment in three areas – recruitment, retention and graduation.
- Desegregation of faculty, administrative staff, nonacademic personnel and governing boards.

In 1983, OCR accepted the Commonwealth's desegregation plan. Throughout the five years of the Plan, Kentucky submitted yearly progress reports to OCR detailing the efforts to achieve the goals outlined in the Plan. In 1987, the Commonwealth submitted a final report to OCR describing the accomplishments achieved under the Plan.

In January of 1989, OCR released to the public for comment a draft copy of its factual report, summarizing the efforts of the Commonwealth to implement the Plan. In December 1990, OCR incorporated the comments and additional explanatory statements offered by Kentucky. Ultimately, a final version of the factual report was not issued and Kentucky was not advised as to its status under the Plan.

II. Legal Context

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin in programs or activities that receive Federal financial assistance. Title VI states: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Thus, programs and activities that receive Federal financial assistance from the United States Department of Education (the Department) are covered by Title VI and its

implementing regulations, 34 C.F.R. Part 100, and they are enforced by the Department's Office for Civil Rights.

When a state has operated a racially dual system of higher education, the Title VI regulations require that the state take "affirmative action to overcome the effects of prior discrimination." 34 C.F.R. §100.3(b)(6)(i). When OCR has accepted commitments to take remedial action, submitted by a state or other institution, OCR will gather information through monitoring to determine whether the commitments have been implemented consistent with the terms of the settlement agreement.

United States v. Fordice

In *United States v. Fordice*, the Supreme Court held that, under Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment, race neutral policies alone are not sufficient to determine that a state has effectively discharged its affirmative obligation to dismantle a formerly *de jure* segregated system of higher education. According to the standards announced by the Court, "[I]f policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound education practices." *Fordice*, 505 U.S. 717, 729 (1992).

The Court urged an examination of "a wide range of factors to determine whether [a] state has perpetuated its formerly *de jure* segregation in any facet of its institutional system." *Fordice*, 505 U.S. at 728. As identified by the Court, a few examples of the wide range of possible factors include, but are not limited to: admissions standards, program duplication, institutional mission assignments and other policies rooted in the prior segregated system that contribute to the continued racial identifiability of previously segregated institutions. The Court held:

If the State perpetuates policies and practices traceable to its prior system that continue to have segregative effects – whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system – and such policies are without sound educational justification and can be practicably eliminated, the State has not satisfied its burden of proving that it has dismantled its prior system. [505 U.S. at 729.]

Responding to inquiries concerning the effect of *Fordice*, on January 31, 1994, OCR published a Notice in the *Federal Register* outlining the procedures and analysis that the agency planned to follow in future reviews of states with a history of *de jure* segregated systems of higher education. 59 Fed. Reg. 4271 (1994).

The Notice stated that OCR planned to apply the *Fordice* standard to all pending Title VI evaluations of statewide higher education systems with OCR-accepted desegregation plans that had expired. Specifically, the Notice explained that OCR planned to examine a wide range of factors to ensure that the vestiges of segregation have been eliminated.

The comprehensive array of factors that OCR would consider included those addressed in *Fordice* and those reflected in the criteria for acceptable desegregation plans specified in the Department's *Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education*, published in the *Federal Register* on February 12, 1978, (43 Fed. Reg. 6658). 59 Fed. Reg. 4272.

Additionally, OCR reaffirmed in the Notice its position that States may not place an unfair burden upon African American students and faculty in the desegregation process and that State systems of higher education may be required to strengthen and enhance historically black institutions. Further, OCR announced that it planned to "strictly scrutinize state proposals to close or merge traditionally or historically black institutions and any other activities that might impose undue burdens on black students, faculty, or administrators or diminish the unique roles of those institutions." 59 Fed. Reg. 4272.

III. Summary of Process after OCR's *Fordice* Notice

In January 1994, OCR sent to then-Governor of Kentucky Brereton Chandler Jones a letter informing him that the Supreme Court's decision in *Fordice* required a reevaluation of state higher education systems' desegregation efforts. The letter included an advance copy of OCR's notice to be published in the *Federal Register* on January 31, 1994, announcing that the agency would apply the *Fordice* decision to all pending evaluations of statewide higher education systems with expired desegregation plans. Kentucky was one of the remaining states.

After the original 1983 plan expired, Kentucky continued its efforts to eliminate the vestiges of its formerly dual system of higher education. The Commonwealth developed a second plan, entitled *The Kentucky Plan for Equal Opportunities in Higher Education*, which contained the identical actions, goals, and objectives as the original OCR-negotiated plan. The duration of this plan was from 1990 to 1997. Following the expiration of this plan, the Commonwealth adopted *The Kentucky Plan 1997-2002*. This plan had three system-wide objectives:

- Increase African American student enrollment;
- Increase the number of African Americans employed at all levels at all institutions; and
- Continued enhancement of KSU.

In February 1999, Assistant Secretary for Civil Rights, Norma Cantú advised then-Governor Paul E. Patton that OCR would be examining Kentucky's formerly segregated system of higher education in light of the *Fordice* decision and OCR's January 1994 *Federal Register* Notice. That letter invited Kentucky's comments concerning a partnership method of conducting this analysis. In June 1999, after a series of preliminary discussions between OCR, CPE and CEO, OCR and the Commonwealth agreed to pursue a collaborative approach to address concerns regarding the status of African Americans in Kentucky's public universities.

The parties reviewed information from all institutions relating to access, retention, campus climate, faculty and physical plant. OCR also joined CEO on site visits to several institutions, which included interviews with faculty, administrators and students, as well as inspections of physical facilities.

In June 1999, OCR advised Kentucky that there were three major areas that needed to be addressed in the Kentucky system:

- Continued enhancement of KSU;
- Initiatives at traditionally white institutions in the areas of improving campus climate; and
- Recruitment and retention of African American students throughout the state.

During the months that followed, OCR and CPE drafted an agreement to address the areas identified by OCR. On January 24, 2000, the parties executed the Agreement. The Agreement's Commitments are organized into two broad categories: 1) strategies to enhance KSU; and 2) strategies to enhance the initiatives at traditionally white universities in the areas of campus climate, student recruitment and student retention.

IV. OCR's Monitoring of the Commonwealth's Completion of Agreement Commitments

OCR monitored the Commonwealth's performance of its commitments through review of written reports submitted according to the schedule provided by the Agreement⁴, on-site visits by OCR staff to each public university and through numerous communications between OCR staff and Commonwealth officials.

A summary of OCR's monitoring actions, in cooperation with the Commonwealth, follows:

- OCR and representatives of the Commonwealth conduct campus visits throughout 2000.
- August 18, 2000 – a scheduled comprehensive monitoring report addressing several aspects of the Agreement, including physical plant enhancement at KSU, appointments to KSU's Board of Regents and undergraduate recruitment and retention strategies at the traditionally white institutions.
- June 21, 2001 – a scheduled comprehensive monitoring report addressing several aspects of the Agreement, including an analysis of the Commonwealth's post-secondary education funding model and its impact on KSU and strategies to improve the climate at the traditionally white institutions.

⁴ OCR also reviewed a Report by the Civil Rights Project, Building on Success Educational Diversity and Equity in Kentucky Higher Education Choices Before The Commonwealth, (September 16, 2008). Commissioned by Kentucky's Council on Postsecondary Education, the report studied the Commonwealth's past progress and future challenges and made recommendations for action on issues of access, equity and diversity at the Commonwealth level and at the higher education institutions.

- January 31, 2002 – a scheduled comprehensive monitoring report addressing several aspects of the Agreement including strategies to enhance KSU’s teacher education program and efforts to recruit and retain African American faculty, administrators and staff.
- March 5, 2003 – the final scheduled Commonwealth monitoring report.
- October 8, 2003 – a report detailing a summer transition program for incoming freshmen at the University of Louisville, pursuant to OCR’s September 15, 2003, request.
- January 23, 2004 – a report addressing KSU’s teacher preparation program, the state funding process for KSU and funding recommendations to the General Assembly for physical plant enhancements at KSU. This report was in response to OCR’s December 18, 2003, request.
- February 5, 2004 – a report addressing KSU student performance on the teacher certification test, provided in response to OCR’s request of the same date.
- February 11 and 18, 2004 – reports detailing student enrollment by race at all public universities, provided in response to OCR’s February 5, 2004, request.
- February 28, 2004 – a report detailing a student academic assistance program at the University of Louisville, provided in response to OCR’s February 5, 2004, request.
- May 19, 2004 – an additional report addressing KSU student performance on the teacher certification test, in response to OCR’s February 5, 2004, request.
- January 10, 2005 – a report submitted by the Commonwealth providing updated information on undergraduate enrollment, graduate and professional school enrollment, employment statistics and plans for physical plant enhancements at KSU and KSU’s program.
- March 28, 2005 – a report submitted by the Commonwealth to apprise OCR of the state’s budget.
- April 28, 2005 – a letter from the Commonwealth informing OCR that a budget had been approved. The letter explained that the budget allocated adequate funds to renovate the dormitory at KSU and complete other capital improvements at KSU required by the Agreement.
- May 31 and June 6, 2005 - written requests by the Commonwealth, on behalf of KSU, to amend the Agreement. The proposed amendment would provide KSU the option to either renovate the dormitory, as originally required by the Agreement, or to build a new dormitory with funds available through the new state budget.
- June 3, 2005 – OCR and the Commonwealth discussion about amending the Agreement.
- August 4, 2005 – OCR and the Commonwealth discussion about the amending the Agreement.
- August 11, 2005 – formal letter from Commonwealth requesting the Amendment.
- October 19, 2005 – OCR submits draft version of the amendment to the Commonwealth.

- October 31, 2005 – the Commonwealth submits revised draft of the amendment.
- On November 2, 2005, OCR, the Commonwealth and KSU execute the amendment to the Agreement permitting the institution the flexibility to either renovate the dormitory or build a new facility, based upon the results of a feasibility study. In December 2005, the Commonwealth informed OCR that the institution chose to build a new facility.
- November 16, 2005 – OCR on-site inspection of physical plant enhancements at KSU.
- December 13, 2005 - the Commonwealth submitted a report concerning the progress on completing KSU's physical plant renovations and enhancement to the institution's teacher education program.
- March 31, 2006 – an update from the Commonwealth on the progress of capital projects at the KSU.
- August 14, 2006 – Commonwealth reports projected groundbreaking for new dormitory at KSU.
- October 14, 2006 – Commonwealth reported that the groundbreaking for the new dormitory at KSU took place on October 6, 2006.
- December 13, 2007 – a report from the Commonwealth showing substantial completion of the new dormitory.
- August/ September, 2008 - reports from the Commonwealth updating information on several aspects of the Agreement.

V. OCR Findings: Completion of Commitments under the Agreement

OCR reviewed the Commonwealth's compliance with each commitment of the Agreement and made the following findings.

Commitment A.2.a.

Commitment: By December 31, 1999, CPE and the University will develop a plan, with specific timeframes, for the renovation of Carver Hall, Hathaway Hall, and Young Hall, which are estimated to cost, in total, \$12.5 million. CPE will request that sufficient funds are authorized and these renovations will be under construction by December 31, 2001.

Carver Hall – Carver Hall is an academic building housing the Office of the Dean of the College of Arts, Social Sciences and Interdisciplinary Studies and the Office of the Dean of the College of Mathematics, Science, Technology and Health. Carver Hall also houses the Division of Mathematics and Science, which offers programs in Allied Health, Biology, Chemistry, Mathematics and Physics. Carver Hall houses the Whitney Young School of Honors and Liberal Studies, which offers KSU's honor program, Liberal Studies program and Pre-Law program.

The Commonwealth's General Assembly approved the sale of \$5,000,000 in state bonds in the 2000-2002 biennial budget to renovate Carver Hall. The Commonwealth assumed

responsibility for servicing the debt on these bonds. By 2005, the renovations, which included a new roof, the installation of new windows in Carver Annex and a new heating, ventilation, and air conditioning (HVAC) system for the entire facility, were completed. As part of its submission, the Commonwealth provided a certificate of occupancy to OCR as well as pictures of the completed project.

Hathaway Hall – Hathaway Hall is an academic building, housing the School of Education; the Division of Behavioral and Social Sciences (offering programs in History, Political Science, Psychology, Sociology and African American Studies); the Division of Integrative Studies, the Division of Language, Literature and Philosophy (offering programs in English, Philosophy and Modern Foreign Languages); and the Division of Computer and Technical Sciences.

The Commonwealth's General Assembly approved the sale of \$3,800,000 in state bonds in the 2000-2002 biennial budget to renovate Hathaway Hall. As with the Carver Hall financing, the Commonwealth serviced the debt on these bonds. The renovation plan called for the installation of a new HVAC system and new windows throughout the building. CPE and the University determined that despite the renovations, the building required a complete interior and exterior renovation to continue functioning as KSU's major academic building. The additional renovations repaired the building facade, remodeled all interior spaces (including faculty offices, labs and classrooms), and turned unused space into offices. CPE submitted a budget request to the General Assembly for the second phase of the Hathaway Hall renovation for the 2002-2004 biennial budget; however, the legislature did not pass a budget until April 2005. This budget included \$7,400,000 for this second phase of the renovations. The legislature also allocated \$4,900,000 for the Hathaway Hall renovations in the 2006-2008 budget. The renovations to Hathaway Hall were completed in 2008 and the total project funded by the Commonwealth cost \$16,100,000. As part of its submission, the Commonwealth provided a certificate of occupancy to OCR as well as pictures of the completed project.

Young Hall – Young Hall was a male-only dormitory. The Commonwealth's practice requires that universities provide the funding for the construction or renovation for "auxiliary enterprises", such as dining and housing facilities, like Young Hall. Typically, public institutions fund such projects through the issuance of bonds, provided the state's General Assembly grants the institution the authority to issue bonds. The Commonwealth's General Assembly granted KSU the authority to issue bonds totaling \$3,700,000 to renovate Young Hall under the 2000-2002 biennial budget. In July 2000, the administration of KSU requested that the bond issuance as well as the Young Hall renovations be postponed until the 2002-2004 biennial budget.

As an interim measure, CPE assessed the condition of the dormitory by employing an architectural firm to determine the feasibility of continuing to use Young Hall as a student residence. The firm concluded that Young Hall was in good condition and, with a regular program of preventative building maintenance, could continue as a residence for students. CPE and KSU continued to monitor the building's condition.

Due to statewide budget issues noted above, the Commonwealth's General Assembly failed to adopt a 2002-2004 budget. In 2003, a comprehensive report of KSU, commissioned by the institution and CPE in response to the institutional management issues, recommended that CPE should partner with KSU to fund the renovation of Young Hall dormitory. All subsequent budget proposals submitted by CPE to the General Assembly contemplated that CPE would service a portion of the bond debt for Young Hall's renovation. In addition, subsequent budget proposals significantly increased the amount for the renovations.

In April 2005, the state's General Assembly passed a budget for the 2004-2006 biennium, providing for \$10,678,000 for the renovation of Young Hall. The Commonwealth agreed to provide \$5,735,000 through the sale of bonds; KSU would contribute \$4,547,000 in bond sales and \$396,000 in cash.

During the development and passage of the state budget, the President of KSU requested that the institution have the flexibility to either renovate Young Hall or replace it with a new dormitory with the allocated funds. KSU's President explained that a new dormitory, designed in the current style of student housing with state-of-the-art technology, could be a greater enhancement to KSU than a renovated Young Hall.

CPE understood that the President's request would constitute a modification to the Agreement with OCR. Thus, CPE requested that the parties amend the Agreement to permit KSU the flexibility to either renovate Young Hall or build a new dormitory. In November 2005, OCR and CPE amended the Agreement to permit KSU to either renovate Young Hall or build a new dormitory by requiring the University to commission a feasibility study to evaluate the options.

By the end of November 2005, the feasibility study was complete, recommending the construction of new dormitory. KSU decided to move forward with the construction of a new male-only dormitory, the Whitney M. Young Hall, which opened for occupancy for the Fall 2008 semester. As part of its submission, the Commonwealth provided a certificate of occupancy to OCR as well as pictures of the completed project.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.2.a.

Commitment A.2.b.

Commitment: By December 31, 1999, the University will develop and begin to implement a program of communication and diversity training for all staff to address the continuing division between minority and non-minority faculty and staff. By February 15, 2000, CPE and KSU will provide OCR with a copy of its plan detailing the training activities that are designed to address the continuing division between minority and non-minority faculty and staff at the University. This plan must include the type of training, the schedule of sessions and the source of the training. This initial plan will have a period of one calendar year at which time

CPE and the University will evaluate the effectiveness of the training sessions and, based on this evaluation, draft a new training plan for the next calendar year. CPE will assist the University in identifying appropriate resources so that the first training session is completed by June 30, 2000.

In May 1999, OCR conducted a fact-gathering site visit to KSU and participated in a number of discussions with components of the campus community. During discussions with faculty and staff, OCR identified issues between minority and non-minority members. OCR communicated these concerns to the University's administration before concluding the visit. During development of the Agreement, OCR included the instant commitment to address the problems OCR found on KSU's campus. The University's administration addressed the issue of divisions between minority and non-minority faculty and staff. In the summer of 1999, the University's President appointed a Liaison for Race Relations (the Liaison). The Liaison was charged with assessing training needs for all components of the University's community, including faculty and staff, and developing and implementing a Diversity Management and Awareness Program (DMAP). After execution of the Agreement, the University used its diversity program to address the instant commitment.

In November and December 1999, the Liaison held a series of training sessions for faculty and staff focusing on the importance of diversity for the University community and providing an opportunity for participants to discuss their concerns about the campus. The Liaison held four additional sessions in February 2000 and two sessions during the summer 2000 semester. Participation in all the sessions was voluntary with the Liaison soliciting participants through e-mail postings and fliers located throughout the campus.

The Liaison evaluated the program before the fall 2000 semester and concluded that to fully address the needs of the campus community, the University would need to involve outside presenters for the training sessions. During the fall 2000 semester, the University held six training sessions, including one conducted by an outside group of diversity trainers. In November 2000, OCR visited the campus as part of its monitoring the implementation of the Agreement and found broad interest and participation in the DMAP as well as an improving environment among faculty and staff. During the fall 2001 semester, the University held fourteen training sessions for faculty and staff, twelve of which were conducted by several non-University training groups.

The Liaison continued the diversity program throughout the 2001-2002 academic year. In March 2002, the Liaison held two diversity workshops for faculty and staff. In August 2002, the University hosted a diversity discussion workshop for faculty and staff conducted by an outside facilitator. After the 2002-2003 academic term, the University discontinued the DMAP and the Liaison position was no longer operational, although discussions, events, and other programs emphasizing diversity remain on-going features of the KSU campus.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.2.b.

Commitment A.2.c.

Commitment: CPE will ensure that any change in the funding formula will not disadvantage KSU, and will take into account the institution's status as the Commonwealth's historically black university and its unique mission as the Commonwealth's small, liberal arts university. KSU and CPE will periodically review the impact of the benchmark funding process to ensure continued enhancement of KSU. CPE will keep OCR fully apprised, on an on-going basis through the life of this Agreement, concerning funding proposals for KSU.

Prior to 2000, the Commonwealth determined institutional funding levels based on a comparison between its public institutions and credit hours in specific disciplines. To address difficulties with this system, the Commonwealth implemented a benchmark-funding model for its public postsecondary institutions beginning with the 2000-2002 biennium. Using a statistical model, the benchmark-funding model compared each Commonwealth public institution to national "benchmark" institutions (i.e., institutions similar in size, mission and academic programs) to assist in determining funding levels. In the case of KSU, the benchmark institutions included other HBCUs and other small liberal arts institutions.

The model required that an institution's funding, comprised of tuition, student fees and direct state funding for operations, place it at approximately the midpoint among its benchmark institutions. State funding for capital projects would not affect the amount of state operational funding.

In 2001, CPE conducted a review of the Commonwealth's benchmark funding process for its postsecondary institutions. The review considered the impact of the benchmark funding process on KSU. CPE concluded that KSU was funded at a higher rate per full time equivalent (FTE) student than any of the state's other comprehensive universities (i.e., Murray State University, Morehead State University, Northern Kentucky University, Eastern Kentucky University and Western Kentucky University). CPE's 2001 funding review also found that KSU was the best-funded institution, per FTE student, among the 50 peer institutions identified for the University. Of the 19 institutions selected from the peer institutions as benchmark institutions, KSU ranked first for public funds per FTE student. As a part of this review, CPE also analyzed other scenarios, based on specific characteristics of KSU, to determine whether the institution was adequately funded. CPE determined that KSU was:

- The second highest funded institution, per FTE student, among the 37 public HBCUs, across the country, that enrolled between 1,000 and 3,000 students;
- The highest funded institution, per FTE student, among the fifteen 1890 public land-grant institutions;
- The seventh highest funded institution, per FTE student, among the 91 public institutions, across the country, that enrolled between 1,000 and 3,000 students; and

- The fifth highest funded institution, per FTE student, among the 52 public institutions, across the country, that enroll 1,000 to 3,000 students and confer a minimum of 30 percent liberal arts degrees.

In 2002, CPE conducted another review of the Commonwealth's benchmark-funding process. CPE found again that KSU was funded at a higher rate per full time student equivalent than any of the state's other comprehensive universities. Nonetheless, CEO requested a complete assessment of KSU that included, among other things, an analysis of the funding available to KSU under CPE's budget model. An independent consulting firm conducted this assessment, and a report was completed in the spring of 2003. Included among its conclusions was that KSU was disadvantaged by its small size in the Commonwealth's benchmark-funding process, because KSU's funding was based on benchmark institutions with mostly larger enrollments. In addition, the report concluded there was not sufficient recognition in the benchmark-funding formula that KSU's fixed expenses, such as overhead and basic infrastructure costs, were higher per student because they were being spread over a much smaller base of students.

Following its review of the independent assessment, CPE adopted a revised set of benchmark institutions for KSU for the 2004-2006 budget cycle. The net effect of this change in benchmark institutions for KSU was to increase the number of HBCUs and the number of smaller institutions that were included in the KSU funding computation. For the 2006-2008 budget cycle, the CPE added a "small school adjustment" to its budget request for KSU, in consideration of the consultants' conclusion.

The Commonwealth discontinued use of the benchmark-funding process beginning with the 2008-2010 biennium budget, opting instead for a state-wide "base plus" funding policy designed to meet the legislative mandate of expanding student enrollments. The increased funding level for KSU that was created with the small school adjustment was maintained in KSU's base appropriation under the "base plus" policy, which is adjusted for inflation, changes in maintenance and operations for new buildings as well as building upkeep. KSU has received additional funds to enhance statewide policy initiatives such as developmental education, increase degree production, endowment match, and other statewide priorities.

OCR's review of the actual state funding that has been provided for KSU, as compared with that provided to all other public universities in Kentucky, confirmed that KSU has received more total public funding per FTE student from 1999-00 to 2007-08 than any of the Commonwealth's five other comprehensive universities. Likewise, a comparison of total expenditures per FTE student between KSU and Kentucky's other public universities during the period 1999-00 to 2007-08 shows that KSU's total expenditures per FTE student were consistently higher than those of all of the other comprehensive universities. CPE officials affirmed that these funding patterns resulted from careful attention to the impact of the Commonwealth's budget processes on KSU's funding levels.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.2.c.

Commitment A.2.d.

Commitment: KSU, the University of Kentucky, the University of Louisville, and CPE will work collaboratively to enhance and strengthen KSU's education program. Specifically, KSU will work to substantially narrow the gap between the performance rate of its students on the PRAXIS II as compared to the Kentucky state-wide performance average. If, in any given year the performance rate of KSU's students on the PRAXIS II declines, KSU will immediately evaluate the education program to identify areas that need improvement and will immediately implement strategies to increase its PRAXIS II performance rate.

The PRAXIS II tests measure knowledge of specific subjects that K-12 educators will teach, as well as general and subject-specific teaching skills and knowledge. Like many states, Kentucky requires individuals entering the teaching profession to take these tests as part of the teacher licensing and certification process. A number of professional associations and organizations require these tests as one criterion for professional licensing decisions. All postsecondary institutions in Kentucky that offer accredited teacher education programs are provided with annual feedback on the percentage of program completers who have passed the PRAXIS II. Under Federal law, teacher education programs must meet reporting requirements that include results of assessments, including the PRAXIS II.⁵

During the 1999-2000 academic term, of the 37 students completing KSU's Teacher Education Program, only 20 (54 percent) passed the PRAXIS II assessment. All other institutions in the Commonwealth had a 94 percent passing rate, with public institutions achieving a 93.6 percent pass rate.

In November 2000, representatives of KSU, the University of Kentucky and the University of Louisville met to discuss strategies to collaborate and improve KSU's Teacher Education Program. As a result of the meeting, the University of Kentucky's Academic Services Teacher Certification Program provided an instructional model to assist KSU in improving the performance of its students on the PRAXIS II. UK's model emphasized aligning curriculum with the PRAXIS II requirements as well as providing students multiple opportunities to complete practice examinations that are similar to the PRAXIS II and providing feedback and counseling to students, particularly in areas of demonstrated weakness. Nonetheless, KSU's pass rate on the PRAXIS II during the 2000-2001 term dropped to 36 percent; the statewide rate was 93 percent.

In March 2000, an accreditation team reviewed KSU's Teacher Education Program. The team comprised staff from the Kentucky Education Professional Standards Board (EPSB)⁶, a representative from the National Council for Accreditation of Teacher

⁵ Higher Education Opportunity Act, Title II, §205(a)(1).

⁶ EPSB is the standards and accreditation agency for Kentucky teachers and administrators and for programs of education at Kentucky colleges and universities.

Education (NCATE), and other relevant experts, as prescribed by EPSB and NCATE rules. The team found that the program failed to meet two of twenty requirements to continue its accreditation. The following year, after reviewing the team's findings, the EPSB certified KSU's Teacher Education Program. However, the EPSB notified the institution that the Board was "very concerned" about the low pass rate of KSU students on the PRAXIS II and requested that KSU annually report its strategies to improve performance.

In May 2001, the CEO required KSU to submit a comprehensive plan by June 2001 designed to improve student performance on the PRAXIS II. In response, KSU's plan called for:

- The institution's Testing Office to host a PRAXIS II Workshop for those students taking the examination for the first time and those students who had performed poorly on the examination in previous terms;
- Education faculty to take the PRAXIS II in order to understand the requirements of the examination; and
- Contracting with an Education Testing Service Consultant to develop and conduct a PRAXIS II training sessions for all faculty.

CEO reviewed the plan and required KSU to revise and resubmit the plan because it failed to address needed programmatic improvements, identify responsible administrators, identify benchmarks to measure success and establish implementation timelines. Rather than continue collaboration with the University of Kentucky and the University of Louisville to improve student performance on the PRAXIS II, KSU worked with the EPSB to align its Teacher Education Program with statewide policy and to identify other improvements to KSU's Teacher Education Program that would improve student performance. EPSB conducted an emergency review of the two KSU teacher education programs that had particularly low PRAXIS II pass rates, elementary education and physical education. The EPSB team identified significant concerns. Among them were the admission into the Teacher Education Program of students who were academically under-prepared and the lack of systematic efforts to ensure that students in the Teacher Education Program became academically prepared to become teachers. The team found that basic information about students in the program was not available to faculty and that students experiencing academic difficulties were not always identified and provided the assistance they needed.

During the spring and fall of 2002, KSU developed plans, with the assistance of the EPSB, to address the identified problems. The plans included the following strategies that were adopted:

- Increase exit GPA to 2.75;
- Require all students to pass the PRAXIS II before beginning student teaching;
- Align the Education Program and the College of Arts and Sciences curricula to prepare students preparing to become elementary and secondary educators;

- Reduce the number of multiple-choice examinations in the Teacher Education Program and increase the number of questions requiring short answer and essay responses;
- Analyze KSU student performance on the PRAXIS II to identify student strengths and weaknesses; and
- Provide for KSU faculty participation in Teacher Education Program workshops at other Kentucky institutions, including the University of Louisville.

KSU also created an internal teacher education committee to study issues related to curriculum, student support, technology and communications and regularly draft recommendations for improvements to the program for submission to the President. KSU worked with EPSB to ensure that the agreed-upon program changes were implemented, that the identified best practices were instituted, and that the program was closely monitored to ensure that progress was being made toward improving the quality of the Teacher Education Program and strengthening the academic performance of the students in the program.

KSU's PRAXIS II scores for 2001-2002 showed improvement, with 52 percent of students passing the exam. The EPSB also noted that KSU improved its pass rates on the PRAXIS II Elementary Education: Curriculum, Instruction and Assessment from 33 percent to 63 percent and on the PRAXIS II Physical Education: Content Knowledge from 25 percent to 100 percent. For the 2002-2003 academic term, 83 percent of KSU students passed the PRAXIS II. As noted above, one of the steps taken by KSU to improve the quality of its teacher education program was to require that students demonstrate mastery of core academic skills by passing the PRAXIS II prior to beginning student teaching. This step was fully implemented, effective with the Spring 2003 semester. A consequence of this change was that all students who completed the Teacher Education Program had passed the PRAXIS II, thus ensuring a 100 percent pass rate among program completers. Thus, for the 2003-2004, 2004-2005, 2005-2006 and 2006-2007 academic terms, 100 percent of KSU students who completed the program had passed the PRAXIS II.⁷ However, effective with the 2007-2008 academic year, and consistent with changes made by the federal Higher Education Opportunity Act, KSU changed its approach by permitting students who had not yet passed the PRAXIS II to begin student teaching.

During this period, KSU continued to work closely with EPSB staff to continue efforts to improve the Teacher Education Program. During the spring of 2005, the program

⁷ The U.S. Department of Education cited the 100% pass rates as a foreseeable consequence of requiring program completers to pass the PRAXIS II, under Title II of the Higher Education Act. The Department's website provides:

In a number of states and institutions [including Kentucky], passing required assessments has been made a condition of teacher preparation program entry or completion. As a result, every completer in these settings will have passed all required assessments by definition, and the institution will have a 100 percent pass rate. This information is important for putting the 100 percent pass rates into context. [<https://title2.ed.gov/Title2DR/Assessments.asp>; See also, Higher Education Act, Title II, §207(f)(1)(A).]

underwent its regular accreditation review by NCATE and EPSB. The accreditation report⁸ reflected marked improvements in the program. The review revealed, among other positive developments, that KSU's Teacher Education Program had addressed the areas of weaknesses that had been identified during the March 2000 accreditation visit. Faculty teaching and advising loads were found to have been significantly reduced. In addition, student performance, faculty development, and program improvement were all being monitored through data collection and assessment. The report noted that the Teacher Education Program had become a project site for the Renaissance Partnership for Improving Teacher Quality, a partnership among eleven higher education institutions, and that KSU had benefited considerably from it. The 2005 report also indicated that steps had been taken to align the curriculum for each program area within the Teacher Education Program with the Kentucky New Teacher Standards, PRAXIS II topics, and other standards. The report specifically noted that KSU's elementary education program was revamped to enhance the content area knowledge component of the curriculum. The report pointed out, at pages 5-6, that the Teacher Education Program had "vigorously addressed the issue of low pass rates on PRAXIS II ... through a variety of measures, including sensitizing candidates and the campus community to the significance of PRAXIS II in light of the No Child Left Behind Act and Title II [of the Higher Education Act], curriculum alignment, data management, PRAXIS II workshops for candidates, graduates and faculty, diagnosis of candidate performance on the test, and peer mentoring and tutoring."

KSU recently shared with OCR the PRAXIS II scores for the 2007-2008 completers of its Teacher Education Program, which showed an overall pass rate of 80.7 percent. Although the statewide 2007-2008 pass rate was not available, it is clear from KSU's 2007-2008 performance that a substantial narrowing of the gap has occurred between the performance rate of KSU students on the PRAXIS II as compared to the Kentucky statewide performance rate. Most importantly, KSU's Teacher Education Program was significantly enhanced and strengthened following program assessments designed to identify areas needing improvement.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.2.d.

Commitment A.2.e.

Commitment: The Governor of the Commonwealth and the Governor's Postsecondary Education Nominating Committee will ensure that Kentucky State University's Board of Regents is of the highest caliber. CPE will assist as appropriate. For any and all vacancies occurring during the period of this agreement, individuals possessing a diversity of experiences and background will be recruited to serve on the KSU Board of Regents. Desired credentials for regents include, but are not limited to, a demonstrated commitment to education and to

⁸ Reginald Nnazor, Kentucky State University Teacher Education Unit Continuing Accreditation Institutional Report (2005).

KSU, successful experience operating medium-size or large for-profit or non-profit organizations, demonstrated leadership in the individual's community or their field of work, demonstrated knowledge or successful experience in managing personnel and fiscal/financial affairs, demonstrated success in fundraising, and other qualifications or experience that would be of use in ensuring the vitality and future of KSU.

The KSU Board of Regents consists of 11 members, including one representative each from the staff, student body and faculty and eight members who are appointed by the Governor. Since the execution of the Agreement, the Commonwealth has appointed five new members to the Board of Regents. Four were appointed in July 2000, including a member of the Governor's Cabinet, the deputy executive director of Kentucky Education Television, the president and CEO of a life insurance company, and the vice president of a metropolitan utility company. Two individuals are graduates of KSU and all possess executive leadership skills, experience with fiscal management, and a commitment to education and KSU, in particular. In 2002, the Commissioner of the State Police was added to the Board. The Commissioner previously was a vice president of internal auditing for a retail store chain, an executive vice president and CEO of a private university in Louisville, and possesses considerable experience with managing fiscal and educational affairs. Currently, the vice president of a Kentucky energy company chairs the Board of Regents. Its vice chair is the president of an automobile manufacturing facility. The remaining governor-appointed members include: the deputy director for intergovernmental affairs of the Kentucky Office of Homeland Security; the vice president of a national banking corporation; a successful management consultant and former University of Louisville and Northern Kentucky University governing board member; the manager of the state property assessment agency; a prominent Louisville attorney; and a Louisville commercial accounts manager.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.2.e.

Commitment A.3.a.

Commitment: Each Commonwealth university will continue its respective recruitment and retention activities. The universities will continue to implement programs to: (1) encourage economically or educationally disadvantaged middle school students to attend college after completing high school; (2) counsel these students toward the academic and college preparatory courses which will help prepare them for college; and (3) provide academic assistance for under-prepared students who wish to attend college. During the life of this Agreement, CPE will continue statewide programs for middle and high school students designed to assist these students in determining whether to attend college and to assist them in choosing a high school curriculum that will enable them to achieve that goal.

CPE reported that it continued the Governor's Minority College Preparation Program during the implementation of the Agreement. This program, begun in 1986, provides

enrichment programs for middle and junior high school minority students throughout the Commonwealth that focus on pursuing postsecondary education. Since 2001, the program served more than 1,000 students each year. The program hosts an annual conference for participants and, since 2001, each of the public universities hosted the conference. As part of this program, each university established a specific program focusing on middle and/or high school students.

CPE also sponsors the Academically Proficient African American High School Junior/Senior Conference, an annual conference designed to provide the Commonwealth's traditionally white institutions the opportunity to recruit academically promising African American high school students. Since 2001, each of the Commonwealth's traditionally white institutions has hosted the conference.

Individual universities offered a variety of outreach, counseling and academic assistance programs for middle and high school students, including the following:

Murray State University maintains the Bridge Program for high school students that focuses on college preparedness activities and provides community-based mentors to assist the students in preparing for post-secondary education. This program targets students from low-income families.

Morehead State University, Eastern Kentucky University, Western Kentucky University and Northern Kentucky University participate in the Education Talent Search Program, which serves middle and high school students, providing an array of activities and services, such as academic, financial and personal counseling, designed to encourage these students to enroll in college. The program targets educationally underprivileged students.

The University of Kentucky serves students in the sixth through eighth grade, providing intensive workshops in math, science, language arts and computer technology. The program is open to all students.

The University of Louisville offers several programs for middle school students, including an academic enrichment program, a basic skills program and a program providing exposure to health professions. These programs are open to all students.

The Governor's Minority College Preparation Program and the Academically Proficient African American High School Junior/Senior Conference provide tangible benefits to minority students based on their race or national origin. The Commonwealth chose to offer these two statewide, race-based programs as evidence of compliance with a commitment that required efforts to assist students based on economic or educational disadvantage, race neutral categories.⁹ To the extent the minority students who benefited

⁹ Title VI requires that the use of race or national origin to provide aids, benefits or services in federally assisted programs be narrowly tailored to achieve a compelling interest. The OCR Conclusion section, infra, addresses possible Title VI issues arising from the continuation past the date of this report of race based programs previously offered to comply with the Agreement.

by these programs included students who were disadvantaged, these programs were responsive to the commitment. On this basis, and based on the race neutral programs provided by the universities to serve disadvantaged students in compliance with this commitment OCR concludes that the Commonwealth fulfilled Commitment A.3.a.

Commitment A.3.b.

Commitment: Northern Kentucky University will develop a comprehensive plan to enhance the recruitment of African American students. CPE will review that plan and will assist Northern Kentucky University as appropriate. Strategies to enhance recruitment will include, at a minimum, increased funding/staff resources in the University's recruitment budget above the 1997-98 funding levels, a vigorous marketing strategy for Kentucky African Americans and use of best practice methods from Commonwealth universities experiencing success in this area.

By 2000, Northern Kentucky University developed and implemented a plan for the recruitment of African American students, in accordance with the Agreement. This plan provided for:

- Establishing an African American Recruitment Team, a collaborative effort between the Admissions Office and the Office for African American Students to coordinate recruitment efforts;
- Doubling the advertising budget for the Office of Admissions to support additional travel, print and radio advertising as well as mailings targeted to minority students;
- Implementing the Admissions Prospect Management System, which enabled the institution to automate the identification, targeting, communications, follow-up and management of the recruitment of African Americans;
- Establishing the Norse Call Center to communicate directly with all applicants in order to enhance the recruitment of African Americans;
- Adding an Associate Vice President for Enrollment Management to provide senior leadership to all recruitment activities;
- Allocating \$275,000 for the Northern Kentucky University Distinguished Scholars program, providing scholarships for first-time freshman with ACT composite scores of 29 or higher, who have also demonstrated leadership ability and concern for their community;
- Adding a Program Coordinator position to its Office of African American Students Affairs to assist the Office of Admission and the Office of New Student Orientation with activities targeted to African Americans;
- Adding a Counselor for Diversity Outreach to the Office of Enrollment Management to conduct outreach activities at community-based agencies, churches and undertake special projects to support African American recruitment;
- Adding a Counselor for Diversity Outreach to the staff of the Office of Enrollment Management. The Counselor conducts recruitment activities at community-based agencies, churches and businesses as well as coordinates and conducts visits to high schools;

- Adding an Admission Counselor for Graduate Recruitment whose duty includes increasing African American recruitment;
- Adding a recruiter at the College of Law who is specifically charged with African American recruitment;
- Attending college fairs that have high African American participation, including events in the Louisville and Lexington area;
- Hosting several on-campus events and visitations specifically targeted to prospective African American students; and
- Implementing a student-to-student recruitment strategy specifically for African American students. The African American Recruitment Team, comprised of student volunteers, made direct telephone contacts to prospective students and assisted in the University's on-campus events.

The programs at Northern Kentucky University were responsive to the commitment's requirement that the university recruit African American students. Under Title VI, the provision of aids, benefits or services on the basis of race or national origin in federally assisted programs can only be justified if narrowly tailored to achieve a compelling interest. In the main, the reported recruitment programs and activities were designed to provide information and encouragement and thereby to increase the racial diversity of the university's qualified applicant pool, as intended by the commitment. As described, these programs did not involve the provision of admissions preferences, financial aid or other specific, tangible benefits on the basis of race and national origin. The continued operation of these programs in this manner will require no additional justification under Title VI.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.b.

Commitment A.3.c.

Commitment: CPE and the University of Louisville will monitor the proposed Pathways to Success Program and Enrollment Management Program to ensure that these programs do not result in diminished access for African American applicants. To this end, beginning on June 30, 2000, and subsequently on June 30, 2001, and June 30, 2002, CPE and the University of Louisville will study student enrollment, by race, to determine if these programs have a negative effect on African American enrollment. If enrollment of African American students diminishes, the program will be revised to eliminate the negative trend.

At the time of the execution of the Agreement, the University of Louisville's Enrollment Management Program began to increase incrementally its matriculation requirements by requiring higher ACT scores and grade point averages. To provide opportunities for applicants who did not meet the raised standards, the University of Louisville, with the Jefferson Community College (JCC) and the Jefferson Technical College (JTC), instituted the Pathways to Success Program (Program). The Program is a remedial and preparation program of instruction designed to meet the needs of the individual student.

Through the Program, students who do not meet the increasing minimum entrance standards for the University of Louisville are offered admission to the University of Louisville, JCC and JTC.

Students enrolling in the Program completed diagnostic testing to identify specific areas of need, which were then addressed through a curriculum tailored to meet these needs. Students in the Program generally attend most classes at either JCC or JTC and transition to the University of Louisville after successfully completing their individually designed remediation and preparedness program. To fully transition to the University of Louisville, a student has to achieve a grade of C or better in the classes required by the individually designed program and meet with academic advisors twice a semester. Students enrolled through the Program had the same access, rights and privileges to the resources of the University of Louisville as any other matriculated University of Louisville student.

To support the Program, the University of Louisville hired a Director of Admissions and Transfer Services to counsel students in the Program and maintain a database of students referred to JCC and JTC through the Program. The three institutions coordinated curriculum, advising, counseling and career planning.

For the Fall 2000 academic term, the University of Louisville referred 438 students to the Program, including 100 African Americans (22.83% of the students served by the Program). For the same period, the University of Louisville admitted 536 African American students, four fewer than it did the previous year. Concerning African American enrollment, data shows that African American students maintained a near-constant rate of enrollment at the University of Louisville from 2000 through 2005. By 2005, the University had completed its transition to increasing application standards and therefore ceased offering enrollment through the Pathways program.

| | African American enrollment | % of total enrollment |
|------|------------------------------------|------------------------------|
| 2000 | 1,902 | 13.1% |
| 2001 | 1,882 | 13.3% |
| 2002 | 1,991 | 13.8% |
| 2003 | 1,982 | 13.4% |
| 2004 | 1,988 | 13.3% |
| 2005 | 1,898 | 13.14% |

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.c.

Commitment A.3.d.

Commitment: By June 30, 2000, the University of Louisville will monitor and report on the effects of the current student support services system to determine if this system has a deleterious impact on student retention or the delivery of support services to students. As appropriate, the University of Louisville will revise the system to ensure satisfactory service delivery.

The University of Louisville contracted with a consultant group to review the delivery and availability of the University of Louisville's support services. In April 2000, the consultants met with staff, faculty and students for input and studied the University of Louisville's then current system for support services. Based on this, the consultants found an overall positive experience among African American students concerning the student support services. However, the consultant group found that although the offices offering academic support were many, they were separate and did not coordinate their efforts. This led to confusion among students about where to find assistance. The consultant submitted a report to the University of Louisville with recommendations for changes to the system. Most importantly, the consultants recommended creating a new position – Vice Provost for Minority Affairs – that would centralize and organize the several but separate offices then offering academic assistance to African American students.

The President of the University of Louisville shared the report and recommendations with key University of Louisville's stakeholders, including the Board of Trustees, the Commission on Diversity and Racial Equality, the Special Assistant to the President for Minority Affairs, the President's Cabinet, vice presidents and deans. The President subsequently created the position of Vice Provost for Minority Affairs, charging the position with enhancing and expanding programs and services for all minority students.¹⁰

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.d.

Commitment A.3.e.

Commitment: The University of Louisville will consider implementing a freshman summer transition program to enhance the University's ability to retain student populations that have had traditionally low retention rates. By June 30, 2000, the University of Louisville will report to OCR its determination whether to adopt the program and the rationale for this decision.

The University of Louisville implemented the freshman summer transition program during the summer of 2000. The transition program was an intensive preparatory program for promising applicants who failed to meet the University of Louisville's admission requirements. During the first summer offering, 44 students participated in the

¹⁰ Title VI requires that the use of race or national origin to provide aids, benefits or services in federally assisted programs be narrowly tailored to achieve a compelling interest. The OCR Conclusion section, *infra*, addresses possible Title VI issues arising from the continuation past the date of this report of race based programs previously offered to comply with the Agreement.

program, with 39 completing it and 34 of those students entering the University of Louisville. Of the 34 students, 28 continued their enrollment in the University of Louisville for the spring 2001 semester. The students were assigned an advisor from their enrollment area, such as the College of Arts and Sciences or, and for undeclared students, advisors were assigned from the student services division. Twenty-eight students participated in the program during the summer of 2001.

The University of Louisville phased out the program in the summer of 2002 after adopting a policy that provided admission to students previously admitted after completing the transition program. Beginning with the 2002-2003 academic term, the University of Louisville adopted an "exception pool" policy, in which students limit their semester course work and complete foundation courses to improve their skills. In addition, the University of Louisville instituted an Early Warning Alert system that collects information on these students' midterm academic performance in order to identify those in jeopardy of failing. Based upon the midterm review, the University of Louisville works with at-risk students to improve their performance by arranging for academic support and tutoring. Beginning with the 2003-2004 academic term, the University of Louisville also sent the names of African American students admitted through the exception pool to the Office of Multicultural Academic Enrichment Programs and made that entity responsible for tracking exception pool students' performance and assisting any who experienced academic difficulties.¹¹

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.e.

Commitment A.3.f.

Commitment: CPE and the following universities will work collaboratively to develop strategies to increase the retention and graduation of African American students:

- Northern Kentucky University
- Murray State University
- University of Louisville
- Western Kentucky University
- Eastern Kentucky University

The universities will identify the barriers encountered by African American students when attempting to complete degrees and implement strategies that address the unique difficulties at each institution. A strategic plan for each university will be developed by June 1, 2000.

Each institution, in conjunction with CPE, developed and submitted a five-year action plan to fulfill this commitment.

Eastern Kentucky University's plan provided for

- Maintaining the Academic Monitoring Program, which provides students with an academic facilitator who maintains contact with the students and their professors. The professors provide the mentors with updates twice a semester on the student's performance. The facilitator, if necessary, assists the student in securing academic help and counseling.
- Implementing an early warning system for first and second year students exhibiting "at risk" behavior. The system requires faculty to identify students and notify the Office of Multicultural Student Services, which contacts the student to discuss areas of difficulty and arrange for support services.

Northern Kentucky University's plan provided for

- Implementing the Academic Advising Council (Council), an institutional body charged with coordinating University retention efforts. The Council is composed of members from the entire campus community, such as the student affairs office, the Academic Advising Resource Center and the Faculty Senate.
- Requiring the Office of African American Student Affairs to maintain a tracking system for at-risk students and assist them in locating resources to improve performance.
- Expanding the Running Start Program - a collection of University-assigned learning communities for students with specific skill deficiencies, which provide intensive remedial courses to prepare students for college-level courses.
- Implementing the *University 101* class – an orientation class for incoming freshmen to educate them about the demands of college and the resources available to them.
- Adopting a mid-term grading procedure to notify freshman of academic progress and assist them in seeking assistance.
- Adding three additional advisors to the Academic Advising Resource Center, the main academic assistance office.
- Implementing the Early Orientation Program, Summer Program in Legal Analysis, Academic Development Center and Bar Review Course in the Chase College of Law.
- Implementing the Summer Bridge Program for African American students focusing on improving writing skills and study strategies in the School of Education.

University of Louisville's plan provided for

- Implementing the Resources for Academic Achievement Program (REACH) to increase retention and graduation rates among all students by helping them to transition to the University of Louisville, connect to the University of Louisville community, succeed in the classroom, and make progress toward major, degree and career goals. To achieve these goals, the REACH Program hosts seminars throughout the year on various academic topics, offers classes and orientation

activities for first-year students and provides learning communities for at-risk students.

Murray State University's plan provided for

- Adopting a mentoring program for incoming students by pairing them with upperclassmen. This program also exposes new students to retention workshops (e.g., study skills, time management, etc.) throughout the school year. The plan also requires the Minority Student Support Services Office to assist students that have a midterm G.P.A. of 2.0 or less.

Western Kentucky University's plan provided for

- Implementing mentoring and tutoring programs through the Office of Minority Student Support Services, creating a program to help African American students adjust to the surrounding town and an alumni mentor program that pairs African American students with African American University of Louisville alumni.
- Increasing funding for the Office of Minority Student Support Services' specialized tutoring program for math and English.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.f.¹²

Commitment A.3.g.

Commitment: CPE and all eight universities will work collaboratively to increase the number of African American students enrolled in Kentucky's professional and graduate schools. To achieve this goal, CPE and the eight institutions will consult with each other to identify successful recruitment programs and share promising practices.

CPE reported the following strategies at these institutions:

- Eastern Kentucky University seeks to recruit students, including African Americans, directly from its undergraduate population through graduate assistantships, scholarships and fellowships.
- Eastern Kentucky University adopted new measures to identify and recruit African American students from institutions that do not offer graduate studies, encourage African American faculty to pursue graduate studies paid by the University of Louisville (an option available to all faculty) and establish a forum for African American graduate students.

¹² Title VI requires that the use of race or national origin to provide aids, benefits or services in federally assisted programs be narrowly tailored to achieve a compelling interest. The OCR Conclusion section, infra, addresses possible Title VI issues arising from the continuation past the date of this report of race based programs previously offered to comply with the Agreement.

- The University of Kentucky maintains the Kentucky Appalachian Science Enrichment Program (KASEP), a five-week science and math enrichment program held on the campus of the University of Kentucky for tenth graders from the Commonwealth as well as surrounding states.
- The University of Kentucky and the University of Louisville maintain the Professional Education Preparation Programs (PEPP I and PEPP II), which are designed to expose students from medically underserved counties in Kentucky to careers in medicine and dentistry. The program serves both high school seniors (PEPP I) and college sophomore or junior college students (PEPP II). The students visit university hospitals, participate in rotations, and receive mentoring from physicians and dentists. The mission of the program is to have these students return to their communities upon degree completion.
- Through the Kentucky Chief Justice's Subcommittee on Diversity in the Legal Profession, the Commonwealth's three public law schools (Louis D. Brandeis School of Law, University of Louisville; Salmon P. Chase College of Law, Northern Kentucky University; University of Kentucky College of Law) developed the Cooperative Law Admissions Program, which facilitates admission to the universities' law schools for students attending KSU. Students in this program attend undergraduate school at KSU, participate in a Program-developed curriculum and must maintain a minimum grade point average. Successful completion of these requirements guarantees admission to one of the three law schools. The University of Kentucky's College of Law hosts an annual minority student visitation conference. As part of the program, the participating universities periodically visit KSU.
- The University of Louisville's graduate schools subscribe to the Minority Graduate Student Locator Service to recruit African American students and places advertisements in *Black Issues in Higher Education*. The University of Louisville's School of Dentistry developed a recruitment agreement with KSU, as well.
- CPE, the University of Louisville and the University of Kentucky implement the Southern Regional Education Board's Doctoral Scholars Program, a national program seeking to address the under-representation of minority students in doctoral programs. In Kentucky, this program focuses on supporting minority students seeking degrees in the sciences, mathematics and engineering. The SREB Scholars Program is a five-year financial assistance package, including tuition and fees, for specific students to initiate and complete a doctoral degree. To participate in the program, applicants must be a racial/ethnic minority. The SREB is funded by appropriations from its 16 member states, including Kentucky, as well as funds from foundations and state and federal agencies.
- Murray State University and Eastern Kentucky University implement the Ronald E. McNair Post-Baccalaureate Achievement Program, U.S. Department of Education-funded program designed to prepare economically disadvantaged and first-generation university students for doctoral studies. Through the program, students receive intensive coaching from university faculty in research skills.
- CPE instituted a statewide Science, Technology, Engineering and Math (STEM) task force charged with developing programs to improve student performance in

STEM disciplines. The President of the University of Kentucky chairs the task force and all universities participate in the regularly held meetings. These programs are open to all students.

- Western Kentucky University participates in the University of Kentucky's Cooperative Masters and Doctoral Program, a collaborative program providing Western Kentucky University students the opportunity to complete part of a post-baccalaureate degree at Western Kentucky University in a number of programs offered exclusively by the University of Kentucky. This program permits all Western Kentucky University students, including African Americans, to pursue advanced degrees in disciplines offered only at the University of Kentucky.

The information shows that the strategies implemented by the universities have coincided with increased enrollments of African Americans in graduate and professional programs. From 2000 to 2007, overall graduate enrollment in the eight institutions remained virtually unchanged while African American enrollment grew over 42 percent; African American enrollment grew from 4.6 percent of the total in 2000 to 6.5 percent of the total graduate enrollment in 2007.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.g.¹³

Commitment A.3.h.

Commitment: By March 31, 2000, each university in Kentucky will create a campus environment team responsible for addressing campus and campus/community issues with the goal of improving the campus climate for minority students. The universities will continue to support student organizations that enhance the co-curricular experiences of minority students. To this end, CPE and CEO will identify the Commonwealth universities that have experienced success with creating a positive, nurturing environment for African American students and assist the remaining universities in replicating this atmosphere through resource and information sharing. In addition, each of the universities will participate in the conference co-sponsored by CPE and OCR, which is planned for spring, 2000, to focus on campus diversity. Each campus environment team will report annually on its activities.

CPE reported that each institution created and supported campus environment teams, providing the names and positions of the members of the teams. During OCR's campus visits during 2000, the OCR/CEO representatives met with the members of the environment teams and found that all were still meeting and attempting to fulfill the mission for the teams identified in the Agreement. However, the visits also showed that the teams at several institutions were not functioning well; specifically, there was a lack

¹³ Title VI requires that the use of race or national origin to provide aids, benefits or services in federally assisted programs be narrowly tailored to achieve a compelling interest. The OCR Conclusion section, *infra*, addresses possible Title VI issues arising from the continuation past the date of this report of race based programs previously offered to comply with the Agreement.

of understanding about their mission and function within their university and a failure to solicit campus-wide input. Subsequent to the campus visits, CPE required each team to implement a consistent policy for the 2005-2006 academic year requiring all teams to hold regularly scheduled open meetings as well as to advertise these meetings.

CPE also required uniform information for the annual team reports including the data used by the teams to determine their success; the actions taken to improve the operation of the teams; the actions taken by the institutions to improve the environment for African Americans; evaluation of the effectiveness of programs or services for African American students, faculty and professional staff; and the status of CET recommendations to the president and board.

Initially, several institutions failed to follow this policy. However, CEO campus visits and institutional reports showed that by the 2007-2008 academic year, each campus environment team was holding regular meetings, advertising the time, date and location of meetings, and ensuring that these meetings were open to the entire campus community. In addition, each institution's campus environment team annually reports on the recommendations it develops through its meetings as well as its efforts to measure the effectiveness of its activities.

All institutions participated in the CPE/OCR sponsored conference held in September 2000. This joint conference was held for the presidents and other high-ranking officials from all public institutions, and CPE and CEO staff and board members. The conference was an opportunity for CPE, CEO, the institutions, and OCR to share best practices in the areas of recruitment, retention, campus environment and graduation.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.h.

Commitment A.3.i.

Commitment: The universities will continue and strengthen their extensive efforts to ensure and enhance the diversity of their faculty, staff and cabinet level positions. Such initiatives may include increased participation with the Southern Regional Educational Board's Compact for Faculty Diversity and such activities as wide-area advertising of vacancies, attendance at conferences in academic disciplines, and maintaining networks of contacts for the purpose of enhancing the diversity of applicant pools for vacancies on campus. The institutions will also continue to implement hiring procedures that ensure minority applicants are given full and fair consideration for the positions for which they are qualified.

During visits to the universities, OCR spoke at length with administrators responsible for filling vacant positions as well as other staff that participate on hiring committees and interview panels to understand the efforts used by the institutions to ensure a diversified compliment of professors and staff. OCR found that each institution posts all faculty and

administrative announcements in *The Chronicle of Higher Education* as well as sending these announcements to historically black institutions.

Northern Kentucky University

- The Director of Affirmative Action and Minority Affairs oversees all hiring activities and advises all search committees about appropriately conducting a search, which includes briefings on applicable equal opportunity policies, institutional priorities and employment strategies for achieving a diverse applicant pool. The institution also utilizes a quarterly University Welcome Program, in which the president introduces new staff and faculty to the campus community.
- All positions are advertised in *Black Issues in Higher Education*.

University of Louisville

- The College of Arts and Sciences has designated an associate dean to head all efforts to recruit and retain African American faculty, including approving all search committees and developing a faculty-mentoring program.
- The College of Law advertises its faculty openings in *Blacks in Higher Education*.
- The Dean of the School of Engineering does not approve faculty searches until he personally reviews the committee's efforts to achieve a diverse applicant pool.

Western Kentucky University

- WKU instituted a Junior Black Faculty program that identifies promising African American candidates and provides assistance in order for them to complete terminal degrees in their field. The University also adopted a new policy that evaluates the performance of deans and department heads based in part on their efforts to promote and achieve equity in their staffs.
- WKU advertised executive and administrative positions at historically black institutions.

University of Kentucky

- Each department has drafted and implemented a plan to ensure a diverse applicant pool for open faculty positions.
- Both the College of Education and African American Studies Department have specific mentoring programs for new faculty.

Eastern Kentucky University

- An integrated plan setting forth strategies for conducting faculty searches has been implemented. The strategies include a voluntary self-disclosure section for

race on applications (used to ensure that all self-identified African American applicants are interviewed) and provides a list of resources (HBCUs, minority groups in academia, etc.) to assist search committees in obtaining a diverse applicant pool.

- The Affirmative Action Officer counsels the members of search committees about the University's employment equity policies.

Morehead State University

- Administrative and faculty employment equity measures are consolidated in the Human Resources Department, which ensures that all announcements are posted in *Black Issues in Higher Education* and that search committees are briefed on relevant Affirmative Action policies.
- Search committees are required to interview all qualified minority faculty and administrative applicants.
- University representatives participate in the SREB Compact for Faculty Diversity's Annual Institute on Mentoring and Teaching.

Murray State University

- The Equity Office is directly involved in all faculty and staff searches, including reviewing position announcements, reviewing the composition of search committees and reviewing the interview list. The Director of the Equity Office may recommend that the search be suspended in the event that a concern arises over the process, such as insufficient advertising or a lack of applicants.
- A general orientation program for new faculty has been implemented and individual departments have orientation programs.
- University representatives participate in the SREB Compact for Faculty Diversity's Annual Institute on Mentoring and Teaching.

Kentucky State University

- All positions are advertised in *Black Issues in Higher Education* as well as specific discipline journals.
- A new faculty orientation event is held each year and the Faculty/Staff Institute meets each semester to introduce new members to the campus community and allows others to explain aspects of the campus and surrounding community.
- Exit interviews for departing faculty and staff are completed to determine the reason(s) for the departure. The interview attempts to gather information about the departing employees opinion about conditions on the campus and suggestions for how to improve the environment.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.i.

Commitment A.3.i.

Commitment: Each university will ensure that the person who is delegated responsibility for access and equal opportunity attends, or has reasonable access to, the President's cabinet meetings.

CPE provided the names and positions of the staff at each university who are responsible for equal opportunity issues as well as implementation of the Agreement. In many cases, the universities listed several individuals as responsible for these issues. The joint OCR/CEO site visits in 2000 confirmed the fact that these individuals met regularly with the presidents and cabinets to discuss issues related to access and equity. CPE provided OCR certification that as of the 2008-2009 academic term, each institution's staff member responsible for equity and access issues continued to have access to the presidents and cabinets. CPE provided OCR the names of each institutional current staff member.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.j.

Commitment A.3.k.

Commitment: Each institution will semi-annually review the institution's progress and discuss with the institution's cabinet and Board future strategies to provide equal access for African Americans in Kentucky's public system of higher education.

The Kentucky Plan 1997-2002 requires each university to implement programs to achieve the following goals:

- Maintain/increase the enrollment of Kentucky resident African American undergraduate students.
- Increase the retention of Kentucky resident African American undergraduate students and the proportion of Kentucky resident African Americans who graduate to the proportion of white undergraduate students who are retained and who graduate.
- Increase the proportion of Kentucky resident African American graduate students enrolled in the universities.
- Increase the number and proportion of African American faculty and staff employed by the universities.
- Increase the enrollment and graduation of Kentucky resident African American students in dentistry, law, and medicine.
- Ensure African American representation on each Board of Trustees or Regents.

Under *The Plan*, each university submits an annual report to CPE and CEO detailing its efforts to meet the goals of the Plan. The Kentucky Plan requires an evaluation of this information, as well as the information gathered during the annual campus visits, by the CEO in order to determine whether each institution met its goals under the Plan. CEO is

empowered under the Plan to deny requests for the adoption of academic programs from institutions that fail to meet their goals, although a waiver system is available. For its part, CPE compiles all of the data to provide a system-wide report on the Commonwealth's progress in meeting the goals of *The Plan*. In addition, the CPE commissioned a comprehensive study of access and equity issues in the public system of higher education and, at its September 28, 2008, meeting began evaluating the numerous recommendations.

Based upon the information, OCR concludes that the Commonwealth fulfilled Commitment A.3.k.

VI. Conclusion

OCR has examined all aspects of Kentucky's implementation of the Agreement, developed in light of the requirements of *U.S. v. Fordice*. The monitoring evidence submitted by the Commonwealth was limited to the time period stated in the Agreement, with extensions of time for specific actions, as agreed by the parties. The evidence gathered during OCR's monitoring shows that the Commonwealth fulfilled the specific commitments of the Agreement. OCR concludes that the Commonwealth has implemented the Agreement and is in compliance with Title VI with respect to the Agreement.

In demonstrating its compliance with the commitments of the Agreement, Kentucky provided examples of numerous programs, including some that involved the use or consideration of race or national origin in providing benefits or services. OCR's determination that Kentucky has complied with a specific commitment should not be interpreted as a determination that each program identified by Kentucky in regard to that commitment is in compliance with Title VI in all respects. OCR cautions the Commonwealth that programs and activities, formerly provided in furtherance of this Agreement, that continue to use or consider race, color or national origin, must be narrowly tailored to achieve a compelling interest in accordance with Title VI strict scrutiny standards. OCR will provide technical assistance to the Commonwealth regarding the Title VI standards that apply to programs that continue to use race or national origin in the provision of aids, benefits or services.

In confirming the Commonwealth's compliance with the Agreement, OCR expects the Commonwealth to make good faith efforts to continue its support of the access and equity principles underlying the commitments. For example, the Commonwealth is encouraged to continue to provide significant and effective support for the full realization of KSU's mission, and effective communication of that mission, in light of the numerous challenges and recommendations included in the study commissioned by CPE and presented to the Council in the September 28, 2008, meeting.⁹ In addition the Commonwealth is encouraged to implement any additional measures that will enhance the opportunities for equal participation in Kentucky's system of public higher education.

⁹ See note 4, *infra*.

The Commonwealth and its public institutions of higher education must continue to comply with Title VI and its implementing regulations. In addition to periodic compliance reviews, OCR will investigate and take appropriate enforcement action authorized by Title VI with respect to any complaint of discrimination based on race, color or national origin that may be filed with OCR against the Commonwealth's system of higher education or its individual institutions. This report is not intended, nor should it be construed, to cover any issues regarding the Commonwealth's compliance with Title VI or its implementing regulations that may exist and are not discussed herein.