

Program Approval Process Workgroup Recommendations

I. Operational Missions

The workgroup devoted the September meeting to a discussion on institutions of higher education mission statements. The workgroup first heard from the Maryland Higher Education Commission (MHEC) on its current requirements for mission statement review. Under § 11-302 of the Education Article, each public institution of higher education is required to update their mission statement every four years for MHEC approval, immediately following the quadrennial review of the State Plan for Higher Education. The only metrics in statute related to mission statement review and approval is the requirement that MHEC determine whether the mission statement is consistent with the State Plan. During MHEC's last mission statement review in 2018, MHEC asked for institutions to provide a variety of information related to their mission statement and role of the institution. But, MHEC did not provide any comments to institutions or deny any institution's mission statement submission. At this meeting, the workgroup discussed how MHEC could have more developed metrics for mission statement review. For example, MHEC could be considering factors such as the unique contributions that historically Black colleges and universities (HBCUs) make to the State and to the country or whether a public institution of higher education has clearly defined their role in higher education system in the State.

The workgroup also heard about different statutory distinctions for public institutions of higher education in the State. In response to a question from a member of the workgroup, the Department of Legislative Services (DLS) prepared a document (**Appendix 1**) comparing the statutory distinctions, MHEC approved missions, and website mission statements of each public senior higher education institution. Most public senior higher education institutions use the same mission statement approved by MHEC, or a similar mission statement, on their website. Overall, most public senior higher education institutions are not adequately referencing their statutory distinctions in their mission statements or on their website. Review of the current law shows that only 9 of 14 public senior higher education institutions have explicitly stated statutory distinctions. Members of the workgroup have expressed concern that some institutions do not have an expressly stated statutory distinction. For institutions that have specific statutory distinctions, which are utilized by MHEC in program review, the statutory distinction may be outdated and not reflective of the current role of the institution. The workgroup discussed whether the General Assembly, or another appointed workgroup, should consider clarifying statutory distinctions for all institutions on a more regular basis.

Also, during this meeting, the workgroup received a presentation about how other states review the mission statement of their institutions of higher education. Of the 16 states surveyed, 9 states require mission statement approval similar to Maryland. Only 3 states had detailed requirements in statute related to mission statements (*i.e.*, intended role of institution, academic and research goals, audiences served, geographic areas). Most states require mission statements to comply with a state plan, like Maryland.

There is concern that current institutional mission statements tend to be too vague and lacking in specificity about the strategic role and direction of the institution under the State's

current structure of mission statement development and approval for public senior higher education institutions. Without clear and distinct roles for institutions of higher education in the State, institutions may engage in mission creep leading to an overexertion of State resources. However, the workgroup thought that establishing a new requirement for operational missions in lieu of mission statements would duplicate current internal practices of an institution and give MHEC authority in an area traditionally within the autonomy of each institution. Workgroup members determined that MHEC's current authority to review mission statements allows MHEC to be more involved and provide more robust comments to institutions when approving or disapproving their four-year mission statement submission.

Recommendation 1: The workgroup does not recommend that MHEC require institutions to adopt operational mission statements for approval by MHEC.

Recommendation 2: The workgroup recommends that MHEC utilize their current authority to develop more detailed criteria for mission statement review of public institutions of higher education and provide robust approval to ensure that mission statements are clearly defined and distinct to prevent mission creep between each institution. Examples of criteria in mission statement review could be the requirement that each institution clearly define the level of research of the public institution of higher education or the new Carnegie classifications, if applicable.

Recommendation 3: The workgroup recommends that after each mission statement review, MHEC submit a report to the House Appropriations Committee, the Senate Budget and Taxation Committee, and the Senate Education, Energy, and the Environment Committee on each approved mission statement and an analysis of each public institution of higher education's role in the State's system of higher education to ensure that each institution's mission statement is distinct and clear. The report should also include an analysis of why each mission statement was approved or rejected. The committees and MHEC should use this report to ensure that the State is supporting each institution in meeting the needs of their approved mission statement.

II. State Plan of Higher Education and State Workforce Development Needs

The focus of the workgroup's October meeting was a discussion of how MHEC determines the workforce needs of the State. Section 11-105 of the Education Article requires MHEC, in consultation with the governing boards and agencies concerned with postsecondary education in the State, to develop and periodically update an overall plan to "coordinate the overall growth and development of postsecondary education in the State" called the State Plan for Higher Education. The State Plan must identify:

- the present and future needs for postsecondary education and research throughout the State;
- the present and future capabilities of the different institutions and agreements of postsecondary education in the State; and

- the long-range and short-range objectives and priorities for postsecondary education and methods and guidelines for achieving and maintaining them.

Once completed, the State Plan is submitted to the Governor and the General Assembly. The latest State Plan was submitted in 2022. The three main goals of the 2022 State Plan are to:

- (1) ensure equitable access to affordable and quality postsecondary education for all Maryland residents;
- (2) promote and implement practices and policies that will ensure student success; and
- (3) foster innovation in all aspects of Maryland higher education to improve access and student success.

The 2022 State Plan focuses on areas of student affordability; financial literacy; academic readiness; student populations; high-quality postsecondary education; improving systems for timely completion; ongoing lifelong learning; and promoting a culture of risk-taking. With respect to academic program review, the 2022 State Plan states that campuses should demonstrate a critical and compelling regional or statewide need before requesting a new academic program. The State Plan defined this need as:

- a need for the advancement and evolution of knowledge;
- societal needs;
- occupational and professional needs; and
- the need to strengthen and expand the capacity of HBCUs and to provide high quality and unique educational programs.

The 2022 State Plan also (1) makes a distinction between market demand and need; (2) encourages campuses to work with Commerce and local chambers of commerce to better understand local workforce needs and emerging fields; and (3) includes an analysis of the key industries in the State by Commerce.

Of the 16 comparison states examined by the workgroup, 13 have a state plan or document that governs the workforce development goals of the state. There is no consistent timeline among these states for updating the state plan and each state's review of the state plan range from 2 to 12 years. Some states, such as Mississippi, require its state plan to identify high demand fields and employment benchmarks. Other states, such as North Carolina, identify target industries. Some states also include regional or institutional goals. The workgroup also heard how other states compile workforce data and work more collaboratively with their labor departments and workforce councils and boards to define workforce needs. Some additional data sources other states use are vacancies and projections, wage data, and education/training needs.

After reviewing this information, the workgroup concluded that MHEC could make the State Plan more effective for institutions by including more targeted workforce need information. Due to a projected enrollment cliff in high school graduates beginning in 2025, it is imperative that public institutions of postsecondary education be extremely thoughtful in academic program development by focusing on programs in areas of need.

Recommendation 4: The workgroup recommends that the State Plan should identify specific workforce needs, including regional needs, and the specific academic programs that institutions could develop to support these workforce needs. This information should be updated annually on a specific date as an annual appendix to the State Plan.

Recommendation 5: The workgroup recommends that MHEC should update the State Plan for commission approval by January 1, 2025. The workgroup recommends that MHEC provide opportunities for input from all segments of higher education, students, major industry partners, and members of the public in developing the 2024 State Plan.

Recommendation 6: The workgroup recommends that the next State Plan should require review and comment by the Legislative Policy Committee prior to the adoption of the State Plan by the commission.

Additionally, the workgroup learned that because there is not a well-established relationship or coordinated effort to determine workforce need between MHEC, the Maryland Department of Labor (MDL), and Commerce, MHEC mostly goes it alone in figuring out the appropriate mechanisms and data regarding State workforce needs for the State Plan and in the program approval process. In fact, MHEC relies heavily on MDL data without MDL's input or insight. And, campuses often rely on narrowly identified areas of industry. Due to this lack of coordination, all State agencies do not have a unified definition of statewide or regional of workforce need and subsequent academic programs. Overall, the State should be utilizing the resources of current State agencies devoted to identifying workforce needs. MDL and Commerce should also be working with other agencies that have particular expertise in emerging fields to have the most accurate analysis of State and regional workforce needs.

Recommendation 7: The workgroup recommends that MHEC, MDL, and Commerce should each have a specific positions dedicated to defining and identifying State and regional workforce needs. Additionally, MHEC should consider working with Maryland Longitudinal Data System Center, licensing boards, and national organization to define and identify State and regional workforce needs. When identifying workforce needs, consideration should be given to data from resources and literature pertaining to specific occupations. This should include occupational supply projections and understanding nationwide program development and current program expansion trends.

NEW RECOMMENDATION: The Workgroup MHEC should utilize their current authority to hire outside consultants with academic disciplinary expertise when the subject matter of a proposed program is outside the areas of expertise of MHEC, MDL, and Commerce.

Recommendation 8: The workgroup recommends that MHEC, MDL, and Commerce have common agreement on data sources and measurements and all institutions of higher education should have access to this data. These data source should include information on current and emerging workforce needs. MHEC and the commission should use this data as a baseline during the program approval process.

III. Letter of Intent

Currently, the State has no requirement for institutions of higher education to collaborate with each other. In the past, MHEC’s leadership made little substantive effort to encourage institutional collaboration.

In a memorandum created for workgroup members (Appendix 1), the Education Commission of the States compiled data on how different states encourage collaboration among institutions to ensure that there is not an oversaturation of similar degree programs. There is no best practices on how to encourage collaboration among institutions. Other states utilize a comment period or an objection period in the beginning stages of the program proposal process to get the perspective of other institutions to the proposed program. Most states require a notice of an intent to develop a new program prior to submitting a program for the coordinating body’s approval to elicit questions, comments, and collaboration and provide notice to other institutions. A few states go further in requiring collaboration in a program proposal submission. For example, Minnesota requires proposals to include “alliances with other institutions of higher education”. Alabama requires proposals to include plans to collaborate with other institutions. Mississippi requires that institutions within a certain geographic area of each other should explore collaboration in their proposal.

Maryland law requires MHEC to circulate proposals for a 30–day objection period. However, by the time the objection period occurs, the proposal has been fully vetted by the institution’s governing board and resources may have already been allocated to the expected implementation of the program. This objection opportunity is often too late in the process to encourage or require collaboration between institutions.

Recommendation 9: After the adoption of the 2024 State Plan, the workgroup recommends that MHEC require all public senior higher education institutions to submit a Letter of Intent every 6 months for any graduate academic program that the institution plans to submit for approval by MHEC in the next 6 months to 2 year time period. MHEC should adopt the requirements and format, deadlines, and review criteria for Letters of Intent. MHEC should use the Letters of Intent to provide early warning signals of potential duplication with existing programs.

A Letter of Intent would serve as formal notice to each public senior higher education institution and MHEC of the direction an institution is planning on pursuing over the next six months to two years related to the offering of graduate degree programs. It would not give preference or approval to a program but allow MHEC to facilitate collaboration among institutions interested in similar programs or among a proposing institution and an institution currently offering

a similar program. MHEC could also provide comments early to institutions if there is a concern MHEC has with the program, potentially saving an institution time and resources to address those concerns before embarking on the formal program approval process. Currently, MHEC is not involved in or aware early enough in the academic program development process of each institution to encourage effective collaboration between institutions.

Recommendation 10: The workgroup recommends that MHEC develop an exception to the Letter of Intent requirement for exigent circumstances. This process should only be used by institutions in rare circumstances and MHEC may only approve these programs when the benefit to the State or region from the expedited adoption of a program without notice from a Letter of Intent outweighs the State's interest in notice and collaboration. MHEC's process for exigent circumstances should encourage fairness and transparency.

IV. Collaborative Grant Fund

Institutions frequently commented during workgroup meetings that while institutions had a desire to collaborate, it was not always economically feasible for the institution.

Recommendation 11: The workgroup recommends that the General Assembly create a Collaborative Grant Fund that would be accessible for public institutions of higher education to fund efforts to collaborate with each other for the establishment of new graduate degree programs.

The eligible expenses from the collaborative fund would be case by case, and MHEC should allow institutions to define which collaborative opportunities work for the institutions, but examples could include grants for:

- the salaries of faculty to work together to determine if collaboration is feasible for the institutions;
- costs associated with providing transportation for one institution to another institution for shared classes or facilities; or
- costs associated with sharing resources in research collaborations, student exchange programs, joint marketing or recruitment, faculty exchange programs, and online program collaborations.

Grants from a collaborative fund would be eligible for institutions after inclusion of the program in the institution's Letter of Intent.

While the State does have an educational interest in encouraging collaboration, workgroup members wanted to be clear that collaboration *will not be* a requirement of an institution. An institution currently with a program is *not* required to collaborate with an institution proposing a program. Additionally, if MHEC determines that programs are duplicative during a program proposal and there is a State or regional workforce need for multiple programs, MHEC may not

require an institution to collaborate with another institution for the new program to be approved. However, if each institution determines that collaborating works for their institution, the State would assist with paying those eligible costs.

V. Program Approval Objection Process

At the August meeting of the workgroup, members heard a presentation from MHEC that included details on the program approval objection process. Under § 11-206.1 of the Education Article, MHEC must circulate the notice of an institution's intent to establish a new program within 30 days of the receipt of the notice. If an objection is filed, the commission must immediately notify the proposing institution's governing board and president. If an objection cannot be resolved within 30 days of the receipt of an objection, the commission must make a final determination on approval of the new program or a final recommendation on implementation for a private nonprofit institution of higher education. Under COMAR 13B.02.03.03, if the commission fails to act on a program proposal within 60 days after the submission of the program proposal to the commission, the program is officially approved without further action by the commission.

An institution may request review of a program proposal decision of the Secretary of Higher Education. COMAR 13B.02.03.28 describes the steps for a review by a commission. Within 10 days of the issuance of the Secretary's decision, a president seeking the commission's review of that decision must send a letter requesting review to the Secretary and the Commission Chair and, within 30 days, their full rationale in support of their request for review, including relevant supporting data. Within 20 days of receipt of notice of the request for review, the Secretary or Commission staff must submit to the Commission Chair its rationale in support of the decision and a copy is provided to the president seeking review. The Commission Chair must schedule a meeting to review the decision of the Secretary within 60 days of the issuance of the Secretary's decision. The Commission Chair may hold the review at a regularly scheduled or special meeting.

Between January 1, 2023, and December 1, 2023, MHEC received 143 new program approval submissions. Ten program approval submissions received an objection. Seven of objections were resolved without a hearing by the commission. Three program approval reviews, after an objection, received a hearing.¹ During this past interim, the Legislative Black Caucus expressed concerns regarding the quorum and transparency requirements for commission votes on final actions for program approval matters; the commission was only requiring a majority vote of commission members present for a final action and discussing and taking votes on an appeal only in closed session.

In response to a question from a workgroup member, DLS analyzed the timelines of other states related to program approval. (Appendix 1). Of all the states surveyed, New Jersey has a process most similar to Maryland in allowing for 30 days of review by institutions for objections

¹ After a review meeting, the Commission approved the proposed program. However, an advice letter from the Attorney General's office noted that the Commission's decision was void due to how the vote occurred. The proposing institution subsequently withdrew the proposal.

or concerns and 30 days for a decision to be made by the Academic Issues Committee. Most states surveyed allow for more time for objections and review by a coordinating board. Additionally, many states have a more cyclical timeframe for program approval by only allowing programs to be submitted for approval during certain times of the year (for example, quarterly or annually) and the coordinating boards devote specific meetings in the board's annual schedule to review of proposed programs. Most of the states surveyed had an administrative procedures guide on the coordinating board's website with details related to the program approval process.

Workgroup members representing institutions in the State have stated that (1) MHEC's process for program review has not been transparent in the past and (2) MHEC has not followed its own specific deadlines related to review and approval. The workgroup members did not discuss specific changes to current process deadlines as, after analysis of comparison of other state processes, there seemed to be no best practice to among other states regarding deadlines. Institutions of higher education deserve clear timeframes, that are followed, for the review of an institution's proposed program so that institutions can be clear to students and stakeholders about the timely delivery of the proposed academic program and effective use of institutional resources in the development and delivery of academic programming.

Recommendation 12: The workgroup recommends that MHEC reexamine its statutory and regulatory deadlines for the program approval process to determine if those deadlines need to be updated or streamlined to meet the needs of institutions and students in the State. MHEC's processes and procedures must be transparent, predictable, and timely and the workgroup recommends that the General Assembly consider holding MHEC accountable if the department does not make progress on adhering to stated timelines and deadlines in the program approval process.

Recommendation 13: The workgroup recommends that MHEC conduct all discussions, deliberations, and votes of an appeal of a program approval decision in public session.

Recommendation 14: The workgroup recommends that a vote of the majority of the commissioners appointed to the commission be required during a review meeting.

Recommendation 15: The workgroup recommends that MHEC develop and adopt an administrative procedures guide for the department's program approval process by June 2024 and prominently post the administrative procedures guide on the department's website. The administrative procedures guide should be updated at least annually.

NEW RECOMMENDATION: In an appeal process, each institution and the Secretary should have a protected 10 minutes of time to present their case.

NEW RECOMMENDATION: The Workgroup recommends that MHEC develop a separate program development and approval process for fully online programs offered to a majority of out-of-state students that allows Maryland institutions to compete with out-of-state competitors in the online market.

NEW RECOMMENDATION: The Workgroup recommends that, beginning in January 2025, that MHEC should review programs approved in the prior 4 year period over the objection of a HBCU, to determine if the establishment of the program had any harm on the HBCU and submit a report to the Maryland General Assembly on the review findings.

VI. Unreasonable Duplication in Graduate Programs Analysis

Under § 11-206.1 of the Education Article, MHEC must circulate the notice of an institution's intent to establish a new program within 30 days of the receipt of the notice. Within 30 days of receipt of a notice of an institution's intent to establish a new program, the commission may file, or an institution of higher education in the State may file with the commission, an objection to the implementation of the proposed program. An objection may be based on:

- inconsistency of the proposed program with the institution's approved mission for a public institution of higher education and the mission statement published in the official catalog of a private nonprofit institution of higher education;
- not meeting a regional or statewide need consistent with the State Plan;
- unreasonable program duplication, which would cause demonstrable harm to another institution; or
- violation of the State's equal educational opportunity obligations under State and federal law.

At the August meeting of the workgroup, the workgroup heard from MHEC about how the department completes an analysis of unreasonable program duplication. MHEC focuses on unreasonable duplication in vocational/technical, occupational, graduate, and professional programs. Proposed programs in undergraduate core programs consisting of basic liberal arts and sciences disciplines are not considered unreasonably duplicative by the department. The workgroup did not give consideration to whether MHEC should make a change to this policy.

MHEC uses a three-part analysis for an unreasonable program duplication analysis – duplication, reasonableness, and demonstrable harm. First, MHEC determines if there is *duplication* of the proposed program and the current program of the objecting institution. In regulation, MHEC describes “considerations” the Secretary of Higher Education must make in determining duplication. At the August meeting, the department phrased these considerations differently than the description in regulation and offered additional considerations used by the department. Next, MHEC considers whether the duplication is *reasonable*. Although the department broke the duplication and unreasonable questions into two different analyses at the August meeting, department regulations combine these tests. The third part of the analysis is a determination on whether the *duplication will cause a demonstrable harm* to the objecting institution. At the August workgroup meeting, the department discussed factors the department

considers when determining demonstrable harm. However, department regulations do not include these stated factors or any other factors that the department should consider in determining demonstrable harm.

Although the workgroup determined that MHEC has made great efforts to educate institutions about their analysis for unreasonable program duplication, the workgroup had concerns that these standards are not in regulation. Without adoption through the formal regulatory process, the program approval process appears to lack uniformity, consistency, and transparency in implementation. At most, the factors are described as “considerations” of the Secretary in regulation causing confusion about whether a specific factor or consideration receives more weight than another factor or consideration. Although the workgroup did not determine the factors for a duplication, unreasonableness, or demonstrable harm, it does think that workforce need should be prioritized in an analysis of unreasonable duplication.

The workgroup also had concerns that the department has conflated the tests for “unreasonable duplication” and “unnecessary duplication” as the same test, instead of conducting different, distinct analyses for each. While the objection for “unreasonable duplication” is in Maryland Code, as previously discussed, and relates to the duties of a coordinating body to allocate resources effectively, the test for “unnecessary duplication” follows the analysis for the objection under “violation of the State’s equal opportunity obligations under State and federal law” and creates a different duty for Maryland as a former *de jure* segregated state.

In *United States v. Fordice*, the Supreme Court adopted the definition of “unnecessary duplication” as “those instances where two or more institutions offer the same nonessential or noncore program. Under this definition, all duplication at the bachelor’s level of non–basic liberal arts and sciences course work and all duplication at the master’s level and above are to be considered unnecessary”. 505 U.S. 738.

In December 2000, Maryland and the Office of Civil Rights entered into a Partnership Agreement which “set forth commitments that the State and OCR anticipate will result in agreement that Maryland is in full compliance under federal law, particularly Title VI, ... and the standards set forth in *United States v. Fordice* ... regarding Maryland’s system of higher education.” In the OCR Agreement, Maryland made the commitment to “Avoid Unnecessary Program Duplication and Expansion of Mission and Program Uniqueness and Institutional Identify at the [HBIs].” The OCR specifically states that “Unnecessary program duplication refers to those instances in which broadly similar academic programs (with respect to overarching purposes, overall curriculum content, and expectations of program graduates) are offered in areas other than core undergraduate liberal arts and sciences at a TWI and an HBI that are operated in locations that are geographically proximate to one another. Maryland will avoid unnecessary program duplication unless there is a sound educational jurisdiction for the dual operation of broadly similar programs.”

In *Fordice*, the Supreme Court also held that the State consider whether there were less segregate means of obtaining the same goal. 505 U.S. at 179. The District Court of Maryland in *Coalition for Equity and Excellence in Maryland Higher Education v. MHEC* held that sound

education jurisdiction is not an open-ended invitation to justify otherwise segregative policies or practices, rather, it is a requirement that the State seriously consider whether a traceable policy cannot possibly be eliminated in light of legitimate educational concerns. In that specific case, the District Court held that “If MBA capacity was a state need, and even if Morgan opposed building its capacity, the State offered no evidence that it seriously considered alternative, non-segregative means to accomplishing the capacity building it sought, such as offering Morgan additional funding for such programming or considering another HBI to fill this need.”

NEW Recommendation 16:

The workgroup recommends that MHEC formally adopt the analysis for unreasonable program duplication in regulation, including the specific criteria and factors the department uses in the analysis. The workgroup recommends that the analysis should prioritize meeting the State’s workforce needs, protecting existing programs if they are meeting workforce demand, and collaboration.

The workgroup recommends that the legislature alter § 11-206.1(e)(4) of the Education Article to clarify this objection and that MHEC adopt the analysis for unnecessary program duplication in regulation, in consultation with the Attorney General. The legislature should consider altering this objection as noted below to distinguish this objection and analysis from an unreasonable duplication analysis under § 11-206.1(e)(3):

“(4) **UNNECESSARY DUPLICATION** in violation of the State’s equal opportunity obligations under State and federal law.”

VII. Criteria for a Full Program Review of a Substantial Modification to an Existing Program

At the initial meeting of the workgroup meeting, MHEC discussed the criteria used to determine a full departmental review of a substantial modification to an existing academic program. Under § 11-206 of the Education Article, the governing body of an institution of postsecondary education must submit to the commission each proposal for a substantial modification of an existing program. MHEC defines “substantial modification” in regulation as a change of more than 33% of an existing program’s course work. While other states use a trigger of 50% or have standards related to how to determine if a change qualifies as a substantial modification, the department’s 33% standard felt arbitrary and difficult to quantify to workgroup members.

Recommendation 17: The workgroup recommends that MHEC, in collaboration with all institutions, find a consensus as to whether 33% is the appropriate standard to trigger a full program review of a substantial modification to an existing program. If MHEC finds that a new standard is more appropriate, MHEC should update their regulations by January 2025 with a detailed explanation of the new standard.

VIII. Analysis of Recommendations and Advisory Committee

Recommendation 18: The workgroup recommends that the Maryland General Assembly determine an appropriate time to review the implementation of the workgroup's recommendations.

Recommendation 19: The workgroup recommends that the Maryland General Assembly add a Program Review Process Advisory Committee within MHEC to make recommendations to the commission on matters of program review and approval.