

Alabama Public Universities Desegregation Case Settled

Just a few days before a scheduled hearing, the parties to Alabama's twenty-five year old higher education desegregation case, *Knight v. Alabama*, reached a settlement that should result in the case finally being dismissed. The court had previously, after several trials (the most recent of which occurred during the summer of 1995), entered orders directing the State of Alabama and various Alabama public institutions of higher education to implement designated remedies. The intent of the orders was to accomplish the removal of conditions identified by the court as remnants or vestiges from the time when segregation existed in higher education in this state. These conditions included, for example, a low number of black faculty and upper-level administrators at some historically white institutions (HWIs), lack of high demand degree programs at historically black institutions (HBIs), etc. The court in 1995 retained jurisdiction over all the parties for a period of ten years (extending by 5 years a 10 year jurisdiction period established in the 1991 decree) to allow sufficient time for the remedial measures to be adopted and begin producing results. At the end of this period, the court indicated that jurisdiction would automatically end, unless one or more parties objected on the grounds that some elements of the vestiges remained.

As the tenth year of the court's August 1, 1995 decree approached last year, the Knight plaintiff class indicated that objections to termination of the court's oversight would indeed be filed. At the urging of the court, however, the parties engaged in settlement discussions throughout the Spring, Summer, and Fall. While a number of issues were discussed, a primary issue related to the insistence by the Knight plaintiffs that each HWI commit to adoption of a strategic diversity plan aimed at enhancing the numbers of black faculty and upper level administrators on campus. This commitment was to be incorporated in a formal settlement agreement entered into by the parties, based on which the parties would agree to seek the court's dismissal of all related claims. The agreement would have a term of five years but would not be subject to any further oversight by the *Knight* court.

The parties reached substantial consensus on these "campus-based" issues but were not able to reach agreement on the other major area of dispute relating to several financial claims by the Knight plaintiffs and the HBIs. These claims included a demand that the state agree to make available a massive sum of money for "need-based" financial aid to be distributed to the various institutions for students whose families' financial situation qualified them for such aid. The plaintiffs claimed that such aid, though it would be offered to prospective students on a race-neutral basis, would hold primary benefit for many of the state's black families, for whom the high cost of tuition presented an obstacle to access to a college or university education. While not opposed to such an initiative, the defendants expressed concern about the impact of dedicating a large amount of funds for such a program, especially on a continuing basis, from the Education Trust Fund (ETF), which supports the funding for public K-12 and public higher education in Alabama.

After the parties reported to the court last October that settlement negotiations appeared to have reached an impasse, the court entered an order giving the parties 30 days to file objections to termination of the decree. Objections were filed by the Knight plaintiffs, the United

States (also a party plaintiff in the case), and by the two HBIs. The objections related to the issues mentioned above and also included claims by the HBIs that additional capital and programmatic funds were needed for their respective campuses. After responses were filed by the defendants and the expiration of a period for discovery (depositions, interrogatories, etc.), the court convened all the parties on June 22, 2006 for a pre-trial hearing. The hearing was followed by an order scheduling a trial on these matters beginning October 10, 2006. For more information on these events, see previous *LegalWatch* reports (Vol. 5-05, pp. 7-8; Vol. 3-06, pp. 1-4).

Settlement negotiations continued after the June hearing, and, as the month of September drew to a close, an agreement was finally secured. The University of Alabama System (UAS) developed a settlement agreement dealing with the campus-based issues that, with some modification, was accepted by the Knight plaintiffs. This document was then shared with other HBIs, who thereafter reached their own settlement agreements.

The UAS agreement calls for each of the three campuses to develop a strategic diversity plan reiterating its commitment to the goal of diversity in its student body and among its faculty and upper-level administrative employees. Diversity is understood to have racial and ethnic components, but with an emphasis on the presence of African-Americans. Campus executive officials are to provide leadership in carrying out this commitment. Goals for African-American representation in these groups are to be established (the UAS institutions have actually had such goals in place for several years), and annual reports are to be prepared showing the racial composition of the groups and discussing progress made in enhancing diversity. The agreement acknowledges that the UAS institutions have already implemented many diversity-enhancing measures and initiatives, and these measures may be continued as long as the institutions deem them effective and/or appropriate. A campus diversity advisory committee may assist the administration in considering practices and policies to increase diversity, and the UAS is to host annual statewide meetings for representatives from Alabama public universities to discuss programs that hold promise for improving campus diversity. The foregoing obligations are to remain in place for five years.

The settlement agreement further requires the parties to jointly request dismissal of the case by the court, including all claims against the UAS. Such a dismissal would constitute an adjudication that all vestiges of segregation in Alabama's higher education system have been removed under applicable legal standards ("to the extent practicable and consistent with sound educational practices"), and that the UAS, along with the other defendants, has satisfied all desegregative obligations under the law.

Inability to reach consensus on a second group of issues involving state funding commitments had previously defeated efforts to conclude the case without a trial. At the end of last month, however, the parties were successful in achieving a break-through agreement on these issues as well. Pursuant to that agreement and a motion filed by the parties, the court has ordered the sequestering of \$45.6 million dollars from the 2005-06 surplus in the ETF, to be paid out for several purposes. Ten million dollars will be used to provide one-time funding for the Alabama Student Assistance Program, the state's current need-based financial-aid program administered

by ACHE. The remainder of the funds will be paid as follows: \$25.8 million to Alabama State University (ASU) and \$7.3 million to Alabama A&M University (AAMU), all for capital projects; \$1 million to the Knight attorneys for fees and expenses; and \$1.5 million to the court for additional litigation expenses, as it may order. ASU will be entitled to an additional \$10 million next fiscal year, to be paid from a bond issue or from the ETF. A claim that Alabama's *ad valorem* tax system is a vestige was appealed by the Knight plaintiffs after being rejected by the District Court, and the Knight plaintiffs have agreed that, if the Eleventh Circuit rules in their favor, they will seek only future relief. The latter includes principally an injunction forbidding the State to collect future property taxes after it is given a reasonable time to enact replacement legislation and/or constitutional provisions.

The next step will be for the court to hold a hearing at which members of the Knight class will be permitted to comment, through testimony, on the fairness of the settlement. It is anticipated that the court will approve the settlement following such hearing and enter final judgment in the case. As indicated above, the parties will still be required, over the next five years, to carry out the obligations specified in the various settlement agreements, but such efforts will no longer be subject to the oversight of the *Knight* court.

It appears that a chapter in the history of public higher education in Alabama is nearing its conclusion. The case involved three major trials and several appeals to the Eleventh Circuit Court of Appeals. At various junctures, severe judicial remedies were considered possible, including, where a HWI (such as UAH) and a HBI (such as AAMU) were located in the same community, program termination/transfer and institutional closure. For obvious reasons, the lawsuit was viewed as presenting a serious potential threat to the future of several of UAH's programs and the institution itself. Fortunately, the court was persuaded to pursue other avenues to achieve the removal of vestiges. The two HBIs have clearly been strengthened, in terms of programs, capital resources, and finances generally, as a result of the lawsuit. Structural changes have been made in the State's land grant program to make AAMU a more equal partner with Auburn University in a new unified system. And the HWIs have made notable progress in attracting greater numbers of black students, faculty, and higher level administrators over the course of the case. While the five year settlement agreement remains as a very real part of the direct lineage of the case, the era of judicial intervention into Alabama's public universities to bring about race-related change may soon be at an end.