

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN F. KNIGHT, JR., and
ALEASE S. SIMS, et al., individually
and on behalf of others similarly
situated,

Plaintiffs and
Plaintiffs-Intervenors,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

THE STATE OF ALABAMA, et al.,

Defendants.

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Civil Action No.
2:83-cv-1676-HLM

SETTLEMENT AGREEMENT
BETWEEN THE KNIGHT-SIMS PLAINTIFFS AND
DEFENDANTS ALABAMA STATE BOARD OF EDUCATION,
CHANCELLOR ROY JOHNSON, ATHENS STATE UNIVERSITY, AND
CALHOUN STATE COMMUNITY COLLEGE

I.

Purpose and Basis of the Agreement

This Agreement is entered into by John F. Knight, Jr., and Alcase S. Sims et al., on behalf of themselves and the plaintiff class they have been certified to represent,¹ and by Defendants Alabama State Board of Education (hereinafter referred to as “the Board”) and its members, Chancellor of Postsecondary Education Roy Johnson (the “Chancellor”), Athens State University (formerly known as Athens State College and hereinafter referred to as “defendant University” or “Athens”), and Calhoun State Community College (hereinafter referred to as “Calhoun”) (hereinafter collectively referred to as the “SBE Defendants”). The purpose of this Agreement is to specify the terms on which the Knight-Sims plaintiffs will join the SBE Defendants in requesting that the Court enter a judgment finally dismissing the claims against the SBE Defendants in this action. This Agreement is intended , upon final Court approval, to accomplish a full, complete, and final settlement of this action (Civil Action No. 2:83-cv-1676-HLM) insofar as it is directed against, involves, limits, or relates to the SBE

¹ The Knight-Sims class was certified as “All black citizens of Alabama and past, present and future students, faculty, staff and administrators of Alabama State University and Alabama A&M University.” *Knight v. Alabama*, 787 F. Supp. 1030, 1051 (N.D. Ala. 1991), *aff’d in relevant part*, 14 F.3d 1534 (11th Cir. 1994).

Defendants, the Board-and-Chancellor-governed postsecondary education institutions, their enrollments, staffing, programs and operations, and/or locations and extent thereof, and is also intended to result in the complete dismissal, with prejudice, of these Defendants from this civil action.

The SBE Defendants acknowledge that since entry of the Court's 1991 Remedial Decree,² they have been enjoined from maintaining vestiges of *de jure* segregation and from engaging in practices which have the effect of impeding the desegregation of the state's institutions of higher education. Since then, substantial progress in conditions, policies and practices at the SBE institutions has been achieved. The parties agree that this progress should continue. The parties further agree that continued progress does not depend on continued federal court supervision. It is in this spirit that the parties have reached this Settlement Agreement ("Agreement").

Applicable desegregation law requires the Court to determine that vestiges of segregation have been eliminated to the extent practicable and consistent with sound educational practices. By entering into this Agreement, the Knight-Sims plaintiffs acknowledge that the SBE defendants have fully, without the necessity of

² *Knight v. Alabama*, 787 F.Supp. 1030, 1377 et seq. (N.D. Ala. 1991), *aff'd in part and rev'd in part*, 14 F.3d 1534 (11th Cir. 1994).

additional action, satisfied this legal burden. Similarly, by entering into this Agreement, the SBE defendants pledge to continue the substantial progress that has been achieved over the course of this litigation in redressing historical discrimination in higher education against African-American citizens of this state. To that end, this Agreement's primary focus is on continuing to improve African American participation in Alabama's system of public higher education. Without limiting their agreement to continue this progress in all aspects of their institutional life, the SBE defendants agree to take the following specific steps.

II.

African-American Representation

on the Faculties and at the EEO-1 Administrative Level

of Defendant Athens State University

1. Defendant Athens State University (hereafter "Defendant University") agrees that it will develop and implement a Strategic Diversity Plan. Development of the Strategic Diversity Plan shall commence no later than the date this Agreement is finally approved by the Court, and implementation of the Plan shall begin no later than one year later.

2. Defendant University will develop and tailor its Strategic Diversity Plan to the circumstances of its own institutional circumstances, utilizing best practices

that are being developed nationally and complying with the relevant legal and constitutional guidelines. However, at a minimum, defendant University agrees as follows:

a. Defendant University will fully include representatives of African Americans on its campus and in its larger service community in the development and implementation of the Strategic Diversity Plan. African-American student, faculty and staff organizations at defendant University and (if it is active on campus) the Alabama Black Faculty Association shall be permitted to designate representatives to participate in the development of the Plan. The objective will be to make the Strategic Diversity Plan the product of inclusion and consensus. The parties acknowledge that the concept of diversity should encompass all under-represented elements of the community, not just African Americans. Nevertheless, in Alabama, where the history and effects of segregation are well known, faculty and EEO-1 administrative level diversity will of necessity include increasing African-American representation.

b. The Strategic Diversity Plan will include the development of dynamic goals and timetables for achieving a critical mass (an appropriate number or percentage) of African-American members of the defendant University's faculty and administration, not as legally or contractually enforceable quotas, but as

standard management techniques for determining the Plan's effectiveness. These goals and timetables shall be subject to periodic review and modification in light of experience with implementation of the Plan and changing circumstances.

c. The President and all deans and department heads will be held accountable for, and their job performance shall be evaluated, at least in part, on the basis of, the performance of their activities related to achieving the objectives of the Strategic Diversity Plan.

d. The Strategic Diversity Plan will require that African-American representation be on all search committees for presidents and all EEO-1 level administrative positions and, to the extent practicable, on all search committees for faculty.

e. The Strategic Diversity Plan shall require that diversity be an important selection consideration for all faculty and administrative positions. The foregoing sentence shall be interpreted and applied in a manner and to an extent that, given the factual record in this case and the purposes of this Agreement, is consistent with applicable law, and not otherwise.

3. The Knight-Sims plaintiffs acknowledge that the Strategic Diversity Plan developed by Auburn University, finalized on May 4, 2005, and available on Auburn's web site, meets the requirements of this Agreement.

4. Defendant University agrees to designate an administrative position at the Vice President or other cabinet level to oversee implementation of the Strategic Diversity Plan.

5. Defendant University agrees that its Strategic Diversity Plan shall be endorsed by its governing Board.

6. Defendant University agrees to attend annual conferences with other defendant universities to review and critique the development, terms and implementation of their strategic diversity plans and to exchange information about best practices. Representatives of the defendant University's African-American faculty organization and the Alabama Black Faculty Association shall be allowed to attend and to participate fully in these conferences. Defendant University agrees to post on its web site a report of the annual conference and any recommendations proceeding therefrom, including any minority reports and recommendations.

7. Defendant University agrees to post to its web site by February 1, 2007, and by February 1 of each year thereafter a report on the implementation of its Strategic Diversity Plan that, at a minimum, includes the following:

- a. Racial composition data of student body (total, undergraduate, and graduate) from 1991 to the present;
- b. Racial composition of the students awarded bachelor, graduate and

professional degrees;

c. Racial composition of full-time faculty from 1991 to the present;

d. Racial composition of presidents, provosts, vice presidents, deans, department chairs and other EEO-1s from 1991 to the present;

e. Racial analysis of faculty and administrative positions filled during the year, including the number of African Americans considered for these vacancies;

f. An assessment of progress by the institution in enhancing diversity and/or moving toward its diversity goals, with an emphasis on the representation of African-American faculty, EEO-1, and students.

8. To the extent it has not already done so by the time this Agreement is finally approved by the Court, defendant University agrees to make good faith and reasonable efforts to respond to the Knight-Sims plaintiffs' discovery requests with respect to the issue of financial aid.

III.

Need-Based Student Financial Assistance

The Parties agree that the availability of financial assistance is an important determinant of a student's decision of whether to attend college. To help accomplish these SBE Defendants' educational missions and to enhance the benefits that flow

from a racially and socially diverse student body. the Parties are committed to increasing the availability of need-based financial assistance. To that end, through a tuition waiver program, the SBE Defendants shall, during the two years following the Court's approval of this Agreement, increase their need-based financial assistance to Athens State University and Calhoun State Community College students. Specifically, in addition to the normally existing, on-going scholarships that are from time to time awarded to Athens and Calhoun students based on need and/or merit it is agreed as follows:

1. Athens State University and Calhoun State Community College shall each with good faith aggressiveness conduct programs that make available and grant to "economically disadvantaged students" "need-based tuition and fee waivers."

a. For this purpose an "economically disadvantaged student" is a student who qualifies for "in state" tuition rates and whose documented financial situation is such that he or she qualifies for Pell Grants and SEOG student financial assistance.

b. The term "need-based tuition and fee waiver" means a decision by Athens or Calhoun to waive the normal tuition and fee charges that would otherwise, for the applicable semester or academic year, be charged to and required to be paid by an individual in order to attend the university or college. Need-based tuition and fee waivers shall be granted based solely upon financial need, as distinguished from

“merit” or combinations of merit and need, to individuals who meet the institution’s minimal standards for admission and demonstrate financial need as defined above. The effective source for these need-based tuition and fee waivers shall not be federal student financial assistance, shall not be other federal funds, and shall not be supplanted from existing foundation or other privately-funded scholarships or donations. Instead, the costs of this need-based tuition and fee waiver program shall be absorbed from *institutional funds* - that is, tuition and fees that otherwise would have been paid by the student to the institution or funds received from the state (unless the State of Alabama appropriates to Athens and/or Calhoun state funds specifically designated for or permitted to fund the program).

c. At the present time, the tuition rate at Calhoun is approximately \$1,140.00 per semester for a full-time student, or \$2,280.00 per year. The current tuition rate at Athens is approximately \$111.00 per semester hour, or about \$1,332.00 per semester for a full-time student, or \$2,664.00 per year.

d. The goal of Athens and Calhoun, for each of them, for the one-year period commencing with the Court’s approval of this Agreement, shall be to increase by 75 full-time students (or the equivalent thereof) the total annual need-based tuition and fee waivers granted by that institution, as compared to the one-year period immediately preceding the Court’s approval of this Agreement. At a minimum, so

long as there are sufficient numbers of qualified student applicant recipients (who subsequently enroll and attend the institution) necessary to grant need-based tuition and fee waivers, Athens and Calhoun shall for each of the two years following Court approval of this Agreement, award at least 50 more need-based tuition and fee waivers (or the equivalent thereof) than were granted during the one-year period immediately preceding the implementation of this Agreement.

2. Athens and Calhoun shall in good faith take appropriate action designed to inform prospective need-based tuition and fee waiver recipients of the program and opportunities to apply for such waivers. This action shall include aggressive marketing of the program to potential minority recipients. For example, Calhoun shall distribute brochures or other notices of the program to officials of public schools within its service area having predominantly African-American enrollments; both Athens and Calhoun shall distribute similar notices to area churches; and Athens shall distribute similar notices to Alabama public two-year colleges with historically or predominately black enrollments.

3. Athens and Calhoun shall at least annually report to the Chancellor the results of its need-based tuition and fee program, and also transmit with said reports any recommendations for change to the program, or its scope, that it believes to be appropriate for consideration in future years. Any changes approved shall not,

however, during the two-year period decrease the above-stated goals and minimum requirements for waivers, and shall not transform the criteria for granting waivers from being strictly financial need-based (as distinguished from merit based).

IV.

Attorneys' Fees and Expenses

The Parties agree that, for purposes of this Agreement, the SBE Defendants shall pay to counsel for the Knight-Sims Plaintiffs total attorneys fees of \$25,000, to be paid not later than ninety-five (95) days following the Court's final approval of this Settlement Agreement.

V.

Dismissal of Action and Settlement Implementation

A. Preliminary Court Approval of Agreement.

Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties by joint motion shall submit the Agreement to the District Court requesting that the Court enter an order granting preliminary approval of the Agreement. The District Court shall be requested to direct the giving of notice to the plaintiff class and to schedule a fairness hearing. In the event the Court declines preliminarily to approve the Agreement, or finds the Agreement does not provide an adequate basis for issuing

notice and scheduling a fairness hearing, then the entire Agreement shall become null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

B. Final Judgment.

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, the parties, and each of them, agree to cooperate in good faith to achieve the expeditious approval of the settlement, and shall request the Court to grant final approval of the Agreement and to enter an order and judgment thereon ("Judgment"), by which Athens State University, Calhoun State Community College, the Alabama State Board of Education, its members and Chancellor Roy Johnson (insofar as they are sued in their official and individual capacities), as well as all claims insofar as they are directed against them, are dismissed with prejudice. In order to satisfy the requirements of the Agreement, the Judgment must include, by specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23, Fed. R. Civ. P., with the plaintiff class as previously defined by the Court;

2. Find that the notice given to class members satisfied the requirements of both Rule 23, Fed. R. Civ. P., and due process, and that the Court has jurisdiction over the class;
3. Find that the Agreement is fair, adequate, and reasonable in all respects;
4. Order that the SBE Defendants shall implement the Settlement Agreement;
5. Incorporate the Agreement within the Judgment to enable the District Court to exercise jurisdiction over any subsequent dispute involving the Agreement;
6. Pursuant to Rule 42(b), Fed. R. Civ. P., sever from this action the claims that are pending resolution of the Knight-Sims plaintiffs' appeal from this Court's orders of October 5, 2004, and February 10, 2005, denying plaintiffs' requests for relief based on said claims;
7. Subject only to final resolution of the claims pending on appeal or severed, find that on judicial approval of this Agreement, including the commitments contained herein, the SBE Defendants shall be in full compliance with the law, and that, therefore, there are no continuing policies or practices of the SBE Defendants, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible and practical alternatives or remedial measures;
8. Subject only to final resolution of the claims pending on appeal or severed, dismiss on the merits and with prejudice (i) all claims against the SBE Defendants set forth in the complaint, as amended, (ii) all claims against the SBE Defendants set forth in the complaint-in-intervention, and (iii) all claims against the SBE Defendants of racial discrimination asserted before the Court throughout the pendency and trials of the action

including, without limitation, claims of system or institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system or barriers to eliminating remnants of the *de jure* system.

9. Find that continued or future injunctive relief against any of the SBE Defendants is not necessary and not appropriate, and dissolve all injunctive relief against Athens State University, Calhoun State Community College, Chancellor Roy Johnson, and the Alabama State Board of Education, its members, and the institutions and officials under their governance, supervision, and control.

C. Finality and Term of Agreement.

This Agreement shall become final upon the occurrence of the following events: (i) approval of the Agreement in all respects by the District Court as required by Rule 23(e), Fed. R. Civ. P., and (ii) entry of the Judgment as provided for above.

The term of the provisions of this Agreement shall be for five years from (a) the date it is finally approved by the Court or (b) July 1, 2006, whichever occurs sooner, except that the term of the provisions of Part III of this Agreement, concerning need-based student financial assistance, shall be two years from the date it is finally approved by the Court

D. Enforcement.


The parties, including all class members, irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Alabama any suit, action, proceeding or dispute arising out of or relating to the Agreement (including any alleged nonperformance of the Agreement or the Judgment) or to the applicability of the Agreement. All parties agree that the District Court has complete jurisdiction and power to enforce this Agreement. The parties intend by this paragraph to vest the District Court with full jurisdiction for enforcement as contemplated by the case of *Kokkonen v Guardian Life Ins. Co.*, 511 U.S. 375 (1994).


This Agreement is subject to and conditional upon the approvals of the Alabama State Board of Education and the State of Alabama Attorney General's Office, and without said approvals shall be null and void.

By and through the respective signatures of their authorized attorneys below, each of the aforesaid Parties agrees and enters into this Settlement Agreement.

FOR THE KNIGHT-SIMS
PLAINTIFF CLASS

FOR THE ALABAMA STATE
BOARD OF EDUCATION, ITS
MEMBERS, CHANCELLOR ROY
JOHNSON, ATHENS STATE
UNIVERSITY, AND CALHOUN
STATE COMMUNITY COLLEGE


James U. Blacksher, Attorney for John
F. Knight, Jr., and Alease S. Sims, et al.


Jeffery A. Foshee, Attorney for the
Alabama State Board of Education,
Its Members, Chancellor Roy
Johnson, Athens State University, and
Calhoun State Community College

Date: 25 Sept. 2006

Date: September 25, 2006

Approved: _____

State of Alabama
Office of the Attorney General
Montgomery, Alabama

Date: _____