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November 21, 2018

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Re: Response to the Governance Subcommittee Proposal to the Governor's Blue Ribbon
Commission on Public Four-Year Higher Education

Dear Fellow Members:

The Governance Subcommittee last week presented to the broader Blue Ribbon Commission its proposed recommendation to eliminate the Higher Education Policy Commission and create the West Virginia Office of Postsecondary Education. I appreciate the work of the Subcommittee members and write to provide perspective regarding the incompleteness of its recommendation.

The Governance Subcommittee built its recommendation on the unsupportable premise that the Higher Education Policy Commission is a "super governing board" as that phrase has been coined by Co-Chairman Gee. It is not. When called upon by Dr. Gee to clarify his opinion, WVU's expert, Dr. Jay Cole, stood by his analysis that the HEPC is not a governing board much

less a “super governing board.” WVU and Marshall have demonstrated that they have the collective influence with the Legislature to free themselves from almost all accountability oversight by the HEPC. The functioning of the HEPC affect and benefits the regional colleges and universities. Each member should ask the representative of a regional institution what restraints the Legislature has placed on their respective Boards of Governors. The HEPC does nothing to any regional institution absent a specific statute that prescribes the activity.

If you vote in favor of the Governance Subcommittee proposal, it is a vote to destabilize a carefully crafted accountability structure designed and approved by the Legislature. **There is not a single instance that has been identified in the Governance Subcommittee “Executive Summary” proposal where the HEPC governed WVU or any other college or university.** The recommendation that the HEPC be abolished is driven by a desire by a few to eliminate any accountability by an impartial agency and force the Legislature to create a group of educational specialists on its payroll to review the same data now required by state law.

The Higher Education *Policy* Commission is an entity comprised of thirty-eight (38) employees who guide and advise the Governor, Legislature, Four Year and Two Year Colleges and Universities. It coordinates higher educational activities pursuant to the West Virginia Code as enacted by the Legislature. It is very efficient in that the salaries of half of its employees are funded through federal grants that it has secured.

HEPC is the entity that the Legislature created to gather, analyze and monitor the performance metrics of higher education and be accountable to the Legislature to confirm that each appropriation is well spent.

The Blue Ribbon Commission will embarrass itself if it endorses to the Governor a proposal that fails to analyze the statutory duties assigned to the HEPC and fails to address why the legislative leadership should discard and disband the sole governmental agency that provides *objective* analysis and advice regarding the policies that provide the foundation for the delivery of higher education in the State of West Virginia.

Each institution has its own Board of Governors. These Boards govern their respective institutions as defined by statute. HEPC does not “govern” any higher education institution in the State.

The present proposal by the Governance Subcommittee was presented to the college and university Presidents who attended the HEPC meeting last Friday in South Charleston. The attendees, with the single exception of President Gee, took exception to the pending proposal and informed Subcommittee Chair Drew Payne that it was incomplete.

One of the rationales advanced by the Subcommittee was a cost savings. The Blue Ribbon Commission did not receive any financial analysis of HEPC or a pro-forma for the Office of Postsecondary Education. In fact, to this day, the members of the Blue Ribbon Commission have received only an “Executive Summary” rather than the complete proposal. A reference was made to the reduction from 400 to a number less than 50 occurred when K-12 public education was reorganized. Presently, HEPC employs only 38. No restructuring is appropriate. Unlike the respective Boards of Governors that have the freedom to govern their respective institutions, the HEPC’s mission is defined by state statutes. While Co-Chairman Gee, during telephonic discussion of the proposal last week, suggested significant costs savings through the new structure, none of those savings were mentioned in the “Executive Summary.” Likewise, the summary does not identify how the Office of Postsecondary Education would be staffed or funded to position it to continue to manage the bond indebtedness incurred by the institutions.

The Governance Subcommittee failed to include within its list of duties for the Office of Postsecondary Education many of the essential services currently provided by the HEPC. The proposal failed to address why such services were omitted and how the Office of Postsecondary Education *could* offer the level of service that our state’s higher education institutions need and deserve. Briefly, this letter focuses on what is missing from the Governance Subcommittee recommendation that is important for each member to consider before voting to accept or reject the proposal. A discussion of some of those omitted responsibilities is instructive.

Omitted areas of concern and importance

Discussion during the Blue Ribbon Commission and the subsequent Council of Presidents meeting on November 16, 2018 made it clear that areas of current HEPC functionality omitted are a concern not just of Blue Ribbon panel members but of the institution presidents. Areas of concern that the Blue Ribbon Commission must address before moving ahead with a governance structure recommendation include (but are not limited to):

- **EPSCoR** — The Science and Research Division of the HEPC successfully has written and managed millions of dollars in federal research grants. The HEPC, a centralized, neutral statewide agency, coordinates the work of talented research teams at our three public research institutions. We would fail in our responsibility per the Governor’s charge by simply removing this responsibility from the HEPC. The OPE proposal makes no mention of where the EPSCoR functionality would transfer and, when the Governance Subcommittee Chairman was asked about it, Co-Chairman Gee suggested a new office for EPSCoR whose details could be discussed “offline” after the BRC meeting. Our research institution partners, besides Co-Chairman Gee, made it clear they wish for the HEPC to continue to provide a balanced, neutral body to manage these federal research grant programs.

- **FINANCIAL AID** —The OPE proposal mentions financial aid training for high school counselors and other financial aid advice, but does not identify administration of the state’s financial aid programs. The HEPC financial aid staff handles hundreds of thousands of FAFSA applications and has faithfully and successfully administered more than \$90 million in state aid each year. This responsibility is not delineated in the OPE proposal and, to my knowledge, the sound management of these programs by the HEPC has not been questioned, yet this critical responsibility is not mentioned in this proposal.
- **LEGAL SERVICES** —The presidents of the regional institutions, with the exception of Shepherd University, will attest one of the most important services provided by HEPC is legal advice provided through the HEPC office of general counsel and the assistant attorneys general managed by that office. Most of our schools cannot afford to employ a general counsel or to maintain counsel on retainer. In addition, the dozens of years of experience and expertise in higher education law available through the combined staff of five is unmatched through a governance model that does not take into account this critical shared service. The omission of legal services in the OPE proposal is surprising, given the frequent mention of its necessity by our presidents.
- **FACILITIES PLANNING AND CAPITAL PROJECTS** — The OPE summary does not mention facilities planning and capital projects planning. Only our largest institutions have the in-house expertise to manage large capital projects and the resources to hire an outside expert to review large construction and maintenance projects. The shared facilities planning office enables the HEPC to assist our schools on demand with the lowest possible cost, while also providing expertise in a variety of other areas including safety and continuity of operations plans.
- **REGIONAL TECHNOLOGY PARK** — While the West Virginia Regional Technology Park (“WVRTP”) in South Charleston is managed by a non-profit board, the property itself and the ownership of the park is housed by State statute under the HEPC. The HEPC provides support services to the Tech Park board. The future of WVRTP is critical to the Kanawha Valley and southern West Virginia. Continuity in its approach to technology development, job creation and innovation through the HEPC is essential to its success. Notwithstanding its importance, disposition of WVRTP is not mentioned in the Governance Subcommittee proposal.
- **TUITION AND FEES** — The Governance Subcommittee proposal ignores one of the most important responsibilities imposed on the HEPC by the Legislature. The proposal presumptively will allow each school to charge whatever tuition or fee that it wants

without any oversight. It is essential that the proposal discuss a mechanism for limiting increases in tuition and fees that can be imposed by the respective Boards of Governors. Currently, the Legislature has tasked the HEPC with authority to review and approval of increases in tuition and fees above the statutory authority local boards have to increase tuition 10 percent in a single year or 7 percent over a three-year rolling average. The institutions have great latitude to set their own tuition and fees but the draft proposal mentions no means for larger increases to be considered. Again, I emphasize that by making HEPC services optional, the state risks losing a neutral body that advocates on behalf of students and helps to ensure statewide accountability.

- **WEST VIRGINIA NETWORK (WVNET)** — An optional service is listed as “Information technology systems” but this is especially vague given that the HEPC oversees the entire WVNET office in Morgantown. WVNET provides a wide variety of technology, networking and support services to K-12, community colleges, regional colleges and a number of other state offices and municipalities. In addition, the WVROCKS online education program, which almost all of our four-year institutions utilize, also is housed within WVNET. The disposition of this organization will be of great interest to the dozens of customers it serves and its reorganization could affect its ability to leverage federal e-rate dollars for broadband services.
- While the Subcommittee’s “Executive Summary” mentions that this new office would provide a measure of these services upon request by the public instructions, its description is vague, and it is not clear if these crucial information-gathering functions also would be optional:
 - Single statewide audit submissions and participation
 - Student-level and P20 data systems

IMPACT ON COMMUNITY AND TECHNICAL COLLEGES

By Statute, the HEPC is directed to share staff and resources with the Community and Technical College System. The model provided by the Governance Subcommittee does not address the impact on the CTCs. Given the limited resources of our community and technical colleges, the Blue Ribbon Commission would be irresponsible to forward a recommendation for a new structure that does not consider input from our CTC Chancellor and the leadership of our individual community and technical colleges. Subcommittee Chair Payne advised the Council of Presidents last week that he believed that the Governor might expand the jurisdiction of the Blue Ribbon Commission to include the Community and Technical Colleges. If so, any proposed change in the structure or functioning of the HEPC would be premature.

COST OF TRANSITION

It is unclear from the Subcommittee proposal how the cost to our institutions and our state would be less. There is significant cost to consider in changing the name of the agency alone. These proposed changes cannot be compared to the Department of Education's elimination of the RESAs. Conversely, this proposal equates to abolishing the WVDE and transferring its responsibilities to the RESAs.

SUMMARY

The work of the Governance Subcommittee in its effort to identify the needs of our institutions is a first step but is inadequate to support the proposed recommendations. I support the evaluation of HEPC functions and cooperative work to design a new improved system structure that would most benefit our students, provide accountability and help to ensure the viability of our institutions.

The proposal presented on November 15 does not, however, accomplish the mission demanded by current state law. While it partially considers some of the service functions that our institutions insist must be maintained, it does not provide for the continuance of accountability with regard to audits and data submissions. The Subcommittee proposal fails to ensure the interests and success of students are the first priority. It is disconcerting that the recommendation proposes removing the EPSCoR functions from the HEPC and does not mention WVNET or Financial Aid. This confirms that the Subcommittee proposal is driven by the desire of one or more institutions to control access to grant funding to the detriment of other institutions, students and the State.

As Governance Subcommittee Chairman Payne mentioned during the HEPC meeting on November 16, the proposal at this stage is a draft. As a member of the Blue Ribbon Commission and Chairman of the Higher Education Policy Commission, I urge my fellow members to consider the concerns discussed above and continue to ask the questions that our regional presidents have asked and remain unanswered. I believe that all of the institutions can work together, with HEPC staff input, to envision and create an improved coordinating and service structure, approved by the Legislature, which is more flexible without sacrificing impartial data collection and analysis, student advocacy and/or institutional accountability.

Having served on the Marshall Board of Governors for eleven years and six years on the HEPC Board, it is irresponsible to suggest that each institution delegate one of its Board members to sit on a Board in Charleston that manages a service agency. The HEPC charter from the Legislature is premised on impartial collection and analysis of raw data for the benefit of the student population, the legislative and executive branches. Ask the respective chairs of the Senate and

House whether they rely on the data analysis provided by the HEPC when considering their appropriations.

Moreover, by recommending that all of these functions would be optional, the Governance Subcommittee would have the Legislature create a situation in which all institutions would not be held to the same accountability standards, and one that could increase the costs for institutions that participate. No one can reasonably expect the Legislature to accept and act favorably upon such a proposal.

Understand that the elephant in the room is the Community and Technical College System. HEPC's personnel support it and provide the same services that the four year schools receive. Before advancing a proposal to the Governor, I urge each member of the Blue Ribbon Commission to do his and her personal due diligence regarding the foregoing issues.

The Executive Order published by the Governor that established the Blue Ribbon Commission charged us to analyze a broad swath of issues. It did not ask us to confirm the agenda of one institution that is uncomfortable with the state law that requires HEPC to collect and analyze data relevant to the accountability and performance of each institution.

Sincerely,



Michael J. Farrell
Chairman

cc: Mrs. Carolyn Long, Chancellor
West Virginia Higher Education Policy Commission

Dr. Sarah A. Tucker, Chancellor
West Virginia Council for Community and Technical College Education

Presidents, West Virginia Public Colleges, Universities, and Community and Technical Colleges

Jay Cole, Professor
West Virginia University

Mr. Ryan Quinn
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