

Michael J. Farrell, Esq.
Chair



Carolyn Long
Interim Chancellor

West Virginia Higher Education Policy Commission

1018 Kanawha Boulevard East, Suite 700 • Charleston, West Virginia 25301

(304) 558-2101 phone • (304) 558-1011 fax

www.wvhepc.edu

December 13, 2018

Dr. E. Gordon Gee, Co-Chair
Blue Ribbon Commission Four-Year Higher Education
West Virginia University
103 Stewart Hall
Post Office Box 6201
Morgantown, West Virginia 26506-6201

Dr. Kendra Boggess, Co-Chair
Blue Ribbon Commission on Four-Year Higher Education
Concord University
Vermillion Street
Post Office Box 1000
Athens, West Virginia 24712

Dr. Jerome A. Gilbert, Co-Chair
Blue Ribbon Commission Four-Year Higher Education
Marshall University
One John Marshall Drive
Old Main 216
Huntington, West Virginia 25755-1000

Ms. Jenny Allen, Member
West Virginia Higher Education Policy Commission
Post Office Box 2046
Shepherdstown, West Virginia 25443

Ms. Diane Lewis, Member
West Virginia Higher Education Policy Commission
Action Facilities Management, Inc.
115 Malone Drive
Morgantown, West Virginia 26501

Mr. James W. Dailey II, Member
West Virginia Higher Education Policy Commission
W. Harley Miller Contractors, Inc.
1193 Hedgesville Road
Martinsburg, West Virginia 25403

Blue Ribbon Commission Members

December 13, 2018

Page | 2

Mr. Dale Lowther, Member
West Virginia Higher Education Policy Commission
1221 Washington Avenue
Parkersburg, West Virginia 26101

Mr. Andrew A. (Drew) Payne, III, Member
West Virginia Higher Education Policy Commission
300 Capitol Street, Suite 1503
Charleston, West Virginia 25301

Ms. Donna L. Schulte, Member
West Virginia Higher Education Policy Commission
309 Hatcher Church Road
Princeton, West Virginia 24739

Mr. Robert Lee Brown, Member
West Virginia Higher Education Policy Commission
AFL-CIO
1615 Washington Street, E.
Charleston, West Virginia 25311

Dr. Steven L. Paine, Member
West Virginia Higher Education Policy Commission
West Virginia Department of Education
1900 Kanawha Boulevard, East
Capitol Building 6, Room 358
Charleston, West Virginia 25305

Re: Final Letter to the Blue Ribbon Commission Re: Governance Subcommittee

My Fellow Members of the Blue Ribbon Commission:

The Commission will convene today and be asked to approve a flawed three hundred (300) page recommendation by the Governance Subcommittee in the form of a new series of statutes that seek to remove accountability—the essence of a civilized society. The recommendation is internally insistent and riddled with errors as discussed in the Appendix. Many of the accountability metrics that the recommendation removed during its “cut and paste” modification of the existing statutes are also reportable to national accreditation organizations. The failure to collect, analyze and report the data could affect accreditation in the future.

The monitoring and reporting by HEPC of institution performance accountability data is mandated by the West Virginia Law. Laws define accountability for nearly every aspect of society. If this Commission endorses the proposal by the Governance Subcommittee initially published on December 11, 2018, it will endorse the abolition of accountability in West Virginia's four-year higher education. Ask yourself and inquire why any higher education system would want state funding but refuse to be accountable by any metric to the state in exchange for the appropriation. Next, ask why the three hundred (300) page document is nothing more than a flawed "find and replace" version of existing law that eliminates all reference to HEPC and its Chancellor. If this was the Subcommittee's objective, it could have done the "cut and paste" editing months ago. In my opinion, this proposal is the last step by which West Virginia University seeks to create a service agency that replicates the services presently delivered by the Higher Education Policy Commission ("HEPC") under the unsupported banner that HEPC is a "governance" body rather than its actual role, as confirmed three times by Dr. Jay Cole, as a "coordinating and service agency." Missing from the Subcommittee submission are any documented Findings of Fact that HEPC engaged in any "governance" activities or that it failed to perform any statutory duties assigned to it.

As Chairman of the HEPC, I am not opposed to change. Every West Virginia college and university President who appeared before the Governance Subcommittee affirmed their approval of the services presently provided by the HEPC staff. Because the Subcommittee recommendation provides for the same HEPC services to be delivered by a state agency with a different name, ask the question what is the real reason for eliminating the post of Chancellor of Higher Education and HEPC. Is the real objective the abolition of accountability to the Legislature? From my perspective, the Legislature is entitled to receive and act upon **unbiased** objective information about the performance of each institution.

The Legislature, by statute, tasked the HEPC with developing a data-driven Funding Formula. The BRC Finance Subcommittee found, as confirmed by **all** BRC members, that there is and has been a gross inequity historically between the funding provided to the exempt and non-exempt schools in an amount that equals at least Ten Million Dollars (\$10,000,000). Each of you endorsed the Finance Subcommittee recommendation that the State redress this inequity. The Funding Formula has been delivered by HEPC to LOCEA and has been praised by almost every institution. Endorsing a recommendation today to abolish the HEPC will not derail the Funding Formula. In fact, such a vote may well be detrimental to the non-exempt colleges and universities.

I agree that a legitimate, thorough and open process to review and recommend changes to West Virginia's higher education administration and its structure could be beneficial. The Executive Order envisioned an open, inclusive process that evaluated the current HEPC structure including input from the employees of the HEPC. Unfortunately, no HEPC employee was

invited to meet with the Governance Subcommittee. This omission clouds the entire evaluation process conducted by the Subcommittee.

As a consequence, I join with those BRC members who believe that the entire BRC process has been rushed in order to present recommendations before the Legislature convenes in January. Regrettably, this conflicted process has failed to produce a valid or meaningful Governance Subcommittee recommendation document.

To preserve the integrity of the Blue Ribbon Commission, I strongly recommend that each Member take the high road and vote for a Resolution to the Governor that thanks him for convening the Commission, endorse the Recommendations by the Finance and Collaboration Subcommittees but informs him that the governance of West Virginia higher education is already vested in the respective Boards of Governors and that the substitution of the OPE for the HEPC is a flawed approach. The Recommendation should inform the Governor that the work of the Governance Subcommittee is a valuable first step. The BRC should recommend to the Governor that he continue the evaluation of the structure of higher education policy by signing a new Executive Order that specifically tasks the Commission to continue its work in 2019 by interviewing the HEPC Vice Chancellors and Chief of Staff, obtain external input from out of state higher education policy experts who are familiar with national best practices on organizational structure and policy implementation, accountability through data-driven decision-making and thoughtful input from the stakeholders, i.e. students, parents, faculty and staff. This was the evaluation process that the Governor's Executive Order originally envisioned.

I am passionate about improving the delivery of higher education in our State. I am very passionate about maintaining local institutional governance. Neither the Chancellor nor the HEPC or any of its individual Commissioners, a majority of whom have WVU ties, have ever attempted to "govern" any institution, including WVU, during my seven (7) years on the HEPC.

Please do not be deceived by believing that there is a "governance" problem that the Governance Subcommittee seeks to remedy. The flawed three hundred (300) page proposal does not change "higher education governance" because **before, today and after today, governance of each institution resides exclusively with each institution's Board of Governors.** It is a ruse by the Chair of the BRC or its Governance Subcommittee to implicitly argue that this massive document is needed to restructure the statutory duties imposed on the HEPC and that these proposed OPE statutes will restore "governance" to the respective Boards of Governors at both the exempt and non-exempt institutions. In the end, this massive document fails to serve the best interests of the stakeholders.

Thank you in advance for voting your conscience and trust that the Legislature will restore equitable funding across the board and maintain the “governance” function where it belongs in the Boards of Governors for each of our great institutions.

Respectfully yours,



Michael J. Farrell
Chairman, HEPC
Member, BRC

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
The Charleston-Gazette Mail

Mr. Hoppy Kercheval
WV Metro News

Brad McElhinny
WV Metro News

APPENDIX

CURSORY COMMENTS BY MICHAEL J. FARRELL REGARDING THE DEFECTS IN THE PROPOSED RECOMMENDATIONS BY THE GOVERNANCE SUBCOMMITTEE OF THE BLUE RIBBON COMMISSION

- 1) There are many inconsistencies the entire proposed bill is riddled with technical errors and omissions throughout the proposed Recommendation written in the form of new legislation. However, limited review time by the late disclosure simply did not permit this list to be comprehensive.
- 2) The proposed Recommendation, in the form of a new statutory scheme, appears to be a “find and replace” approach to change all references to the Higher Education Policy Commission (“HEPC”) to the Office of Postsecondary Education (OPE) as well as deleting all references to the Chancellor of Higher Education, whether appropriate or not.
- 3) The full context of the text of this Recommendation appears to have been assembled by deleting references to HEPC and recommending the transfer of much of the authority to the West Virginia Council for Community and Technical College Education System (“CTCS”) that were previously a joint responsibility even though the CTCS has no present authority over four-year schools.
- 4) The title of “Chancellor” has been in place for every iteration of the West Virginia higher education system since the creation of the WV Board of Regents in 1969. The current HEPC hierarchy organizational structure has followed the use of that title by having many senior-level positions with the title of “Vice-Chancellor” to reflect that protocol. Many of the chief executive officers of the national State Higher Education Executive Officers (SHEEO) organization carry the title of Chancellor to respect the importance of that role. The proposed change to the title of “Director” seems to devalue the respected position in the academic world and will cause difficulties with recruitment of a qualified leader to move forward with a new organizational structure for the coordinating and service organization for four-year higher education. The qualifications of a new “Director” are not defined, the criteria and characteristics of the position have been deleted, and the new Board of Managers determine the salary. The population of the recommended new OPE by members of Institutional Boards of Governors thwarts the intentional separation of “governance” personnel being tasked with the impartial policy analysis duties currently assigned to the HEPC. Additionally, the structure of the proposed OPE Board of Managers includes two members from West Virginia University (Morgantown and Beckley) even though there is only one WVU Board of Governors.
- 5) The position of Vice Chancellor for Administration is no longer a joint position appointed by the HEPC and CTCS but rather only exists at the CTCS, not the OPE, even though the Vice Chancellor for Administration is the day to day manager of activities and

communications conduit with the Legislature and Executive Branch. However, staff for the OPE are under the direction of the Vice Chancellor for Administration and are to carry out their duties and services to the CTCS. And, former Commission staff are transferred to the CTCS.

- 6) References to current legislative approval have been removed for all existing Legislative Rules prepared by the HEPC at the request of the Legislature and Executive Branch. Uncertain as to how this may impact existing authority of the Commission's rules.
- 7) Terms of office are not defined for members of the new Board of Managers. Once appointed, will they have no term limits? Members may only be removed by the appointing institution or for misconduct.
- 8) In a few but not all instances, Shepherd University has been inserted into the recommendation as an "exempted" institution.
- 9) The names of institutions within the recommendation have not been updated as documented by references to the former names of the four-year institutions as well as the community colleges.
- 10) References to the institutional compacts and campus development plans have been deleted.
- 11) References to some previous reporting deadlines and dates have been changed to be effective July 1, 2019.
- 12) The Vice Chancellor for Administration shall administer and oversee financial aid programs administered on the state level for four-year institutions have been eliminated but have been preserved for CTCS students.

I ESTIMATE THAT THERE ARE HUNDREDS OF OTHER CHANGES WITHIN THE SUBCOMMITTEE RECOMMENDATION, THAT, IF ADOPTED, WILL CREATE CONFUSION AMONG ALL INSTITUTIONS, BOND HOLDERS AND LEGISLATORS.