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I applauded the appointment of this Blue Ribbon Commission when Governor Justice formed it because, combined with the Legislative mandate that the HEPC research and create a funding formula, both the executive and legislative branches of our State Government were fully engaged with higher education.

The Blue Ribbon Commission Executive Order expressly premised its mission:

**WHEREAS**, the staff of the Higher Education Policy Commission has proposed a funding formula for four year institutions of higher education;

**WHEREAS**, before any funding formula may be adopted in West Virginia, it is imperative that the State of West Virginia analyze the overall structure of four year institutions of higher education;

4. The Commission shall review, study and assess the current state of four-year higher education in the State including, but not limited to:

- (a) The adequacy of current funding levels for four-year institutions of higher education;
- (b) The current governance structure relating to four year institutions of higher education;
- (c) The role and value of the Higher Education Policy Commission;
- (d) The identification of bureaucratic inefficiencies that cause a negative impact;
- (e) Measures to be taken to facilitate the long term viability of higher education delivery in communities across the State; and
- (f) Anything else the Commission deems necessary to provide a thorough evaluation in preparation of its report.

## THE HIGHER EDUCATION POLICY COMMISSION

I applaud the work and commitment of our Blue Ribbon Commission on Four-Year Higher Education, especially given the short timeframe in which we have been given to complete our tasks. The urgency of our mission and brevity of time to complete it has deprived the Commission the opportunity to objectively learn about the value added to all of West Virginia's institutions of higher education by the HEPC. I acknowledge that Co-Chair Gee is not a fan of the HEPC. The inquiry does not end with his opposition. Rather, our BRC Mission addresses all higher education institutions. I am confident that you will agree the HEPC provides extremely talented and experienced human resources that assist and guide our higher education institutions through federal bureaucratic statutes and regulations. Within this presentation, I will identify every West Virginia statute that imposes reporting and accountability obligations upon each institution. The State invests in and provides annual funding to each college and university. The funding has accountability obligations. One of the important functions the HEPC meets is the implementation of the State accountability system. Accountability reports are required from each institution. State law requires the reports and HEPC evaluates the information within each report, which enables it to provide system-wide reporting to the legislative and executive branches of state government.

You should be concerned about the dearth of objective information that the BRC has received during our face-to-face meetings regarding how the HEPC exceeds the expectations of the colleges and universities that it serves. To fulfill our responsibility to produce a reasoned and objective evaluation of our state's higher education structure, each of you need to read this presentation and ask why one institution is critical of the HEPC. Without the information contained in this letter, you will not understand the significant financial return on investment and positive changes in the lives of many students who were motivated by HEPC personnel to enroll in higher education. HEPC unquestionably benefits the State. It would be a disservice to the Governor, our legislators, our institutions, faculty, staff and, most importantly, our students if we fail to endorse the HEPC and publically recognize its achievements.

### COORDINATING VERSUS GOVERNING – A BRIEF HISTORY OF WEST VIRGINIA HIGHER EDUCATION

Despite the Co-Chairman's insistence to the contrary, the Higher Education Policy Commission is not a governing board nor does it fulfill its statutory and regulatory obligations as one.

Since the early days of West Virginia statehood, higher education governance has ranged from six separate boards of regents, to a board of education combined with K-12, to a singular, powerful board of regents, to the individual, autonomous local boards of governors we have today.

The structure, services and authority of the regional and centralized governing bodies have varied over the last 151 years, but there has always been a statewide agency charged with ensuring access to higher education for state citizens, for setting overall higher education goals and for holding institutions accountable for the public resources they are provided by the State. Dr. Jay Cole has repetitively told the BRC members that the HEPC is not a governing body or agency for any college or university including West Virginia University. In comparison with all other state models and as listed in reports published by national education policy and research organizations, HEPC is classified as a **state-level coordinating agency**, providing coordinating and policy research and recommendation functions, as well as shared services and administration. The clamor that it oppressively governs WVU is wrong and not factually supportable. The WVU Board of Governors governs WVU.

By definition, a statewide governing board has control and extensive administrative powers over its institutions. These powers go beyond setting policy, and extend to hiring and evaluating presidents and developing institutional budgets, in addition to complete academic program control and operational responsibilities. The Boards of Governors for each institution hire their respective Presidents and exert

operational control. WVU and Marshall do not need any approval from the HEPC to start or close a new academic college, program or discipline. Both were given full academic control in 2005.

Authority under a coordinating board can vary, but generally is a combination of responsibilities including developing statewide master plans for postsecondary education, as well as approving new institutions or academic programs to avoid unnecessary duplication and competition among public colleges and to ensure academic integrity. The Legislature and Governor chose to exempt WVU and Marshall from any academic program scrutiny because the institutions jointly approached the Legislature and Senate Bill 603 was enacted.

Coordinating boards provide research and information to legislators and governors to support higher education policymaking. They typically review annual budgets and sometimes set tuition increase limits for institutions. Coordinating and service functions include facilitating transfer and articulation among institutions, resolving student complaints and administering federal and state financial aid programs.

A coordinating body's role is to advance the interests of the state and its citizens as a whole, whereas a governing body's role is to oversee the operations of a single institution. In essence, coordinating boards across the nation commonly perform the exact functions of the HEPC today.

At our last meeting of the Blue Ribbon Commission, following a report of the Governance Subcommittee, some members publicly commented that the Higher Education Policy Commission is a "super governing body," which is overtly contrary to fact, West Virginia Code and state history. In fact, Blue Ribbon Commission Co-Chairman Gee has used that term publicly and in media interviews during the last several weeks. These comments are incorrect.

An objective review of documents and reports describing the structural changes to the state's higher education governance system, as well as an examination of major legislation affecting higher education (some of which with I was directly involved in my role as Interim President at Marshall), it is indisputable that **at no time in our state's history have our individual colleges and universities had greater flexibility and autonomy than they have today. This is particularly true for WVU and Marshall since the passage of the so-called "Freedom Bill" in 2017.**

This interactive map from the National Conference of State Legislatures identifies the type of higher education governance structure for each state.

<http://www.ncsl.org/research/education/interactive-guide-to-state-post-secondary-governance-and-finance-policies.aspx#/>

Again, West Virginia is shown as one of 27 states with a *coordinating board or agency*, versus a central governing authority.

The state's departure from centralized authority to local governance began following a 1989 Carnegie Foundation report on improving public and higher education in West Virginia. The report, among other recommendations, called for developing a coordinated system of community colleges and for increasing the management flexibility of the colleges and universities. At the time of that report, the state's strong, centralized Board of Regents had existed for nearly 20 years. That historic board was considered a super governing body, especially when its powers are compared to the limited authority of the HEPC as the current coordinating board.

Since that time, through numerous legislative actions, and following additional reports, including a 1999 study by the National Center for Higher Education Management Systems (NCHEMS), the Board of Regents

was abolished, individual institution governing boards were created and two state *coordinating boards* (HEPC and CTCS) were created. In 2000, Senate Bill 653, following the NCHEMS recommendations, established a new framework for higher education by separating policymaking from institutional governance and by putting greater emphasis on the role of community and technical colleges.

West Virginia Code itself identifies the Commission as a coordinating body, and outlines the responsibilities in **§18B-1-1a**:

*(2) The Council for Community and Technical College Education and the Higher Education Policy Commission. -- In their role as state-level coordinating boards, the council and commission function as important partners with state policy leaders in providing higher education that meets state needs. The council and commission provide service to the state in the following ways:*

*(A) By developing a public policy agenda for various aspects of higher education that is aligned with state goals and objectives and the role and responsibilities of each coordinating board;*

*(B) By ensuring that institutional missions and goals are aligned with relevant parts of the public policy agenda and that institutions maximize the resources available to them to fulfill their missions and make reasonable progress toward meeting established state goals;*

*(C) By evaluating and reporting on progress in implementing the public policy agenda;*

*(D) By promoting system efficiencies through collaboration and cooperation across institutions and through focusing institutional missions as appropriate; and*

*(E) By conducting research, collecting data and providing objective recommendations to aid elected state officials in making policy decisions.*

#### **THE FREEDOM BILL AND ITS PREDECESSOR**

Since the HEPC was established in 2000, West Virginia University and Marshall University have sought, and succeeded, in gaining significant additional freedom and autonomy, first with Senate Bill 603 in 2005 and followed with House Bill 2815 in 2017. The regional colleges also have gained additional local governance authority on the coattails of the “research institution” designation provided to Marshall and WVU and, most recently, the West Virginia School of Osteopathic Medicine now shares similar independence.

Among those freedoms from these sweeping bills are the ability to approve their own academic programs (MU and WVU) without regard to the needs of the region, or whether similar programs are offered by other institutions serving the region. The schools also may hire and fire their presidents without HEPC approval, purchase items up to \$50,000 without competitive bidding and develop capital projects up to \$3 million without state approval. With the 2017 legislation, Marshall and WVU now are exempt from the state compact process and all institutions may increase tuition by as much as 10 percent in a single year without seeking HEPC approval.

In addition, all four-year colleges and universities no longer pay for HEPC services, as the Higher Education Resource Assessment (a per-student fee institutions collected that supported the Policy Commission’s shared services and the Higher Education Grant Program) was removed with HB 2815. The institutions continue to receive services because the Legislature recognized the importance of these shared student services and provided an appropriation in 2018 so the HEPC could continue to support all our institutions.

A complete list of the oversight exemptions provided by HB 2815 has been posted on the Blue Ribbon Commission website so that each of you can review it and understand that many of the HEPC's initial granted authorities have been withdrawn as the state moved toward a decentralized governance model. In fact, it is apparent when reviewing these changes that Marshall, WVU and the WVSOM have very little oversight from the Policy Commission at all.

What has not changed; however, is the requirement, and established need, for statewide coordination and collaboration among the institutions, to ensure thorough, efficient and effective delivery of higher education opportunities for West Virginians as envisioned by Governor Justice in the Executive Order that established the BRC. The Legislature designed the HEPC as a coordinating and service agency that has consistently and objectively delivered essential services, including student services, financial aid, consolidated budget and auditing assistance as well as data analysis and research for the legislature.

### HEPC BUDGETS AND IMPACT OF PROPOSED \$2 MILLION REDUCTION

The HEPC provides statewide coordination with a general revenue appropriation of about \$3.8 million (FY 2019, which includes restoration of the operating budget lost through HB 2815). Only about one-third of the agency's personnel expenses are paid through general revenue appropriations, while the remainder is through staff-generated federal and private grants and special revenues, including financial aid support.

Importantly, most of these grants are uniquely available to the HEPC as a statewide, state-level entity, so they would not simply transfer to an individual college or university that might attempt to assume responsibility for the service. A singular institution likely would not be eligible to apply for and receive such revenues in the future.

Looking solely at the current year, and only at direct dollars -- not impact or induced value -- **the ratio of grants received by HEPC staff to total state operating support is nearly 2 to 1. So HEPC staff are receiving more grant dollars for agency operations than state dollars appropriated. HEPC represents a wise and prudent use of state money.**

The HEPC's Division of Student Affairs alone has received almost \$50 million in federal and private grants since 2008 that are helping high school students in the poorest of West Virginia's counties find a pathway to higher education and a better life. HEPC staff wrote and received these grants, which are helping to increase enrollment in all of our colleges and universities, as well as support continued student success.

Take a look at the attached presentation, *Division of Student Affairs, An Introduction*, **Appendix A**, which highlights the innovative and effective programs that are provided by the Division of Student Affairs to students and institutions across the state. The members of Blue Ribbon Commission should recognize that these student oriented services, provided through grants at no cost to our institutions, are essential to both K-12 and higher education statewide.

The attached 2019 HEPC budget breakdown, **Appendix B**, provides facts that are relevant to any discussion of funding higher education in West Virginia. The budget document also provides additional information about how these funds are used for various shared services. The services provided by the HEPC are those that have been directed by the Governor, the Legislature and by the Policy Commission board itself.

Reducing the HEPC by two million dollars (\$2,000,000) will adversely impact every regional institution. If WVU and Marshall believe that they do not want their share of services and grant dollars, then the regional colleges and universities should not be punished by underfunding HEPC. Each BRC member should ask the regional Presidents whether it would be a responsible decision to eliminate HEPC staff and

cut agency services based on an arbitrary budget reduction of two million dollars (\$2,000,000). The BRC has the time before the final report is due to conduct a formal survey of the institutions that use HEPC services and have an actual factual basis for making a decision. . **The impact of such a dramatic cut would hurt students, harm our regional institutions as well as community and technical colleges, and potentially could subject individual HEPC board members to legal action.**

#### **IMPAIRING OR ELIMINATING HEPC CAN HAVE ADVERSE IMPACT ON THE \$331M BOND DEBT AND INDIVIDUAL HEPC COMMISSIONERS**

A critical area of concern that has not been addressed by the BRC's Governance Subcommittee is the HEPC's role in holding more than \$331 million in institutional bond debt.

**Each individual HEPC board member, the Interim Chancellor, and the HEPC Chief Financial Officer** has a personal fiduciary and contractual obligation to maintain sufficient revenue streams to pay bond debt service. A default by any institution would invite lawsuits by bondholders. To avoid the costs associated with potential lawsuits, the HEPC must support rational and methodical analysis of any new HEPC structure.

Common sense and fiscal responsibility require that every BRC member must advocate for the maintenance and strengthening of any financial resources dedicated for debt service and avoid any support or perceived support for a proposal that accelerates the financial distress of any of the institutions. Bondholders could view the "die on the vine" comments some BRC members have shared with the media as an abandonment of the HEPC and its fiduciary and contractual responsibilities. They also could view budget, service and oversight reductions that are not informed by a rational and methodical analysis to be evidence of such an abandonment.

It is most surprising that the suggestion by Co-Chair Gee to dismantle the HEPC have come upon the heels of the far-reaching freedoms granted by the Legislature last year to WVU and Marshall. It should be evident that any perceived burdens or inefficiencies in the HEPC's limited accountability oversight functions have been addressed through the 2017 legislation, and continue to be modernized with the current progressive and professional staff who have sought to streamline agency processes through cooperation with all institutions.

#### **HEPC MONITORS INSTITUTIONAL ACCOUNTABILITY BY PROVIDING STATE-MANDATED REPORTS TO THE LEGISLATURE**

Higher education policy decisions are made by the Legislature. The Legislature depends on the HEPC to enforce its accountability statutes and regulatory standards. The Legislature trusts the HEPC. The Legislature trusted the HEPC to develop the funding formula that has been criticized by two universities and praised by the remainder. The Legislature relies on the HEPC because it has a proven track record of providing professionally gathered and prepared objective information as specifically required in West Virginia Code. The HEPC reports to the Legislative Oversight Commission on Education Accountability (LOCEA), and presents mandated analyses ranging from enrollment and student success to tuition costs, healthcare provider education and financial aid effectiveness.

Without this critical accountability function, lawmakers would not have a neutral and qualified party from which they could gather this information and make informed decisions on state higher education finance and academic policy. Because HEPC's legislatively designed role is to monitor and report on each public institution's progress toward the statewide higher education goals, the motives of those who seek to disable or eliminate it should be carefully scrutinized.



Shifting HEPC functions from a state-level, statewide entity to individual institutions could allow institutions to put their own advancement ahead of the needs of the state as a whole, to the detriment of other institutions and taxpayers. The Legislature sought to protect itself from self-serving informational sources because ensuring that its investment in higher education is too important to leave to well-intentioned advocates from each college or university. *An individual institution responsible for gathering and reporting this type of information about itself to the Legislature naturally would have an interest in advancing itself without as much regard to how its decisions negatively could affect another institution, a region or the state.*

A comprehensive list of statutorily mandated reports the HEPC provides to lawmakers is attached as **Appendix C** and available for download from the Blue Ribbon Commission website at:

<https://wvblueribbonhighered.org/files/d/8d198894-1dde-4d75-90d2-b635d2079fd1/1-brc-leg-report-mandates-with-appendix-2018-09-05-f1433776xb17fd.pdf>

### **Changing HEPC Central Office Function and Structure Would Adversely Affect Community and Technical Colleges**

Any BRC members who doubt the veracity of the headline above should call CTCS Chancellor Sarah Tucker and ask the question whether underfunding or dismantling HEPC will affect the community and technical colleges. The answer will be an emphatic **YES, it will!**

West Virginia Code requires the HEPC to provide administrative support and office space to the West Virginia Council for Community and Technical Education (Council). In order to operate, the Council shares administrative, academic, finance, human resources, legal and financial aid staff with the HEPC. In fact, the Council has fewer than 10 of its own employees and could not operate without the statutorily mandated services provided through the HEPC.

Several members of the BRC in its early meetings raised concern about the impact of this Commission's recommendations on the community college system. The potential impact of changes to the higher education system's finances, system structure and funding models all were suggested as areas that could not be studied without including the community colleges. In response, Co-Chair Gee sought clarification from Governor Justice about whether the community colleges also should be involved, and the response was they would be evaluated after the Blue Ribbon Commission's work was complete.

Given that the BRC has not involved the community colleges themselves, or its Chancellor or Council members in our deliberations, it would be imprudent to recommend changes that would have a direct impact on another system without its input and an appreciation of the catastrophic impact of the proposed recommendation to reduce funding to the HEPC or otherwise dismantle it.

### **OTHER HEPC COORDINATING FUNCTIONS WOULD BE ELIMINATED IN A SHARED SERVICES ONLY MODEL**

The Legislative Oversight Commission on Education Accountability also serves as the legislative rule-making authority for the Legislative rules promulgated by the Policy Commission. The HEPC has a longstanding reputation for working closely and effectively with both standing education committees in the Legislature, as well as the joint interim LOCEA to ensure state higher education laws are implemented as the Legislature intended. This is a clearly and strongly designated function the Legislature (and lawmaking

bodies across the country, as well) have placed in the HEPC and other state central higher education offices nationwide.

In addition, the HEPC maintains a P-20 database, which combines K-12 and Workforce West Virginia information to provide a holistic picture of the state's education continuum. The HEPC is now able to provide a variety of insightful reports that evaluate and document our state's success in educating our children from preschool through secondary and postsecondary education, all the way to their gainful employment in West Virginia.

West Virginia Code §18B-1D-8 requires Commission staff to gather vetted, consistent data from among the institutions. This information about the quality and performance of our institutions serves parents, students, faculty, staff and state policymakers, as well as the leaders of our institutions themselves, who use it to compare their performance against their in-state peers. Through this coordinated effort, a vast amount of historical and current information is readily available at the state and national levels for all to evaluate and use.

Because WVU objects to submitting state-mandated reports through the HEPC is not a sufficient reason for the BRC to fall into a march that will be unsuccessful at the Legislature. The Legislature insists upon accountability as demonstrated by the recent debacle at the Supreme Court of Appeals. Recommending that the Legislature eliminate or underfund the HEPC would be shortsighted. No legislature and especially our Legislature will abandon its fiduciary duty to demand accountability for an institution's performance and compliance with state law. The HEPC is the agency empowered to collect and analyze the accountability data. Imagine the difficulties and potential anarchy that the Legislature, regional four-year colleges and two-year community and technical colleges would experience if the BRC made a recommendation to cripple the HEPC by reducing its funding by two million dollars (\$2,000,000) and cause it to lose valuable professional staff.

Such an ill-founded recommendation would deprive these same institutions of more than the treasury of knowledge developed over the last eighteen (18) years of knowledge, analytical information-gathering and reporting expertise, and then asking nineteen (19) separate institutions to provide consistent and reliable data analysis that forms the foundation for all postsecondary higher education. It would deprive the Legislature of an indispensable resource for charting and making future policy decisions. It would deprive all of the regional four-year institutions of services that they need but cannot afford. It will deprive the two-year CTCS institutions of access to a high-quality professional without which the system will stall to a halt.

**THE LEGISLATURE WILL ADOPT A FUNDING FORMULA  
BECAUSE IT MANDATED HEPC TO PREPARE ONE**

West Virginia remains one of only a handful of states without some form of performance-based funding for its public institutions. Even Co-Chair Gee has said it's not a question of "if" performance funding is coming to West Virginia, but rather, "when." Without HEPC acting as a central coordinating body, the design and implementation would be very difficult, if not impossible. Accountability requires that the Legislature measure institutional performance. Without HEPC to gather, analyze and report that information without bias, the Legislature would be deprived of valuable information that is necessary to make informed decisions. Such measurement, reporting and recommending is not a shared service, but a central function on behalf of policymakers.

The Legislative Services Office designated the HEPC as the agency that serves on behalf of all public higher education institutions to receive, process and respond to fiscal note requests for the Legislature. HEPC staff compile the data and analyze bills to complete the fiscal implications of proposed legislation within a three-day timeframe. Additionally, HEPC staff act as a trusted resource for lawmakers and their committee

staffs as legislation is drafted. The HEPC employees interact with Legislative staff on a daily basis during the regular session and throughout the year for a reason. The Legislature trusts the HEPC.

HEPC staff also support the Governor's Office in handling student and parent concerns as they relate to our public and private institutions. The HEPC assists with policy questions and information to help the Governor's Office answer constituent questions and provide the data they need to develop state and national policies as they relate to higher education.

### SUMMARY

The Higher Education Policy Commission operates at the direction of the Legislature as a coordinating body, created to help our lawmakers and executive branch establish and analyze state higher education policy.

In recent years, the original, limited authority of the HEPC has been greatly reduced to provide additional "freedom" and projected efficiencies to local institutional governing boards. Those freedoms are broad and substantial and, in the case of the most recent sweeping changes, are untested as to their success and accountability.

HEPC staff are working and will continue to work closely with all of the institutions to find additional ways to reduce administrative burden while maintaining the agency's duty to gather, analyze and report institutional performance. The support the HEPC provides to lawmakers and state leaders is indispensable to good policymaking and it goes well beyond shared services.

Outside of its limited program approval and reauthorization authority, the HEPC and its professional staff provide shared services to all institutions, including financial aid, human resources, financial audit and capital projects planning expertise, legal and student advocacy and success initiatives. These services support our struggling institutions and save them millions of dollars each year by providing these services at no charge. In reality, these are services that the HEPC critics ignore. Most schools, if not all of the regional colleges and universities cannot afford to provide these services on their own.

The HEPC and its staff are responsive to change when indicated. They embrace it and support a rational and well-intentioned relationship with the Governor, Legislature and each college and university, with an eye for student success and public stewardship.

However, if it is to fulfill the worthwhile purposes set out in its Executive Order charter, the Blue Ribbon Commission must carefully and thoughtfully evaluate the state's higher education oversight structure. The Blue Ribbon Commission should seek and value the input and expertise of the HEPC staff, many of whom have worked with state leaders through previous reorganizations.

The Blue Ribbon Commission has the opportunity to conduct a deliberative, objective and open process during the next six (6) weeks that will be respected by the Governor, Senate and House of Delegates. A recommendation to eliminate or cripple it by a two million dollar (\$2,000,000) reduction in its appropriation will not garner that respect.

Listen to those four-year and two-year institutions that have been served by the HEPC and understand the indispensable role that HEPC plays in their success.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Farrell". The signature is fluid and cursive, with a large initial "M" and "F".

Michael J. Farrell, Esq.  
Chairman  
West Virginia Higher Education Policy Commission

Attachments

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

Members of the Higher Education Policy Commission

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

Members of the West Virginia Council for Community and Technical College Education Council

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

Mr. Ryan Quinn  
The Charleston-Gazette Mail

Mr. Hoppy Kercheval  
WV Metro News