



Mr. Robert Rucker
Manager of Compliance and Complex Evaluations
Higher Learning Commission
230 South LaSalle Street, Suite 7-500
Chicago, IL 60604

January 11, 2023

RE: Formal Response to HLC Letter Dated December 12, 2022

This formal response addresses the potential concerns raised by the complaint submitted to HLC in regard to the institution's substantive compliance with Criterion Five, Core Component 5.A.,

- "through its administrative structures and collaborative processes, the institution's leadership demonstrates that it is effective and enables the institution to fulfill its mission."

The Final HLC Comprehensive Review Report which included the Bluefield State Assurance Argument and the Peer Review On-Site Visit (April 11-12, 2022) indicated all HLC Criteria were met with no monitoring required for Federal Compliance.

Thank you for the opportunity to respond to the potential concerns raised by the complaint submitted to HLC.

Sincerely,

Robin C. Capehart, President

**RESPONSE OF BLUEFIELD STATE UNIVERSITY
TO FOUR COMPLAINTS
PER HLC LETTER OF DECEMBER 12, 2022
- January 11, 2022 -**

The four complaints should be dismissed. Under the guise of shared governance assertions, the complaints constitute simple disagreements by individuals with properly considered and enacted Board policies which were thoroughly reviewed and discussed with faculty involvement under the concept of shared governance, and which are justified and legally sound. Shared governance requires that the Board of Governors listen to the faculty and consider such advice and assistance. It does not require the Board to agree with the faculty. Bluefield State submits that the complaints do not demonstrate substantive non-compliance with Criterion Five, Core Component 5.A of the Higher Learning Commission's Criteria for Accreditation.

Bluefield State University is an entity of the State of West Virginia. As such, Bluefield State is subject to the laws of West Virginia not only relating to its operation as an institution of higher education, but also with regard to its operation as a state institution. The State of West Virginia, by law, delegates its power and authority in the operation of this state institution to its Board of Governors. The State does not delegate any authority for policy or rules to any sub-entity, including the faculty, and limits the role of the faculty in the governance of an institution of higher education to advising and assisting the institution's Board of Governor.

Pursuant to West Virginia law, under the concept of shared governance, the Board of Governors may seek meaningful advice and assistance from its faculty through *either* a faculty senate *or* a faculty assembly, whichever the Board deems to be best for the institution. During 2022, the Bluefield State's Board of Governors discovered that its reliance on a faculty senate model for shared governance had been compromised by a manipulated election for senate officers (one of whom, Mr. Malamisura, is a complainant), by the dissemination of false and misleading information by the faculty senate, and by a coercive threat to the Board that the faculty senate would release to the press a flawed secret no confidence vote should the Board choose to pursue a policy in a way which the faculty senate did not desire.

The four complaints arise from these activities of the former-faculty senate and from disagreements by the complainants with well-considered and discussed policies which enhance the ability of the University to serve its Mission, to serve its students and the community, to expand the meaningful involvement of all faculty in shared governance, to enhance communications to and from the faculty and the Board of Governors, and to ensure accountability in educational outcomes. The complaints are meritless, are based on factual inaccuracies and misstatements, are conclusory, and rely on erroneous legal assertions.

THE APPLICABLE LEGAL AND ADMINISTRATIVE FRAMEWORK FOR BOARD ACTIONS

West Virginia law provides the framework applicable to the complaints and allegations of the four complainants herein. Sadly, the four complaints are rife with inaccuracies, falsehoods and misstatements of law. The complainants disagree with proper, lawful, and, importantly, needed policy initiatives of Bluefield State's Board of Governors. These initiatives were implemented to fulfill its duty and mission to serve its students, their parents and the community. Each complainant had a full opportunity to provide his or her advice and assistance to the Board in the Board's consideration of potential policies, as did the entire faculty. Bluefield State submits that the concept of shared governance does not require the Board to agree with the faculty. Indeed, to do so would violate the Board's legal responsibilities and duties.

The Board of Governors met or exceeded reasonable and required notices for consideration of policies and rules, and, in all instances, affirmatively sought the advice and assistance of the faculty directly and through the then-existing faculty senate, a body which investigation confirmed to be compromised by a manipulated election, the disenfranchisement of faculty members, and the dissemination of false and misleading information to the general faculty.

Bluefield State's actions confirm its commitment to its Mission, its dedication to the public good, its focus on ensuring an excellent education for its students. Disagreement by certain faculty members with these needed policies and conclusory statements does not constitute a violation of the concept of "shared governance" or of any Accreditation Criteria of the Higher Learning Commission.

The law fully authorized the actions taken by Bluefield State's Board of Governors and provides no support for any of the complaints herein. Indeed, Bluefield State's Board of Governors are obligated to establish rules and policies which deliver a:

. . . post-secondary education which is competitive in the changing national and global environment, is affordable for the state and its citizenry and [which] has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

W.Va. Code 18B-1-1a(c). The complaints herein disregard and/or misstate the law applicable to the operation of Bluefield State and how the Board of Governors should execute its Mission.¹ Contrary to the assertions of the complainants, the proactive actions taken by the Board of Governors since 2019 fulfill its duties under West Virginia law, and, specifically in the area of shared governance, actually *enhance* meaningful faculty input, advice and assistance by expanding faculty involvement with the Board of Governors to a full Faculty Assembly, and by

¹ "The mission of Bluefield State University, a historically black institution, is to prepare students for diverse professions, informed citizenship, community involvement, and public services in an ever-changing global society by providing an affordable, accessible opportunity for public higher education through certificate, associate, bachelor, and master degree programs."

replacing a tarnished senate model which in 2022 had engaged in a manipulated officer election (see attached investigation report at Exhibit "A") and which the Board of Governors believed had failed to properly and fully communicate important information to and from the Board and the faculty (an example of which was a secret motion of no confidence based on false narratives to attempt to coerce the Board in the execution of its duties and responsibilities).

In West Virginia, a state institution of higher education's power and duties with respect to its operation is vested by law in the institution's Board of Governors. W.Va. Code 18B-2A-4. The Board of Governors are appointed by West Virginia's Governor or, with respect to membership by a faculty member, an employee and a student, are established by statute. W.Va. Code 18B-2A-1. Oversight of the Board of Governors by the West Virginia Higher Education Policy Commission is expressly limited by statute. W.Va. Code 18B-2A-3. Of importance to the complaints made,

The provisions of *any* rule adopted by a governing board *preempt* any conflicting rule adopted by the commission or the council.

W.Va. Code 18B-8-7 (emphasis added). This provision also provides the statutory notice of 30 days applicable to rule changes relating to faculty (note the complaint of Mr. Malamisura faulting the 30-day notices for comments provided by Bluefield State's Board of Governors for the policies at issue herein). The Board may delegate its power to the institution's President. There is no statutory provision or other legal basis for a contention that the faculty may assert state authority over an institution, superior to that of an institution's Board of Governors, or that the faculty has a role in the governance of an institution beyond that of providing advice and assistance to the Board of Governors (i.e., "shared governance). WV. Code 18B-6-3, 18B-8-6, 18B-6-1a.

The complaints made by the four complainants ignore or misstate the established West Virginia laws applicable to the Bluefield State's Board of Governors' policy actions and the facts related to Hiring Policies, the use of a Faculty Assembly for faculty input and assistance (i.e., "shared governance"), the use of Post-Tenure Review to ensure excellence in education for Bluefield State's students, Student Outcomes/Academic Objectives to ensure accountability in educational outcomes, Communications (i.e., disturbing failings by the former-Faculty Senate model), Administrative Procedures, the use

of a newly established Office of the Chancellor reporting directly to the Board of Governors in areas of Equity and Diversity, and the other miscellaneous assertions set forth by the complainants.

SPECIFIC COMPLAINTS BY COMPLAINANTS

The four complainants reference eight areas of complaint. Bluefield State will respond to each complaint area.

A. Faculty Senate

At a Board meeting on November 3, 2022, the Board of Governors voted, pursuant to its choice under West Virginia law, to replace the flawed faculty senate model for shared governance with a broader Faculty Assembly. This vote resulted from deep and serious concerns by members of the Board of Governors that Bluefield State's Faculty Senate had engaged in improprieties in its Spring 2022 officer election and that meaningful participation by all faculty was being limited or prevented due to misinformation from the Senate. Furthermore, in assessing its need and desire for a full, meaningful and diverse participation by all of Bluefield State's in advising and assisting the Board of Governors, the Board of Governors concluded that a Faculty Assembly form of shared governance ensures better engagement of all faculty; better and more accurate communications between the Board of Governors and the faculty; better visibility, transparency, diversity and inclusiveness; and the open and meaningful direct sharing of ideas.

The complainants make several assertions challenging the Board of Governors' actions. These range from the Board's decision being "unsanctioned" (Connolly and Godfrey), to the decision occurring without input from the faculty (Connolly), to the decision being contrary to the wishes of the Faculty Senate (Matoushek). Further, allegations are made that the Board improperly nullified "democratically elected senate officers" (Connolly), and factually inaccurate claims that the President and the Executive Vice President improperly influenced a Board member to reject the outcome of the election (Connolly and Malamisura). The complaints ignore the deeply disturbing actions of the Faculty Senate as evidenced by investigation, as well as plain statutory law. Further the complaints related to President Capehart affirmatively misstate facts and are misleading since President Capehart was not involved in any aspect of the investigation into election improprieties by the Faculty Senate having disqualified himself from involvement.

By law, a fair and open election of Faculty Senate officers was required to be held during the Spring of 2022. This did not happen. Procedural and notice requirements were ignored by the Faculty Senate. As referenced in the Investigation Into and Recommendation Regarding April 2022 Faculty Senate Election, attached hereto as Exhibit "A," as a matter of law, the necessary procedures for a fair election did not occur and the purported election was a nullity. The investigation was performed by Bluefield State's Executive Vice President and General Counsel, Hon. Brent Benjamin. Justice Benjamin is a former Chief Justice of the West Virginia Supreme Court and served on the Supreme Court for twelve years. During this time, he participated in thousands of cases and was involved in hundreds of investigations. Justice Benjamin was tasked with investigating disturbing complaints regarding the alleged "rigging" of the officer election, the allegation that a candidate for the Chair of the Faculty Senate was improperly removed from the ballot one business day before the election to the benefit of the incumbent, Mr. Malamisura, that certain faculty members did not have equal rights in the Senate, that certain faculty members were disenfranchised immediately before the vote, and that certain faculty members were deprived of their opportunity for meaningful participation in Bluefield State's shared governance system.

After investigating the election, Justice Benjamin confirmed the disturbing allegations related to the April 2022 officer election and recommended that the Acting President (Board Chair Charles Cole was selected to act as President in lieu of President Robin Capehart who had disqualified himself from the investigation) not approve the election and that new elections be held. Specifically, procedural requirements necessary for an open and full election were not followed. Actions taken by certain Faculty Senate members to limit the involvement of other faculty members and to nullify a candidate opposing then-Chair Malamisura were found to be arbitrary and capricious, having been taken without proper authority, without proper notice, and without proper neutrality. This resulted in a tainted election and the disenfranchisement and denial of meaningful participation in shared governance of an entire class of faculty at Bluefield State. On behalf of the Faculty Senate, then-Chair Malamisura readily admitted the factual bases for the complaints related to the disenfranchisement. The Senate's defense was not that faculty members were disenfranchised and that an opposing candidate was removed from the ballot immediately prior to the vote. Rather, the Senate's defense was that it had the inherent authority to decide which faculty members could participate in shared governance. As found by Justice Benjamin, this assertion is completely contrary to West Virginia law.

Contrary to later misleading assertions and false statements used against Justice Benjamin's Investigation and Report to support a secret no confidence vote against him, Justice Benjamin's report and recommendation was thorough, unimpeachable as to facts, completely consistent with West Virginia law and Board of Governors' policies, and thought provoking in its findings related to the operation of the Faculty Senate and its failures regarding shared governance. Justice Benjamin further found that the Faculty Senate consistently failed to provide required statutory notices under West Virginia's Open Meetings Act (W.Va. Code 6-9A-3(d)), failed to keep adequate minutes, and failed to follow its own procedures. The Higher Learning Commission is encouraged to review the Investigation and Report, attached as Exhibit "A," to fully appreciate the concerns of the Board of Governors regarding the inability of the faculty senate model to ensure shared governance and to ensure meaningful and equal opportunities for accurate communications to and from the faculty and the Board of Governors.

W.Va. Code 18B-6-3 is quite clear regarding the Board of Governors' authority to choose the system of shared governance which best serves the institution. The choice is solely that of the Board, which is responsible for the operation of the institution under state law. An institution may use a faculty senate model or a faculty assembly, the latter involving all faculty (akin to a Town Meeting). In view of its belief that all faculty should be empowered and directly engaged, that the then-Faculty Senate struggled to engage faculty participation and achieve quorums (as admitted by then-Chair Malamisura), that direct engagement of faculty was lacking, that information needed to be shared more directly, and that open and meaningful dialogue with all of the faculty take place, the Board of Governors explored alternatives to the senate model.

On September 16, 2022, the Board's Executive Committee recommended use of a Faculty Assembly model of shared governance in lieu of a Faculty Senate model to expand and enhance

faculty involvement, as empowered by West Virginia law. On October 3, 2022, the Board of Governors accepted the Executive Committee's resolution and established a 30-day comment period for receiving faculty comments. President Capehart and Justice Benjamin had multiple meetings with the faculty to encourage comments.

A properly noticed open meeting of the Board of Governors was held on November 3, 2022, to consider the best method of shared governance for Bluefield State. At this meeting, those faculty members who commented where affirmatively asked to appear to discuss their comments with the Board. Comments were received from six faculty members, including Ms. Godfrey, Mr. Connolly and Ms. Matoushek. Mr. Connolly and Ms. Godfrey did not appear. In addition to the opportunity for comments, Justice Benjamin set forth the duties and powers of the Board of Governors under West Virginia law. Justice Benjamin stated that the authority of the Board to establish the best model for shared governance at Bluefield State was not at all a close call under the plain meaning of West Virginia law. He further reviewed the role of the faculty in shared governance under West Virginia law; that being to advise and assist the Board of Governors. W.Va. Code, 18B-2A-4, 18B-6-1a, 18B-6-3, 18B-8-6 and 18B-8-7. A copy of Justice Benjamin's presentation at this meeting is attached as Exhibit "B," and includes a review for the Board of the comments made and the applicable law.

With respect to the complaints, full and adequate opportunities for input were ensured, the Board acted lawfully, the change to a Faculty Assembly was not "unsanctioned", there was no denial of democracy, there was no improper attempt to influence a Board member by the President or the Executive Vice President, Faculty Senate authorization for the change was not lawful, and the Investigation and Report by Justice Benjamin was full, thorough, and completely supported by fact and law. It is ironic that the complaints assert issues related to shared governance when the Board of Governors has affirmatively moved from a seriously flawed model to a model of full, meaningful and equal participation by all faculty with the Board.

B. Hiring Policies

The Complainants assert issues regarding the modernization of Bluefield State's hiring policy. The complaints contend that the new hiring policy violates the Faculty Constitution (Connolly), eliminates "required" faculty peer review of academic hires (Connolly), and otherwise allows for the appointment of new faculty with no input from current faculty (Matoushek, Malamisura). There is no violation of shared governance since such this policy involved full input and advice from the faculty and there is no legal or other requirement for faculty review of hires and the Faculty Constitution does not supersede West Virginia state law or Board policy.

W.Va. Code 18B-2A-4A establishes that "each governing board has the following powers and duties: (a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institution of higher education under its jurisdiction . . ." There is no legal provision which provides these powers and duties to the faculty. The Board may seek

advice and assistance from the faculty, but it is the Board's duty under West Virginia law to manage the school's business and education policies. This includes hiring.

Equally important to the Board's powers and duties is W.Va. Code 18B-8-7, which provides: "The provisions of *any* rule adopted by a governing board *preempt* any conflicting rule adopted by the [Higher Education Policy] commission or the council." (Emphasis added.) Thus, West Virginia has established the primary authority and duty of the Board to operate its school, including the business aspect of hiring.

At a meeting held on June 24, 2022, the Board of Governors approved the publication of proposed new/modified policies, collectively termed the University Improvement Package. These proposed policies covered Academic Objectives (see below); Standards for Undergraduate Admissions; Admissions into Colleges and Schools; Academic Freedom and Professional Responsibility; Faculty Appointments; Faculty Evaluation (see below); Staff Structure; and Recruitment, Promotion and Hiring. With respect to Hiring, the Board proposed changes to Board Policy HR-713 (attached as Exhibit "D"). The proposed policies were published as Notices of Proposed Rulemaking on June 29, 2022. An email inviting comments was sent to all faculty members and staff on June 29, 2022.

Comments regarding HR-713 were received from four faculty members. Each of these faculty members was also invited to discuss his or her comments directly with Board members. Comments were expressed by three of the faculty members that the current system is preferable, and no changes were needed. President Capehart observed that the current system is preserved, but that the flexibility for direct hires was added if time was of the essence in a hiring situation or if certain requirements were met which would be addressed in the procedures which would be used to implement the policy and which would require presidential involvement in the review process. Those procedures are currently under consideration for applicability if a direct faculty hire, other than an adjunct faculty member, is desired.

The fourth comment to HR-713 sought clarification on the involvement of a diversity officer in hiring. That concern was remedied by the Board's establishment of a greatly enhanced diversity officer in the position of Chancellor which now reports directly to the Board of Governors. (See discussion below, and Exhibit "F" Resolution creating Office of the Chancellor.)

Attached as Exhibit "C," is a summary of the procedural history of the policies incorporated in the University Improvement Package. This exhibit establishes that all notice and procedural requirements were met regarding faculty involvement in the development and implementation of the new policies. This exhibit further demonstrates that Mr. Connolly, Ms. Godfrey and Ms. Matoushek actively participated in the comment process, though Mr. Connolly and Ms. Matoushek did not appear to discuss their comments with Board members. The Board of Governors adopted these policies at its meeting on August 4, 2022.

There is no violation of the concept of shared governance with respect to Bluefield State's Hiring Policies.

C. Post-Tenure Review

The complainants assert numerous concerns about Bluefield State's new policy of Post-Tenure Review, a policy which brings Bluefield State into the growing mainstream of institutions of higher education in the United State. The complaints contend that administrators determine continuation without input from the faculty (Matoushek and Malamisura), that the new policy renders tenure non-existent (Matoushek), that the new policy violates West Virginia law and HLC accreditation criteria (Connolly – without citation to a specific law), that the new policy eliminates tenure and tenure protections (Connolly), and that, contrary to law, the new policy redefines tenure and tenure-track status and its protections (Connolly and Malamisura). The complaints affirmatively misrepresent applicable law and are factually inaccurate.

The Board of Governors' policy regarding Post-Tenure Review was established as part of the Board's University Improvement Package, which was approved for publication on June 24, 2022, which was noticed to all faculty members and staff by email inviting comments on June 29, 2022, and which was approved by the Board of Governors on August 4, 2022. Individuals who filed comments were affirmatively invited to also discuss their comments with members of the Board of Governors. The policy was established by Board Policy 403C, titled Faculty Evaluation. The procedure implementing this policy is found at Board Administrative Procedure AP-FC-001, attached hereto as Exhibit "E." This Procedure establishes:

1.2 Policy Statement. The purpose of post-tenure review is to examine, recognize, enhance and assure the performance of tenured faculty members. Post-tenure review includes the recognition of multi-year accomplishments, an ongoing assessment of a tenured faculty member's adherence to the standards set forth in section 3.3 of Policy 403 and plans for professional development to promote such adherence.

1.2.1 The post-tenure review process is not a reconsideration of tenure, but rather a three-year performance review which serves to identify the tenured faculty member's contributions to the institution and future opportunities as well as identifying any deficiencies in performance and, in those cases, provide a plan for addressing concerns.

Comments were received regarding this policy from only two faculty members, including Mr. Connolly. Mr. Connolly did not appear to discuss his comments with the Board of Governors at its August 2022 meeting, or at any subcommittee meetings.

The contention that tenure was eliminated or rendered non-existent is simply untrue. In August 2022, the Board of Governors, in Policy FC-403B, established the classifications of tenure

and tenure-track employees. If the Board had wished to eliminate tenure, it would have done so at that time.

Likewise, contending that requiring faculty to update their portfolio every three years after an award of tenure is the same as a continuous process of applying for tenure is wrong. The purpose of post-tenure review is to assure that Bluefield State's faculty are maintaining no more than the same level of performance that was necessary to receive an award of tenure. Post-tenure review serves to recognize achievements beyond the policy standards for the purpose of salary increases and other awards.

Unlike tenure, if a person going through post-tenure review fails to meet the prescribed standards, Administrative Procedure AP-FC-001 requires the faculty member and his or her dean to agree upon a development plan that for a period of at least two years will allow the faculty member to achieve such standards. During this time, the University will continue to offer the faculty member a contract until such time as the development plan is satisfactorily completed.

If the faculty member fails to complete the development plan, dismissal is only one among several options available including entering into a term contract or being assigned elsewhere within the University.

The assertion that faculty have been removed from the opportunity to participate is untrue. Under the administrative procedure, the power to comment on an applicant's performance is not limited to a select few. Instead, the politics that existed in the past are removed and all faculty members will have the opportunity to offer, anonymously, comments of support or concern.

Post-tenure review is now commonplace across the United States, including being codified in Georgia and Texas. By some accounts, over 50% of schools have post-tenure review. In West Virginia, the only benefit of tenure is the right to be offered a one-year contract the next year. This has not been taken away by the Board of Governors' policy.

The contentions of the complainants regarding post-tenure review are factually and legally unfounded. Bluefield State observed every notion of shared governance in its policy consideration. Only two comments were received and those were addressed through the administrative procedure process.

D. Dissolution of the Office and Absence of an Officer for Equity, Diversity and Inclusion.

Two complainants charge that Bluefield State eliminated its Officer for equity, diversity and inclusion. (Connolly, Malamisura) This is completely untrue and unfounded. To the contrary, the Board of Governors expanded and enhanced the position, and had the position report to the Board Chair directly. This is another example of false and/or misleading narratives from some in the faculty.

Prior to 2022, the former Officer was an assistant to the President with a primary duty of dispersing Title III monies, mostly for purposes not associated with diversity. In 2022, the Board of Governors created the Chancellor's position. This position reports directly to the Chair of the Board of Governors, and has far greater responsibilities for advancing diversity, equity and inclusion especially in terms of the student population.²

The Chancellor's position is held by Rev. Garry Moore, who is also the pastor at Scott Street Baptist Church in Bluefield. Rev. Moore has extensive experience in education, community action, and marginalized populations. One of the many new programs he is currently helping to develop is Bluefield State's Emerging Scholars Academy, which identifies secondary school students in rural minority schools for on-campus educational development during the summer months.

The complaints regarding equity, diversity and inclusion are simply untrue. A copy of the Board of Governors Resolution establishing the Office of Chancellor is attached as Exhibit "F."

E. Complaints Related to Academic Objectives Policy.

Two complainants assert that the Board of Governors established policies regarding Academic Objectives, Curricula and/or Student Outcomes without faculty input. (Matoushek, Malamisura) This is simply untrue. A third complainant asserts that such policies eliminate "required" faculty peer review of courses and curricula and that such policies violate the Faculty Constitution. (Connolly) Again, this is false and an incorrect assertion of law. Finally, one complainant asserts that the Board of Governors did nothing when presented with problems related to the new policy. This is absolutely untrue, as the Board of Governors did make changes as needed.

The Academic Objectives policy was part of the University Improvement Package, first published for comment on June 24, 2022. The faculty was requested to review and comment on the Package proposals by email of June 29, 2022. Those who commented were invited to discuss their comments with the Board's Joint Special Meeting of the Academic Affairs Committee, Policy and Planning Committee, and the Executive Committee of the Board of Governors on July 25, 2022. The Board adopted the policies with some changes at its August 4, 2022, meeting.

The Academic Objectives policy, attached hereto as Exhibit "G," is designed to ensure that the University and its faculty are accountable for the educational services provided to its students. Consistent with Accreditation Criteria 3.B.2, this policy helps to ensure that Bluefield State provides a general education which is grounded in a philosophy developed for the University, which imparts broad knowledge and concepts to students.

² Since 2019, African-American student population at Bluefield State has grown from less than 5% to near 25%. This year's incoming freshman class grew to approximately 40%.

This policy focuses not on required methods of teaching or courses, but on outcomes. Faculty members are free to teach; however, the policy ensures that external verification is used to confirm that students are actually learning. Accountability in education is an objective and obligation for all educators and institutions of higher education. It is an issue which has previously been positively discussed with individuals from the Higher Learning Commission.

The assertion that the faculty was not able to have input is false. During the comment period, eight faculty members submitted comments, including Ms. Godfrey, Mr. Connolly and Ms. Matoushek. Mr. Connolly and Ms. Matoushek did not appear to discuss their comments with the Board. The Board carefully reviewed and considered the comments. Policy changes were made. For example, "Critical and Creative Thinking" was added to 5.1.1 for Associate Degrees, and "General Science" was moved to 5.1.2 for Bachelor's Degrees. This was in response to comments about the time requirements for competencies for 2-year degrees. The complaints alleging a lack of input and no consideration and changes to the proposed policy are, again, simply false.

The assertion that faculty peer review is "required", and that the Academic Objectives policy violates the Faculty Constitution is inaccurate and legally flawed. No authority is provided for the complaint alleging a "requirement" for faculty peer review. There is none. Furthermore, the Faculty Constitution is not a policy document and does not supersede the authority and duties of the Board of Governors.

The Board of Governors acted properly in their focus on educational outcomes and accountability in its formulation of the Academic Objectives policy. There is no factual or legal basis which supports the complaints of the complainants. Shared governance was absolutely practiced.

F. Communications

Three complainants assert communications claims. Two complainants contend that the Board of Governors ignored substantial comments during comment periods or simply did not seek comments. (Matoushek, Malamisura) As demonstrated above, this is factually untrue. The third complainant asserts violations of West Virginia law, state higher education policies and accreditation criteria without specific references. (Connolly) This misstates applicable law. To the contrary, the Board of Governors has acted fully within its lawful duties and responsibilities at all times. One complainant asserts that input was not sought except through the 30-day comment period. (Malamisura) It is uncertain what he means, since he apparently concedes that 30-day comment periods, consistent with West Virginia law, were provided. Finally, complaints were made that the President did not meet specifically with the Faculty Senate on four occasions and that the Executive Vice President did not meet with the Faculty Senate. (Connolly, Malamisura) These assertions ignore the affirmative outreach of the President to the faculty far in excess of four times, the Faculty Senates failure to follow lawfully required notice and reporting obligations

to publicly set its times for meeting, and that the Executive Vice President reports to the President and not to the Faculty Senate.

During Justice Benjamin's investigation into the improprieties of the April 2022 Faculty Senate officer election, Mr. Malamisura, the then-Faculty Senate Chair, acknowledged that the Faculty Senate had failed to meet the legal obligations of West Virginia's Open Meetings Act, and that proper notices for the Faculty Senate meetings were never done. The complaints likewise do not aver that President Capehart was ever actually invited to any of its non-noticed meetings. President Capehart, on the other hand, has actively engaged the faculty directly through numerous meetings, forums, and gatherings. The Provost attended all Faculty Senate meetings for which he had notice (noting that the Provost was not provided notice to attend a meeting when the Faculty Senate improperly excluded an officer candidate from the ballot in April 2022). The faculty also has a member on the Board of Governors. As for the Executive Vice President not attending Faculty Senate meetings, that is not his role as Chief Operating Officer of the University. The Executive Vice President reports to the President and acts through the President. When policy-related inquiries are directed to the office of the Executive Vice President, the response is made through the President or the Provost. This was done.

The complaints regarding a purported lack of communications are conclusory and ignore facts. The Board of Governors has consistently attempted to engage the faculty and benefit from the faculty's advice and assistance. The Faculty Senate was the filter through which such communications between the Board and the faculty had to pass. Valid concerns regarding false narratives caused the Board of Governors to choose a Faculty Assembly model for more direct and accurate communications between the Board and the faculty. The complaints regarding communications are unfounded.

G. Administrative Procedures

One complainant asserts a blanket contention that actions of the Board of Governors violated West Virginia law, state higher education policies and accreditation criteria. (Connolly) No citations or references to specific problems are made.

This complaint seems more a conclusory opinion than a properly founded and legally based contention. For each of the specific complaints, Bluefield State has stated by citation its authority and duties in its actions, and the legal basis for its actions. This non-specific conclusory complaint is factually and legally deficient.

H. Other Miscellaneous Complaints

Mr. Malamisura and Mr. Connolly assert generalized and conclusory statements that a toxic and authoritarian work environment which is harming institutional effectiveness is present,

that academic freedoms and freedom of speech have been eliminated, that false promises have allegedly been made, and that there is a fear of retaliation.

These are conclusory opinions unsupported by fact or law. A faculty grievance procedure exists but has not been used. No freedoms have been eliminated and no false policy promises have been made. A fear of retaliation is unfounded. No example can be cited for retaliation by Bluefield State to a faculty member. To the contrary, however, a coercive threat was made by the Board's faculty member to the Board immediately prior to the Board's vote on moving to a Faculty Assembly for shared governance. This member affirmatively stated to the Board that a secret no confidence vote "might" have been taken by the Faculty Senate and that the results "might" be released to the press if the Board of Governors did not relent. The Board proceeded with the vote despite this threat voting unanimously, save the faculty representative's vote, to adopt a broader faculty assembly model for communicating and engaging all of the faculty. Thereafter, the flawed secret no confidence vote was indeed released to the press. The complaints are unfounded and lack an equitable basis.

CONCLUSION

For the reasons stated herein, Bluefield State University respectfully requests the Higher Learning Commission to dismiss the complaints filed by the four complainants.

Exhibit “A”

September 7, 2022

Mr. Malamisura,

Board of Governors Chair Charles Cole has directed me to communicate to you and the Faculty Senate that, pursuant to Section 2.6200¹ of the Bluefield State Faculty Handbook, he has reviewed concerns and complaints related to decisions underlying the April 2022 Faculty Senate elections and has chosen not to approve the Faculty Senate's decisions. Therefore, he has directed that the elections be vacated and that new elections take place consistent with West Virginia legal requirements and Bluefield State policies and procedures. The reasons underlying his decision are more fully set forth in the attached Faculty Senate Election Report.

Thank you for your attention to this matter.

Brent Benjamin

Executive Vice President and General Counsel
Bluefield State University

¹Section 2.6200 of the Bluefield State Faculty Handbook provides: "The Senate's decisions are subject to review and approval by the President." Chair Cole was appointed by then-Chair Garry Moore to serve as Acting President for this review due to the recusal of President Robin Capehart.

INVESTIGATION INTO AND RECOMMENDATION REGARDING APRIL 2022 FACULTY SENATE ELECTION

Introduction:

On Monday, April 18, 2022, an election was held by the Bluefield State faculty Senate to, among other things, select officers. Complaints were received in the Office of the President raising questions about the manner in which this election was conducted, and certain actions taken by the faculty Senate leading up to the election. These included assertions that Visiting Faculty members were treated in a manner inconsistent with the rules established for the faculty Senate and disparate from the manner in which other faculty members were treated. Specifically, it was alleged that a candidate for the presidency of the faculty Senate was improperly removed from the ballot one business day prior to the election because he was not a tenured or tenure-track faculty member. It was further asserted that other Visiting Faculty members who were serving on the faculty Senate were removed and that votes of Visiting Faculty members were not considered. Finally, it was argued that Visiting Faculty instructors were deprived of their opportunity for meaningful participation in Bluefield State's shared governance system.

Because faculty Senate decisions are subject to review and approval by the President (Section 2.6200, BSU Faculty Handbook), the complaints were submitted to the President's Office. Deeming himself disqualified, President Robin Capehart advised the Board of Governors that he was unable to perform such a review. Thereupon, Chairman Garry Moore appointed Vice-Chairman Charles Cole to serve as Acting President for purposes of the complaints. Acting President Cole directed the undersigned to investigate the complaints and prepare a recommendation for his consideration.

Summary Recommendation:

The only issue before the Acting President is whether the April 2022 faculty Senate election should be approved or not approved. For the reasons set forth herein, the undersigned recommends that the Acting President not approve the actions of the faculty Senate, and that the matter be remanded to the faculty Senate for a new election which ensures the procedural requirements of Bluefield State University are carried out, and which maximizes the potential for full and equal instructor participation in shared governance.

Procedural requirements necessary for an open and full election were not followed. It is further found that actions taken by the faculty Senate were arbitrary and capricious, having been taken without proper authority, without proper notice, and without proper neutrality. The result of these actions was that an entire class of instructors at Bluefield State was disenfranchised and denied meaningful participation in the faculty Senate in a manner inconsistent with the concept of shared governance and the Board of Governors' desire for more inclusive instructor involvement at Bluefield State.

Background:

Shared governance requires that the Boards of Governors of Higher Educational Institutions in West Virginia have access to information from their respective instructors and that "all faculty" have the opportunity to participate in such a delivery of advice. *W.Va. Code 18B-6-3(a)*. Therefore, West Virginia law provides that each institution may establish either a faculty Senate or a faculty assembly as the

institution sees fit. *Id.* Currently, Bluefield State has a faculty Senate. This faculty Senate is governed by West Virginia law, the Bluefield State Board of Governor's Policies, the Faculty Handbook, and its own Faculty Senate Constitution.

By statutory law, the selection of the faculty Senate and its leadership occurs in April of each even-numbered year. *W.Va. Code 18B-6-3(b)(1)*. This process begins with the President of the institution, "at the direction of the faculty and in accordance with procedures established by the faculty, [convening] a meeting or otherwise institute[ing] a balloting process to elect members of the faculty Senate." *Id.* Such selection procedures must provide "for representation of all academic units within the institution." *W.Va. Code 18B-6-3(b)(2)*. Members of the Senate serve 2-year terms and may succeed themselves. *W.Va. Code 18B-6-3(c)*. The Senate may select a Chairperson from among its members. *W.Va. Code 18B-6-3(d)*. West Virginia law does not limit or qualify what types of faculty members, *i.e.*, tenured, tenure-track, etc., who may serve on the Senate or serve as an Officer of the Senate.

During April 2022, the President of Bluefield State did not receive a "direction of the faculty" to initiate a balloting process or convene a meeting. An election of a Chairperson of the Senate was nevertheless held on Monday, April 18, 2022, one business day after an Executive Committee of the Senate was convened on Friday April 15, 2022, by the current Chairperson, Darrel Malamisura for the sole purpose of removing Visiting Instructors from the Senate. One of these Visiting Instructors in the Senate had been nominated to run against Chair Malamisura on Thursday, April 14, 2022. At that time, Chair Malamisura had no other competitors for reelection. Although the Executive Committee consists of, among others, the Provost (non-voting), Provost Ted Lewis did not receive notification of any meeting on April 15, 2022. *Constitution, Art. X, Section 3A*.

In response to Chair Malamisura's action, several complaints/appeals were received in President Capehart's office from those adversely affected and other Senate members. President Capehart disqualified himself from considerations of these complaints/appeals. Because the President serves as the Board's chief executive officer for Bluefield State, then-Board Chairman Garry Moore designated then-Board Vice Chairman Charles Cole to serve in President Capehart's capacity. These complaints/appeals focused on several issues related to the removal of the Visiting faculty members from the Senate and the manner in which the Officer election was conducted. Additional complaints related to generalized contentions that the faculty Senate has engaged in "poor professionalism," has acted beyond the purview of the Senate, is not interested in the success of the school, has created a "toxic environment," is biased, conveys negative and false information, has been "hijacked" by a minority for its own purposes, and discourages other viewpoints. These latter complaints are beyond the purview of this investigation.

Pursuant to Section 2.6200 of the Bluefield State Faculty Handbook:

The Faculty Senate is the vehicle for participation by representation of the faculty in the governance of the College. The Faculty Senate reports to the College faculty assembly. *The Senate's decisions are subject to review and approval by the President.* [Emphasis added.]

No notices of meetings or agendas are available for the faculty Senate meeting held on or about April 18, 2022, on the West Virginia Secretary of State's website, pursuant to West Virginia's Open Meeting Act. Likewise, no notice of meeting or agenda was found on that website for any of the faculty Senate's March meetings. A review of the faculty Senate's minutes for two meetings held in March 2022

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did not show any activity then taken related to the April elections or notice of such elections. It is possible that such was discussed and simply was not reflected in the Minutes.

Pursuant to *West Virginia Code 6-9A-3*, commonly known as the *Open Meetings Act*, all meetings of governing bodies shall be open to the public and adequate notice shall be made electronically of such meeting to the Secretary of State for publication/notice on the Secretary of State's website to permit notice to, and Involvement by, those interested in or affected by a body's actions. *West Virginia Code 6-9A-2(4)* defines a "governing body" as members of a public agency "having the authority to make decisions for or recommendations to a public agency on policy or administration . . ." [Emphasis added.]

Notices for and Minutes of the April 15, 2022, Executive Committee meeting of the faculty Senate and of the April 18, 2022, Meeting of the faculty Senate were not provided for this investigation and have not been added to the faculty Senate's site on the Bluefield State website. It is therefore unknown what officially was considered at such meetings or if a required quorum of members were present. A quorum is designated to be three-fifths of the elected faculty Senate members. *Constitution, Art. VII, Section 8*. To date, no notice or prior agenda has been identified by which proper notice of such meetings was conveyed.

Jurisdiction/Authority of the Board:

Pursuant to West Virginia law, the faculty Senate exists to assist the Board of Governors in shared governance. West Virginia law (see above) empowers each Higher Educational Institution to determine whether it wishes to ensure such participation by use of a faculty Senate or a faculty Assembly. Whether a Senate or an Assembly, the faculty entity derives its existence from the Board of Governors. The faculty Senate/Assembly, by law, must ensure the opportunity of "all faculty" to participate in such assistance to the Board (which is inherent in Assembly forms of shared governance). Therefore, the Board has ultimate authority over the operations of the faculty Senate.

Furthermore, BSC's Faculty Handbook expressly provides, at Section 2.6200, that all faculty Senate decisions are subject to the President's (or, here, the Board Chairman's designee from the Board) review and approval.

Finally, the *Faculty Senate Constitution*, at *Article II, Section 1*, acknowledges that BSC's budget, which is within the authority of the Board of Governors, will cover the financial needs of the Senate, subject to approval by the College's President.

Complaints/Appeals:

Several complaints/appeals were received related to Chair Malamisura's actions on April 15, 2022, which resulted in three Senate members being removed from the Senate without notice of the decision or an opportunity to defend. These members were, James Quesenberry, a Visiting Instructor of Criminal Justice, who was nominated on April 14, 2022, for the position of Chair of the faculty Senate; Adrian Ayersman, a Visiting Instructor of English; and Sarah Miles, a Visiting Professor of Marketing. Faculty Senate records at its site on the Bluefield State website are not current. It is possible that a fourth member, Diane Belcher, a Visiting Instructor of Business, was also affected. All are fulltime faculty. The complaints/appeals contended that the April 15 and April 18 meetings were not properly noticed and not properly announced; that the actions taken were inconsistent with equity and inclusion; that the faculty Senate, its Chairperson, and its Officers acted in an arbitrary and capricious manner inconsistent with past

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actions by the faculty Senate which had accepted full participation by the Visiting faculty in the Senate; that the Senate, its Chairperson, and its Officers acted with disregard to its Constitution, BSC's Faculty Handbook, Board Policy, and West Virginia law; that the April 15 meeting was held "in secret"; and that there are ethical issues related to the vote and notice issues. In addition, Mr. Quesenberry contends that he was specifically targeted and discriminated against because of the timing of the April 15 decision by Chair Malamisura and the convening of the Executive Committee a day after he was nominated to challenge Chair Malamisura and less than two business days before the election was to commence.

The complaints of those adversely affected by Chair Malamisura's actions, and/or those of the Senate, are considered appeals of such actions.

Chair Malamisura's Position:

Chair Malamisura does not dispute the factual basis of the complaints/appeals. Rather, he contends that he has the authority to determine which faculty members may serve on the Senate, that Visiting Faculty members were permitted by him to serve only because some Schools at Bluefield State had difficulty finding enough tenured and tenure-track faculty to serve on the Senate, and that he therefore also possessed the authority to remove such Visiting Faculty members at his discretion.¹

Chair Malamisura concedes that such Visiting Faculty members had served on the faculty Senate throughout his tenure as Chair. Chair Malamisura also concedes he did not remove another non-tenure-track educator, Vanessa Godfrey, from the Senate. Ms. Godfrey is a Clinical-Track Lecturer of Radiologic Technology. She is also a former Officer of the faculty Senate. Chair Malamisura had no explanation for the failure to follow statutory requirements regarding the President's involvement in the convening of balloting.

Chair Malamisura further contends that Bluefield State policies and tradition do not afford to Visiting Faculty the right to participate in service such as faculty Senate. No specific Bluefield State policy or passage in the Faculty Handbook or Faculty Senate Constitution was cited. Likewise, no statutory authority for such a limitation was offered.² Chair Malamisura's argued limitations for Visiting Faculty appear to be based upon his interpretation of constitutional passages and his belief in past practices at Bluefield State.

Chair Malamisura also advises that the faculty Senate will change its Constitution to prohibit Visiting Faculty from participation in the faculty Senate. *Article XI of the Faculty Senate Constitution* does not provide the authority to the faculty Senate, alone, to make changes to the Constitution. *Article XI* requires that any proposed constitutional changes be approved by the entire faculty.

¹ Chair Malamisura's assertions regarding the difficulties he perceived in getting participation by instructors on the Faculty Senate were mirrored by others. This may be a matter to be considered by individual Deans and the Provost, or may reflect inherent problems in the type of shared governance model used by BSU. This issue is beyond the purview of this investigation.

² To the contrary, West Virginia statutory law requires that "all faculty" have the opportunity to participate in the delivery of advice to the Board of Governors under the principles of shared governance. *W.Va. Code 18B-6-3(a)*.

[REDACTED]

Relevant BSC and related Authority:

In addition to the Authority cited above, the following is relevant to a Discussion of the complaints/appeals and a Recommended Action.

The *Faculty Senate Constitution* contains provisions for Membership (*Art. V*), Officers (*Art. VI*) and Meetings (*Art. VII*). Membership in the faculty Senate is open to faculty:

. . . holding the rank of instructor, assistant professor, associate professor, or professor, who are full-time employees of Bluefield State College. Professors *emeritus* and *emeriti* shall be welcomed as *ex-officio*, non-voting observers at faculty meetings.

Thus, the *Constitution* expressly establishes a class of faculty who may not participate as voting members, *i.e.*, *emeriti*. That the *Constitution* contains a specific prohibited class from participation (*i.e.*, *emeriti*) and that such a prohibition does *not* include Visiting Faculty is significant. Each of the Visiting Faculty members affected by Chair Malamisura's removal met the requirement of being instructors and were all full-time. Visiting instructors are not expressly prohibited from membership or service in the faculty Senate. The assertion that such Visiting faculty are presumptively barred from service or that there is an implicit limitation on their service is simply not supported by the language of the *Constitution*. The *Constitution* considered those who could not serve in a voting context by expressly eliminating *emeriti* faculty. That the *Constitution* has a provision for express limitations of participation and that this provision does not list Visiting Faculty confirms that there is no express and no implied limitation of any form to the service of Visiting Faculty in the faculty Senate.

Article VI, Officers, provides for three officers: Chair, Vice-Chair and Secretary. The only limitation provided by the *Constitution* for such service is that the Chair and the Vice-Chair may not come from the same School. Again, that the *Constitution* makes such an express limitation without listing Visiting Faculty confirms that there is no express and no implied limitation to the service of Visiting Faculty as officers of the faculty Senate. No reasonable reading of the *Constitution* supports an argument that service as a member on, or officer of, the faculty Senate is limited to only a subset of Bluefield State's fulltime faculty. Such an interpretation is inconsistent with West Virginia public policy as established by statute and by the essence of shared governance which encourages, not discourages, full and open assistance to the Board of Governors from all of the faculty. Visiting Faculty bring a rich diversity of experiences to Bluefield State from a variety of backgrounds and institutions.

Article VII, Meetings, require that "[d]ue notice be given so the faculty can participate in meetings" and that such meetings be conducted in accordance with *Roberts' Rules of Order*. Due notice of anything related to membership or officers was not properly given by any consideration of that term with respect to the April 15 and April 18 meetings, much less with respect to the Open Meetings requirements in West Virginia and *Roberts' Rules of Order*.

West Virginia CFR, 133-9-1, et seq., sets forth the distinction between tenure, tenure-track, and non-tenure track faculty for an Institution. This distinction is more specifically set forth in Bluefield State Board of Governor's *Policy FC-403*, which defines tenured faculty, tenure-track faculty, clinical and non-tenure-track faculty. *FC-403.3.2.1 to .4*. Non-tenure-track faculty may be fulltime. Clinical Faculty are not subject to consideration for tenure, are appointed only for designated purposes, and have no expectation

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of continued appointment. FC-403.3.5. Clinical and Visiting Faculty are the same for purposes of appointment:

3.9 Non-tenure track appointments shall have one of the following titles:

3.9.1 Any of the faculty ranks, but designated visiting, research, clinical, extension, or adjunct, as applicable to describe the connection or function; .

There is no limitation in Board Policy or in West Virginia law for the service of non-tenure-track faculty on boards, councils or other entities at Bluefield State. Furthermore, there appears no implicit distinction in Bluefield State Board policy to distinguish tenure/tenure-track faculty from non-tenure-track faculty in service to the University.

Bluefield State *Faculty Handbook, Section 5.3000*, relates to Committee Assignments for faculty. This Section does not distinguish, expressly or implicitly, between tenured/tenure-track and non-tenure-track faculty:

Service on College committees is one of the responsibilities of the faculty members. All full-time faculty are expected to participate on college wide committees.

Nothing has been found in this investigation, nor was anything provided by the faculty Senate, to distinguish the broad purpose behind the policy underlying faculty involvement in committees with the policy underlying faculty involvement in the faculty Senate and shared governance.

Discussion:

The actions taken by Chair Malamisura, the faculty Senate Executive Committee (to the extent it was involved) and the faculty Senate (to the extent it was involved) constitute a serious departure from West Virginia law, the Board of Governor's policies, the *Faculty Handbook*, and the *Faculty Senate Constitution*. The removal of Visiting Faculty, including one who less than a day prior became a challenger to the position of the one making the determination, constitute an improper departure from necessary procedural safeguards designed to ensure fair notice and meaningful participation in shared governance, and further constitute arbitrary and capricious acts. It is recommended, that Vice Chair Cole, sitting by designation for President Capehart, pursuant to *Section 2.6200* of the *Faculty Handbook*, reject approval of the actions taken by Chair Malamisura/faculty Senate with respect to Visiting Faculty and the election of faculty Senate officers, that the affected Board Members be immediately reinstated, and that the purported election taken the week of April 18, 2022, be voided. Furthermore, in view of the gross failure to meet minimum legal and other standards with its resulting prejudice to the meaningful and equal opportunity for participation by all instructors not expressly exempted from participation, including contravention of the most basic notions of due notice, the basic foundation for effective shared governance has been compromised and requires, at a minimum, non-acceptance of the purported vote held in April 2022, and the actions taken thereto.

1. Procedural Deficiencies

Procedures establish the foundation necessary for individuals who have an interest in a particular act or event to have a fair and meaningful opportunity to be heard and to participate. Procedures also

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ensure that each such individual have an opportunity to do so equally to other similarly situated individuals. Basic procedural safeguards are so important to the concept of shared governance that the West Virginia Legislature saw fit to codify foundational tenets of process and notice. These safeguards are found not only in *Chapter 18B* of the West Virginia Code, but also in West Virginia's Open Meetings Act (see above). The *Faculty Senate Constitution* likewise establishes minimum notice requirements prior to the faculty Senate taking substantive actions. These minimum standards for due procedure were not met in the faculty Senate's April 2022 election.

West Virginia Code 18B-6-3(b)(1) establishes the manner in which elections shall occur. These procedures are necessary to ensure fair notice, equal participation, and fundamental fairness in how elections are conducted. The President of Bluefield State never received a statutorily required "direction of the faculty," the necessary predicate to conducting a balloting process. As such, the balloting process used by the faculty Senate was not properly initiated. The election is void *ab initio*, as a matter of law.

Further, public notice of the anticipated April 2022 elections was deficient. A review of the faculty Senate's March minutes for two meetings (as reflected on the Bluefield State website) shows no activity taken with respect to such a legally required April election. No notice was given of such anticipated elections in such official records.

Although meetings of the faculty Senate and/or its Executive Committee took place in April 2022 and apparently substantive actions were taken related to the issues in this investigation, the faculty Senate's page on Bluefield State's website is devoid of any notices, meetings, agendas or other information for such meetings. Specifically, there are no notices of meetings or agendas available for the April 15, 2022, meeting of the faculty Senate Executive Committee or the reported April 18, 2022, meeting of the faculty Senate. Such notices are required by law and by the *Constitution*.

Although required by the *Faculty Senate Constitution, Article X, Section 3A*, Provost Ted Lewis did not receive notification of the April 15, 2022, Executive Committee meeting despite being a non-voting member. Minutes are not available for either this meeting or that held on April 18, 2022. It is therefore unknown if a quorum was established. The failure to follow basic procedural requirements for conducting business renders any substantive decisions taken void. Since it is undisputed that purported substantive decisions were made during these meetings -- decisions which fatally prejudiced the meaningful participation of several instructors in the election process -- the fruits of such improper actions should not be approved by the Acting President and the affected instructors should be made whole. The basic requirement of *West Virginia Code Section 18B-6-3(a)* that "all faculty" have the opportunity to participate in shared governance has been violated.

During this investigation, it became apparent that the faculty Senate has heretofore failed to meet the requirements of West Virginia's Open Meeting Act. Specifically, no notices or agenda were found on the Secretary of State's website for any faculty Senate meetings in March or April 2022. The purpose of the Open Meeting Act is to ensure proper and adequate public notice for meetings by entities which, among other things, "have the authority to make decisions for or recommendations to a public agency on policy or administration. . ." *W.Va. Code 6-9A-2(4)* (*Emphasis added*). Because the faculty Senate (or the Faculty Assembly for institutions which use that model of shared governance) is established to assist and advise the Board of Governors on policy matters, it is subject to the requirements of West Virginia's Open Meetings Act. It is the understanding of the undersigned that this procedural notice deficiency will be corrected by the faculty Senate henceforth.

[REDACTED]

In view of the seriousness and extent of procedural deficiencies, it is recommended that the Acting President not accept the actions of the faculty Senate related to the April 2022 election.

2. Arbitrary and Capricious Actions Taken Without Authority

Although the procedural deficiencies of the faculty Senate actions are sufficient alone to require vacation of the April 2022 election, the complaints filed against the actions of the faculty Senate and its leadership compel a review of some troubling aspects of these actions. These troubling aspects may serve to undermine faculty participation in the faculty Senate and faculty morale, and thereby undermine the concept of shared governance.

The events which gave rise to the filing of complaints transpired over four business days. On Wednesday, April 13, Chair Malamisura was unopposed for reelection as Chair of the faculty Senate with an election set for Monday, April 18. On Thursday, April 14, James Quesenberry, a Visiting Instructor of Criminal Justice, was nominated for the position of Chair against Chair Malamisura. Mr. Quesenberry was a fulltime faculty member. As a result of actions taken by Chair Malamisura and apparently endorsed by a portion of the Executive Committee on Friday, April 15, one business day before the officer election was to commence, Challenger Quesenberry was removed from the ballot and barred from opposing Chair Malamisura for the position of Chair of the faculty Senate. Moreover, other Visiting Instructors who were members of the faculty Senate were removed. No prior notice was given regarding these actions. No right to be heard or to defend was provided.

However, the membership on the faculty Senate of a different non-tenured, non-tenure-track faculty member, Vanessa Godfrey, a Clinical Track Lecturer of Radiologic Technology, was not eliminated. Despite her status as a non-tenure track instructor, Ms. Godfrey is also a former Officer of the faculty Senate. Chair Malamisura could not explain this inequality of treatment of similarly situated faculty members. He was apparently unaware of her non-tenure track instructor status.

The next business day, April 18, the election was held. No minutes have been made available (online or in person) to determine if a quorum was present to conduct business on April 18, or who voted for officers. At the April 18 meeting, Mr. Michael Lilly advises that actions were taken by the faculty Senate to confirm the April 15 actions of Chair Malamisura and the Executive Committee. It is not known exactly what official action was taken due to a lack of official Minutes, the lack of an agenda and notice for the meeting, and the lack of notice that any such action would be considered at such a meeting.

Chair Malamisura contends that he and the faculty Senate were justified in the actions taken to remove Challenger Quesenberry from the ballot, as well as Visiting Faculty from voting positions on the faculty Senate. Chair Malamisura argues that Bluefield State policies and traditions do not afford to Visiting Faculty members the right to participate in service such as faculty Senate. Chair Malamisura relies on his interpretation of relevant authority for this assertion. No specific authority was provided.

Chair Malamisura contends that he had the authority as Chair to determine which faculty members may serve on the Senate, and that he acquiesced in permitting Visiting instructors to be Senators simply because of the difficulty of getting tenured and tenure-track instructors to serve. Thus, he contends that if he could permit such service, he could likewise end such service at his discretion. This argument is not persuasive as a basis for avoiding established procedural, legal and constitutional requirements. There is no authority for the contention that the Chair may follow or disregard requirements at his or her sole

discretion, much less exercise any such supposed discretion in a manner which from all appearances substantially benefited his reelection chances.

The contention that either the Chair or the Executive Committee of the faculty Senate has plenary power to disregard and/or to interpret relevant authority in a manner inconsistent with the plain meaning of such authority is meritless. That such substantive decisions also appear to have been beneficial to the Chair's reelection chances no doubt served as a basis for many of the harsh complaints received in the Office of the President.

After an exhaustive search of relevant authority, the undersigned finds no persuasive argument to support the faculty Senate's contention of plenary power and control over the election and membership process. To the contrary, the relevant authority compels the conclusion that Visiting instructors may fully and meaningfully participate in all aspects of shared governance. Indeed, the practice of the faculty Senate had, prior to the April 2022 election, permitted non-tenured/non-tenure-track faculty to not only be full Senate members, but also to hold office in the faculty Senate. This precedent undermines Chair Malamisura's defense of the faculty Senate election-related actions.

The ultimate authority for who may participate in shared governance was established by the West Virginia Legislature. *West Virginia Code, Section 18B-6-3(a)* establishes that Boards of Governors shall have access to information from their respective instructors and that "all faculty" shall have the opportunity to participate in the delivery of advice. That is the policy of West Virginia. Furthermore, the *Faculty Senate Constitution* provides no limitation on Visiting Instructors so long as such an individual is fulltime and holds the rank of instructor, assistant professor, associate professor, or professor. *Article V*. The contention that visiting instructors are presumptively barred from participation is simply not present, expressly or implicitly, in the *Constitution*. What is present in the Constitution is a prohibition of *emeritus* professors from serving. Consistent with the legal principle of *expressio unius exclusio alterius*, had it been the intention to bar Visiting Instructors from serving, such a provision would have been inserted at this point. That it wasn't requires the conclusion that visiting instructors are not barred from service as members or as officers of the faculty Senate consistent with legislative policy.

The long and extensive service of Ms. Godfrey on the faculty Senate undermines the current argument of the faculty Senate. Given the timing of the elections-related actions, the lack of pertinent authority, and Ms. Godfrey's long service, together with the complete lack of proper notice for such actions, one must conclude that (1) the Chair did not possess the discretion to determine which instructors could or could not serve as a member of or seek office on the faculty Senate; and (2) that the un-noticed substantive actions taken in view of the election time line, when considered with the lack of authority for such actions, were arbitrary and capricious and severely prejudiced the ability of Visiting Instructors to fully and meaningfully participate in the elective process and in shared governance. *Bluefield State Faculty Handbook, Section 5.3000*, relating to Committee Assignments for faculty, provides an expectation that fulltime faculty should participate on college-wide committees. This provision, which does not distinguish, expressly or implicitly, between tenure/tenure-track and non-tenure-track faculty, is additional persuasive authority that the faculty Senate acted improperly with respect to the election process. For these reasons, in addition to the fatal procedural problems referenced above, it is recommended that the Vice Chairman Cole *not* accept the actions of the faculty Senate with respect to the April 2022 election.



Respectfully submitted,



Brent D. Benjamin
Executive Vice President and General Counsel
Bluefield State University

09/01/2022

Date

Exhibit “B”

11/03 – BSU BOG MEETING

Background:

- On 09/16/22, the Executive Committee of this Board passed a resolution asking the Board to consider whether the current Faculty Senate should be replaced by a Faculty Assembly to best serve the need for open, equal and meaningful input and advice between individual faculty members and the Board. The Executive Committee expressed concerns that the Board was not benefiting from the full diversity of experience of BSU's faculty and that meaningful, open and direct engagement of the faculty in communications between individual faculty members and the Board would be enhanced by an Assembly model.
- On 10/03/22, this Board accepted the 09/16 Resolution and established a 30-day comment period for receiving comments. This decision was promptly properly posted, including on BSU's website. The Board established that it would vote on the matter at its 11/03/22 meeting.
- In addition to the posting, BSU issued an email to "all users", advising of the 10/03 action and encouraging all interested individuals to submit comments to the Board through the President's Office. A link to the Board's action was also provided.
- During the next weeks, BSU's President and its EVP/General Counsel met and consulted over several hours with the current Faculty Senate to discuss the Resolution.

Written Comments

In response to a request to interested parties for written comments, comments were received from 6 individuals during since 10/03.

These comments focused on two issues: legal and policy.

The written comments were forwarded to Board members earlier this week. It is my understanding that each of you have received and considered them in preparation for this meeting. Each of the individuals who submitted written comments received an invitation to attend and speak with the Board should they desire.

For purposes of this meeting, I will summarize the general issues addressed by each comment.

Vanessa Godfrey – Could not be here

- Ms. Godfrey opposes a move from a Senate to an Assembly.
- She references WV statutory law for assertions regarding Board duties, Administration duties and Senate actions related to its April election.
- She states that the Senate is trying to correct oversights of the Senate made in the past.
- She believes that the creation of an Assembly should require a vote by the faculty.
- She believes that by-laws should be done before a vote, not during an interim period evolving the Senate to an Assembly.
- She believes that a move to an Assembly "is not a power that should be in the President's or the Board's best interests" in that it will create faculty divisions.
- She believes that BSU's faculty is doing its best to help the success of BSU

Sean Connolly – 3 submission

First Submission

- Mr. Connolly makes several legal arguments for the proposition that the Board cannot move to an Assembly model including: (1) that the Board and the President does not have the power to so act; (2) that any power that the Board has must be also shared with everyone at the school (using the term, "a plebiscitary vote"); (3) that any Board action would be "a legal and administrative overreach" if "others" are excluded from voting on the matter; (4) it is an abuse of the Code to assert that Boards have the power to dissolve senates or create assemblies; and (5) that it is "legally dubious" to involve non-faculty in the faculty's self-governance and representation.
- Mr. Connolly contends that arguments that an Assembly model will lead to more inclusion and openness in communications is "completely spurious" and is a red-herring. He asserts that the "real agenda" of the Board is to (1) direct staffing officers; (2) directly surveil the faculty; or (3) to intimidate the faculty. He believes that under the current senate model, the Board can meet directly with the faculty's representatives.
- Mr. Connolly raises other questions and matters, referencing efficiencies, the "business speed" of leaders of authoritarian dictatorships and monarchies, and that public schools are "not designed to be the oligarchical corporate fiefdoms of self-appointed managerial aristocrats as in the manner of third-world banana republics or feudal manors."
- Mr. Connolly believes that an Assembly model will lead to less communication than the current Senate model, and that such a change will "irrevocably harm the institution and its faculty."

Second submission

- Mr. Connolly adds that he believes that the senate has a "sovereignty" which refers to the power of self-determination of the faculty.
- He asserts that the faculty should choose who communicates with the Board and the Administration on its behalf.
- He questions whether those who do not primarily serve a faculty role and have the same interests as faculty should have any role in determining how communications occur with the faculty.
- Otherwise, Mr. Connolly argues, "[h]aving management determine the means by which faculty speak and to who they speak is tantamount to passive control over faculty speech itself."
- An assembly model will not result in more honest, helpful or frequent feedback.
- Those who speak out can "more easily be sanctioned, ignored, dismissed, or otherwise marginalized."
- A move to an Assembly model will destroy faculty morale, trust and cooperation.

Third submission

- Repeats assertions from second submission

Carol Cofer

- The old General Faculty meetings were poorly attended, not representative and faculty was intimidated to speak out.

- The current Senate model provides more opportunities for faculty voice in institutional governance than an Assembly or general faculty meeting model.
- The President and the Board haven't met sufficiently with the current Board.
- Any proposal to dissolve the Senate in favor of an Assembly must be first initiated at the Faculty Senate level according to the Faculty Senate's Constitution. Neither the Board nor anyone else has "the right to change our Faculty Constitution."

Amanda Matoushek

1. Having a Senate doesn't prevent Board or President meetings with the entire faculty.
 - a. Senate provides a way for faculty to initiate discussions on practices, procedures, etc.
 - b. Senate is a means for schools/colleges to work together and cooperate, and resolve things at the faculty level.
2. President and Board have not met sufficiently with the Senate.
3. Board should have had input from the faculty before it went forward on the resolution.
4. The President should not prepare the by-laws.
5. Ms. Matoushek acknowledges issues with faculty participation in the current model, but contends that it is because the President and the Board have not accepted the Senate's recommendations. She asserts that such advice has been met with "disdain and hostility."
6. An Assembly model will kill faculty morale "as we are made to feel that we are simply hired help being told what to do by our Board overlords, rather than the professional education and subject matter experts that we are."
7. [Disagreement with Benjamin's Investigative Report findings;
 - o Only source Malamisura
 - o Inappropriate attack on Malamisura
 - o Contradicts Malamisura on who decided against candidacy and membership of Visitings
 - o Implies that Malamisura didn't have power as Chair that he exercised
 - o Comparison on Godfrey not accurate and "intentionally misleading"
 - o Argues that Visitings shouldn't be included [but later acknowledges mistakes, etc.]
 - Timing of action disputes this logic
8. Communications need to be a two-way street.

Sara Roberson

- Assembly model will serve to silence faculty when conflicts with the administration arise
- Fear of retribution
- Faculty work hard – having to be in an Assembly is "an additional burden" which will reduce participation. It is excessive.

Roy Pruett

- The full Senate represents the schools and ensures their interests are protected.
 - o The Chair and Vice-Chair must come from different schools.
 - o An Assembly would allow larger schools to have an unfair advantage over smaller schools.
- The Board and President have not sufficiently met with the Senate.
- The move from a senate model to an Assembly model goes against WV law and HEPC rules.

The Board's Duties and Powers –

- WV public policy is established by its statutory and common law. This is an institution of the State of WV.
- The law applicable to the issue before the Board is set forth in Chapter 18B of the WV Code. Specifically, there are 6 Sections which relate to faculty senates and assemblies, 4 of which are relevant to today's discussion.
 - o 2A-4 Powers and duties of Boards
 - o 6-1a What the purposes of faculty senates/assemblies are for
 - o 6-3 What form of faculty model should be used
 - o 8-7 The authority of the BOG relating to faculty
- With respect to the decision of which faculty model provides the best means of direct unfiltered communications between individual faculty members and the Board, the public policy of WV as set forth in its law is plain and clear. This is not even remotely a close call. The Board has not simply the power, *but the duty*, to "determine, control, supervise and manage the financial, business and education policies and affairs of the state institution of higher education under its jurisdiction." 18B-2-4(a). No other entity is given such authority. This duty is non-delegable.
- The purpose of a faculty senate or assembly is set forth by statute: A Senate/Assembly "means the advisory group of faculty formed at a state institution of higher education" as determined by the institution. 18B-6-1a(h). There is no other role for the Senate/Assembly set forth by law. The statutory purpose for a Senate/Assembly is therefore to provide the Board with advice. It is a communications purpose.
- The public policy of WV does not mandate a Senate form for faculty communications. It provides the school with an option: a Senate or an Assembly. This choice reflects the Legislature's belief recognition that different schools have different situations and that the ultimate choice of faculty communication should be left to the institution. 18B-6-3.
- As the Board is aware, a Senate model utilizes faculty representatives for communications between the Board and its faculty. An Assembly model provides direct, unfiltered communications between individual faculty members and the Board since all faculty members participate. *Id.*
- The decision is that of the Board. There is no legal dispute on this. The judicial doctrine which applies here is the Plain Meaning Doctrine. This requires that a statute which is plain and not ambiguous is applied according to its meaning. Here the plain meaning of the statutes is clear. Even if they were not clear, application of the judicial doctrine of reading statutes "in pari materii" reaches the same conclusion. The decision is that of the Board and its duty is to do what it believes best serves the school.
- Each model has its pluses and minuses. To ensure that the Board is well informed in its decision, the Board should involve the faculty in decisions affecting the faculty. Regarding today's vote, all interested parties, including the faculty, were provided a 30 day notice of the Board's decision to consider this issue today. Furthermore, the President and myself consulted for several hours with the current Faculty Senate over the last several weeks on this issue.

- With respect to the Comments made regarding the law compelling a different conclusion, I must respectfully disagree. Based upon my experience and research, this is not a close legal call. The Board has the duty and authority to proceed today as it believes is best for BSU.

Exhibit “C”

**Bluefield State University
Board of Governors – Special Meeting
August 4, 2022**

Consideration of University Improvement Package of Proposed Policies (new and amended)

Summary: At a meeting held on June 24, 2022, the BOG approved the publication of proposed new/modified policies, collectively termed the University Improvement Package. This Package consisted of proposed modifications to eight (8) current sections of the BOG’s policies. The proposed new/modified policies were published as Notices of Proposed Rulemaking on June 29, 2022. An email inviting Comments was sent to all faculty members and staff on June 29, 2022.

Comments were received from eight (8) individuals. Each was invited to attend the July 25, 2022, Joint Special Meeting of the Academic Affairs Committee, Policy and Planning Committee, and the Executive Committee to discuss their Comments. Those who attended were: Melissa Haye, Vanessa Godfrey, Rodney Montague, and Sandra Wynn. Angie Lambert attended but did not present. The following provided written Comments (which were provided to the Committee members), but did not appear: Sean Connolly, Carol Cofer and Amanda Matoushek. Comments were provided as follows:

| | |
|--|---|
| AC-201 Academic Objectives | 8 |
| AC-204 Standards for Undergraduate Admission | 1 |
| AC-204A Admissions into Colleges and Schools (new) | 6 |
| FC-403A Academic Freedom and Professional Responsibility | 5 |
| FC-403B Faculty Appointments | 5 |
| FC-403C Faculty Evaluation | 2 |
| HR-703 Staff Structure | 2 |
| HR-713 Recruitment, Promotion and Hiring | 5 |

Most of the Comments were non-substantive. Most were questions regarding the application of the policy changes. These Comments were addressed by President Capehart at the July 25 Special Meeting. A second area of Comments focused on considerations related to curriculum for two-year degrees which have previously been determined in policy making. President Capehart also addressed these Comments. A third area of Comments focused on the procedural implementation of the proposed policy changes. President Capehart advised that such input would be incorporated into the procedures which he will establish by Executive Order. The fourth are of Comments represented substantive change recommendations. These included grammatical suggestions, clarifications regarding nursing continuing education and outside work, and related recommendations. The final Policies before the Board of Governors today include many of these recommendations.

Substantive Comments and Changes to Specific Proposed Policies:

AC-201 Academic Objectives

Comments were received from 8 individuals. As a result of the Comment period, changes in the proposed policy were made to 5.0 Core Competencies. Specifically, "Critical and Creative Thinking" was added to 5.1.1 for Associate's Degrees, and "General Science" was moved to 5.1.2 for Bachelor's Degrees. This was in response to concerns about the time requirements for competencies for 2-year degrees. Other areas of Comments will be considered when developing procedures for implementing this policy. Other Comments were previously considered by the Board of Governors when the current Policy was last changed.

AC-204 Standards and Procedures for Undergraduate Admissions

Comments were received from 2 individuals. As a result of the Comment period, grammatical changes were made to Sections 2.2, 2.4, and 2.5. One Comment inquired whether Bluefield State should drop the ACT requirement. That Commentor did not attend the July 25 meeting, so no discussion was made.

AC-204A Admissions into Colleges and Schools

Comments were received from 6 individuals. As a result of the Comment period, language was changed in Section 1 of the proposed Policy. During the July 25 meeting, President Capehart clarified that the procedures which will implement this Policy will involve admissions criteria and input from the specific colleges and schools, but that the President is responsible and accountable for such admissions. Requirements from accrediting bodies will not be eliminated. Typographical changes were made to replace "College of Arts and Sciences" with "College of Liberal Arts." A provision to permit an exception to the need to be in a school to take 200 level and above courses was added.

FC-403A Academic Freedom and Professional Responsibility

Comments were received from 5 individuals. A primary concern expressed by individuals in the instruction of healthcare fields focused on the need for such faculty to have practice days for licensure maintenance. The committee members and the President discussed this at length and agreed that such concerns are not only important, but that such practice days are beneficial to the University and to its students. A change was made to Section 2.2.1.3.2, which establishes that clinical faculty who are required to engage in activities for pecuniary return in order to maintain their professional licensure are exempt from institutional approval of such activities.

FC-403B Faculty Appointments

Comments were received from 5 individuals. No substantive changes were made. Most of the Comments requested clarifications as to how the Policy would be implemented. President Capehart answered these questions at the July 25 meeting.

FC-403C Faculty Evaluations

Comments were received from 2 individuals. Both individuals had questions about how this Policy will be implemented. Unfortunately, neither individual was able to attend the July 25 meeting. President

Capehart addressed implementation matters. The Policy establishes specific standards for annual evaluations, where before there were on generalities.

HR-703 Employees

No Comments were received on this Policy. The only modifications made relate to Section 1, concerning the effective date of the Policy.

HR-713 Recruitment, Promotion and Hiring Policy

Comments were received from 4 individuals. Because this proposed policy was drafted before university status, all references to College have been changed to University. Because of the changes made in eliminating the "classified employees" status for some staff, Section 1.2 was changed to refer to staff generally. Concerns were expressed by 3 individuals that the current system of committees is preferable. President Capehart responded to these concerns. Dr. Montague made important contributions regarding the role of a diversity officer to review employment decisions. The Committee members and President Capehart discussed the matter in some length with Dr. Montague and Mr. Benjamin. The manner in which the diversity officer proceeds will be a matter for the procedures which will implement this Policy. Dr. Montague's comments will be considered in developing such procedures and the institutional role of the diversity officer.

Exhibit “D”

**BLUEFIELD STATE UNIVERSITY
BOARD OF GOVERNORS**

POLICY NO. HR-713

RECRUITMENT, PROMOTION AND HIRING POLICY

SECTION 1. GENERAL

- 1.1 Purpose.** The purpose of this policy is to assure that Bluefield State University employs the highest quality of faculty, staff and administrators to accomplish its mission.
- 1.2 Scope.** This policy authorizes the creation of hiring procedures for faculty and staff within Bluefield State University.
- 1.3 Effective date:** August 4, 2022.

SECTION 2. HIRING PROCEDURES

- 2.1** Because the success of Bluefield State University is directly dependent on the quality of its employees, the recruitment and hiring for all positions at Bluefield State University, below that of the President, shall be the responsibility of the President who is responsible to the Board of Governors for the success of the University. The President, at his or her discretion, shall retain the sole responsibility for the hiring of the University's full and part-time employees in compliance with state and federal hiring requirements. The President may designate an individual to perform this function.
- 2.2** The President shall by executive order issue a procedure or procedures for the hiring of all full-time and part-time regular vacancies to provide Bluefield State University the most qualified person for each position while promoting equal employment opportunity to all qualified individuals. Such hiring procedures may vary between different types of positions, and may include:
- a. the direct recruitment of qualified individuals;
 - b. the promotion of any person holding an "interim" position for a period of a year or more to a fulltime position without further procedure;
 - c. the use of traditional job postings utilizing a hiring committee, or by any combination thereof as the President determines to be appropriate.

All hiring decisions recommended to the President shall be reviewed by the University's designated diversity officer to affirm that appropriate sensitivity has been given to the hiring of minority applicants and that equal employment opportunity has been afforded to all qualified applicants.

SECTION 3. PROCEDURES

- 3.1 Relevant hiring procedures, resources and forms, as necessary to implement this policy, shall be posted electronically on the Bluefield State University, Office of Human Resources website.

Exhibit “E”

**BLUEFIELD STATE UNIVERSITY
ADMINISTRATIVE PROCEDURE AP-FC-001.**

1. In General.

1.1 **Authority.** The Bluefield State University procedure for post-tenure review is issued pursuant to section 2.3 of Policy No. FC-403C consistent with section 2.2 of Policy No. FC-403C.

1.2 **Policy Statement.** The purpose of post-tenure review is to examine, recognize, enhance and assure the performance of tenured faculty members. Post-tenure review includes the recognition of multi-year accomplishments, an ongoing assessment of a tenured faculty members adherence to the standards set forth in section 3.3 of Policy No. FC-403 and plans for professional development to promote such adherence.

1.2.1 The post-tenure review process is not a reconsideration of tenure, but rather a three-year performance review which serves to identify the tenured faculty member's contributions to the institution and future opportunities as well as identifying any deficiencies in performance and, in those cases, provide a plan for addressing concerns.

1.3 **Subject Faculty.** All tenured faculty shall be reviewed with the exception of tenured administrators whose majority of their duties are administrative.

1.3.1 The three-year review cycle shall begin upon the completion of any prior post-tenure review period.

1.3.2 Any administrator who returns to full-time teaching shall be subject to post-tenure review in the third year following their return to full-time faculty status.

2. Portfolio Submission.

2.1 **Notice.** On or before the 1st day of November of each academic year, the Provost shall notify each faculty member who is in their third year following the granting of tenure or their third year since the completion of their last post-tenure review process that they shall be considered for post-tenure review.

2.2 **Portfolio submission.** On or before the 15th day of March, the faculty member under consideration under section 2.1 shall submit their post-tenure portfolio to the Dean of their respective College for review.

2.3 **Documentation.** Each post-tenure portfolio shall include the following:

2.3.1 One copy of their portfolio and a .pdf file.

- 2.3.2 Authorization to release information.
 - 2.3.3 Curriculum vitae.
 - 2.3.4 Proposed exceptions to current criteria.
 - 2.3.5 A demonstration of excellence in teaching supported by student evaluations for the preceding four semesters; faculty annual self-evaluations; syllabi and lesson plans for the preceding four semesters; and classroom evaluations.
 - 2.3.6 A demonstration of distinctive professional and scholarly activities and recognition.
 - 2.3.7 A demonstration of adequate accessibility to students supported by the faculty member's course schedule and posted office hours for the previous four semesters.
 - 2.3.8 A demonstration of adherence to professional standards of conduct.
 - 2.3.9 A demonstration of effective service to the University, college, school and department.
 - 2.3.10 A demonstration of active promotion of his or her field of study.
 - 2.3.11 A demonstration of active recruitment of students for his or her field of study.
 - 2.3.12 A demonstration of significant service to the community and the people of West Virginia.
 - 2.3.13 A demonstration of exemplary experience in higher education and at the University.
 - 2.3.14 A demonstration of possession of an earned doctorate, the highest earned degree in the faculty member's field of study or a special competence earned from professional experience.
 - 2.3.15 A demonstration of continuing professional growth.
- 2.4 **Faculty Comment.** On or before the 1st day of January, the Provost shall provide notice to all faculty members of those faculty members who are subject to post-tenure review during such academic year.

- 2.4.1 The notice shall include (1) the criteria upon which post-tenure review is conducted; and (2) the time, place and manner for the faculty to submit any comments as they relate to specific criteria set forth.
- 2.4.2 The Dean shall not consider anonymous submissions. However, in order to maintain confidentiality, the Dean shall retain the original comments under this section while including sanitized versions of the comments in the portfolio that does not include the submitter's name or any other identifying reference.
- 2.4.3 Comments shall be submitted no later than the 1st day of March of the academic year.

3. Initial Determination.

- 3.1 **Dean's Review.** On or before the 31st day of March of the academic year, the Dean of the respective College shall submit to the Provost (1) a satisfactory determination that the faculty member's performance for the period under consideration has met or exceeded the criteria; or (2) an unsatisfactory determination that the faculty member's performance for the period under review has failed to meet the criteria.
- 3.2 **Satisfactory Determination.** If a faculty member receives a satisfactory post-tenure determination, the Dean shall include in their submission to the Provost a recommendation for a salary enhancement that adequately reflects the faculty member's performance.
 - 3.2.1 In instances in which the Dean determines that the faculty member's performance greatly exceeds the normal expectations for the execution of his or her professional responsibilities as they relate to the criteria, the Dean may recommend to the Provost meritorious recognition of the faculty member as evidenced by a letter to be included in the his or her personnel file which may be used to support future applications for honors, awards, grants or project support.
 - 3.2.2 A Dean may issue a satisfactory determination with recommendations in instances in which a faculty member's performance requires only minor improvement in three or less areas for the faculty member to meet the criteria.
- 3.3 **Unsatisfactory Determination.** If a faculty member receives an unsatisfactory post-tenure determination in which the Dean determines that they have failed to demonstrate meeting the criteria set forth in section 2.3 of this procedure, then the Dean and the faculty member shall create a development plan that will set forth the manner in which the faculty member shall meet the criteria during a development period which may not exceed two years.

4. **Remedial Action.**

4.1 **Development Plan.** A development plan shall include (1) clearly defined goals and outcomes; (2) activities designed to achieve such outcomes; (3) a timeline for such activities including periodic assessments; (4) a monitoring strategy that includes the method for measuring progress; and (5) the source for any support necessary to assist the faculty member.

4.2 **Portfolio Submission.** At the end of the development period, the faculty member shall submit a portfolio that shall include (1) the original development plan; (2) materials supporting measurement of outcomes set forth in the plan; and (3) any additional documents that the faculty member may wish to include.

4.3 **Dean's Review.** Upon submission, the Dean shall review the faculty member's portfolio submitted pursuant to section 4.2 to determine whether or not the faculty member has met the goals set forth in the development plan.

4.4 **Dean's Approval.** If the Dean determines that the goals of the development plan have been met, they shall submit the portfolio to the Provost with a recommendation of approval to the Provost.

4.5 **Dean's Disapproval.** If the Dean determines that the goals of the development plan have not been met, they shall forward to the Provost a recommendation that (1) an extension not to exceed one year be granted in order to provide the faculty member the opportunity to meet the goals set forth in the development plan; (2) the faculty member be reassigned to another position within the University; (3) the faculty member be offered a term contract; or (4) personnel action be taken pursuant to section 3 of Policy No. FC-403C.

5. **Provost's Action.**

5.1 **Provost's Review.** Upon submission, the Provost shall review the faculty member's portfolio and Dean's recommendation submitted pursuant to section 3.1 to determine whether or not the faculty member has met the goals set forth in the development plan.

5.2 **Provost's Approval.** If upon review of the portfolio and recommendation of the Dean the Provost determines that the goals of the development plan have been met, they shall declare the plan satisfied and the process complete and notify the President of their approval.

5.3 **Provost's Disapproval.** If the Provost determines that the goals of the development have not been met, they may (1) grant an extension not to exceed one year in order to provide the faculty member the opportunity to meet the goals set forth in the development plan; (2) recommend to the President that the faculty member be reassigned to another position within the University; (3) recommend to

the President that the faculty member be offered a term contract; or (4) recommend to the President personnel action be taken pursuant to section 3 of Policy No. FC-403C.

6. President's Action.

6.1 Satisfactory Determination. Upon receipt of notification of a satisfactory determination from the Provost, the President may within five days (1) accept the decision of the Provost; or (2) request all of the documents that pertain to faculty member's post-tenure review in order to conduct a further review.

6.1.1 If the President fails to take any action within five days of receipt of notification from the Provost, the action of the Provost shall be deemed accepted.

6.1.2 If the President conducts a further review, they must act within thirty days of receipt of the documents or the action of the Provost shall be deemed to be accepted.

6.2 Provost's Disapproval. Upon receipt of a determination by the Provost pursuant to section 5.3, the President shall:

6.2.1 Affirm the recommendation of the Provost and proceed to (1) reassign the faculty member to another position within the University; (2) offer the faculty member a term contract; or (3) undertake personnel action pursuant to section 3 of Policy No. FC-403C;

6.2.2 Dismiss the recommendation of the Provost and determine that the goals of the development plan have been met; or

6.2.3 Return the matter to the Provost for further review.

6.3 Appeal

6.3.1 Right to Reconsideration. Any faculty member who receives an unsatisfactory determination that is affirmed by President pursuant to section 6.2.1 has the right to file an appeal for reconsideration with the Office of President.

6.3.2 Notice of Appeal. In order to exercise the right granted under section 6.3.1, the faculty member must file a Notice of Appeal within seven days of receipt of the determination received under section 6.2.1.

6.3.3 Letter of Appeal. A faculty member filing a Notice of Appeal under section 6.3.2 shall file a Letter of Appeal within seven days of filing the Notice of Appeal that sets forth reasons and includes additional supporting

documentation in support of his or her position that the decision rendered pursuant to section 6.2.1 should be reversed.

6.3.4 Reconsideration. Based upon all the information submitted, the President shall reconsider the matter on appeal and render a decision within fourteen days of the filing of the Letter of Appeal. In order to obtain additional information, the President may convene a hearing on the matter and require the faculty member and any other college personnel to attend and provide information

6.3.5 President's Decision. The President's decision provided under section 6.3.4 shall be final.

7. Failure to Comply.

7.1 Neglect of Duty. Any faculty member that fails to submit to post-tenure review shall be dismissed pursuant to section 3.1.4 of Policy No. FC-403C as a substantial and manifest neglect of duty.

Exhibit “F”

**A RESOLUTION
BY THE
BOARD OF GOVERNORS OF BLUEFIELD STATE COLLEGE**

WHEREAS, on the first day of July, two thousand twenty-two, BLUEFIELD STATE COLLEGE will be designated BLUEFIELD STATE UNIVERSITY; and

WHEREAS, at the time of this transition, the BOARD OF GOVERNORS of BLUEFIELD STATE COLLEGE wishes to assure that following said transition that BLUEFIELD STATE UNIVERSITY will continue to embrace its further designation as an Historically Black College and University (HBCU); and

WHEREAS, the BOARD OF GOVERNORS of BLUEFIELD STATE COLLEGE believes that maintaining our proud and rich heritage as an HBCU can best be served by creating a position of prominence directly reportable to the BOARD OF GOVERNORS whose responsibility will be to assure the BOARD OF GOVERNORS that BLUEFIELD STATE UNIVERSITY remains vigilant in maintaining its stature as an HBCU.

THEREFORE, LET IT BE RESOLVED, that the BOARD OF GOVERNORS hereby creates the position of CHANCELLOR of BLUEFIELD STATE UNIVERSITY whose duties and responsibilities shall be as follows:

1. To represent the University before organizations and at functions that are inherently, structurally or historically created and conducted for the specific benefit of historically black colleges and universities;
2. To represent the University in other situations as requested by the PRESIDENT;
3. To assist the PRESIDENT in fundraising including the acquisition of grants especially in situations in which prospective donors or grantors provide opportunities that are specifically for the benefit of historically black colleges and universities;
4. To assure that the University makes sufficient effort to maintain its heritage as an historically black college and university when conducting the hiring of faculty and staff and recruiting minority students; and
5. Perform other duties as may be directed by the CHAIR of the BOARD OF GOVERNORS.

The position of CHANCELLOR shall not be provided any supervisory or administrative duties or responsibilities nor shall any duties or responsibilities set forth above be interpreted as to supersede the executive authority of the PRESIDENT as set forth in the By-laws and by state law but such duties and responsibilities shall be confined to representing the University and assisting the PRESIDENT as set forth above.

It is understood that the PRESIDENT and the CHANCELLOR shall work together to support the intent of the BOARD OF GOVERNORS in creating this position.

The PRESIDENT is hereby authorized to negotiate the proper terms and conditions of the letter of appointment of the CHANCELLOR and that such agreement shall become effective upon the approval of the CHAIR of the BOARD OF GOVERNORS.

Approved this 23rd day of June, 2022.

Presiding Officer

Exhibit “G”

**BLUEFIELD STATE UNIVERSITY
BOARD OF GOVERNORS**

**POLICY NO. AC-201
ACADEMIC OBJECTIVES**

1.0 IN GENERAL

1.1 This policy establishes academic objectives for Bluefield State University.

1.2 Effective date: August 4, 2022.

1.1 Student Preparation. Bluefield State University ("the University") shall prepare its students for real world success by assuring that each graduate:

1.1.1 is competent in their chosen field of study;

1.1.2 has the workplace skills necessary to succeed in the economic marketplace;

1.1.3 is capable of participating as a knowledgeable member of American civil society; and

1.1.4 possesses a solid ethical foundation.

1.2 Roles and Responsibilities. The roles and responsibilities for achieving these objectives are as follows:

1.2.1 Consistent with state law, it is the Board's role to set forth these academic objectives and hold the University responsible for achieving such objectives:

1.2.2 It is the role and responsibility of the academy to design and implement the course curriculum necessary to achieve the objectives set forth in Section 1.1.

1.2.3 It is the President's role and responsibility to assure that the necessary courses, faculty and methods of assessment will be created and implemented in order to achieve the academic objectives set forth in Section 1.1 of this policy.

1.2 Accountability. At each annual meeting of the Board of Governors, The President shall provide a report to the Board of Governors detailing the University's progress in achieving these objectives.

1.3.1 For the purposes of this paragraph, the President shall report real results that relate to acquiring knowledge and skills and not traditional academic seat-

time measures of compliance such as graduation rates, retention rates, progress towards graduation, number of hours or other time-related assessments.

1.4 Minimum Requirements. The objectives set forth in Section 1.1 are the minimum objectives to be achieved in order to prepare our graduates for real world success. As such, it is within the role of the Academy to establish additional objectives that it believes will further prepare our graduates for real world success.

2.0 FIELD OF STUDY

2.1 Competent defined. A graduate shall be considered "competent in their chosen field of study" when he or she has mastered the content or the relevant body of knowledge required and possesses the skill necessary to apply such knowledge in a vocational environment so as produce a desired set of results.

2.2 Curriculum. The curriculum for each field of study must be rigorous, current and require student performance appropriate for the credential awarded.

2.3 Accountability. The University shall maintain a method to assess and demonstrate the competence of its graduates in their chosen field of study based upon external objective measures approved by the Board of Governors.

2.3.1 "External objective measures" must measure results and may include, but are not limited to, job placement, major field tests, graduate admissions, licensure acquisition, comprehensive examination or other such data or information.

2.3.2 "External objective measures" may not include measures of process such as graduation rates, retention rates, number of graduates, credit hours completed or other such measurement that is based upon internally assigned values.

3.0 WORKPLACE SKILLS

3.1 Defined. "Workplace skills" include, but may not be limited to, critical thinking, creative thinking, problem solving, verbal communication, written communication, teamwork, leadership, intellectual rigor and discipline.

3.2 Curriculum. The University shall provide a curriculum in which all students shall obtain the workplace skills necessary to enable them to compete in a dynamic economic marketplace.

3.3 Accountability. The University shall maintain a portfolio for each student that will demonstrate upon graduation that such student possesses the workplace skills necessary to compete in a dynamic economic marketplace.

4.0 KNOWLEDGEABLE MEMBER OF AMERICAN SOCIETY

4.1 Defined. For the purposes of this policy, "a knowledgeable member of American society" means knowing and understanding:

4.1.1 The political, economic, philosophical and societal foundations for our country including the history of the United States and western civilization, in general;

4.1.2 The philosophical foundation, development and application of the American Constitution, Declaration of Independence and other founding documents to the operation of the American system of government;

4.1.3 The fundamentals of entrepreneurship and the free market economic system and a comparison to other major economic systems; and

4.1.4 West Virginia history that includes the development of the African-American community and the role of historically black universities in advancing African-Americans politically, economically and societally.

4.2 Curriculum. The University shall provide a curriculum in which all students shall obtain the broad base of knowledge necessary to participate as a knowledgeable member of society.

4.3 Accountability. The University shall maintain a portfolio for each student that will demonstrate upon graduation that such student has the broad base of knowledge necessary to participate as a knowledgeable member of society.

5.0 CORE COMPETENCIES. The curriculum shall prepare each graduate to be competent in the following areas:

5.1.1 Associate's Degree. All students receiving an associate's degree shall be required to be competent in in the following areas:

5.1.1.1 Western civilization and history to 1600 and American history

5.1.1.2 The U.S. Constitution and American system of government

5.1.1.3 Political economy focused on free market economics

5.1.1.4 Written and oral communications

5.1.1.5 Mathematics

5.1.1.6 Ethics in the student's field of study

5.1.1.7 Critical and creative thinking

5.1.2 Bachelor's Degree. In addition to the competencies required in Section 5.1.1, students receiving a bachelor's degree shall also be competent in the following areas:

- 5.1.2.1 General Science
- 5.1.2.2. History of the student's field of study

5.1.3 Honors Students. In addition to the competencies required in Section 5.1.2, students receiving a bachelor's degree and enrolled in the Honors University shall also be required to complete a senior capstone project and be competent in the following areas:

- 5.1.3.1 The Western philosophical tradition
- 5.1.3.2 World theologies with a focus on the Western theological tradition
- 5.1.3.3 Great books in the Western tradition
- 5.1.3.4 Speech and debate

5.2 Co-curricular activities. The University shall maintain a portfolio for each student that will demonstrate that by participation or engagement that the students has experienced frequent exposure to physical wellness activities and an appreciation of the arts including music, art and/or theater.

5.3 Accountability. The University shall demonstrate that upon graduation that all students are competent in each area of the core curriculum. The University shall maintain a method to assess and demonstrate the competence of its graduates in the areas within the core curriculum based upon objective measures approved by the Board of Governors.

5.4 Competent defined. A graduate shall be considered "competent" in all areas of the core curriculum when he or she has mastered the content or the relevant body of knowledge required and possesses the skill necessary to apply such knowledge in a vocational environment so as produce a desired set of results.

6.0 COMMUNITY SERVICE

6.1 Required service. The University shall require each graduate receiving an associate's or bachelor's degree to have performed a level of community service as approved by the University.

6.2 Defined. For the purposes of this section, community service is defined as voluntary work performed by a student that benefits others in the community either individually or through organizations that support children, senior citizens, people with disabilities, animals, local parks, the arts, historic building preservation or other charities including faith-based organizations.

7.0 INTERNATIONAL CULTURES

7.1 Opportunities Required. The University shall require each student receiving a bachelor's degree to have received an introduction to one or more international cultures through an appropriate curricular, co-curricular or extracurricular opportunity.

7.2 Accountability. The University shall maintain a portfolio for each student that will demonstrate upon graduation that such student has received an introduction to one or more international cultures through an appropriate curricular, co-curricular or extracurricular opportunity.