

WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS

January 24, 2018

The one hundred fifty fourth meeting of the West Virginia University Board of Governors (called as a Special Meeting) was held on January 24, 2018 in Morgantown, WV. Board members in attendance/participating by telephone included David Alvarez, Marty Becker, Elmer Coppoolse, Thomas Flaherty, Thomas Heywood, Dr. Stanley Hileman, Blake Humphrey, J. Thomas Jones, Taunja Willis Miller, Ed Robinson, J. Robert (J.R.) Rogers, Ben Statler, Dr. Matthew Valenti and William Wilmoth. Board member, Dr. Kimberly Weaver, was absent and excused.

WVU officers, divisional campus officers, representatives (and others) present included:

President, Gordon Gee;
Vice President for Strategic Initiatives, Rob Alsop;
General Counsel, Stephanie Taylor;
Deputy General Counsel, Gary G. Furbee, II;
Provost, Joyce McConnell;
Vice Provost, John Campbell;
Vice President for University Relations, Sharon Martin;
Vice President and Chief Financial Officer, Paula Congelio;
Associate Vice President for Finance, Anjali Halabe;
Executive Officer and Assistant Board Secretary, Jennifer Fisher; and,
Special Assistant to the Board of Governors, Valerie Lopez.

Members of the Press were also present.

CALL TO ORDER

The meeting was called to order by Board Chairman, William D. Wilmoth, at 10:00 a.m. A roll call was taken to determine who was in attendance and a quorum established.

BOARD ITEM

Discussion/Action – Proposed Rules

General Counsel, Stephanie Taylor, advised that at the Board's October 27, 2017 meeting, it issued a Notice of Proposed Rulemaking for the existing Policies and new Rules addressed today. The proposed changes are to amend, approve, rename/renumber, and, in some cases, repeal the current Policies in order to implement new Rules in accordance with W. Va. House Bill 2542 (2017) and W. Va. House Bill 2815 (2017). To that end, the term "Policy" will be replaced with "Rule" and these Policies will be reformatted to the new design for BOG Rules, renumbered, and standard terms will be used when applicable. Moreover, all BOG Rules will be updated to supersede and repeal W. Va. Higher Education Policy Commission Rules, where applicable. Additional specific changes were set forth in detail in

the table that was included in the October 27, 2017 Notice of Proposed Rulemaking, attached hereto and incorporated herein by reference.

The proposed changes to the existing Policies and the new Rules were posted for the required thirty (30) day public comment period. Seven comments were received. These comments and the University's response to these comments are summarized in the chart attached hereto and incorporated herein by reference.

The revised final amended Rules and the summary of all comments received have been posted for at least ten (10) calendar days, as required under BOG Governance Rule 1.1 – Adoption, Amendment, and Repeal of Rules.

General Counsel Taylor then covered the items listed on said chart and answered any questions regarding any of the proposed rules.

Following a brief discussion, J. Robert (J.R.) Rogers moved that (a) the Board of Governors approves the final draft of the Rules listed below (as contained in today's meeting agenda materials), namely:

- BOG Governance Rule 1.2 – Administration
- BOG Governance Rule 1.6 – Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, Retaliation and Relationships
- BOG Governance Rule 1.7 – Rule on Child Protection
- BOG Governance Rule 1.9 – President and Staff Emeritus Status
- BOG Governance Rule 1.10 – West Virginia Freedom of Information Act

and (b) the Board of Governors approves the repeal and/or amendment of the current Board of Governors policies listed below:

- West Virginia University Board of Governors Policy 5, Changes in Organizations;
- West Virginia University Board of Governors Policy 6, Naming of Buildings;
- West Virginia University Board of Governors Policy 36, Separation of Programs and Personnel at Admin. Linked Institutions;
- West Virginia University Board of Governors Policy 37, Board of Governors Meetings;
- West Virginia University Board of Governors Policy 38, Emeritus Status;
- West Virginia University Board of Governors Policy 44, Policy Regarding Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation;
- West Virginia University Board of Governors Policy 49, Children on Campus; and
- West Virginia University Board of Governors Policy 55, West Virginia Freedom of Information Act.

Said motion was seconded by David Alvarez, and passed.

BOARD ITEM
Discussion/Action – Master Planning Facilities Process Document

Vice President for Strategic Initiatives, Rob Alsop, shared the following information related to a Master Planning Facilities Process Document:

By Code, West Virginia University is required to develop a Facilities Master Plan every ten years, with an update five years into the plan. The University last completed a master plan in 2012. Additionally, as a result of legislation passed during the 2017 legislative session, WVU will be developing a more comprehensive master plan that addresses the institution's mission, degree offerings, enrollment levels, and other planning determinants in the future. The 2017 Facilities Master Planning Update therefore serves to update the 2012 Facilities Master Plan and acts as a bridge to the more comprehensive plan that will be developed. The 2017 Facilities Master Planning Update lays out financial planning and potential capital project developments for the next five to ten years. WVU will move the projects contained within the document through the planning and project development processes and will seek approval from the WVU Board of Governors for each project. Formal approval of projects typically includes a description of the building program, project scope, architectural renderings, estimated budget, and a funding plan. Further, WVU recognizes that this plan may be modified as opportunities for development of projects present themselves and are approved by action of the WVU Board of Governors. The 2017 Facilities plan will be integrated into the new comprehensive master plan document beginning in 2019.

Looking ahead to the next five years, Vice President Alsop indicated that the focus will be on supporting the University's three pillars of education, health care and prosperity. Some of the projects under consideration include:

- Kelley complex renovations for nursing program, Potomac State College in Keyser
- New College of Business and Economics building
- Repurposing of current College of Business and Economics building
- Eberly relocation modifications, Morgantown.
- Evansdale Visitors Center, Morgantown.
- Hodges Hall renovation, Morgantown.
- Mountainlair Student Union renovations (and downtown traffic solutions).
- Residence Hall, Beckley.
- R1 research lab upgrades.
- STEM building, Jackson's Mill.
- STEM innovation building, Beckley.
- Youth development facilities, Jackson's Mill.

Vice President Alsop further indicated that with respect to each project, the University will be identifying sources of funds (donations; bond proceeds; grants and contracts; fees; deployment of University budget allocations and reserves at the University or College level; and use of private investment, including through public-private partnerships). After a thorough examination of the debt capacity of the University and analysis of the anticipated financial results of the current and future fiscal years, the Board of Governors and management of the

University will further prioritize and make strategic decisions relating to the development projects for completion.

Following a brief discussion, David Alvarez moved that the Board of Governors approves the Master Planning Facilities Process Document, as presented. Said motion was seconded by Blake Humphrey, and passed.

BOARD ITEM

New Business and Economics Facilities

Vice President for Strategic Initiatives, Rob Alsop, advised that in February 2017, WVU announced that Bob and Laura Reynolds donated \$10 million to the WVU College of Business and Economics to provide initial funding for a building in their name at a new business school complex on Morgantown's waterfront.

WVU has selected an architect and is seeking approval to move forward with the preliminary design phase of this project. The construction budget will be confirmed at the completion of this preliminary design phase and the project will be submitted to the Board for approval at that time. The preliminary design phase includes the development of conceptual design options, followed by schematic design of the preferred option and a cost estimate. Interior and exterior renderings and virtual modelling will be developed to visualize the design and assist with fund raising efforts. The preliminary design effort will take approximately six months to complete.

The new Business and Economics facility is anticipated to be located along the waterfront of the Monongahela River at the current location of Stansbury Hall. Stansbury Hall will be vacated and demolished as part of this project. The riverfront location is highly visible and the project will set the tone for future development of WVU's waterfront area following the successful development of Morgantown 's Wharf District. WVU's vision is to have a state of the art facility that promotes "business on display," including space that allows "learning by doing". The new facility will also include space for campus recreation, food services and retail. The new facility will be approximately 216,000 GSF. A student housing component to support a live-learn environment is also being considered as part of the project. The existing pedestrian bridge over Beechurst Ave will be replaced to safely connect the facility with the Beechurst PRT station and the rest of campus.

Revenues for the work authorized by this action will be provided for by the WVU Foundation.

Following a brief discussion, David Alvarez moved that the Board of Governors approves a budget of \$1.5 million to complete the preliminary design of the new Business and Economics complex in Morgantown. Said motion was seconded by Taunja Willis Miller, and passed.

ADJOURNMENT

Chairman Wilmoth announced that the Board will conduct its next regular meeting on February 16, 2018, in Morgantown. There being no further business to come before the Board, J. Robert (J.R.) Rogers i moved to adjourn the meeting. The motion was seconded by Blake Humphrey, and passed. The meeting was adjourned at 10:25 a.m.

Taunja Willis Miller, Secretary

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
BOG Policy 5 – Changes in Organization	Relocate & Repeal	BOG Governance Rule 1.2 – Administration	<ul style="list-style-type: none"> • Incorporates substance of BOG Policy 5 into new BOG Governance Rule 1.2.
BOG Policy 6 – Naming of Buildings	Relocate & Repeal	BOG Governance Rule 1.2 – Administration	<ul style="list-style-type: none"> • Incorporates substance of BOG Policy 6 into new BOG Governance Rule 1.2.
BOG Policy 36 – Separation of Programs and Personnel at Admin. Linked Institutions	Repeal	N/A	<ul style="list-style-type: none"> • Policy involved separating out programs and employees from community college originally part of WVU Tech; thus, no longer relevant.
BOG Policy 37 – Board of Governors’ Meeting	Repeal	N/A	<ul style="list-style-type: none"> • Meeting requirements contained within BOG By-Laws. • No statutory requirement to have a separate Rule on this topic.
BOG Policy 38 – Emeritus Status	Partial Repeal & Relocate	BOG Governance Rule 1.9 – President and Staff Emeritus Status	<ul style="list-style-type: none"> • Incorporates substance relating to President and Administrator Emeritus status into new BOG Governance Rule 1.9. • Portion of BOG Policy 38 regarding the ability to grant faculty Emeritus status is not being repealed. However, that portion will eventually be incorporated into a new BOG Faculty Rule in 2018.
BOG Policy 44 – Policy Regarding Discrimination, Harassment, Sexual Harassment, Sexual & Domestic	Amend & Approve	BOG Governance Rule 1.6 – Rule Regarding Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking,	<ul style="list-style-type: none"> • Re-organizes and streamlines text for clarity, especially sections on Consent and Confidentiality. • Substantive changes include: <ul style="list-style-type: none"> ○ Updates definition of terms to comply with recent W. Va. Code changes. ○ Clarifies that criminal violations may (as opposed to must) be referred to prosecuting authority to better address a victim’s wishes.

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
		Retaliation, and Relationships	<ul style="list-style-type: none"> ○ Adds “threat or intimidation, express or implied, that the aggressor will retaliate or cause damage to the victim’s reputation if the victim does not give into the aggressor’s sexual advances” to definition of Forcible Compulsion under Consent. ○ Clarifies certain relationships are prohibited when one individual has authority or control over the other individual. ○ Adds that failure to disclose certain consensual relationship could lead to discipline. ○ Broadens definition of “Members of the University Community.”
BOG Policy 49 – Children on Campus	Amend & Approve	BOG Governance Rule 1.7 – Rule on Child Protection	<ul style="list-style-type: none"> ● Re-organizes and streamlines text for clarity. ● Substantive changes include: <ul style="list-style-type: none"> ○ Centralizes responsibility and development of appropriate guidelines to Title IX Coordinator; however, individual Units maintain obligation to notify Title IX Coordinator of events involving children and to implement the guidelines Title IX Coordinator develops for that program. ○ Clarifies that background checks for those participating in programs involving children must be conducted a minimum of every 3 years. ○ Adds that failure to abide by Rule can result in discipline. ○ Streamlines definitions of terms for clarity to reader, but references W. Va. Code.

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
BOG Policy 55 – West Virginia Freedom of Information Act	Amend & Approve	BOG Governance Rule 1.10 – West Virginia Freedom of Information Act	<ul style="list-style-type: none"> • Re-organizes and re-formats text into Rule format. • Streamlines text for clarity and to reflect current University structure.
N/A	Approve	BOG Governance Rule 1.2 – Administration	<ul style="list-style-type: none"> • Combines BOG Policies 5 and 6 into new Rule. • Incorporates statutory requirements to develop a University Master Plan that is submitted bi-annually to Legislative Oversight Committee and HEPC. • Substantive changes to text of BOG Policy 5 – <u>Change in Organization</u>: <ul style="list-style-type: none"> ○ Removes requirement to inform HEPC of major organization changes. ○ Provides BOG the right to take action on any significant organization change. • Substantive changes to BOG Policy 6 – <u>Naming of Building</u>: <ul style="list-style-type: none"> ○ Provides additional guidelines and restrictions for naming facilities or academic units.
N/A	Approve	BOG Governance 1.9 – President and Staff Emeritus	<ul style="list-style-type: none"> • Incorporates substance relating to President and Administrator Emeritus status from BOG Policy 38 • Amends version to include ability to grant Emeritus status to retired staff. • Portion of BOG Policy 38 regarding the ability to grant faculty Emeritus status is not being repealed. However, that portion will eventually be incorporated into a new BOG Faculty Rule in 2018.

WVU BOARD OF GOVERNORS – PROPOSED RULES OFFICIAL COMMENTS & DETERMINATIONS MADE

Date Received	Proposed Rule	Comment	Determinations Made
10/30/2017	WVU BOG Governance Rule 1.6 – Discrimination, Harassment, Sexual Harassment, Domestic Misconduct, Stalking, Retaliation, and Relationships	In this and other rules, there are changes made that alter the previous version from having lower case adjectives, adverbs and verbs to capitalized forms. This is redundant as the words are generally self referential in the context they're being used. If the reason these words are capitalized is to add emphasis, you might want to consider italics, bolding or underlining.	It was determined that a modification to WVU BOG Governance Rule 1.6 was not needed in response to this comment.
10/30/2017	WVU BOG Governance Rule 1.6 – Discrimination, Harassment, Sexual Harassment, Domestic Misconduct, Stalking, Retaliation, and Relationships	6.2 (p. 14) Coordinator is misspelled as Coordinatore	It was determined that a modification to WVU BOG Governance Rule 1.6 was not needed in response to this comment. The perceived typo was due to the track changes within the document.
10/30/2017	WVU BOG Governance Rule 1.6 – Discrimination, Harassment, Sexual Harassment, Domestic Misconduct, Stalking,	It is a bit disconcerting to be required to give one's name to comment on a policy. In section 9.7 on responsible employees, it makes it seem like all Title IX staff are responsible [sic] employees when in fact Ms. Matthews is a confidential reporter. I would [sic] like to see her and the office of the faculty ombudsperson [sic] listed as	WVU BOG Governance Rule 1.6 has been amended as follows in response to some portions of this comment: <u>7.3.4. Anonymous reports may also be filed through the EthicsLine by calling 866-4131955 or by submitting a report online at the following address:</u>

Date Received	Proposed Rule	Comment	Determinations Made
	Retaliation, and Relationships	<p>confidential resources - if you cannot name a person, please name the office the person could report to. I would also list the ethics line as a place to anonymously report - this would be particularly helpful if a person feared retaliation (which often comes in the form of unit downsizing or reorganizing, so is very difficult to prove).</p> <p>My other concern is with the section early on where it says the Coordinator will be responsible for preventive education - this is obviously a good thing, but I would like to see language added that they are not the only entity on campus that can do preventative education- there are many groups concerned about these issues.</p> <p>Finally, near the end there is a statement about this policy relative to free speech policy - please list the exact policies you are referencing by number.</p>	<p>https://secure.ethicspoint.com/domain/media/en/gui/14303/index.html</p> <p>2.1.2.5 Develops appropriate training, education, and communication regarding this Rule, including what constitutes Prohibited Conduct, the complaint and investigation process, and preventative education for Members of the University Community. <u>These efforts may be coordinated with other units and groups on-campus.</u></p> <p>The remaining portions of the comments did not merit any further changes to the Rule.</p>

10/30/2017	WVU BOG Governance Rule 1.6 – Discrimination, Harassment, Sexual Harassment, Domestic Misconduct, Stalking, Retaliation, and Relationships	Prohibited conduct that constitutes a criminal law violation should ALWAYS be referred to the appropriate authorities. The use of the language "may" rather than "will" invites far too much personal opinion on the matter and puts the jurisdiction solely in the hands of the University Title IX coordinator or other administration. If there is a criminal law violation, it clearly should always be referred to the appropriate authorities with legal authority & jurisdiction (and far more experience!) on those matters. Excellent, clear definition of consent requiring a clear affirmative -- this should be instituted far sooner than 2022, preferably immediately. Likewise with the removal of age requirements with regards to fear one's life -	WVU BOG Governance Rule 1.6 has been amended as follows in response to this comment: 2.4.4. In addition, Prohibited Conduct that constitutes a criminal law violation may <u>will</u> be referred to the appropriate authorities for prosecution <u>as appropriate under the circumstances</u> . This additional clarity was provided to indicate that law enforcement will be contacted under the appropriate circumstances, which still allows for cases when adult victims do not want to report to law enforcement. Importantly, this was never intended to and does not relieve any member of the University community from notifying law
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Date Received	Proposed Rule	Comment	Determinations Made
		excellent edit and this should be instituted immediately or as soon as possible.	<p>enforcement of child abuse and neglect under West Virginia University Board of Governors Governance Rule 1.7 – Rule on Child Protection.</p> <p>The effective date for the amendments to this Rule is not 2022. Rather, that is latest date upon which this Rule will be reviewed again by the Board of Governors. (However, the Rule may be reviewed at an earlier point, if needed.)</p>
11/01/17	BOG Governance Rule 1.6 - Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, Retaliation, and Relationships	There should be an outline of what degree of punishment shall be given under what circumstances. This will help complainants and respondents alike to understand what to expect from the Title IX process. Without such an outline, many will get unreasonable expectations regarding Title IX outcomes.	It was determined that a modification to WVU BOG Governance Rule 1.6 was not needed in response to this comment. Section 2.4 of the Rule indicates the range of potential punishments for violations.
10/30/17	BOG Governance Rule 1.9 – President and Staff Emeritus Status	I am delighted and appreciative of this final draft. Rule 1.9 will allow those Classified Staff employees who has performed outstanding service to the University to be recognized for their work with a very honorable designation.	It was determined that a modification to WVU BOG Governance Rule 1.9 was not needed in response to this comment.

10/30/17	BOG Governance Rule 1.9 – President and Staff Emeritus Status	I was under the impression that staff would either be "exempt" or "non-exempt" and that the terms "Classified" and "Non-Classified" would no longer be used. If this is correct the wording in the rule related to staff should reflect this.	It was determined that a modification to WVU BOG Governance Rule 1.9 was not needed in response to this comment. The relevant W.Va. Code still utilizes the terms "Classified" and "Non-Classified," although, in accordance with the recent amendments to the Code, these terms are now more closely aligned with the terms "exempt" and "non-exempt" under the federal Fair Labor Standards Act.
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Note: Additionally, proposed Rule 1.6 was also amended to specifically identify the ADA Coordinator in Section 2.1 to better comport with federal guidelines and to correct the definition of "Sexual Harassment (Quid Pro Quo)" in section 3.4.1 by removing the duplicative reference to Hostile Environment, which is covered in 3.4.3.