

November 27, 2023

**FILED VIA PACFILE**

Michael Krimmel, Esq.  
Prothonotary  
Commonwealth Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 2100  
Harrisburg, PA 17106-2575

**RE: Submission of Record in: *Pennsylvania Department of Education v. Wyatt Massey and Spotlight PA*, No. 1083 CD 2023 Consolidated with *Pennsylvania Department of Education v. Wyatt Massey and Spotlight PA*, 1092 CD 2023 and *The Pennsylvania State University v. Pennsylvania Department of Agriculture and Wyatt Massey and Spotlight PA*, 1207 CD 2023.**

Dear Mr. Krimmel:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

**Office of Open Records Docket Nos. AP 2023-1492 and AP 2023-1520:**

1. The appeal filed by Wyatt Massey, a reporter with Spotlight PA (collectively “Requester”) to the Office of Open Records (“OOR”), received July 5, 2023.
2. Official Notice of Appeal dated July 11, 2023, sent to both parties by the OOR, advising them of the docket number (AP 2023-1492) and identifying the appeals officer for the matter.
3. Pennsylvania Department of Education (“PDE”) Position Statement dated July 18, 2023.

4. The Pennsylvania State University (“PSU”) Entry of Appearance, Request to Participate, and Position Statement dated July 24, 2023.
5. Final Determination in AP 2023-1492 dated September 1, 2023, issued by the OOR.
6. PDE Petition for Reconsideration dated September 15, 2023.
7. PSU Petition for Reconsideration dated September 16, 2023.
8. OOR Denial of the Petitions for Reconsideration dated September 20, 2023.
9. The appeal filed by the Requester to the OOR, received July 5, 2023.
10. Official Notice of Appeal dated July 7, 2023, sent to both parties by the OOR, advising them of the docket number (AP 2023-1520) and identifying the appeals officer for the matter.
11. Pennsylvania Department of Agriculture (“PDA”) Entry of Appearances submitted on July 10, 2023.
12. OOR Notice of Appeal Reassignment dated July 11, 2023.
13. OOR correspondence dated July 16, 2023, advising the parties of the appeal reassignment to new Appeals Officer.
14. PDA submission dated July 18, 2023.
15. PSU Request to Participate and Position Statement dated July 24, 2023.
16. OOR correspondence dated July 24, 2023, granting PSU direct interest participant status.
17. PDA correspondence dated July 25, 2023, noting they would not be making a submission in response to PSU’s submission.
18. Correspondence dated August 29, 2023 through August 30, 2023 wherein the OOR confirms the Requester’s agreement to grant the OOR additional time to issue the final determination.
19. OOR correspondence dated September 14, 2023, wherein the OOR seeks clarification from the Requester and additional time to issue the final determination.

20. Requester correspondence dated September 18, 2023 responding to the OOR request for clarification and granting the requested extension.
21. OOR correspondence dated September 18, 2023, confirming the Requester's agreement for additional time to issue the final determination and seeking additional clarification from PDA and PSU.
22. PSU submission in response to the OOR's request for additional information dated September 25, 2023.
23. OOR Final Determination in AP 2023-1520 issued on October 6, 2023.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,



Kyle Applegate  
Chief Counsel

Attachments

cc: Paula Knudsen-Burke, Esq. (for Requester)  
Zachary A. Stritzinger, Esq. (for PDE)  
Marija K. Kuren, Esq. (for PDA)  
Kandice K. Hull, Esq. (for PSU)



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<b>PENNSYLVANIA DEPARTMENT OF EDUCATION, Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>1083 CD 2023</b>
	:	
<b>WYATT MASSEY and SPOTLIGHT PA, Respondents.</b>	:	
	:	
	:	
<b>PENNSYLVANIA DEPARTMENT OF EDUCATION Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>1092 CD 2023</b>
	:	
<b>WYATT MASSEY and SPOTLIGHT PA, Respondents.</b>	:	
	:	
<b>Petition of: The Pennsylvania State University</b>	:	
	:	
	:	
<b>THE PENNSYLVANIA STATE UNIVERSITY, Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>1207 CD 2023</b>
	:	
<b>PENNSYLVANIA DEPARTMENT OF AGRICULTURE, WYATT MASSEY and SPOTLIGHT PA, Respondents.</b>	:	

---

**CERTIFIED RECORD**

Kyle Applegate  
Chief Counsel  
Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
Email: [Kyapplegat@pa.gov](mailto:Kyapplegat@pa.gov)

November 27, 2023

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<b>PENNSYLVANIA DEPARTMENT</b>	:	
<b>OF EDUCATION,</b>	:	
<b>Petitioner,</b>	:	
	:	<b>1083 CD 2023</b>

v.

<b>WYATT MASSEY and SPOTLIGHT PA,</b>	:	
<b>Respondents.</b>	:	

<b>PENNSYLVANIA DEPARTMENT</b>	:	
<b>OF EDUCATION</b>	:	
<b>Petitioner,</b>	:	
	:	<b>1092 CD 2023</b>

v.

<b>WYATT MASSEY and SPOTLIGHT PA,</b>	:	
<b>Respondents.</b>	:	

**Petition of: The Pennsylvania State University**

<b>THE PENNSYLVANIA STATE</b>	:	
<b>UNIVERSITY,</b>	:	
<b>Petitioner,</b>	:	
	:	<b>1207 CD 2023</b>

v.

<b>PENNSYLVANIA DEPARTMENT OF</b>	:	
<b>AGRICULTURE, WYATT MASSEY</b>	:	
<b>and SPOTLIGHT PA,</b>	:	
<b>Respondents.</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the Certified Record upon the following by PACFile and by email at the email addresses listed below:

Paula Knudsen-Burke, Esq.  
REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS  
PO Box 1328  
Lancaster, PA 17608  
[pknudsen@rcfp.org](mailto:pknudsen@rcfp.org)  
(for Requesters)

Zachary A. Stritzinger, Esq.  
Office of Chief Counsel  
Pennsylvania Department of Education  
333 Market Street, 9th Floor  
Harrisburg, PA 17126  
[zstrizing@pa.gov](mailto:zstrizing@pa.gov)  
(Department of Education)

Dana W. Chilson, Esq.  
Kandice K. Hull, Esq.  
Austin D. Hughey, Esq.  
McNees Wallace & Nurick, LLC  
100 Pine Street  
Harrisburg, PA 17108  
[dchilson@mcneeslaw.com](mailto:dchilson@mcneeslaw.com)  
[khull@mcneeslaw.com](mailto:khull@mcneeslaw.com)  
[ahughey@mcneeslaw.com](mailto:ahughey@mcneeslaw.com)  
(The Pennsylvania State University)

Marija K. Kuren, Esq.  
Office of Chief Counsel  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17111  
[mkuren@pa.gov](mailto:mkuren@pa.gov)



---

Faith Henry, Administrative Officer  
Office of Open Records  
333 Market Street 16<sup>th</sup> floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
Email: [fahenry@pa.gov](mailto:fahenry@pa.gov)

Dated : November 27, 2023

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<b>PENNSYLVANIA DEPARTMENT OF EDUCATION, Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>1083 CD 2023</b>
	:	
<b>WYATT MASSEY and SPOTLIGHT PA, Respondents.</b>	:	
	:	
	:	
<b>PENNSYLVANIA DEPARTMENT OF EDUCATION Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>1092 CD 2023</b>
	:	
<b>WYATT MASSEY and SPOTLIGHT PA, Respondents.</b>	:	
	:	
<b>Petition of: The Pennsylvania State University</b>	:	
	:	
	:	
<b>THE PENNSYLVANIA STATE UNIVERSITY, Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>1207 CD 2023</b>
	:	
<b>PENNSYLVANIA DEPARTMENT OF AGRICULTURE, WYATT MASSEY and SPOTLIGHT PA, Respondents.</b>	:	
	:	

---

**TABLE OF CONTENTS - RECORD**

*Wyatt Massey and Spotlight PA v. Pennsylvania Department of Education and The Pennsylvania State University*, OOR Dkt. AP 2023-1492 and *Wyatt Massey and Spotlight PA v. Pennsylvania Department of Agriculture and The Pennsylvania State University*, OOR Dkt. AP 2023-1520

1. The appeal filed by Wyatt Massey, a reporter with Spotlight PA (collectively “Requester”) to the Office of Open Records (“OOR”), received July 5, 2023.
2. Official Notice of Appeal dated July 11, 2023, sent to both parties by the OOR, advising them of the docket number (AP 2023-1492) and identifying the appeals officer for the matter.
3. Pennsylvania Department of Education (“PDE”) Position Statement dated July 18, 2023.
4. The Pennsylvania State University (“PSU”) Entry of Appearance, Request to Participate, and Position Statement dated July 24, 2023.
5. Final Determination in AP 2023-1492 dated September 1, 2023, issued by the OOR.
6. PDE Petition for Reconsideration dated September 15, 2023.
7. PSU Petition for Reconsideration dated September 16, 2023.
8. OOR Denial of the Petitions for Reconsideration dated September 20, 2023.
9. The appeal filed by the Requester to the OOR, received July 5, 2023.
10. Official Notice of Appeal dated July 7, 2023, sent to both parties by the OOR, advising them of the docket number (AP 2023-1520) and identifying the appeals officer for the matter.
11. Pennsylvania Department of Agriculture (“PDA”) Entry of Appearances submitted on July 10, 2023.
12. OOR Notice of Appeal Reassignment dated July 11, 2023.
13. OOR correspondence dated July 16, 2023, advising the parties of the appeal reassignment to new Appeals Officer.
14. PDA submission dated July 18, 2023.
15. PSU Request to Participate and Position Statement dated July 24, 2023.
16. OOR correspondence dated July 24, 2023, granting PSU direct interest participant status.
17. PDA correspondence dated July 25, 2023, noting they would not be making a submission in response to PSU’s submission.

18. Correspondence dated August 29, 2023 through August 30, 2023 wherein the OOR confirms the Requester's agreement to grant the OOR additional time to issue the final determination.
19. OOR correspondence dated September 14, 2023, wherein the OOR seeks clarification from the Requester and additional time to issue the final determination.
20. Requester correspondence dated September 18, 2023 responding to the OOR request for clarification and granting the requested extension.
21. OOR correspondence dated September 18, 2023, confirming the Requester's agreement for additional time to issue the final determination and seeking additional clarification from PDA and PSU.
22. PSU submission in response to the OOR's request for additional information dated September 25, 2023.
23. OOR Final Determination in AP 2023-1520 issued on October 6, 2023.

# OOR Exhibit 1

**From:** no-reply@openrecordspennsylvania.com  
**To:** [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation  
**Date:** Monday, July 3, 2023 1:57:50 PM  
**Attachments:** [oor\\_logo\\_email.png](#)

---

**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

<b>Name:</b>	Wyatt Massey
<b>Company:</b>	Spotlight PA
<b>Address 1:</b>	210 W. Hamilton Ave., #331
<b>Address 2:</b>	
<b>City:</b>	State College
<b>State:</b>	Pennsylvania
<b>Zip:</b>	16801
<b>Phone:</b>	445-236-0562
<b>Email:</b>	wmassey@spotlightpa.org
<b>Email2:</b>	
<b>Agency (list):</b>	Pennsylvania Department of Education
<b>Agency Address 1:</b>	333 Market Street, 15th Floor
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Harrisburg
<b>Agency State:</b>	Pennsylvania

<b>Agency Zip:</b>	17126-0333
<b>Agency Phone:</b>	717-783-9810
<b>Agency Email:</b>	RA-RTK-Education@pa.gov
<b>Records at Issue in this Appeal:</b>	See attached PDF "Massey OOR Appeal 070323" Also, please note this appeal also includes similar records sought from the Pennsylvania Department of Agriculture.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	05/18/2023
<b>Response Date:</b>	06/26/2023
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Angela Riegel
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or notices extending the Agency's time to respond to my request:</b>	Yes
<b>Agree to permit the OOR additional time to issue a final determination:</b>	30 Days
<b>Interested in resolving this issue through OOR mediation:</b>	No
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>● Massey OOR Appeal 070323.pdf</li> <li>● Ed Dept Original RTK 051823.pdf</li> <li>● Ed Dept RTK Extension 052523.pdf</li> <li>● Ed Dept RTK Denial 062623.pdf</li> <li>● Ag Dept Original RTK 051823.pdf</li> <li>● Ag Dept - Emails 1 (including expedition).pdf</li> <li>● Ag Dept - Emails 2 (including denial).pdf</li> </ul>

**I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.**

I am a reporter with Spotlight PA who filed two similar Right-to-Know requests with the Pennsylvania Department of Education and the Pennsylvania Department of Agriculture seeking records connected to the respective department secretaries and their roles on the Pennsylvania State University's Board of Trustees.

Given the similarities of both the requests and the subsequent denials, I am arguing for the right to access in both cases in the appeal detailed below.

### **Pennsylvania Department of Education Request**

On May 18, 2023, I filed an open records request with the Department of Education seeking the following:

- 1. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.*
- 2. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.*
- 3. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.*
- 4. An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.*

By nature of his previous position as secretary, Eric Hagarty was a voting member of Penn State's board of trustees in 2022. Similarly, current education secretary Khalid Mumin serves on Penn State's board of trustees as an ex officio and voting member.

For context, Diligent is a file-sharing service that Penn State's Board of Trustees uses for sharing information related to its meetings. These files can include agendas, background information, and other materials directly connected to items trustees vote on during committee and full board meetings.

Rather than requesting a copy of all documents hosted on Diligent, I requested an electronic screenshot of the files there so that, in the future, I could make more tailored requests (see requests #1 and #2). Using information I gathered before filing my request, I also made a specific request for documents hosted on Diligent concerning two events that involved the board (see requests #3 and #4).

On May 25, 2023, The Department of Education requested a 30-day extension to my request. On June 26, 2023, the department denied the request, writing that the department “does not have possession, custody, or control of the requested records. It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them,” citing *Jenkins v. Pennsylvania Dept. of State* from April 2009.

### **Pennsylvania Department of Agriculture Request**

On May 18, 2023, I filed an open records request with the Department of Education seeking the following:

1. *An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Russell Redding’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees.*
2. *An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.*

By nature of his position as secretary, Russell Redding was a voting member of Penn State’s board of trustees in 2022 and remains a voting member today.

On May 18, 2023, I received confirmation via email that the department received my request. However, after inquiring with the department on June 29, 2023, I was informed by Susan West, via email, that my request was not in the department’s records system. My request was subsequently expedited and provided Log #230637 for the purpose of tracking.

On July 3, 2023, the department denied my request, writing that the department “does not have records related to this request” and that such records are not “under its custody or its control.” The department also cited *Jenkins v. Pennsylvania Dept. of State* from April 2009 in its denial.

The department also cited Section 705 of the Right-to-Know Law in that an agency is not mandated to “create a record which does not currently exist or to compile, maintain, format or

organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

### **Argument for Appeal**

According to the [Pennsylvania Office of Open Records](#), which cites the state’s open records law, “all records are presumed to be public records unless disclosure is barred by: (1) state or federal law or regulation; (2) judicial order; (3), privilege, e.g., attorney-client or doctor-patient; or (4) one of the exceptions in Section 708 of the Right-to-Know Law.”

None of the exceptions outlined in Section 708 of the Right-to-Know Law pertain to these records requests and, to the best of my knowledge, the specific documents requested. The materials sought directly concern a public official’s work and statutory responsibilities as a member of the Penn State Board of Trustees.

Additionally, controlling law on this issue makes clear that the records are public. In a 2013 opinion in [Bagwell v. Pennsylvania Department of Education](#), the Commonwealth Court of Pennsylvania concluded that records connected to a Secretary of Education in their role as a member of the Penn State Board of Trustees are not exempt and are subject to the Right-to-Know Law:

Pursuant to a statutory requirement, the Secretary serves on behalf of the Department when serving on the PSU Board. Thus, the records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as supporter and influencer of education at state-related institutions. Because the records are received by a Commonwealth agency to enable it to perform its statutory governmental function, they qualify as “records” under the RTKL.

The 2013 opinion also states that records held by Penn State may still be accessed through an agency subject to the RTKL because “the records of [Penn State] may be reached through the connection between the Department and PSU.”

Similarly, in [Edinboro University of Pennsylvania v. Ford](#), the Commonwealth Court of Pennsylvania ruled that an agency’s argument that it does not maintain, or never maintained, certain records does not constitute grounds for denial.

In that case, the court ruled that “The RTKL contains no requirement that the record be ‘maintained’ by the Commonwealth agency, and where the record is created or received by the Commonwealth agency, there is no requirement that it then be retained by the agency.”

The records sought in the requests outlined above relate directly to the roles and responsibilities of the respective secretaries as public officials. Through the file-sharing service Diligent, the records requested are sent to and received by a secretary to carry out the trustee position.

Moreover, the RTKL reaches records in an agency's actual or *constructive* possession under Section 901 of the law. See *Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214 (Pa. 2015). In *Eiseman*, the Commonwealth Court explained the concept of constructive possession under the RTKL as follows:

Constructive possession focuses on an agency's access to a record. The analysis emphasizes the statutory language in Section 901 of the RTKL that mandates an agency "determine whether [it] has possession, custody or control of the identified record." 65 P.S. § 67.901. We recognize constructive possession under Section 901 as a means of access so agencies cannot frustrate the purposes of the RTKL by placing their records in the hands of third parties to avoid disclosure. See *Barkeyville Borough v. Stearns*, 35 A.3d 91 (Pa. Cmwlth. 2012); *Office of the Budget v. Office of Open Records*, 11 A.3d 618 (Pa. Cmwlth. 2011)...The litmus test under Section 901 remains whether the records document a transaction of the agency to which the request was directed.... *Office of the Budget*, 11 A.3d at 621.

Whether the Department of Education or the Department of Agriculture has “custody” or actual physical possession of the records is irrelevant given the nature of the requested records and the fact that they document a statutory duty of the respective secretaries.

The RTKL cannot be applied in a manner that allows agencies to thwart public access by claiming records exist solely in the possession, custody or control of a third party, and the RTKL was intentionally and expressly designed to prevent such an outcome.

Given previous rulings in open records cases and the remedial letter and intent of the act itself, it is clear that the requested records are subject to the RTKL and the Department of Education and the Department of Agriculture each has an affirmative legal duty to facilitate access to them.

For all the foregoing reasons, I respectfully request the OOR to grant access to the requested records and order the Department of Education and the Department of Agriculture to facilitate access.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
333 MARKET STREET  
HARRISBURG, PA 17126-0333  
[www.education.pa.gov](http://www.education.pa.gov)

June 26, 2023

Via Electronic Mail ([wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org))

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Ave., #331  
State College, PA 16801

Re: Right-to-Know Law Request No. 2023-108

Dear Mr. Massey:

The Pennsylvania Department of Education (PDE) is in receipt of your request pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. § 67.101, *et seq.* Your request was received on May 18, 2023. By letter dated May 25, 2023, you were advised that PDE required up to an additional 30 days, i.e., until Monday, June 26, 2023 in which to respond to your request. Your request is as follows:

*An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat. An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.*

PDE does not have possession, custody, or control of the requested records. It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them." *In the Matter of Jenkins v. Pennsylvania Dept. of State*, OOR Dkt. AP 2009-065, dated 4/2/2009.

If you have questions regarding this letter, please contact me.

Sincerely,

*Angela Riegel*

Angela Riegel  
Agency Open Records Officer  
(717) 783-9810



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
333 MARKET STREET  
HARRISBURG, PA 17126-0333  
[www.education.pa.gov](http://www.education.pa.gov)

May 25, 2023

**Via Electronic Mail** ([wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org))

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Ave., #331  
State College, PA 16801

**Re: Right-to-Know Law Request No. 2023-108**

Dear Mr. Massey:

The Pennsylvania Department of Education (PDE) is in receipt of your request pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. § 67.101, *et seq.* Your request was received on May 18, 2023 and is as follows:

*An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat. An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.*

Under the provisions of 65 P.S. §67.902(b)(2), you are hereby notified that your request is being reviewed for the reasons listed below and that PDE requires up to an additional 30 days, until Monday, June 26, 2023 in which to respond to your request.

- Compliance with your request may require the redaction of certain information that is not subject to access under the RTKL.
- The extent or nature of the request precludes a response within the required time period.
- A legal review is necessary to determine whether the record is a record subject to access under the RTKL.

This is an interim response, not a final response, to your request. Please note that the estimated or actual total for any fees that will be owed when the records become available will be included in our subsequent response. Prepayment is required before providing access when the estimated cost to fulfill a request exceeds \$100.00. 65 P.S. § 67.1307(h). Please contact me with questions.

Sincerely,

*Angela Riegel*

Angela Riegel  
Agency Open Records Officer  
(717) 783-9810



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Pennsylvania Dept of Education (Attn: AORO)

Date of Request: May 18, 2023 Submitted via: [X] Email [ ] U.S. Mail [ ] Fax [ ] In Person

PERSON MAKING REQUEST:

Name: Wyatt Massey Company (if applicable): Spotlight PA

Mailing Address: 210 W. Hamilton Ave. #331

City: State College State: PA Zip: 16801 Email: wmassey@spotlightpa.org

Telephone: 445-236-0562 Fax:

How do you prefer to be contacted if the agency has questions? [ ] Telephone [X] Email [ ] U.S. Mail

RECORDS REQUESTED: Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.

Please see attached

DO YOU WANT COPIES? [ ] Yes, printed copies (default if none are checked) [X] Yes, electronic copies preferred if available [ ] No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? [ ] Yes (may be subject to additional costs) [X] No RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than [ ] \$100 (or) [ ] \$\_\_\_\_\_.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: Date Received: Response Due (5 bus. days):

30-Day Ext.? [ ] Yes [ ] No (If Yes, Final Due Date: ) Actual Response Date:

Request was: [ ] Granted [ ] Partially Granted & Denied [ ] Denied Cost to Requester: \$\_\_\_\_\_

[ ] Appropriate third parties notified and given an opportunity to object to the release of requested records.

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.

An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.

# OOR Exhibit 2

## **NOTICE OF DEADLINES**

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **September 5, 2023**.

**The timeline for this RTKL appeal may be extended by the OOR during the appeal.** This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **July 18, 2023**.

**If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.**

Due to delays in U.S. mail, we urge agencies and requesters to use email or the E-File Appeal Portal for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

July 11, 2023

**Via Email Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Ave., #331  
State College, PA 16801  
wmassey@spotlightpa.org

**Via Email Only:**

Angela Riegel  
Agency Open Records Officer  
Pennsylvania Department of Education  
333 Market Street, 15th Floor  
Harrisburg, PA 17126-0333  
RA-RTK-Education@pa.gov

**RE: OFFICIAL NOTICE OF APPEAL - Massey and Spotlight PA v. Pennsylvania Department of Education OOR Dkt. AP 2023-1492**

Dear Parties:

**Review this information and all enclosures carefully as they affect your legal rights.**

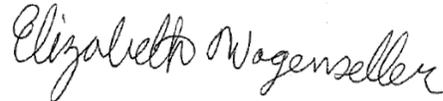
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on July 5, 2023. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

**Notes for both parties (more information in the enclosed documents):**

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Elizabeth Wagenseller  
Executive Director

Enc.: Description of RTKL appeal process  
Assigned Appeals Officer contact information  
Entire appeal as filed with OOR

# The Right-to-Know Law Appeal Process

**Please review this information carefully as it affects your legal rights.**

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

## Submissions to the OOR

**Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer.** Please contact the Appeals Officer as soon as possible.

**Any information provided to the OOR must be provided to all parties involved in this appeal.** Information submitted to the OOR will not be considered unless it is also shared with all parties.

**Include the docket number on all submissions.**

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

It is strongly advised that attorneys and other party representatives **file an Entry of Appearance** by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>.

*NOTE TO AGENCIES: In cases assigned to the E-File Portal, if an Entry of Appearance is not filed, the AORO is responsible to inform attorneys and other party representatives of all docket activity.*

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

## Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

**A third party's failure to participate in a RTKL appeal before the OOR**

**may be construed as a waiver of objections regarding release of requested records.**

*NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.*

---

---

## Statements of Fact & Burden of Proof

**Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge.** Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, [openrecords.pa.gov](http://openrecords.pa.gov).

*Any evidence or legal arguments not submitted or made to the OOR may be waived.*

---

## Preserving Responsive Records

**The agency must preserve all potentially responsive records during the RTKL appeal process**, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

---

## Mediation

**The OOR offers a mediation program as an alternative to the standard appeal process.** To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.





**APPEALS OFFICER:**

**Magdalene C. Zeppos-Brown, Esq.**

**CONTACT INFORMATION:**

**Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234**

**FACSIMILE:**

**(717) 425-5343**

**EMAIL:**

**mazepposbr@pa.gov**

**Preferred method of contact and  
submission of information:**

**EMAIL  
(Except cases assigned to the E-File  
Appeal Portal)**

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.  
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot  
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review  
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff  
are also available to provide general information about the appeals process by calling (717) 346-9903.



## REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

**PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.**

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

**Name of Requester:** \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

**Name of Agency:** \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

**Record at issue:** \_\_\_\_\_

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted, \_\_\_\_\_ (must be signed)

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**

# OOR Exhibit 3



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 18, 2023

**Via OOR Portal and E-mail**

Magdalene C. Zeppos-Brown  
Appeals Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

**Re: *Wyatt Massey v. Pennsylvania Department of Education OOR Dkt. AP 2023-1492***

Dear Appeals Officer Zeppos-Brown:

Please accept the following as the Position Statement of the Pennsylvania Department of Education (PDE) in the above-captioned appeal submitted by Wyatt Massey.

On May 18, 2023, PDE received a request (the "Request") pursuant to the Pennsylvania Right-To-Know Law (hereinafter "RTKL"), 65 P.S. § 67.101, *et seq.* from Requester that indicated:

"An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees."

"An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees."

"An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat."

"An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member."

By letter dated May 25, 2023, Requester was advised that PDE required up to an additional 30 days, i.e., until Monday, June 26, 2023, in which to respond to her RTKL request. On June 26, 2023, PDE sent Requester the Final Response, which explained that "PDE does not have possession, custody, or control of the requested records. It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them."

In his appeal, Requester stated that “None of the exceptions outlined in Section 708 of the Right-to-Know Law pertain to these records requests and, to the best of my knowledge, the specific documents requested. The materials sought directly concern a public official’s work and statutory responsibilities as a member of the Penn State Board of Trustees.”

Further, Requester referenced *Bagwell v. Pennsylvania Department of Education* by stating “[i]n a 2013 opinion in *Bagwell v. Pennsylvania Department of Education*, the Commonwealth Court of Pennsylvania concluded that records connected to a Secretary of Education in their role as a member of the Penn State Board of Trustees are not exempt and are subject to the Right-to-Know Law . . . .”

Requester is incorrect. This matter is clearly distinguishable from *Bagwell*. Specifically, Mr. Hagarty and Secretary Mumin did not possess the requested information from the Pennsylvania State University (“PSU”). To the contrary, PSU controls document access in *Diligent* and a PDE search has verified that Mr. Hagarty and Secretary Mumin did not print, download, delete, or possess in any way the requested documents. PDE respectfully requests the OOR to affirm PDE’s denial. In support of its position, PDE submits the Affidavit of Agency Open Records Officer Angela Riegel, the Affidavit of Kari Worley, and the Affidavit of Shannon S. Harvey. Simply put, in *Bagwell*, PDE did possess the records at issue; however, in the present matter, the records at issue are not in PDE’s possession, custody or control.

In *Bagwell* the following information was requested:

copies of letters, emails, reports and memorand[a] received by Secretary of Education Ronald J. Tomalis that were: (1) received by Secretary Tomalis in April, May, June and July of 2012; (2) sent to Secretary Tomalis during his official capacity as a member of [PSU]'s Board of Trustees; and, (3) sent by any of the below-mentioned individuals who are associated with [PSU] . . . .

*Bagwell v. Pa. Dep't of Educ.*, 76 A.3d 81, 83 (Pa. Commw. Ct. 2013).

Unlike the present matter, *Bagwell* dealt with letters, emails, reports and memoranda physically possessed by Secretary Tomalis. *Bagwell v. Pa. Dep't of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013). The Requester in the matter now before OOR does not ask for any physical documents such as letters, emails, reports and memoranda. Rather the Requester asks for documents stored within the *Diligent* software. The secretary does not possess the documents on *Diligent*. Mr. Hagarty formerly and Secretary Mumin currently have not screen captured, saved, printed, or in any way maintained information accessible on *Diligent* in a format outside of *Diligent*. See Affidavit of Kari Worley.

Also, the instant matter is distinguishable from *Edinboro University of Pennsylvania v. Ford* because in *Edinboro University* the court held that records met the definitions of Records under the RTKL and were created by a contractor then received by Edinboro. *Edinboro Univ. of Pa. v. Ford*, 18 A.3d 1278 (Pa. Cmwlth. 2011). *Edinboro University* focuses on Section 102 of the RTKL that defines a record as “[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant

to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. In the instant matter, Secretary Mumin and Mr. Hagarty never possessed the requested documents. PSU controls document access in *Diligent*. See affidavit of Shannon S. Harvey. Mr. Hagarty and Secretary Mumin have not screen captured, saved, printed, or in any way maintained information accessible on Diligent in a format outside of the *Diligent* software. See Affidavit of Kari Worley.

Requester does not correctly apply *Dental Benefit Providers, Inc. v. Eisman* to the case at matter. *Dental Benefit Providers, Inc. v. Eisman*, 86 A.3d 932 (Pa Cmwlth. 2014). In *Dental Benefit Providers* the court stated that “this Court does not infer constructive possession from the mere availability of the records to an agency upon request.” *Id.* at 938. *Dental Benefit Providers* stated that the “litmus test under Section 901 remains whether the records document a transaction of the agency to which the request was directed, not whether they document a transaction of a private contractor.” Secretary Mumin and Mr. Hagarty’s access to *Diligent* is for purposes of performing their duties as *ex officio* voting members of the Pennsylvania State University Board of Trustees (“PSU Board”). See Affidavit of Shannon S. Harvey. The fact that they have access to *Diligent* does not mean that they have viewed or possess the documents on *Diligent*. For example, by the date of the Request, Secretary Mumin did not access *Diligent*. See Affidavit of Kari Worley.

As established in the attached affidavit by PDE Agency Open Records Officer Angela Riegel, Ms. Riegel checked with Kari Worley, Executive Assistant regarding Mr. Hagarty and Secretary Mumin’s usage of *Diligent*. See Affidavit of Angela Riegel. Ms. Riegel asked Kari Workley whether Mr. Hagarty formerly or Secretary Mumin currently held any records responsive to the Request. *Id.* Kari Worley spoke with Secretary Mumin regarding the request. See affidavits of Angela Riegel and Kari Worley. After speaking with Secretary Mumin, Kari Worley informed Angela Riegel that Secretary Mumin was granted access to *Diligent* on May 3, 2023, and that on the date of the Request, May 18, 2023, Secretary Mumin still had not accessed *Diligent*. See Affidavit of Shannon S. Harvey. Mr. Hagarty was granted *Diligent* access on May 18, 2022 and removed from access on January 22, 2023. See Affidavit of Shannon S. Harvey. Ms. Worley also informed Angela Riegel that Mr. Hagarty did not screen capture, save, print, or in any way maintain information accessible on *Diligent* outside of the *Diligent* software. See Affidavit of Kari Worley.

Eric Hagarty served as Pennsylvania Acting Secretary of Education beginning on or about April 2022 and he left commonwealth service on or about January 15, 2023. See Affidavit of Kari Worley. Mr. Hagarty was *ex officio* voting member of the PSU Board from April of 2022 to January 2023. See Affidavit of Shannon S. Harvey. Khalid N. Mumin, Ed.D. began service as Pennsylvania Acting Secretary of Education on or about January 17, 2023 and was confirmed as Pennsylvania Secretary of Education on or about June 26, 2023. See Affidavit of Kari Worley. Secretary Mumin became an *ex officio* voting member of the PSU Board in January of 2023 when he was appointed to serve as the Acting Secretary of Education. See Affidavit of Shannon S. Harvey.

Under the Bylaws of the Pennsylvania State University, Article II Trustees Section 2.01 Number, Election and Term of Office (a)(i) the Pennsylvania Secretary of Education shall serve as an *ex officio* voting member of the PSU Board. See *Amended and Restated Bylaws of the Pennsylvania State University*, Article II Section 2.01(a)(i) (May 7, 2021); See Also, Affidavit of Shannon S. Harvey. Mr. Hagarty served as an *ex officio* voting member of the PSU Board during his tenure as

Pennsylvania State Secretary of Education. *See* Affidavits of Kari Worley and Shannon S. Harvey. Secretary Mumin currently serves as an *ex officio* voting member of the PSU Board. *Id.*

*Diligent* is board management software used by the PSU Board as a platform for sharing documents and other information with the Trustees. *See* Affidavit of Shannon S. Harvey. For approximately 3 years PSU's Office of the Board of Trustees (the "Board Office") has utilized *Diligent* as a platform for sharing documents and other information with members of the PSU Board. *Id.* *Diligent* is an online board portal tool that facilitates secure digital communication from the Board Office to the PSU Board. *Id.* PSU utilizes *Diligent* to securely share board meeting agendas, meeting materials, and other documents. *Id.* The Board Office, with the assistance of other PSU staff members as appropriate, maintains all aspects of *Diligent*, including with respect to access, controls, posting of documents, deleting documents and other posting information. *Id.*

Access to *Diligent* is given to the Pennsylvania Secretary of Education in his capacity as a Trustee. *See* Affidavit of Shannon S. Harvey. Mr. Hagarty, during his tenure as Acting Secretary of Education, was granted access to *Diligent* individually in his capacity as a trustee to the PSU Board. *See* Affidavits of Kari Worley Shannon S. Harvey. Mr. Hagarty, during his tenure as Acting Secretary of Education, was the only member of PDE to have access to *Diligent* for PSU Board purposes. *See* Affidavit of Kari Worley. As Acting Secretary of Education and now as Secretary of Education Secretary Mumin has been granted access to *Diligent* individually in his capacity as a trustee to the PSU Board. *See* affidavits of Kari Worley and Shannon S. Harvey. Secretary Mumin is currently the only member of PDE that has access to *Diligent* for PSU Board purposes. *See* Affidavit of Kari Worley.

Mr. Hagarty formerly, and Secretary Mumin currently are the only individuals within PDE who have access to *Diligent*. *See* Affidavits of Shannon S. Harvey and Kari Worley. Mr. Hagarty formerly and Secretary Mumin currently do not have the ability to post or delete anything in *Diligent*. *Id.* The ability to print or download documents on *Diligent* is controlled by PSU and there is no agency record that indicates Mr. Hagarty formerly or Secretary Mumin currently printed or downloaded the requested documents. *Id.*

Mr. Hagarty formerly and Secretary Mumin currently, like all other members of the PSU Board are subject to the University's Bylaws and Board of Trustees' Standing Orders, attached to Affidavit of Shannon S. Harvey as Exhibit PSU #1 and Exhibit PSU #2 respectively, stating in relevant part:

"Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount."

*Section 8.07 of the Bylaws (Fiduciary Duty)* *See* a copy of PSU's Bylaws Section 8.07 attached as Exhibit PSU #1 to the Affidavit of Shannon S. Harvey.

The PSU Bylaws further provide that “It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose “confidential information” includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;”

*Order VIII, Section 1(d)(x) (Expectations of Membership)* See a copy of Order VIII, Section 1(d)(x) (Expectations of Membership) attached as Exhibit PSU #1 to the Affidavit of Shannon S. Harvey.

Section 705 of the RTKL reads “[w]hen responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705. Asking PDE to take electronic screen shots of the records in *Diligent* would require PDE to create records. PDE is not required to create records under 65 P.S. § 67.705 and therefore, does not need to create screen shots of the documents stored on *Diligent*. See Affidavit of Angela Riegel.

Commonwealth Court has held “An agency may satisfy its burden of proof that it does not possess a requested record with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” See *Smith Butz, LLC v. Pa. Dep't of Env'tl. Prot.*, 142 A.3d 941, 945 (Pa. Cmwlth. 2016) (quoting *Hodges*, 29 A.3d at 1192). “In the absence of any competent evidence that the agency acted in bad faith or that the agency records exist, ‘the averments in [an agency’s] affidavits should be accepted as true.’” See *Smith Butz, LLC*, 142 A.3d at 945 (quoting *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-383 (Pa. Cmwlth. 2014)).

PDE does not have any records in its possession or under its custody or control responsive to the RTKL request. See Affidavits of Kari Worley and Angela Riegel. PDE has met its burden to demonstrate that it does not possess or have under its custody or control any responsive records to Requester’s RTKL request. Accordingly, PDE’s response to Requester’s RTKL request should be affirmed.

PDE respectfully requests that the Office of Open Records deny the above-captioned appeal and require PDE to take no further action.

Sincerely,



Zachary Stritzinger  
Assistant Counsel

cc: Wyatt Massey (via OOR Portal and E-mail)

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS

WYATT MASSEY, :  
Requester :  
v. : Docket No.: AP 2023-1492  
PENNSYLVANIA DEPARTMENT :  
OF EDUCATION, :  
Respondent :

**AFFIDAVIT OF AGENCY OPEN RECORDS OFFICER ANGELA RIEGEL**

1. I, Angela Riegel, Agency Open Records Officer for the Pennsylvania Department of Education (hereinafter “PDE”), make this statement under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.
2. PDE received a request (the “Request”) pursuant to the Pennsylvania Right-To-Know Law (hereinafter “RTKL”), 65 P.S. § 67.101, *et seq.* on May 18, 2023, from Wyatt Massey that asked for the following information:

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

“An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.”

“An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State’s Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.”

3. PDE does not have any records in its possession or under its custody or control that are responsive to the above-referenced RTKL request.

4. I have confirmed this by personally checking with the appropriate PDE staff member Kari Worley, Executive Assistant.
5. Upon receipt of the Request, the Request was provided to Kari Worley, so that she could inform me as to whether Mr. Hagarty formerly and Dr. Mumin, currently, had any documents relevant to the request.
6. After Kari Worley was notified of the Request, she discussed the request with Secretary Mumin.
7. Kari Worley informed me that Mr. Hagarty did not screen capture, save, print, or in any way maintain information accessible on *Diligent* outside of the *Diligent* software.
8. After speaking with Secretary Mumin, Kari Worley informed me that Secretary Mumin did not receive access to *Diligent* until May 8, 2023 and that on the date of the request, May 18, 2023 Secretary Mumin still had not accessed *Diligent*.
9. Section 705 of the of the Pennsylvania Right to Know Law requires that “[w]hen responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705.
10. PDE is not required to create screen shots of *Diligent* under 65 P.S. § 67.705.

Date: July 18, 2023

*Angela Riegel*

---

Angela Riegel, Agency Open Records Officer  
Pennsylvania Department of Education  
Commonwealth of Pennsylvania  
Department of Education  
333 Market Street  
Harrisburg, PA 17126

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS

WYATT MASSEY, :  
Requester :  
v. : Docket No.: AP 2023-1492  
PENNSYLVANIA DEPARTMENT :  
OF EDUCATION, :  
Respondent :

**AFFIDAVIT OF KARI WORLEY**

1. I, Kari Worley, Executive Assistant, make this statement under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.
2. In my capacity as Executive Assistant, I perform a wide variety of highly responsible management duties such as serving as the primary executive staff assistant to the Secretary and Executive Deputy Secretary of the Pennsylvania Department of Education (PDE). I work and collaborate with the senior leadership team to plan and direct PDE operations.
3. Eric Hagarty served as Pennsylvania Acting Secretary of Education beginning on or about April 2022, and he left commonwealth service on or about January 15, 2023.
4. Khalid N. Mumin, Ed.d., began serving as Pennsylvania Acting Secretary of Education on or about January 17, 2023 and was confirmed as Pennsylvania Secretary of Education on or about June 26, 2023.
5. As Executive Assistant, I worked closely with Mr. Hagarty during his tenure as Acting Pennsylvania Secretary of Education.
6. Since Secretary Mumin’s appointment as Pennsylvania Acting Secretary of Education and currently since being confirmed as Pennsylvania Secretary of Education, as Executive Assistant I have worked closely with Secretary Mumin.
7. The Pennsylvania Secretary of Education serves an Ex Officio Voting Member of the Pennsylvania State University Board of Trustees (“PSU Board”).
8. Mr. Hagarty served as an Ex Officio Voting Member of the PSU Board during his term as Pennsylvania Acting Secretary of Education.
9. Dr. Mumin currently serves as an Ex Officio Voting Member of the PSU Board.

10. During his tenure as Acting Secretary, Mr. Hagarty was granted access to *Diligent* individually in his capacity as a trustee to the PSU Board. During Mr. Hagarty's tenure as Acting Secretary he was the only member of PDE who had access to *Diligent* for PSU Board purposes.
11. Secretary Mumin, as Pennsylvania Secretary of Education is currently granted access to *Diligent* individually in his capacity as a trustee to the Trustees. No one else in PDE has access to *Diligent* for PSU Board purposes.
12. As of the date of the Right-to-Know-Law request at issue in the above captioned appeal, May 18, 2023, Dr. Mumin did not attempt to access *Diligent*.
13. Mr. Hagarty has not screen captured, saved, printed, or in any way maintained information accessible on *Diligent* in any format outside of the *Diligent* software.
14. Secretary Mumin has not screen captured, saved, printed, or in any way maintained information accessible on *Diligent* in any format outside of the *Diligent* software.
15. Mr. Hagarty, while serving as Pennsylvania Acting Secretary of Education was the only member of PDE who had access to *Diligent*.
16. Currently, Secretary Mumin is the only member of PDE who has access to *Diligent*.

Date: July 17, 2023



---

Kari Worley, Executive Assistant  
Pennsylvania Department of Education  
Commonwealth of Pennsylvania  
Department of Education  
333 Market Street  
Harrisburg, PA 17126

**AFFIDAVIT OF SHANNON S. HARVEY**

I, Shannon S. Harvey, declare:

1. My name is Shannon S. Harvey. I am over the age of 18 and fully competent to make this affidavit. The facts stated herein are true and correct and based on my personal knowledge.

2. I am the Assistant Vice President and Secretary, Office of the Board of Trustees at The Pennsylvania State University (“Penn State” or the “University”). In this capacity, I serve as the elected Secretary of the University with responsibilities as outlined in Section 5.06 of the University Bylaws (Exhibit PSU #1). I am also responsible for the management and operation of the Office of the Board of Trustees including oversight of all activities, meetings, agenda preparation and filing of minutes, Trustee certifications and questionnaires in compliance with legal requirements and University policy to ensure the Board is as effective and efficient as possible in the conduct of its oversight responsibilities.

3. My business address is Office of the Board of Trustees at The Pennsylvania State University, 201 Old Main, University Park, Pennsylvania 16802.

4. For approximately three years, the University’s Office of the Board of Trustees (the “Board Office”) has utilized the services of Diligent as a platform for sharing documents and other information with the members of its Board of Trustees (“Trustees”). Diligent Boards is an online board portal tool that facilitates secure digital communication from the Board Office to Trustees. We utilize Diligent to securely share board meeting agendas, meeting materials, and other documents.

5. The Board Office staff, with the assistance of other University staff members as appropriate, maintains all aspects of the Diligent site, including with respect to access controls, posting of documents, deleting documents and posting other information.

6. Former Acting Secretary of Education Eric Hagarty was an ex officio Trustee from April of 2022 to January 2023. Dr. Mumin became an ex officio member of the Board of Trustees in January of 2023 when he was appointed to serve as the Acting Secretary of the Department of Education.

7. Mr. Hagarty was granted Diligent access on May 18, 2022 and removed from access on January 22, 2023. Dr. Mumin was granted Diligent access on May 3, 2023.

8. The Board Office controls the Secretary's ability to print or download any document from the Diligent platform. The Secretary does not have the ability to post or delete anything in the Diligent platform.

9. Access is given to the Secretary of Education individually, in their capacity as a Trustee. No one else in the Pennsylvania Department of Education is given access to Diligent by the University.

10. The Secretary, like all other members of the Board of Trustees is subject to the University's Bylaws and Board of Trustees' Standing Orders, attached herein as Exhibits PSU #1 and PSU #2, stating in relevant part:

“Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.”

*Section 8.07 of the Bylaws (Fiduciary Duty) (See Exhibit PSU #1)*

“It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose ‘confidential information’ includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;”

*Order VIII, Section 1(d)(x) (Expectations of Membership) (See Exhibit PSU #2)*

Further affiant sayeth not. I hereby certify and declare that the above information is true and correct and that the statements contained herein are made subject to the penalties of 18 Pa.

C.S.A. § 4904.

Executed on July 17, 2023.

*Shannon S. Harvey*  
Shannon S. Harvey

# Exhibit PSU #1

## Bylaws

AMENDED AND RESTATED

BYLAWS

of

THE PENNSYLVANIA STATE UNIVERSITY

Adopted May 6, 2016

Amended November 4, 2016

Amended July 21, 2017

Amended November 10, 2017

Amended May 3, 2019

Amended November 15, 2019

Amended May 8, 2020

Amended September 18, 2020

Amended May 7, 2021

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I NAME AND PURPOSE .....	1
Section 1.01    Name .....	1
Section 1.02    History .....	1
Section 1.03    Purpose .....	1
ARTICLE II TRUSTEES .....	2
Section 2.01    Number, Election and Term of Office.....	2
Section 2.02    Qualifications for Membership .....	4
Section 2.03    Removal.....	5
Section 2.04    Regular Meetings; Notice.....	6
Section 2.05    Annual Meeting of the Board.....	6
Section 2.06    Special Meetings; Notice.....	6
Section 2.07    Quorum.....	7
Section 2.08    Actions.....	7
Section 2.09    Meetings via Electronic Communication .....	7
Section 2.10    Resignations .....	8
Section 2.11    Vacancies.....	8
Section 2.12    Compensation; Reimbursement of Travel Expenses.....	8
Section 2.13    Certain Meetings .....	8
ARTICLE III COMMITTEES AND SUBCOMMITTEES .....	8
Section 3.01    Committees and Subcommittees .....	8
Section 3.02    Executive Committee .....	9
Section 3.03    Standing Committees and Subcommittees .....	10
Section 3.04    Quorum and Actions .....	19

Section 3.05	Authority of Board .....	19
Section 3.06	Special Assignments.....	20
ARTICLE IV LIABILITY AND INDEMNIFICATION .....		20
Section 4.01	Personal Liability of Trustees.....	20
Section 4.02	Indemnification .....	21
ARTICLE V OFFICERS AND EMPLOYEES .....		24
Section 5.01	Officers .....	24
Section 5.02	Additional Officers; Other Agents and Employees.....	25
Section 5.03	The Chair .....	26
Section 5.04	The President.....	26
Section 5.05	The Vice President(s) .....	27
Section 5.06	The Secretary, Associate Secretary and Assistant Secretaries .....	28
Section 5.07	The Treasurer and Assistant Treasurers .....	28
Section 5.08	Vacancies.....	29
Section 5.09	Delegation of Duties.....	29
ARTICLE VI MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS ..		37
Section 6.01	Execution of Notes, Checks, Contracts and Other Instruments .....	37
Section 6.02	Voting Securities Owned by the University .....	37
ARTICLE VII GENERAL PROVISIONS.....		38
Section 7.01	Offices .....	38
Section 7.02	Corporate Seal .....	38
Section 7.03	Fiscal Year.....	38
Section 7.04	Private Inurement .....	38
ARTICLE VIII CONFLICTS OF INTEREST .....		38
Section 8.01	Definitions. ....	38

Section 8.02	Disclosure .....	40
Section 8.03	Annual Disclosure .....	40
Section 8.04	Recusal .....	40
Section 8.05	Contracts or Transactions with the University .....	40
Section 8.06	Annual Statements.....	41
Section 8.07	Fiduciary Duty.....	42
Section 8.08	Misuse of Information .....	42
Section 8.09	Gifts and Favors .....	42
Section 8.10	Pre-Existing Contract or Transaction .....	42
Section 8.11	Family Members as Employees .....	42
Section 8.12	Employment of Trustees .....	43
Section 8.13	Disclosure of Potential Conflict of Interest by Employees of the University	43
Section 8.14	Consultation.....	43
ARTICLE IX AMENDMENTS .....		43
Section 9.01	Amendments.....	43

# THE PENNSYLVANIA STATE UNIVERSITY

## Amended and Restated Bylaws

### ARTICLE I

#### NAME AND PURPOSE

**Section 1.01 Name.** The name of the corporation is The Pennsylvania State University (hereinafter referred to as the “University”), existing under the Pennsylvania Nonprofit Corporation Law of 1988.

**Section 1.02 History.** The University was created as the Farmers’ High School by special act of the Pennsylvania legislature on February 22, 1855. The name of the institution has been changed successively to the Agricultural College of Pennsylvania in 1862, the Pennsylvania State College in 1874 and The Pennsylvania State University in 1953. On August 28, 1878, after the enactment of Pennsylvania’s first corporation law, and pursuant to the provisions thereof, the institution elected to be subject to such corporation law and thereafter, has been existing under such law, as such law has been amended, supplemented and modified from time to time.

**Section 1.03 Purpose.** The University was formed in 1855 as an institution for the education of youth in the various branches of science, learning and practical agriculture, as they are connected with each other. The University currently exists as a multi-campus public research university that educates students from Pennsylvania, the nation and the world, and improves the wellbeing and health of individuals and communities through integrated programs of teaching, research, and service.

## ARTICLE II

### TRUSTEES

**Section 2.01 Number, Election and Term of Office.** The affairs of the University shall be managed by a Board of Trustees.

(a) The number of Trustees which shall constitute the full Board of Trustees shall be fixed at thirty-eight (38), as set forth herein.

(i) Ex Officio Voting Members. The Secretary of Education, the Secretary of Agriculture and the Secretary of Conservation and Natural Resources shall be *ex officio* voting members of the Board of Trustees.

(ii) Ex-Officio Non-Voting Members. The Governor of the Commonwealth of Pennsylvania and the President of the University shall be *ex officio* non-voting members of the Board of Trustees.

(iii) Members Appointed by the Governor. Six voting members of the Board of Trustees shall be appointed by the Governor of the Commonwealth of Pennsylvania.

(iv) Members Elected by the Alumni. Nine voting members of the Board of Trustees shall be elected by the alumni and former students of the University.

(v) Members Elected by Agricultural Organizations. Six voting members of the Board of Trustees, who shall be members of and represent organized agricultural societies and associations, shall be elected by three delegates from each county in the Commonwealth representing organized agricultural societies or associations of the said county.

**(vi)** Members Elected Representing Business and Industry. Six voting members of the Board of Trustees representing business and industry endeavors shall be elected by the Board of Trustees.

**(vii)** A Member Elected Representing the Student Body. In May 2015 and bi-annually thereafter, a voting member of the Board of Trustees representing the student body (the “Student Trustee”) shall be elected by the Board of Trustees.

**(viii)** A Member Elected Representing the Faculty. In May 2015 and every three years thereafter, a voting member of the Board of Trustees representing the faculty shall be elected by the Board of Trustees.

**(ix)** A Member Representing the Penn State Alumni Association. Commencing July 1, 2015, and bi-annually thereafter, the immediate past President of the Penn State Alumni Association shall become an *ex officio* voting member of the Board of Trustees.

**(x)** At-Large Members Elected by the Board of Trustees. In May 2015 three at-large voting members shall be elected by the Board of Trustees. Thereafter, one at-large voting member shall be elected annually by the Board of Trustees.

**(b)** Each Trustee shall serve for a term of three (3) years, except that the Student Trustee and the Trustee who serves ex-officio as the immediate past President of the Penn State Alumni Association shall each have a two (2) year term. No individual may serve as a Trustee for more than a total of twelve years, whether or not in consecutive terms; provided, however, that

(i) Any Trustee who has served for twelve years or more as of November 15, 2019 may complete the term for which such Trustee was most recently elected or appointed but shall not be eligible

for subsequent election or appointment as a Trustee; (ii) Any Trustee as of November 15, 2019 whose next reelection or reappointment would cause such Trustee, if such Trustee serves for the entirety of such new term, to exceed twelve total years of service may complete the term for which such Trustee is reelected or reappointed but shall not be eligible for subsequent election or appointment as a Trustee; and (iii) this subsection (b) shall not apply to any Trustee who serves in an *ex officio* capacity. Trustees shall be separated into three groups of substantially equal number so that the terms of one third of the Trustees shall expire each year. Each Trustee shall serve until his or her term expires, and thereafter until such Trustee's successor is duly elected or appointed, or until such Trustee's earlier death or resignation.

**Section 2.02 Qualifications for Membership. (a)** Members of the Board of Trustees shall be natural persons of full age who need not be residents of the Commonwealth of Pennsylvania. A person who is employed in any capacity by the University shall not be eligible to serve as a member of the Board of Trustees. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, a trustee elected pursuant to Section 2.01(a)(viii), or to a person who is a student employed part-time by the University. A person shall not be eligible to serve as a member of the Board of Trustees for a period of five (5) years from the July 1 coincident with or next following the date of (a) last employment in any capacity by the University or (b) the last day of such person's employment with the Commonwealth of Pennsylvania as Governor, Lieutenant Governor, Attorney General, Auditor General or State Treasurer. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, nor to a person who is a student employed part-time by the University. Only graduates of The Pennsylvania State University who shall have received an associate degree, a bachelor's degree, or an advanced degree from the University shall

be eligible to serve as a trustee elected by the alumni. No member of the faculty or the governing board of any other college or university in Pennsylvania shall be eligible to serve as a trustee elected by the alumni.

(b) The Student Trustee shall be a full-time undergraduate, graduate or professional student, in good academic standing and in a degree seeking program at the University.

**Section 2.03 Removal.** Any member of the Board of Trustees other an *ex officio* member may be removed from his or her position as a Trustee in accordance with this Section 2.03.

(a) Any Trustee who believes that another Trustee has breached his or her fiduciary duty to the University shall raise the issue with the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning.

(b) Removal of a Trustee shall require a joint proposal to the Board of Trustees by the chairperson of the Board of Trustees and the chairperson of the committee on governance and long-range planning that the Board of Trustees take action to remove a Trustee on the basis that the Trustee has breached his or her fiduciary duty to the University. Such joint proposal shall be furnished in writing to each member of the Board of Trustees not less than 30 days prior to the meeting of the Board of Trustees at which such matter is to be considered. Removal shall require the determination of not less than two-thirds of the Trustees present at a duly called meeting that the Trustee has breached his or her fiduciary duty.

(c) In the event that the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning is the subject of a removal action under this Section 2.03, the Vice Chair of the Board of Trustees shall be substituted for such affected Trustee for purposes of this Section 2.03.

**Section 2.04 Regular Meetings; Notice.** Regular meetings of the Board of Trustees shall be held at such time and place as shall be designated by the Board of Trustees from time to time. There shall be at least one (1) regular meeting of the Board of Trustees per year. Notice of such regular meetings shall not be required, except as otherwise expressly required herein or by law, and except that whenever the time or place of regular meetings shall be initially fixed and then changed, notice of such action shall be given promptly by telephone, facsimile, electronic mail or otherwise to each Trustee not participating in such action. Any business may be transacted at any regular meeting.

**Section 2.05 Annual Meeting of the Board.** One regular meeting of the Board of Trustees shall be designated the annual organization meeting at which the Board of Trustees shall organize itself and elect officers of the University for the ensuing year and may transact any other business.

**Section 2.06 Special Meetings; Notice.** Special meetings of the Board of Trustees may be called at any time by the Chair of the Board or by seven members of the Board of Trustees, to be held at such place and day and hour as shall be specified by the person or persons calling the meeting. Notice of every special meeting of the Board of Trustees shall be given by the Secretary to each Trustee by telephone, facsimile, electronic mail or otherwise at least three (3) days before the meeting unless the meeting is being called in the event of an emergency, in which case as much advance notice shall be given to the Trustees as is practicable under the circumstances. In addition, public notice of any special meeting shall be given as required by law. Except as otherwise provided herein or required by law, any business may be transacted at any special meeting regardless of whether the notice calling such meeting contains a reference thereto.

**Section 2.07 Quorum.** At all meetings of the Board of Trustees, the presence of at least a majority of the voting members of the Board of Trustees in office shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum is not present at any meeting, the meeting may be adjourned from time to time by a majority of the Trustees present until a quorum as aforesaid shall be present, but notice of the time and place to which such meeting is adjourned shall be given to any Trustees not present either by facsimile or electronic mail or given personally or by telephone at least eight hours prior to the hour of reconvening.

**Section 2.08 Actions.** Except as expressly provided herein, resolutions of the Board of Trustees shall be adopted, and any action of the Board of Trustees upon any matter shall be valid and effective, with the affirmative vote of a majority of the Trustees present at a meeting duly convened and at which a quorum is present. The Chair, if one has been elected and is present, or if not, the Vice Chair, if present, or if not, a Trustee designated by the Board of Trustees, shall preside at each meeting of the Board of Trustees. The Secretary, or in his or her absence the Associate Secretary, shall be responsible for ensuring that the minutes of all meetings of the Board of Trustees are recorded in some reasonable manner. In the absence of the Secretary and the Associate Secretary, the presiding officer shall designate any person to take the minutes of the meeting. Unless otherwise modified in these Bylaws, the conduct of business in meetings of the Board of Trustees and any committees thereof shall be in accordance with the parliamentary procedures prescribed in Robert's "Rules of Order".

**Section 2.09 Meetings Via Electronic Communication.** Subject to the requirements of any applicable open meeting laws, one or more Trustees may participate in any regular or special meeting of the Board of Trustees or of a committee of the Board of Trustees by means of conference telephone, video conference or similar communications equipment by means

of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner by a Trustee will be considered to be attendance in person for all purposes under these Bylaws.

**Section 2.10 Resignations.** Any Trustee may resign by submitting his resignation to the Secretary. Such resignation shall become effective upon its receipt by the Secretary or as otherwise specified therein.

**Section 2.11 Vacancies.** Vacancies in the membership of the Board of Trustees created by death, resignation, removal or any other reason may be filled by appointment by the Chair of the Board of Trustees for the unexpired term in all cases except memberships reserved for gubernatorial appointment and *ex officio* memberships established by the University's Charter.

**Section 2.12 Compensation; Reimbursement of Travel Expenses.** Members of the Board of Trustees serve as volunteers and shall not be compensated for their services. Upon the request of a Trustee, the University shall reimburse the Trustee's reasonable direct travel expenses, including transportation expenses, incurred while the Trustee was engaged in the discharge of his or her official duties. Reimbursement of travel expenses shall be determined in accordance with the University's travel reimbursement policies in effect from time to time.

**Section 2.13 Certain Meetings.** The Chair of the Board of Trustees may, at his discretion, request that one or more of the non-voting members of the Board of Trustees be excused from any regular or special meeting of the Board of Trustees or any portion thereof.

### **ARTICLE III**

#### **COMMITTEES AND SUBCOMMITTEES**

**Section 3.01 Committees and Subcommittees.** Standing or temporary committees or subcommittees consisting of at least one (1) Trustee may be appointed by the Board

of Trustees from time to time; provided, however, that a temporary committee may not be created for the purpose of acting on any matter appropriate to be acted on by a standing committee or subcommittee thereof. Committees and subcommittees may include non-voting members that are not Trustees of the University. Each such committee and subcommittee shall have and exercise such authority of the Board of Trustees in the management of the business and affairs of the University as the Board of Trustees may specify from time to time.

**Section 3.02 Executive Committee.** The executive committee shall have thirteen (13) members, all of whom shall be voting members. The executive committee shall be composed of the Chair of the Board of Trustees (who shall also be the chair of the executive committee), the Vice Chair of the Board of Trustees, the Chairs of the standing committees, the Chair of the Board of Directors of Penn State Health (or, if such chair is not a voting member of the Board of Trustees, a member of the Board of Directors of Penn State Health who is also a voting member of the Board of Trustees), the immediate past Chair of the Board of Trustees and such number of at-large members, nominated by the committee on governance and long-range planning and elected by the Board of Trustees, as may be necessary to have an executive committee of thirteen (13) members. In addition, the President of the University shall be an *ex officio* non-voting member of the executive committee.

**(a) Purpose of the Executive Committee.** The purpose of the executive committee shall be to transact all necessary business as may arise in the intervals between regular meetings of the Board of Trustees; it being understood that action by the executive committee would not be expected to be taken except in extraordinary circumstances. Notice of any action by the executive committee shall be provided to the Board of Trustees at its next regular meeting.

(b) Meetings of the Executive Committee. Meetings of the executive committee may be called by the Chair of the Board of Trustees or by any three (3) members of the executive committee. No action may be taken by the executive committee without the affirmative vote of at least seven (7) members of the executive committee.

(c) Place of Meetings of the Executive Committee. All meetings of the executive committee shall be held at the executive offices of the University unless otherwise ordered by the Chair of the executive committee.

(d) Notice of Meetings of the Executive Committee. Notice of the time and place of all meetings of the executive committee shall be given in the same manner as for meetings of the Board of Trustees.

**Section 3.03 Standing Committees and Subcommittees.** The Board may adopt standing committees and subcommittees thereof in addition to the executive committee in accordance with the terms of these Bylaws.

(a) Function of Standing Committees and Subcommittees. The purpose of the standing committees and subcommittees is to facilitate consideration of the business and management of the Board of Trustees and of the University, as hereinafter set forth.

(b) Referral of Matters to Standing Committees and Subcommittees. Any matters appropriate for consideration by a standing committee or a subcommittee first shall be referred thereto by the Board of Trustees or the Chair of the Board of Trustees; except that a two-thirds (2/3) vote of the Trustees present at a meeting of the Board of Trustees but in no event by an affirmative vote of less than nine (9) Trustees will permit initial consideration by the full Board of Trustees; provided, however, that any matter referred to and considered by a standing committee or a subcommittee, but upon which the committee or subcommittee makes no recommendation or

report to the Board of Trustees may be brought before the Board of Trustees for consideration at the request of any Trustee.

(c) Matters Appropriate to More Than One Committee or Subcommittee. Except as otherwise provided in these Bylaws, matters determined to be appropriate for consideration by more than one committee or subcommittee may be referred by the Chair of the Board of Trustees to one committee or subcommittee or more.

(d) Final Authority of the Board. Unless otherwise specifically delegated and except as otherwise provided herein, in the Standing Orders or in the approved operating guidelines of any standing committee or subcommittee, authority to act on all matters is reserved to the Board of Trustees, and the duty of each standing committee and subcommittee shall be only to consider and to report or make recommendations to the Board of Trustees upon appropriate matters.

(e) Specific Responsibility of Standing Committees. The several standing committees are charged specifically with the immediate care and supervision of the subject matters respectively indicated by and properly relating to their titles. Standing committees shall assume such additional responsibilities as may from time to time be assigned by the Chair of the Board of Trustees.

(f) Standing Committees Established. The following shall be the standing committees of the Board of Trustees:

(i) Committee on Academic Affairs, Research and Student Life. The committee on academic affairs, research and student life shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) the educational policies and programs of the University, including the long range educational development of the University with respect to instruction and continuing education;

(2) the faculty;

(3) the University's research enterprise; and

(4) all phases of student life.

(ii) Committee on Finance, Business and Capital Planning. The committee on finance, business and capital planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) finance, business, budgets, non-budget expenditures, human resources, investments, trust funds, insurance, real estate contracts, government and private contracts, and grants, fees, room and board charges, and the long-range financial planning and development of the University;

(2) endowments, gifts, and fund raising;

(3) the purchase and sale of real estate, master plans, construction, the award of contracts, and the honorific naming of buildings and roads; and

(4) the University's capital plan, the long-range comprehensive physical plant and infrastructure development of the University at each campus, consistent with the long-range educational development of the University.

**(iii)** Committee on Governance and Long-Range Planning. The committee on governance and long-range planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

**(1)** in fulfillment of its governance responsibilities, providing counsel and advice to the Board of Trustees in matters concerning the development of strategies, policies, and practices that orient, educate, organize, motivate, and assess the performance of trustees.

**(2)** The committee's responsibilities shall also include, but not be limited to:

- a.** reviewing and recommending to the Board any changes to the expectations of membership and code of conduct for all trustees, including trustees emeriti;
- b.** recommending to the Board of Trustees candidates for election to membership on the executive committee;
- c.** recommending to the Board of Trustees proposed Student and Academic Trustees;
- d.** reviewing the service of a Trustee upon retirement and recommending candidates for emeritus status;
- e.** evaluating and making recommendations on committee and subcommittee operating guidelines

and with respect to the working effectiveness of the Board of Trustees and its committees and subcommittees; and

- f.** evaluating, recommending and reporting on the qualifications and skill sets to be considered in the process of nominating board of trustee candidates.

**(3)** in fulfillment of its long-range planning responsibilities:

- a.** charging and supporting the President in leading a strategic planning process, participating in that process, making recommendations to the Board of Trustees with respect to the Strategic Plan, and monitoring its progress; and
- b.** providing oversight of the growth, development, and sustainability of the University for future generations in order to achieve its full potential as one of the world's great universities.

**(iv)** Committee on Audit and Risk. The committee on audit and risk shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall oversee the auditing of the University's financial statements and internal controls as set forth more fully in the operating guidelines of the committee. In fulfilling its responsibility, the committee on audit and risk shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) regular and special audits; and

(2) the identification and management of risks including financial, material, and reputational.

(v) Committee on Legal and Compliance. The committee on legal and compliance shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall oversee adherence to laws, regulations, and policies that pertain to University operations. In fulfilling its responsibility, the committee on legal and compliance shall consider and report or recommend to the Board of Trustees on matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed.

(vi) Committee on Outreach, Development and Community Relations. The committee on outreach, development and community relations shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall provide advice and support to, and help inform the public of, the University's efforts to build support among its major constituents, from faculty, staff and students to alumni and donors, business and civic leaders and elected officials. In fulfilling its responsibility, the committee on outreach, development and community relations shall consider and report or recommend to the Board of Trustees on matters pertaining to outreach, development and community relations, including, but not limited to:

(1) Short and long-term communications plans and initiatives that support University priorities and protect and advance its reputation;

(2) Key outreach programs, such as extension and “Invent Penn State” that advance community and economic development priorities;

(3) Fundraising priorities and campaigns, including those that promote access and affordability and ensure academic excellence;

(4) Community and governmental relations activities that help ensure budget and policy decisions meet University needs;

(5) Major alumni association activities; and

(6) Opportunities to showcase the accomplishments of faculty, staff, students and others that merit public recognition.

(vii) Committee on Equity and Human Resources. The committee on equity and human resources shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) Compensation, benefits, performance management, talent management, succession planning and leadership development for the broader University;

(2) Recruitment, enrollment, retention, and graduation of students representing all aspects of diversity;

(3) Enhancement of diversity in the racial, ethnic and gender composition of faculty and staff at all levels;

(4) Accessibility, accommodation, and support for veterans and individuals with disabilities; and

(5) Engagement by the University of qualified diversity business enterprises, including minority- and women-owned businesses, as suppliers of goods and services.

(g) Selection of Committee Members. Members of the standing committees and subcommittees, and the chairperson and vice chairperson thereof, shall be appointed by the Chair of the Board of Trustees. The Chair and, in his or her absence, the Vice Chair of the Board of Trustees shall be an *ex officio* member of all standing committees, of all special committees and of all subcommittees. No Trustee shall serve as chairperson of any standing committee for more than five (5) consecutive years, except as specifically approved by a two-thirds vote of the Board of Trustees.

(h) Term of Committee Members. Committee members shall serve until their successors are appointed in accordance with this Bylaw.

(i) Vacancies on Standing Committees. Vacancies on all standing committees shall be filled through appointment by the Chair of the Board to serve the unexpired term created by the vacancy.

(j) Consultation with Constituent Groups. Standing committees shall seek consultation from representative constituent groups as appropriate in the exercise of their responsibilities.

(k) The following shall be the subcommittees of the Board of Trustees:

(i) The subcommittee on finance (of the committee on finance, business and capital planning) shall be composed of up to three members of the committee on finance, business and capital planning. This subcommittee shall be responsible for reviewing on a regular basis certain of the University's material financial

matters, including the operating and capital budgets, balance sheet management and debt strategy, non-endowed investments, review and endorsement of endowment spending rates, and informing the committee on finance, business and capital planning regarding relevant financial oversight matters.

**(ii)** The subcommittee on compensation (of the committee on equity and human resources) shall consist of up to five members, all of whom need not be members of the committee on equity and human resources, in addition to the *ex officio* members. This subcommittee shall assist the Board with executive compensation philosophy and strategy pertaining to the University's senior leadership positions; the annual review and approval of the President's personal goals and objectives, performance and annual compensation, including salary and incentive compensation, if applicable; and will make decisions and recommendations for and on behalf of the Board of Trustees, when appropriate, relating to the effectiveness of executive compensation, benefits, performance management, and leadership development.

**(iii)** The subcommittee on legal (of the committee on legal and compliance) shall be composed of up to five members of the committee on legal and compliance. This subcommittee shall be responsible for reviewing matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed, including but not limited to litigation strategies and other matters.

**(iv)** The subcommittee on risk (of the committee on audit and risk) shall be composed of up to five members, at least two of whom shall be members of the committee on audit and risk. This subcommittee shall be responsible for reviewing

matters pertaining to the identification and management of risks, including financial, operational, strategic and compliance risks.

(v) The subcommittee on long-range planning (of the committee on governance and long-range planning) shall be composed of up to five members, at least two of whom shall be members of the committee on governance and long-range planning. This subcommittee shall be responsible for reviewing matters related to the University's long-range planning activities, including supporting the strategic planning process, participating in that process, and monitoring its progress.

(l) Operating Guidelines. All standing committees and subcommittees shall operate pursuant to written operating guidelines which shall be submitted to and approved by the Board upon the recommendation of the committee on governance and long-range planning.

**Section 3.04 Quorum and Actions.** At all meetings of a committee, the presence of at least a majority of the members of such committee (including any ex officio members of such committee) shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as set forth in Section 3.02(b), resolutions of a committee shall be adopted, and any action of the committee upon any matter shall be valid and effective, with the affirmative vote of a majority of the members of the committee present at a meeting duly convened and at which a quorum is present.

**Section 3.05 Authority of Board.** Any action taken by any committee or subcommittee shall be subject to alteration or revocation by the Board of Trustees; provided, however, that third parties shall not be prejudiced by such alteration or revocation.

**Section 3.06 Special Assignments.** The Chair of the Board of Trustees may make special assignments to the Trustees from time to time in furtherance of the Board's duties and obligations. Such assignments shall include, but not be limited to, the following:

(a) **Trustee Representative at All Commencements.** The Board of Trustees shall be represented at all Commencements by the Chair of the Board of Trustees or by Trustees designated by the Chair of the Board of Trustees.

(b) **Trustee Liaison to Capital Campaigns.** The Chair of the Board of Trustees is directed to appoint a liaison Trustee to interact with developmental activities for capital campaigns and to apprise the Board of Trustees of the activities and the progress of campaigns.

#### **ARTICLE IV**

#### **LIABILITY AND INDEMNIFICATION**

##### **Section 4.01 Personal Liability of Trustees.**

(a) **Elimination of Liability.** To the fullest extent that the laws of the Commonwealth of Pennsylvania, as now in effect or as hereafter amended, permit elimination or limitation of the liability of Trustees for monetary damages, no Trustee of the University shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a Trustee.

(b) **Nature and Extent of Rights.** The provisions of this Section shall be deemed to be a contract with each Trustee of the University who serves as such at any time while this Section is in effect and each such Trustee shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the University which has the effect of increasing Trustee liability for

monetary damages shall operate prospectively only and shall not affect any action taken, or any failure to act, prior to the adoption of such amendment, repeal, Bylaw or provision.

**Section 4.02 Indemnification.**

**(a) Right to Indemnification.**

**(i)** As used herein, the word “Action” shall mean any action, suit or proceeding, administrative, investigative or other, (A) in which such person is named as a defendant (other than in an action, suit or proceeding by the University) or (B) in connection with which such person is not named as a defendant but is a witness, subject to investigation or otherwise involved, in either case by reason of such person being or having been a Trustee or officer of the University or by reason of such person serving or having served at the request of the University as a director, officer, employee, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other entity.

**(ii)** Except as prohibited by law, each Trustee and officer of the University shall be entitled as of right to be indemnified by the University against expenses and any liability paid or incurred by such person in connection with any Action.

**(iii)** Except as provided in Section 4.02(c) below, the University shall not indemnify any Trustee or officer, or pay, advance or reimburse any Trustee or officer, for any legal fees and expenses incurred in connection with any action, suit or proceeding, administrative, investigative or other, which such Trustee or officer brings, directly or indirectly, against the University, the Board of Trustees or any

officer, Trustee, employee, agent or representative of the University or the Board of Trustees.

(iv) A person who is not a Trustee or officer of the University may be similarly indemnified in respect of service to the University to the extent the Board of Trustees at any time designates such person as entitled to the benefits of this Section. The Board of Trustees has delegated to the Vice President and General Counsel the authority to make the determination, after consideration of relevant facts and circumstances, as to whether a person who is not a Trustee or officer of the University shall be indemnified in respect of his or her service to the University pursuant to this paragraph.

(v) As used in this Section, “indemnitee” shall include each Trustee and each officer of the University and each other person designated by the Board of Trustees as entitled to the benefits of this Section; “liability” shall include amounts of judgments, excise taxes, fines, penalties and amounts paid in settlement; and “expenses” shall include fees and expenses of counsel incurred by the indemnitee only (A) if the University has not at its expense assumed the defense of the Action on behalf of the indemnitee with reputable and experienced counsel selected by the University, or (B) if it shall have been determined pursuant to Section (c) hereof that the indemnitee was entitled to indemnification for expenses in respect of an Action brought under that Section

(b) Right to Advancement of Expenses. Every indemnitee shall be entitled as of right to have his expenses in defending any Action paid in advance by the University, as incurred; provided, however, that the University receives a written undertaking by or on behalf of

the indemnitee to repay the amount advanced if it should ultimately be determined that such person's conduct was such that the University is prohibited by law from indemnifying such person

**(c) Right of Indemnitee to Initiate Action; Defenses.**

**(i)** If a written claim for indemnification or advancement of expenses under paragraph (a) or paragraph (b) of this Section is not paid in full by the University within thirty days after such claim has been received by the University, the indemnitee may at any time thereafter commence a lawsuit to recover the unpaid amount of the claim and, if successful in whole or in part, the indemnitee shall also be entitled to be paid the reasonable expenses of prosecuting such suit..

**(ii)** The only defenses to a lawsuit to recover a claim for indemnification otherwise properly asserted under paragraph (a) shall be that the indemnitee's conduct was such that under applicable law the University is prohibited from indemnifying the indemnitee for the amount claimed, but the burden of proving any such defense shall be on the University.

**(iii)** The only defense to a lawsuit to recover a claim for advancement of expenses otherwise properly asserted under paragraph (b) shall be that the indemnitee failed to provide the undertaking required by paragraph (b), but the burden of proving any such defense shall be on the University.

**(d) Non-Exclusivity; Nature and Extent of Rights; Insurance.** The rights to indemnification and advancement of expenses provided for in this Section shall (i) not be deemed exclusive of any other rights to which any indemnitee may be entitled, (ii) be deemed to create contractual rights in favor of each indemnitee who serves the University at any time while this Section is in effect (and each such indemnitee shall be deemed to be so serving in reliance on the

provisions of this Section), and (iii) continue as to each indemnitee who has ceased to have the status pursuant to which he was entitled or was designated as entitled to indemnification under this Section and shall inure to the benefit of the heirs and legal representatives of each indemnitee. The University may provide, at its cost, insurance, or may self-insure, to protect itself and any Trustee, officer, agent or employee eligible to be indemnified hereunder against any liability or expense whether or not the University would have the power to indemnify such trustee, officer, agent or employee.

## ARTICLE V

### OFFICERS AND EMPLOYEES

#### **Section 5.01 Officers.**

(a) Officers. The officers of the Board of Trustees shall be a President (also referred to as the “Chair”), a Vice President (also referred to as the “Vice Chair”), each of whom shall be a member of the Board of Trustees, and a Secretary.

(b) Election and Term of Officers. All officers of the Board of Trustees shall be chosen each year by ballot of the voting members of the Board of Trustees present at the stated meeting of the Board of Trustees in November to serve for a period of one year and until their successors are chosen according to these Bylaws.

(c) Duties of Officers. The Chair of the Board of Trustees shall perform the corporate duties which pertain to that office. The Chair shall appoint all committees and subcommittees of the Board of Trustees and the chairperson thereof (except the executive committee) unless otherwise ordered by the Board of Trustees. The Vice Chair shall, in the absence of the Chair, perform the duties of the Chair. The Secretary shall perform the corporate duties which pertain to that office, be custodian of the corporate seal, conduct the ordinary

correspondence of the Board of Trustees and maintain an accurate record of all proceedings of the Board of Trustees and of the executive committee.

(d) Vacancies in Office. Vacancies in any office or offices may be filled by ballot of the voting members present at any meeting of the Board of Trustees.

(e) Officers of the University. The executive officers of the University shall be the President, one or more Vice Presidents as the Board of Trustees may from time to time determine, an associate secretary, three assistant secretaries, a Treasurer, and three assistant treasurers, all of whom shall be elected by the Board of Trustees. Except for the office of the President and Secretary, any two or more offices may be held by the same person. Each executive officer shall hold office at the pleasure of the Board of Trustees, or until his or her death or resignation.

(f) The associate secretary shall assist the secretary in the performance of his/her duties and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The assistant secretaries shall assist the associate secretary and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The Treasurer shall receive and disburse all monies of the corporation under procedures and safeguards prescribed by the Board of Trustees. The assistant treasurers shall assist the treasurer in the performance of these duties and shall act for and on behalf of the University in the same manner and with the same authority as the treasurer.

**Section 5.02 Additional Officers; Other Agents and Employees.** The Board of Trustees may from time to time appoint or employ such additional officers, assistant officers, agents, employees and independent contractors as the Board of Trustees deems advisable; the Board of Trustees shall prescribe their duties, conditions of employment and compensation; and

the Board of Trustees shall have the right to dismiss them at any time, without prejudice to their contract rights, if any. The President of the University may employ from time to time such other agents, employees and independent contractors as he may deem advisable for the prompt and orderly transaction of the business of the University, and he may prescribe their duties and the conditions of their employment, fix their compensation and dismiss them at any time, without prejudice to their contract rights, if any.

**Section 5.03 The Chair.** The Chair of the Board of Trustees, if any, shall be elected from among the voting members of the Board of Trustees, shall preside at all meetings of the Board of Trustees as provided herein, and shall have such other powers and duties as from time to time may be prescribed by the Board of Trustees. The Chair shall be an *ex officio* member of all standing committees and subcommittees, entitled to vote thereon. In the absence or disability of the Chair, the Vice Chair shall have the powers and perform the duties of the Chair.

**Section 5.04 The President.** The President of the University shall be the chief executive officer of the University. Subject to the control of the Board of Trustees, the President shall have general supervision of and general management and executive powers over all the property, operations, business, affairs and employees of the University, and shall see that the policies and programs adopted or approved by the Board of Trustees are carried out. The President shall exercise such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees. The President of the University, as chief administrative officer, shall carry out all orders and directives of the Board of Trustees and shall administer all policies of the Board of Trustees, as well as the policies established by him or her and by the faculty. The President may delegate such administrative authority as he or she deems appropriate to his or her staff, to the Treasurer, to the deans of the various academic units, and to others, who

shall exercise such delegated authority in the name of the President. The establishment of senior administrative positions responsible directly to the President and the determination of the functions of such positions shall be made by the President of the University. All administrative officers with the title of vice president or dean shall be appointed by the President, subject to the approval of the Board of Trustees. Removal of such administrative officers with the title of vice president or dean shall be made by the President and, in such event, the President shall inform the Board of Trustees of such removal at the next regular meeting of the Board. The President, as chief policy officer, shall have final authority, subject to the revisions and orders of the Board of Trustees, to establish policy concerning educational policy and planning, student affairs, the instructional program, courses and curricula, personnel, admissions, graduation requirements, scholarships and honors, calendar requirements, business, planning, research, and finance; provided, however, that the President shall delegate to the faculty, as appropriately organized, subject to the orders of the President, the authority to establish policy concerning the approval and supervision of the instructional program, including courses and curricula, academic admission standards, graduation requirements, and scholarships and honors. The President shall consult with the faculty, as appropriately organized, in the establishment of policy concerning educational policy and planning, including general admissions policy, calendar, academic personnel, student affairs, and any other matter he or she shall deem appropriate. In addition, the President shall consult with the student body, as appropriately organized, in the area of student affairs.

**Section 5.05 The Vice President(s).** The University may have one or more Vice Presidents. The Vice President(s) may be given by resolution of the Board of Trustees general executive powers, subject to the control of the President, concerning one or more or all segments of the operations of the University. The Vice President(s) shall exercise such further

powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. At the request of the President, or in his or her absence or disability, the Executive Vice President and Provost shall exercise the powers and duties of the President.

**Section 5.06 The Secretary, Associate Secretary and Assistant Secretaries.**

It shall be the duty of the Secretary (a) to keep an original or duplicate record of the proceedings of the Board of Trustees, and a copy of the Charter and of the Bylaws; (b) to give such notices as may be required by law or these Bylaws; (c) to be custodian of the corporate records and of the seal of the University and see that the seal is affixed to such documents as may be necessary or advisable; and (d) to exercise all powers and duties incident to the office of Secretary; and such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. The Associate Secretary and the assistant secretaries shall assist the Secretary in the performance of his duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Secretary. At the direction of the Secretary or in his or her absence or disability, the Associate Secretary shall exercise the powers and duties of the Secretary.

**Section 5.07 The Treasurer and Assistant Treasurers.** It shall be the duty of the Treasurer (a) to keep the University's contracts, insurance policies, leases, deeds and other business records; (b) to see that the University's lists, books, reports, statements, tax returns, certificates and other documents and records required by law are properly prepared, kept and filed; (c) to be the principal officer in charge of tax and financial matters, budgeting and accounting of the University; (d) to have charge and custody of and be responsible for the University's funds, securities and investments; (e) to receive and give receipts for checks, notes, obligations, funds and securities of the University, and deposit monies and other valuable effects in the name and to

the credit of the University, in such depositories as shall be designated by the Board of Trustees; (f) to cause the funds of the University to be disbursed by payment in cash or by checks or drafts upon the authorized depositories of the University, and to cause to be taken and preserved proper vouchers for such disbursements; (g) to render to the President and the Board of Trustees whenever they may require it an account of all his transactions as Treasurer, and reports as to the financial position and operations of the University; (h) to keep appropriate, complete and accurate books and records of account of all the University's business and transactions; and (i) to exercise all powers and duties incident to the office of Treasurer; and such further duties from time to time as may be prescribed in these Bylaws or by the Board of Trustees or the President. The assistant treasurers shall assist the Treasurer in the performance of his or her duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Treasurer. At the direction of the Treasurer or in his absence or disability, an assistant treasurer shall exercise the powers and duties of the Treasurer.

**Section 5.08 Vacancies.** Any vacancy in any office or position by reason of death, resignation, removal, disqualification, disability or other cause shall be filled in the manner provided in this Article V for regular election or appointment to such office.

**Section 5.09 Delegation of Duties.** The Board of Trustees may in its discretion delegate for the time being the powers and duties, or any of them, of any officer to any other person whom it may select. Upon authorization by the Board of Trustees, an officer may delegate performance of specific duties to employees and agents of the University.

(a) Notwithstanding the foregoing, the following matters shall require the approval of the Board of Trustees:

(i) Basic University Organization and Policy

- (1) Amendments to the Charter, Bylaws and Standing Orders;
  - (2) All reports of standing or special committees of the University's Board of Trustees;
  - (3) All major modifications of educational policy;
  - (4) Authorization to grant degrees to graduates;
  - (5) The University's Strategic Plan; and
  - (6) University intellectual property policy.
- (ii) Fiscal Matters
- (1) Establishment of, or changes in existing, major University fiscal policies;
  - (2) State appropriation requests and annual operating budgets;
  - (3) Acceptance of gifts, bequests, grants, fellowships, scholarships, loan funds that are not in accord with established policy;
  - (4) Establishment of, or changes in, tuition, room and board rates and mandatory student fees;
  - (5) Authorization to borrow money; authorization of persons to sign checks, contracts, legal documents, and other obligations, and to endorse, sell, or assign securities; and
  - (6) Selection of a firm to make annual audit of University accounts.
- (iii) Capital Projects
- (1) Establishment of, or changes in the University's five-year Capital Plan;

(2) Establishment of, or changes in existing policies, on matters such as honorific naming of buildings and roads and preservation of campus landmarks;

(3) Purchase of land and other real estate with a purchase price of \$1 million or more;

(4) Sale of land or other real estate, with the exception of the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale with proceeds benefitting the University;

(5) Honorific names for individual buildings and roads;

(6) Any new construction or renovation project for which the total project cost is \$10 million or more, including

(A) Total project cost; provided however, that the Officers of the University shall have the discretion to expend up to an additional 10 percent of the approved total project cost, as necessary; and

(B) Awarding of contracts for construction;

(7) Projects under \$10 million in cost that are bond-financed;

(8) Other capital expenditures of \$10 million or more.

(iv) Personnel Matters.

(1) The selection, evaluation, compensation and removal of the President of the University, in accordance with policies and procedures adopted by the Board of Trustees from time to time. This responsibility

includes a commitment to grant the President broad delegated authority, to support the President in his/her exercise of such authority, to judge the performance of the President, and if necessary, to remove the President. In the selection of a President, the Board shall consult with representatives of the faculty and the student body.

(2) The establishment of and any changes to the University's executive compensation philosophy.

(3) The establishment of and any changes to the employment terms and conditions of the President of the University.

(4) The appointment and removal of the Vice President and General Counsel and the process by which Vice Presidents (other than the Vice President and General Counsel) and Deans are appointed, and any material amendments or modifications to such process.

(v) Subsidiaries

(1) Appointment of the Board of Directors of each direct subsidiary of the University as provided in such subsidiary's articles of incorporation;

(2) Amendments to the articles of incorporation of each direct subsidiary of the University; and

(3) Exercise of rights reserved to the University in the articles of incorporation, bylaws or other governing documents of any direct or indirect subsidiary of the University.

(vi) Miscellaneous

(1) Selection of the recipients of Distinguished Alumni Awards, honorary degrees and the Penn State Medal; and

(2) Selection of specific dates for regular meetings of the Board of Trustees.

(b) The delegation of authority set forth in this Section 5.09 requires that the Board of Trustees rely on the judgment and decisions of those who operate under its authority. However, this reliance of the Board of Trustees must be based upon its continuing awareness of the operations of the University. Therefore, the Board of Trustees shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designated by the President. The Board of Trustees has a continuing obligation to require information or answers on any University matter with which it is concerned. In addition to such matters as the President of the University may determine, or as requested by the Chair of the Board of Trustees, the following matters shall be presented to the Board of Trustees for information:

(i) Basic University Organization and Policy

(1) New curricula and major changes in existing curricula;

(2) Major policy matters affecting student welfare and activities;

and

(3) Major policy matters affecting research.

(ii) Fiscal Matters

(1) Financial statements, and gifts, bequests, grants, fellowship, scholarships, loan funds that are in accord with established policy; and

(2) The University's annual reports filed under the Clery Act and the Pennsylvania Right to Know Act.

**(iii) Personnel Matters**

**(1) Policies.** New policies or changes in existing policies governing appointments, promotions in academic rank, leaves of absence, resignations, retirements, academic freedom and tenure, hours and conditions of employment, and fringe benefits; and

**(2) Executive Compensation.** Information regarding

**(A)** the evaluation and compensation of University executives (other than the President of the University), in accordance with policies and procedures recommended by the subcommittee on compensation from time to time.

**(B)** the establishment of and any changes to executive compensation and benefit programs and policies.

**(3)** Information regarding the appointment and removal of Vice Presidents and Deans.

**(iv) Capital Projects**

**(1)** New construction or renovations projects with a total project cost equal to or greater than \$5 million but less than \$10 million;

**(2)** Generic naming of individual buildings and roads and honorific naming of University facilities other than individual buildings and roads;

**(3)** Purchase of real estate with a purchase price of less than \$1 million;

(4) Reports on the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale;

(5) Capital budget request submitted to the Commonwealth of Pennsylvania;

(6) An annual capital plan informational update; and

(7) Reports on the progress of new construction or renovation projects with a total project cost of \$10 million or more.

(c) Board of Trustees Delegation of Authority to Certain University Administrative Officers.

(i) The President, Vice President, Secretary, Treasurer, Assistant Treasurer, Senior Vice President for Finance and Business, and Corporate Controller of the University, or any one of such officers be and they are hereby fully authorized and empowered on behalf of the University to execute and acknowledge all deeds, agreements and contracts, and to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness or other securities now or hereafter standing in the name of or owned by this University, and to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(ii) The Treasurer, or in the absence of the Treasurer, the Senior Vice President for Finance and Business, may delegate in writing to such employees of the University as they may deem appropriate, the authority to execute and

acknowledge on behalf of the University standardized agreements and contracts for which those employees have administrative responsibility.

**(iii)** The Chief Investment Officer, or in such person's absence, the Managing Director, Operations of the Office of Investment Management, is hereby fully authorized and empowered on behalf of the University to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes or other securities now or hereafter standing in the name of or owned by the University, and to make, execute, acknowledge, and deliver, under the corporate seal of the University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

**(iv)** The Associate Vice President for Finance and Business and Controller, or, in his or her absence, the Associate Controller, be and is hereby fully authorized and empowered on behalf of the University to execute and acknowledge all agreements and contracts related to the affairs of the College of Medicine.

**(v)** The Associate Secretary and Assistant Secretary of this University, or any one of such officers, be and they are hereby fully authorized and empowered on behalf of this University to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

**(d)** Subject to the provisions of Section 5.09(a)(v), the affairs of any direct or indirect subsidiary of the University shall be governed by the Board of Directors of such subsidiary

in accordance with the articles of incorporation, bylaws or other governing documents of such subsidiary.

## ARTICLE VI

### MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS

**Section 6.01 Execution of Notes, Checks, Contracts and Other Instruments.** All notes, bonds, drafts, acceptances, checks, endorsements (other than for deposit), guarantees and all evidences of indebtedness of the University whatsoever, and all deeds, mortgages, contracts and other instruments requiring execution by the University, may be signed by the Chair, the President, any Vice President or the Treasurer, and authority to sign any of the foregoing, which may be general or confined to specific instances, may be conferred by the Board of Trustees upon any other person or persons. Any person having authority to sign on behalf of the University may delegate, from time to time, by instrument in writing, all or any part of such authority to any other person or persons if authorized to do so by the Board of Trustees, which authority may be general or confined to specific instances. Facsimile signatures on checks may be used if authorized by the Board of Trustees.

**Section 6.02 Voting Securities Owned by the University.** Securities owned by the University and having voting power in any other University shall be voted by the President or any Vice President, unless the Board of Trustees confers authority to vote with respect thereto, which may be general or confined to specific investments, upon some other person. Any person authorized to vote such securities shall have the power to appoint proxies, with general power of substitution.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 7.01 Offices.** The principal business office of the University shall be located at 201 Old Main, University Park, Pennsylvania 16802. The University may also have offices at such other places within or without the Commonwealth of Pennsylvania as the business of the University may require.

**Section 7.02 Corporate Seal.** The Board of Trustees shall prescribe the form of a suitable corporate seal, which shall contain the full name of the University and the year and state of its creation.

**Section 7.03 Fiscal Year.** The fiscal year of the University shall end on June 30 or on such other day as shall be fixed by the Board of Trustees.

**Section 7.04 Private Inurement.** No part of the net earnings of the University shall inure to the benefit of, or be distributable to, its Trustees, officers or other private persons, except that the University shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Bylaws and the University's Charter.

## ARTICLE VIII

### CONFLICTS OF INTEREST

**Section 8.01 Definitions.** For purposes of Sections 8.01 – 8.11 hereof, the following terms shall have the meanings set forth below.

(a) **Conflict of Interest.** A “conflict of interest” exists when a reasonable observer, having knowledge of all of the relevant facts and circumstances, would conclude that a Trustee has an actual or apparent conflict of interest in a matter related to the University. In

addition to financial conflicts of interest, a conflict of interest includes a situation in which a Trustee, family member or related entity has an interest that may lead the Trustee to act in a way that is incompatible with or a breach of the Trustee's fiduciary duty to the institution or use such Trustee's role to achieve personal gain or benefit or gain or benefit to family, friends or associates.

**(b) Family Member.** A "family member" means a Trustee's spouse or dependent child.

**(c) Financial Conflict of Interest.** A "financial conflict of interest" exists when a Trustee, a family member or related entity has an actual or potential financial interest in a matter (i) that is pending before the Board for discussion or vote or (ii) in which the Trustee or a family member is personally involved. A financial conflict of interest does not include a student or employment relationship of a family member.

**(d) Related Entity.** A "related entity" means a corporation, partnership, association or other entity where the Trustee or family member serves as an officer, director, partner or employee; expects to receive \$5,000 or more in compensation for services in a calendar year; holds any equity in a non-publicly traded entity; or holds an interest of 5% or more in a publicly traded entity.

**(e) Known.** "Known" means that the Trustee has actual knowledge of the conflict of interest.

**(f) Board.** "Board" includes any standing or ad hoc committee of the Board.

**(g) Disclose or Disclosure.** "Disclose" or "disclosure" means to provide a brief summary of the transaction, agreement or business arrangement and the Trustee's financial or other interest.

(h) For purposes of this Article VIII, the term “University” includes all direct and indirect subsidiaries thereof.

**Section 8.02 Disclosure.** Each Trustee must disclose in writing to the Office of the Board of Trustees and to the Chair of the Board all situations that involve actual or apparent conflicts of interest if and as the conflict of interest becomes known to such Trustee.

**Section 8.03 Annual Disclosure.** In addition to other annual disclosures required by law or policy, each Trustee must disclose annually and in writing to the Secretary of the Board all conflicts of interest that are known to such Trustee. The annual disclosures of known conflicts of interest will be publicly available upon request.

**Section 8.04 Recusal.** If a matter in which a Trustee has a known conflict of interest comes before the Board for discussion or decision, the interested Trustee shall leave the Board meeting while the matter is discussed and voted upon. The Trustee’s interest and recusal shall be noted in the minutes, which shall be publicly available.

**Section 8.05 Contracts or Transactions with the University.** (a) A contract or transaction between the University and a Trustee, family member or an entity in which a Trustee or family member has a beneficial interest of ten percent (10%) or more and the contract or transaction is valued at \$10,000 or more must be approved by the Board of Trustees in accordance with this Section. The University official responsible for the matter must first conclude that it is in the best interests of the University to consider entering into such a contract or transaction. In circumstances where the Trustee, family member or related entity is purchasing goods or services from the University, as opposed to selling such goods or services, the matter is presumptively in the University’s interests if the price is fair and reasonable and the contract or transaction does not foreclose a similar transaction with another individual or entity. In other circumstances where the

University is purchasing goods or services, the officer must first explore alternatives that do not involve an interest of the Trustee, family member or entity in which the Trustee or family member owns a beneficial interest of ten percent (10%) or more. If, after exercising such due diligence, the official determines that it is in the best interests of the University to proceed, the matter must be submitted to the Board for approval. The written materials submitted to the Board shall include a description of the contracting process, including the use of open and public bidding if possible and practical, and the official's analysis of why it is in the best interests of the University to proceed with the agreement or relationship. The interested Trustee shall leave the meeting during the discussion and voting. The Board shall determine by a majority vote of the disinterested Trustees whether the transaction or arrangement is in the University's best interests, the price and value provided are fair and reasonable to the University and whether to approve the transaction or arrangement. Any such decision shall be recorded in the minutes, which shall be publicly available.

**(b)** Contracts or transactions of less than \$10,000 between the University and a Trustee, family member or an entity in which the Trustee or a family member has a beneficial interest of ten percent (10%) or more will be disclosed to the Board of Trustees annually in a written report which shall be available to the public. The report shall include a certification by the appropriate officers of the University that such contracts or transactions were made in the normal course of business and were fair to the University.

**Section 8.06 Annual Statements.** Each Trustee shall annually sign a statement that affirms that such Trustee (a) has received a copy of the Board's conflict of interest policy as expressed in this Article VIII, (b) has read and understands the policy, and (c) has agreed to comply with the policy.

**Section 8.07 Fiduciary Duty.** Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.

**Section 8.08 Misuse of Information.** No member of the Board of Trustees shall for personal gain or benefit or for the gain or benefit of others use any information not available to the public at large and obtained as a result of service to the University.

**Section 8.09 Gifts and Favors.** No member of the Board of Trustees shall solicit or accept for personal use or for the use of others any gift, loan, gratuity, reward, promise of future employment or any other thing of monetary value based on any understanding that the vote, official action or judgment of the member would be influenced thereby.

**Section 8.10 Pre-Existing Contract or Transaction.** A contract or transaction that would be required to be disclosed under this Article but which was entered into before the interested Trustee assumed office, or which became subject to this Article as a result of amendments to the Article, and which remains to be performed in whole or in part, shall be disclosed by the Trustee pursuant to Section 8.03 but is not subject to the voting and other requirements of this Article.

**Section 8.11 Family Members as Employees.** A record of all spouses or dependent children of Trustees who are employed by the University or an affiliated entity and where compensation exceeds \$10,000 per year shall be maintained in the Office of the Board of

Trustees and the names and positions but not the amount of compensation shall be posted on the University's public website.

**Section 8.12 Employment of Trustees.** No Trustee may be employed by the University in any capacity before the fifth (5th) anniversary of the date on which such person last served as a Trustee, except as approved by action of the Board of Trustees.

**Section 8.13 Disclosure of Potential Conflict of Interest by Employees of the University.** Employees of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. They shall not use their positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise between the interest of the University and that of the individual. Employees shall disclose to the administrative head of the college or other unit in which they are employed, or other appropriate superior officer, any potential conflict of interest which they are aware before a contract or transaction is consummated. This bylaw shall be published to the University community at least once annually.

**Section 8.14 Consultation.** Any Trustee or University official may consult with the Secretary of the Board or the University General Counsel concerning the interpretation or application of any of the provisions of Article VIII.

## **ARTICLE IX**

### **AMENDMENTS**

**Section 9.01 Amendments.** These Bylaws may be amended, altered or repealed, and new bylaws may be adopted, by the Board of Trustees at any regular or special

meeting. Except as specifically set forth in Section 4.01, no provision of these Bylaws shall vest any property or contract right in any person.

## BYLAWS AMENDMENT HISTORY

May 6, 2016	Amended and Restated Bylaws adopted
November 4, 2016	Section 3.03(f)(vi) amended
July 21, 2017	Section 5.09 amended
November 10, 2017	Sections 2.12, 4.01 and 4.02 amended
May 3, 2019	Sections 5.09 and 8.01 amended
November 15, 2019	Section 2.01(b) amended
May 8, 2020	Sections 3.03 and 5.09 amended
September 18, 2020	Sections 2.01(a), 2.09, 3.02, 3.03(d), 3.03(e), 3.03(f)(i), 3.03(f)(iii), 3.03(f)(vii), 3.03(g), 3.03(h), 3.03(k), 3.03(l), 3.05, 3.06(b), 5.09(b)(iii) and 5.09(c)(iii) amended
May 7, 2021	Section 5.01(b) amended

# Exhibit PSU #2

## Standing Orders

**Standing Orders of the Board of Trustees**

**As Amended as of September 18, 2020**

		<b>Page</b>
ORDER I.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI .....	1
ORDER II.	PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES .....	2
ORDER III.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES .....	3
ORDER IV.	PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE .....	5
ORDER V.	PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE.....	5
ORDER VI	PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES.....	6
ORDER VII.	RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES.....	7
ORDER VIII.	GOVERNANCE OF THE UNIVERSITY .....	11
ORDER IX.	TRUSTEES EMERITI.....	16
ORDER X.	PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS .....	17

## STANDING ORDERS OF THE BOARD OF TRUSTEES

### **ORDER I. PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI (see also *the Charter*)**

- (1) Date of Election. Elections for alumni members of the Board of Trustees shall be held each year on the day preceding the annual Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees, and may be held either in connection with the Delegate Convention for the election of other members of the Board, or at such other hour of the same day, and such other place, as the Chair of the Board of Trustees may from time to time direct.
- (2) Nominations. The Secretary of the Board of Trustees, or such other officer as may be from time to time designated by the Chair of the Board of Trustees, shall send to each qualified elector, as established in the Charter, whose email address is known a notice stating the date at which the next election will be held and the names of alumni trustees whose terms will expire by law on the thirtieth day of June next following. Such notice shall be sent each year not less than ninety days preceding the date on which such election is to be held, and shall invite nominations for vacancies then to occur. All persons who are nominated by as many as 250 electors shall be announced as soon as practical after the tenth day of April each year in a circular sent to all electors, with a form of ballot.
- (3) Form of Ballot. Only the official nominating and voting ballots may be used to nominate and vote for candidates.
- (4) Position on Ballot. Immediately after the last day fixed for depositing ballots to nominate candidates for alumni trustee, the Chair of the Board of Trustees shall fix a day and hour for casting lots for the position of names upon the election ballots. The Secretary of the Board of Trustees shall give at least three days' notice of said date and hour to all candidates nominated. Any candidate may appear in person or by a representative duly authorized in writing. In the event that any candidate is not present in person or by duly authorized representative at the time of casting of lots, it shall be the duty of the Secretary to appoint some person to represent such absentee. After said lots are cast, the Secretary shall accordingly establish the order in which the names of said candidates are to appear on the election ballot.
- (5) Designation of Incumbents. Incumbents shall not be identified as such on election ballots, but biographical sketches shall identify incumbents with an asterisk.
- (6) Position in Booklet of Biographical Sketches. Candidates' names shall be in alphabetical order in any publication of biographical sketches.
- (7) Duplicate Ballots. A duplicate ballot may be issued to a voter only on a written or personal application to the Secretary of the Board of Trustees stating that the original ballot has been lost, mutilated, or destroyed.

- (8) Deadline for Receipt of Nominations. Ballots for the nomination of alumni trustees must be received at the office of the Secretary of the Board of Trustees before 5:00 p.m., February 25.
- (9) Candidate May Withdraw Name. Each candidate nominated shall be given the privilege of withdrawing his/her name.
- (10) Election Returns. All ballots for alumni trustees returned to the proper official in response to said circular and received by him/her on or before the day of election shall be safely kept by him/her, and by him/her delivered at the time and place of election to the two judges selected by the Chair of the Board of Trustees and shall by them be counted as cast at that time and place. Said judges shall make return to the Board of Trustees of the persons for whom ballots have been cast, either by letter or by electors in person, with the number of votes for each person; and the Board of Trustees shall thereupon determine and declare what persons have been elected to fill the vacancies aforesaid. A plurality of votes only shall be required to elect and, in case of an equality of votes between two or more candidates, the person or persons who shall hold said office or offices of trustee shall be designated by ballot of the Board of Trustees.
- (11) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.
- (12) Electronic Notices and Voting. In order to be good stewards of the limited financial resources of the University, electronic mail may be used to communicate any required notices or other correspondence under this Order I and an electronic balloting and voting process may be used so long as reasonable accommodations are made to permit any qualified elector without access to electronic mail to participate in the election.

**ORDER II. PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for Business and Industry Trustees shall be composed of five seated Trustees (three Trustees representing business and industry endeavors excepting those standing for reelection; and two trustees from among those elected by the alumni, elected by agricultural associations, or appointed by the Governor). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, two candidates for membership on the Board of Trustees representing business and industry endeavors. The names and qualifications of the candidates shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidates only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board as a representative of business and industry. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop business and industry candidates may continue through the end of the month of June following the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of trustees representing business and industry endeavors shall be held at the May meeting of the Board of Trustees.

**ORDER III. PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES** (*see also the Charter and the Bylaws*)

The Charter of the Board of Trustees of The Pennsylvania State University provides for the election of six trustees who represent the organized agricultural societies or associations in the Commonwealth ("Agricultural Organizations").

- (1) Date of Election. Election for two members of the Board of Trustees representing agricultural interests shall be held each year on the Thursday prior to the day for the annual Spring Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees.
- (2) Delegates. Agricultural Organizations are not entitled to send delegates to participate in the election of Trustees unless they have at least fifteen (15) members in good standing and have been organized and in existence at least twelve (12) months preceding the election, and have duly notified the Secretary of the Board of Trustees of this fact at least sixty days prior to the election. Each Agricultural Organization is invited to send up to three delegates to participate in the election; provided, however, that if an Agricultural Organization has more than fifteen (15) members in good standing in more than one county, such Agricultural Organization may send up to three delegates from each such county and provided, further that the maximum number of delegates that may be sent by any Agricultural Organization to participate in the election shall be nine (9). Each Delegate must be a member of the Agricultural Organization that he or she represents. Employees of The Pennsylvania State University are not permitted to serve as delegates. The secretary or another authorized officer of each Agricultural Organization shall provide proof to the Secretary of the Board of Trustees, in form and substance satisfactory to the Secretary of the Board of Trustees, of the authority and eligibility of each delegate sent by such Agricultural Organization to participate in the election. No proxies are permitted.

- (3) Candidates. Each Candidate must be an active member of an Agricultural Organization. Individual candidates are invited to notify the Secretary of the Board of Trustees by February 25 of each year. The names of the candidates (along with a biographical sketch and position statement for each candidate, the agenda for the meeting, and the governance provisions for the election) will be distributed to the secretaries or other authorized officers of each Agricultural Organization whose contact information is on file with the Secretary of the Board of Trustees in advance of the election in order to better inform Agricultural Organization delegates.
- (4) Nominations. Nominations will be required for all trustee candidates on the day of the election. Nominations of additional candidates not included in the election mailing are also permitted.
- (5) Registration. The names of the delegates representing each Agricultural Organization must be provided by the secretary or another authorized officer of such Agricultural Organization to the Secretary of the Board of Trustees, in a form approved by the Secretary of the Board of Trustees, at least 30 days prior to the election. An Agricultural Organization may amend its submission after that time but in no event shall changes be accepted if received by the Secretary of the Board of Trustees after 4:00 p.m. on the Monday prior to the election. Delegates must present a valid Pennsylvania driver's license or some other form of photo identification acceptable to the Secretary of the Board of Trustees in order to participate in the election, and may be registered as a delegate of only one Agricultural Organization and in only one county.
- (6) Eligibility and Voting. Only those delegates in attendance and duly registered are permitted to participate in the election and voting. The following provisions also apply:
  - (i) Each county is permitted a maximum of three votes for the candidates.
  - (ii) If a county is represented by more than three delegates, a caucus is required to determine the three from their number who will represent the county.
  - (iii) If fewer than three delegates represent a county, the county is permitted only as many votes as there are delegates.
  - (iv) Each voter must vote for two nominated candidates. Any ballot indicating a vote for a single candidate shall not be counted.
- (7) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.

**ORDER IV. PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE (see also the Charter and the Bylaws)**

- (1) The Selection Group on Board Membership for the Student Trustee shall be composed of eleven members (the incumbent Student Trustee, the President of the University Park Undergraduate Association, the President of the Graduate and Professional Student Association, the President of the Council of Commonwealth Student Governments and the President of the World Campus Student Government Association (the “Core Committee”) plus six at-large undergraduate, graduate or professional student members selected by the Core Committee. The Selection Group shall recommend, in accordance with guidelines established by the Selection Group and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the student body of the University.<sup>1</sup>
- (2) Three trustees to be appointed by the Chair of the Board of Trustees (including the incumbent Student Trustee) shall interview the preferred candidate (and, if necessary, any alternate candidates) and shall forward the recommended candidate’s name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Selection Group unless issues with the recommended candidate’s background check, student conduct issues, academic standing issues or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Selection Group shall treat as confidential the identities of all candidates.
- (4) The election of the Student Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER V. PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE (see also the Charter and the Bylaws)**

- (1) The University Faculty Senate shall recommend, in accordance with procedures and guidelines established by the Faculty Senate and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the faculty of the University.<sup>2</sup>

---

<sup>1</sup> The Guidelines provide that the Selection Group would identify a preferred candidate and two ranked candidates.

<sup>2</sup> The Guidelines provide that the Faculty Senate would identify a preferred candidate and two ranked candidates.

- (2) Three trustees to be appointed by the Chair of the Board of Trustees shall interview the preferred candidate (and, if necessary, the alternate candidates) and shall forward the recommended candidate's name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Faculty Senate unless issues with the recommended candidate's background check or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Faculty Senate shall treat as confidential the identities of all candidates.
- (4) The election of the Academic Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER VI. PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for At-Large Trustees shall be composed of five seated Trustees (one Trustee elected by the alumni, one Trustee representing business and industry endeavors, one Trustee elected by agricultural associations, one Trustee appointed by the Governor, and one Trustee from among the group of the Student Trustee, the Academic Trustee, the Trustee serving ex officio by virtue of his or her past presidency of the Penn State Alumni Association and the At-Large Trustees, if any). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, a candidate for at-large membership on the Board of Trustees. The name and qualifications of the candidate shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidate only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop trustee candidates may continue through the end of the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of at-large trustees shall be held at the May meeting of the Board of Trustees.

**ORDER VII. RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES**

- (1) Meetings Open to the Public. A meeting of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be open to the public as required by applicable law.
- (2) Annual Public Notice of All Meetings. Public notice of the date, time, and place of all regularly scheduled public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees for the calendar year shall be published annually in all daily newspapers of general circulation published in Centre County, and in at least one daily newspaper of general circulation in Pennsylvania, as required by law. Such notice for public meetings at locations other than University Park shall be published in a daily newspaper of general circulation in the political subdivision in which such meetings are to be held. Notice of all regularly scheduled public meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (3) Public Notice of Individual Meetings. Public notice of the date, time, and place of each regular meeting shall be given and published in the daily newspapers of general circulation as indicated above, at least three days prior to the time of each regularly scheduled meeting, and at least twenty-four hours prior to the time of the meeting in the case of special or rescheduled meetings. This provision shall not apply in case of a meeting called to deal with an emergency involving a clear and present danger to life or property. Notice of all special meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (4) Posting of Notices. Notice of all public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be posted at the offices of the Secretary of the Board of Trustees at University Park, Pennsylvania, as required by law.
- (5) News Media Notices. Notice of the date, time, and place of meetings shall be furnished on request to any newspaper publishing in the political subdivision in which the meeting will be held and to any radio and television station which regularly broadcasts into the political subdivision (Centre County in the case of meetings at University Park).

- (6) Notice to Others. Notice of meetings shall also be furnished to anyone providing a stamped, self-addressed envelope prior to the meeting.
- (7) Meeting Room. Except for telephonic meetings, public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be held in a room large enough to accommodate the members of the Board of Trustees, officers of the University, and invited guests. Space shall also be available for up to twenty-five visitors, including representatives of the news media, on a first-come, first-served basis. The room will be opened one-half hour prior to the starting time of the meeting.
- (8) Arrangements for News Media Area and Press Conferences. An area in the meeting room shall be designated by the University for use by the press and other news media, subject to such rules and regulations as the University may adopt. To further facilitate communications between the Board and the public, the Chair of the Board of Trustees and/or the President of the University shall hold press conferences as necessary following meetings of the Board of Trustees.
- (9) Visitors to the Meetings. Visitors to the meetings, including representatives of the news media, shall be present as observers, and not as participants. Any form of participation including speaking, the presentation of petitions, and the display of banners, posters, and other forms of signs is prohibited. This rule does not apply to guests invited by the Chair of the Board of Trustees or the President of the University.
  - (a) The Chair of the Board of Trustees or the President of the University shall be authorized to invite non-voting faculty representatives, non-voting student representatives or other constituent representatives to attend and participate in the meetings of standing committees, subcommittees and of special committees, except executive sessions. The representatives shall be selected by the Chair of the Board of Trustees in such manner as he/she deems appropriate.
  - (b) Public Comment
    - (i) The Board of Trustees welcomes the opportunity for expression of public views on issues before the Board. To accommodate such expression the Board shall reserve a portion of its regular meeting cycle for individuals who wish to address the Board.
    - (ii) All persons wishing to speak must preregister by completing a Request to Address form and submit it to the Office of the Secretary of the Board of Trustees no later than 9:00 a.m. on the Wednesday preceding the meeting. The Secretary of the Board of Trustees will review this request and notify the person making the request whether he/she may give public comment at such meeting. The Board will allow up to thirty minutes for public comment per meeting. An individual speaker will be

permitted up to three minutes for a presentation. This will be strictly adhered to with assistance of a timekeeper. Thus, a maximum of ten speakers will be scheduled for each Board meeting.

- (iii) When the number of requests to address the Board of Trustees at a given session exceeds the time available, requests will be approved based on the date the written request was received by the Secretary of the Board. In addition, preference will be given to subject matters that relate to the agenda for the relevant Board meeting and to avoid repetitiveness.
  - (iv) The exact time of the public comment period will be set by the Chair of the Board, after consideration of the number of speakers and other matters on the Board's agenda. All public comments will be recorded.
  - (v) The Board will not hear presentations that include, in whole or in part, the following topics: the employment status of any specific individual; statements concerning the private activities, lifestyles or beliefs of any specific individual employed by or associated with the University; or grievances relating to any individual student or employee. In addition, the Board will not entertain requests to participate in the public comment period by a party to any pending or threatened litigation or any administrative or other proceeding to which the University is a party, or by legal counsel for such party.
  - (vi) Speakers who comply with the Board's rules will have their remarks archived and made available on the Board's website, with such posting to be made as soon as practicable. Remarks by speakers who do not comply with the Board's rules will not be archived or made available on the Board's website. The decision on whether a speaker has or has not complied with the Board's rules will be made by the Chair of the Board, in consultation with the Secretary of the Board and the Chair of the Committee on Outreach, Development and Community Relations.
  - (vii) The Chair of the Board of Trustees shall have the authority to modify the provisions of this subsection (b) in his or her discretion to permit additional speakers, extend the public comment session and to make such other accommodations as may be necessary or advisable in his or her opinion to achieve the purposes of the public comment period.
- (10) Photographic and Recording Equipment. Visitors to the meeting, including representatives of the news media, shall be allowed to use battery-operated audio tape recorders, television cameras and photographic equipment subject to the following regulations:
- (a) A designated area in the meeting room shall be used by all visitors to the meeting using television cameras or photographic equipment.

- (b) Television cameras and related equipment shall be allowed entry into the meeting room for set up purposes during the one-half hour period prior to the starting time of the morning and afternoon meetings. Television cameras and related equipment shall not be allowed entry into the meeting room after the starting time of the meeting, except during the course of a meeting recess, in which event entry will be permitted.
  - (c) Television cameras and photographic equipment shall be required to use available light during the meeting. Artificial lighting and flashes shall not be used during the meeting.
  - (d) No voice-over broadcasting shall be permitted during the meeting.
- (11) Procedures for Committee Meetings and Board Meetings. In conducting the business of the Board of Trustees, its Standing Committees, and its Special Committees, the procedures for the meetings of the Standing Committees and the Special Committees shall provide for full discussion of both information and action items. Following discussion of action items, Standing Committees will vote to recommend an action to the Board of Trustees. Subcommittees and Special committees recommend action to Standing Committees, except as specifically authorized by the Board of Trustees. The Board of Trustees meeting will be devoted primarily to (a) taking formal action on committee and subcommittee recommendations as a block, with Board members having the opportunity to raise questions concerning any of the recommended action items and to call for a separate vote on a given item; (b) considering and acting upon matters which have not come to the Board through a Standing Committee; and (c) receiving the report of the President of the University. The vote of each member of the Board or of a committee on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of a roll call vote, recorded. From time to time, the Board of Trustees, executive committee, standing committees and subcommittees may hold conferences, which need not be open to the public, for the purposes of providing training and information to Trustees on matters directly related to their official responsibilities; provided, however, that no “deliberations” (as defined in the Pennsylvania Sunshine Law) of University business may occur at a conference.
- (12) Agenda for the Meetings. The agenda and supporting material for public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees shall be available to the public (both in hard copy at the meeting and online) at the time of the meetings. In addition to making available to the public at the time of the meeting the agenda and supporting material, the University will make available five days in advance of the meeting an agenda of items to be considered with a note that the agenda of items is subject to change without notice prior to the meeting.

- (13) Executive Sessions. The Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees may hold executive sessions as permitted by applicable law. Attendance at executive sessions shall be limited to voting members of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees, as the case may be, unless the presiding officer of the Board or of such Executive Committee, Standing Committee, Subcommittee or Special Committee otherwise directs.
- (14) Maintaining Order. The presiding officer at public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall have the authority to maintain order during the public meeting. Any person who, in the opinion of the presiding officer, prevents, disturbs, or interrupts a public meeting may be requested to leave the public meeting, and, upon failure to comply, may be subject to forcible removal and/or arrest for violation of applicable law.
- (15) Minutes of Public Meetings. The minutes of public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be available for inspection and copying during regular business hours at the office of the Secretary of the Board of Trustees. A copy of minutes of public meetings shall be available to a member of the public upon payment of the reasonable cost of reproduction.
- (16) Revisions in the Rules and Regulations for Public Meetings. The Board of Trustees will periodically review the Rules and Regulations for the Conduct of Public Meetings and make such revisions as experience indicates are appropriate and desirable.

## **ORDER VIII. GOVERNANCE OF THE UNIVERSITY**

- (1) Role of the Board of Trustees in University Governance
  - (a) Guiding Policies. In the exercise of its responsibilities, the Board of Trustees shall be guided by the following policies:
    - (i) Delegation of authority. As set forth in the Bylaws, the authority for day-to-day management and control of the University, and the establishment of policies and procedures for the educational program and other operations of the University, is delegated to the President of the University, and by him or her either by delegation to or consultation with the faculty and the student body in accordance with a general directive of the Board of Trustees.
    - (ii) Advisor to the President. It is the duty of the Board of Trustees to advise the President on any University matter.
  - (b) Responsibility to Inform the Citizens of Pennsylvania. The Board of Trustees shall inform the citizens of the Commonwealth of Pennsylvania of

the University's performance of its role in the education of the youth of Pennsylvania.

- (c) Responsibility for Development of Effective Relationships. The Board of Trustees shall assist the President in the development of effective relationships between the University and the various agencies of the Commonwealth of Pennsylvania and the United States of America which provide to the University assistance and direction.
- (d) Expectations of Membership. In exercising the responsibilities of trusteeship, the Board of Trustees is guided by the expectations of membership, each of which is equally important. It is expected that each Trustee will:
  - (i) Understand and support the University's mission, vision, and values;
  - (ii) Act in good faith at all times and in the best interests of the University, maintain independence from external stakeholders and act without regard to the manner in which such Trustee was appointed or elected to the Board of Trustees;
  - (iii) Make the University a top philanthropic priority to the very best of one's personal ability and fulfill on a timely basis all financial obligations and pledges of support to the University;
  - (iv) Prepare diligently, attend faithfully, and participate constructively in all Board of Trustees meetings and related activities by reading the agenda and supporting materials;
  - (v) Speak openly, freely and candidly within the Board, while being mindful that any public dissent from Board decisions must be done in the context of being trusted stewards of a public institution. Because a University is a free marketplace of competing ideas and opinions, its governance mandates open communication as well as principled, civil and respectful debate. At the same time, trustees must always protect and act in the best interest of the University, being cognizant that the tone and substance of their words reflect on the University that they are dedicated to serve and have consequences on its overall wellbeing.
  - (vi) Make decisions and instruct the administration collectively as the governing body of the University; it being recognized and understood that unless specifically authorized by the Board or the Chair, no individual trustee has the authority to direct administrators with respect to the performance of their duties for the University or to otherwise act on behalf of the University or the Board;

- (vii) Participate regularly in events that are integral parts of the life of the University community;
- (viii) Disclose promptly and fully any potential or actual conflicts of interest in accordance with the Board's conflict of interest policies, and personally maintain exemplary ethical standards;
- (ix) Refrain from requests of the President or staff for special consideration or personal prerogatives, including admissions, employment, and contracts for business;
- (x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose "confidential information" includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;
- (xi) Advocate the University's interests, but speak for the Board or the University only when authorized to do so by the Board or the Chair; it being recognized and understood that it is important for the Board of Trustees to convey a consistent message and that the Chair of the Board of Trustees or his or her designee serves as the spokesperson for the Board;
- (xii) Respect University policies relating to the acquisition of information and communication; it being recognized and understood that all such information should be used only for purpose consistent with such Trustee's duties and responsibilities to the University; and
- (xiii) Extend goodwill to one another and to all members of the University community.

Regular attendance at meetings by members of the Board is expected. If a member of the Board is unable to attend at least four of the six scheduled meetings each year, such Board member should discuss with the Chair of the Board of Trustees the question of his or her ability to continue attendance appropriate to a Trustee.

For violation of the Board's expectations of membership as set forth in Standing Order VIII(1)(d), the chair of the Board, in consultation with the Board's vice-chair, shall have the discretion to take any or all of the following actions:

1. Remove a trustee from any Board leadership position, including the positions of chair or vice-chair of any committee or subcommittee;

2. Remove a trustee from any committee, subcommittee or other Board assignment;
3. Pursue the adoption of a full Board resolution, or publicly issue a letter from the chair, censuring the offending trustee;
4. Privately issue a letter of censure with or without notice to the Board; in the case of a private letter of censure with notice to the Board, the letter would be confidential, and Board members would be requested to maintain the confidentiality of the communication; and/or
5. Discuss the breach with the offending trustee and without notice to the Board.

Before taking any of the above-described actions (1) – (3), the chair of the Board shall also consult with the chair and vice-chair of the Committee on Governance and Long-Range Planning and, in the case of an action described in (2) above, with the chair of any affected Committee. In the event that the chair or vice chair of the Board, the chair or vice chair of the Committee on Governance and Long-Range Planning or the chair of any affected Committee is the subject of the action to be taken, such individual would be recused from participating in any such consultation.

Additionally, before taking any of the above-described actions, the chair and vice-chair of the Board shall communicate with the offending trustee to specify the nature of the perceived offense, to clarify the expectations of Board leadership, and to provide an opportunity for the trustee to explain his/her actions and otherwise respond to the alleged violation. In deciding whether to impose a sanction for violation the expectations of membership, the Board chair shall take into account the position of the trustee charged with the violation, and shall also consider whether the violation is a first-time, or repeated, offense, the public or private nature of the offense and the severity of the injury or potential injury to the Board or the university arising from the violation.

The imposition of any sanctions hereunder for violation of the Board's expectations of membership shall not inhibit the capacity of the Board to remove a trustee pursuant to §2.03 of the Bylaws for any misconduct that constitutes a breach of a trustee's fiduciary duties.

- (e) Final Responsibility of the Board. The Board of Trustees is the final repository of all legal responsibility and authority to govern the University, under the laws of Pennsylvania. It can delegate but it cannot abandon this

responsibility and authority. The Board has the responsibility and duty to direct all organizations and persons participating in governing the University, whether such participation be in the establishment of policies, rules, and regulations, or in the administration of such policies, rules, and regulations. In order to perform this responsibility and duty, and consistent with the Charter, the Board of Trustees hereby directs that governing of the University henceforth be conducted in accordance with the following general plan of organization.

(2) Internal Governance

- (a) What Internal Governance Is Concerned With. This plan of organization concerns only the internal governance of the University. It is not concerned with the operation of the Board of Trustees, with the functions of the officers of the corporation, or with the establishment of financial policy and fiscal and budgetary controls, which matters are the responsibility of the Board of Trustees, the President, and the Treasurer in accordance with established policy.
- (b) Who Performed By. The internal governance of the University shall be performed by the President and his or her administration, by the faculty, and by the student body in accordance with the delegations of authority and advisory roles hereinafter set forth.

(3) Faculty

- (a) Responsibilities. The faculty, as appropriately organized, pursuant to delegation from the President, and subject to the revisions and orders of the President, shall establish policy concerning the approval and supervision of the instructional programs including courses and curricula, academic admissions standards, graduation requirements, and scholarships and honors.
- (b) Consultation by the President. The faculty shall be consulted by the President concerning student affairs, educational policy and planning, academic personnel, and any other matter upon the request of the President.
- (c) Communication with the Board. Official faculty communication to the Board of Trustees shall be made through the President and through faculty participation on the standing committees.
- (d) Regular Meetings. In furtherance of the objective of appropriate communication among the faculty, the administration and the Board of Trustees, a meeting will be held at least once per semester, attended by the President, the Provost and the Vice President for Administration, the Chair, Chair-Elect and Secretary of the Faculty Senate and the Chair and Vice Chair of the Board of Trustees. Any of such individuals may initiate agenda items for any such meeting.

(4) Student Body

- (a) Consultation by the President. The student body shall be consulted by the President concerning the establishment of policy for student affairs.
- (b) Communication with the Board. Official student communication to the Board of Trustees shall be made through the President and through student participation on the standing committees.
- (c) Participation in the Deliberations of the Faculty. Students may also participate in an appropriate manner in the deliberations of the faculty subject to the revisions and orders of the President.

**ORDER IX. TRUSTEES EMERITI**

- (1) Granting the Status of Trustee Emeritus to Former Members of the Board. The status of Trustee Emeritus shall be reserved for any living former member of the Board of Trustees who has served as a board member for six years or more with distinction. Trustee shall be eligible for consideration to receive such status immediately upon retirement from active service on the Board of Trustees. The Committee on Governance and Long-Range Planning shall review the service of a Trustee upon such Trustee's retirement and shall make a recommendation to the Board of Trustees. Criteria to be considered by the Committee shall include offices held, attendance record, participation in the activities of the Board, length of service, or other significant contributions to the governance of the University. The Committee may also take into account the Trustee's fulfillment of the Board's expectations of membership as set forth in these Standing Orders. Each former Chair of the Board of Trustees will be entitled to automatic trustee emeritus status upon retirement or resignation.
- (2) The election of Trustees Emeriti will be held at the September meeting of the Board of Trustees.
- (3) The status of Trustee Emeritus shall be applicable for a term of six years. At the end of such six year period, individuals who have been granted Trustee Emeritus status shall retain the title and may be invited to continue to participate in University activities and events at the discretion of the Chair of the Board of Trustees. All other privileges associated with the status of Trustee Emeritus shall expire.
- (4) Individuals with the status of Trustee Emeritus shall be invited to attend public meetings of the Board of Trustees and Standing Committees thereof and may participate at the discretion of the presiding officer of such meeting. Trustees Emeriti shall not have the right to attend executive sessions of the Board of Trustees or any Standing Committees thereof or to attend any portion of any meeting at which attorney-client privileged discussions are held unless the presiding officer of such session determines, after consultation with counsel, that such attendance is appropriate and advisable. Trustees Emeriti shall receive or be given access to documents and other materials that are made public, and may receive or have access

to the University's confidential, proprietary or attorney-client privileged materials at the discretion of the presiding officer of the meeting at which such materials are to be discussed.

- (5) Trustees Emeriti may be appointed by the Chair of the Board of Trustees, at the Chair's discretion, to serve as non-voting members of certain Standing Committees or ad hoc committees.
- (6) At the discretion of the Chair of the Board of Trustees, Trustees Emeriti shall be invited to participate in University events and activities, to serve as an advisor or mentor, to consult on University matters and/or to serve the University in such other capacities as the Chair may determine are advisable and appropriate.
- (7) The University shall reimburse Trustees Emeriti for reasonable expenses associated with service as Trustees Emeriti in accordance with policies applicable to the Board of Trustees from time to time.

#### **ORDER X. PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS**

The following process will be followed in connection with the search for, and appointment of, Vice Presidents and Deans.

- (1) Members of the Board of Trustees will be notified in writing by the President or his or her designee when a vacancy occurs. This notification shall include:
  - a. Position description/advertisement.
  - b. Roster of search committee members.
  - c. Information about any search firm engaged to assist in the search.
  - d. A description of the search process, the projected timeline and a tentative interview schedule.
- (2) When a successful finalist has been chosen, the Executive Committee of the Board of Trustees will be notified and sent the application materials of the candidate, a summary of the interview feedback and any other relevant materials, as determined by the President or the Executive Vice President and Provost.
- (3) The notice to the Executive Committee members will specify a date by which the members of the Executive Committee shall have an opportunity to express any concerns to the President. If there are no concerns, the University may proceed with the hiring and announcement of the candidate and shall introduce the hire at the next meeting of the Board of Trustees. If any Executive Committee expresses a concern with respect to a candidate, a conference call will be held at which Executive Committee members may express their concerns and discuss any issues with the President.

- (4) The process set forth in this Standing Order X shall not be applicable to the Vice President and General Counsel. The appointment and removal of the Vice President and General Counsel shall remain subject to approval by the Board of Trustees as set forth in the Bylaws.

# OOR Exhibit 4





**PennState**

**Natalie Voris Grosse**  
Associate General Counsel  
Office of General Counsel  
The Pennsylvania State University  
227 West Beaver Avenue, Suite 507  
State College, PA 16801-4842

814-867-5332  
Fax: 814-863-8469  
nvg5267@psu.edu  
ogc.psu.edu

July 24, 2023

*Via Email only to: [mazepposbr@pa.gov](mailto:mazepposbr@pa.gov)*

Deputy Chief Counsel Magdalene C. Zeppos-Brown, Esquire  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
4000 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

**Re: Request of The Pennsylvania State University to Participate in Appeal;  
Wyatt Massey v. Pennsylvania Department of Education (“PDE”),  
Dkt No. AP 2023-1492**

Dear Deputy Chief Counsel Zeppos-Brown:

Pursuant to Section 1101(c) of the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.1101 (c), The Pennsylvania State University (“the University”) hereby requests to participate in the above-captioned appeal as a party with a direct interest. The items subject to this appeal are University documents in the possession, custody and control of the University and, therefore, the University has a direct interest in this matter. To the extent the University’s request to participate is granted, this letter includes the information and legal arguments that the University would make in support of its position that the items subject to this appeal are not public records subject to disclosure. The University reserves the right to raise additional legal arguments should this matter proceed to the judicial system for adjudication.

### **REQUEST TO PARTICIPATE**

The University became aware of the above-docketed appeal on July 7, 2023, when the Pennsylvania Department of Education (“PDE”) notified the University’s Office of General Counsel. Thus, the University’s request to participate in the appeal and provide further information and legal argument is timely and appropriate. 65 P.S. § 67.1101 (c)(2).

### **The University Has a Direct Interest in the Records Subject to Appeal**

Section 1101(c) of the RTKL provides that a person “with a direct interest in the record subject to an appeal may ... file a written request to provide information or to appear before the appeals officer or to file information in support of the requester’s or agency’s position.” 65 P.S. § 67.1101(c). An

Appeals Officer may grant a third party's request to participate as a direct interest participant upon a showing of the party's "direct interest and any reasons this interest is not adequately represented by the actual parties to the appeal." Pennsylvania Office of Open Records Appeals Process – Procedural Guidelines, Section V(D)(6)(a)(i).

The request subject to this appeal is for University documents in the possession, custody, and control of the University, not the PDE. The requested documents were created or curated by the University. The University provides members of its Board of Trustees (the "Board") with electronic access to University documents for the purpose of preparing for Board of Trustees meetings and performing necessary functions of the Board. Each Board member is invited to view such documents via a secure two-factor authentication platform utilizing credentials provided by the University. As described in the PDE submission, at no time does possession, custody, or control of the requested documents pass to PDE.

Simply put, the Requester is seeking an interpretation of the RTKL's application to the University that would transform University documents housed on the University's secure network into public records by the simple act of a Board member who is also a Commonwealth Agency Secretary having access to such information on the University's system.

As a result, the University has an interest that is directly affected by this appeal. Moreover, the University's interest in preventing disclosure of its nonpublic, confidential, and protected information cannot be adequately represented by the PDE. The PDE itself does not have a direct stake in such information and the University is the more appropriate party to explain how the University would be substantially harmed by a determination that University documents in its possession, custody, and control are subject to RTKL disclosure.

If it is determined any requested documents are in the possession, custody, or control of PDE, the request may seek information that is subject to protection from disclosure, whether that protection is afforded under the RTKL itself or other legal authorities and doctrines such as a privilege recognized by a court interpreting the laws of this Commonwealth. Disclosure of any such document that is subject to protection would be contrary to the RTKL's intent and would be detrimental to the University.

In light of the foregoing, the University respectfully requests that Deputy Chief Counsel Zeppos-Brown grant this request to participate as a party with a direct interest.

### **POSITION STATEMENT**

In the event the request to participate is granted, please accept the following as the Position Statement of the University in support of PDE's position that it does not have possession, custody, or control of the records requested by Wyatt Massey of Spotlight PA on May 18, 2023, pursuant to the Pennsylvania Right-To-Know Law ("RTKL"), 65 P.S. § 67.101, *et seq.* As detailed within, the Office of Open Records ("OOR") must deny the appeal because the documents sought are not public records under the RTKL.

## **Procedural History**

On May 18, 2023, appellant, Wyatt Massey of Spotlight PA (“Requester”), submitted to the PDE a request for the following documents (“Request”) under RTKL:

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.

An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State’s Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.

On June 26, 2023, PDE properly responded with a Final Response that it does not have possession, custody, or control of the requested documents. Requester subsequently filed an appeal of the PDE’s Final Response.

## **Statement of Facts**

The University is a state-related institution that is governed by a Board of Trustees (“Board” or “Board of Trustees”) comprised of thirty-six voting members and two ex-officio non-voting members, the University President and the Governor of the Commonwealth of Pennsylvania. Amongst the thirty-six voting members are three *ex officio* members: the Secretary of Education, the Secretary of Agriculture, and the Secretary of Conservation and Natural Resources. These three Commonwealth Secretaries serve as *ex officio* members of the Board of Trustees pursuant to the *Amended and Restated Bylaws of the Pennsylvania State University*, Article II, Section 2.01(a)(i) and the University’s Charter. (Act of February 22, 1855, P.L. 46, sec. 3, 24 Purd.Comp. Stat. sec. 2533; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Act of June 2, 1893, P.L. 272, sec. 1; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Decree of the Court of Common Pleas of Centre County, July 19, 1951, No. 218, February Term, 1951; Resolution of the Board of Trustees, May 3, 2013).

As outlined in the University's Bylaws Section 8.07 and cited by PDE in its July 18, 2023 submission that included the Affidavit of Shannon S. Harvey, Assistant Vice President and Secretary of the Board of Trustees, all members of the Board of Trustees stand in a fiduciary relationship with the University. Further, each Trustee is expected to diligently prepare for meetings and maintain confidentiality of nonpublic information concerning the University. *See* Standing Order VIII Section 1(d)(iv) and (x) (copy attached hereto).

The Request under appeal seeks documents housed on the Diligent platform. Diligent is a cloud-based and closed network platform maintained by the University for the purpose of facilitating the review by members of the Board of Trustees of University documents such as board meeting agendas, meeting materials, and other relevant documents. The University's Office of the Board of Trustees ("Board Office") controls access to the Diligent platform including access controls, posting of documents, deleting documents, and posting other information. *See* Affidavit of Shannon S. Harvey.

Diligent access is granted to the Secretary serving on the Board of Trustees individually, in the Secretary's capacity as a Trustee. No one else in the PDE is given access to Diligent by the University. The Board Office controls the Secretary of the PDE's ability to print or download any documents from the Diligent platform. The Secretary does not have the ability to post or delete anything from the Diligent platform. *See* Affidavit of Shannon S. Harvey.

### **Legal Analysis**

The PDE presents sufficient legal arguments as to why the PDE does not have possession, custody, or control of the requested documents and the University supports their Position Statement in its entirety.

To further advance the University's interest in PDE's position, it should be noted that the University is not a "Commonwealth Agency" or "Local Agency" subject to the RTKL. *See Christina v. Pennsylvania State University*, OOR Dkt. AP 2012-0970, 2012 PA O.O.R.D. LEXIS 862. As a state-related institution defined within the RTKL, the University is subject to requirements outlined in RTKL Chapter 15 that include the public disclosure of certain University information. The University acknowledges that prior case law, cited below, has concluded that University documents physically in the possession of a Commonwealth Secretary on the Board of Trustees to be documents within the custody, possession, and control of such Commonwealth Agency and, accordingly, subject to the disclosure requirements outlined in the RTKL for Commonwealth Agencies. However, the University is not aware of any legal authority that would support the Requester's position that documents posted by the University on the Diligent platform which are not in the physical custody of the Secretary or agency, be it in hard copy or an electronic file on the agency network, are public records. To the extent this appeal seeks to classify any document on the Diligent platform that has not been printed or downloaded by the member Secretary as a public record, then the University strongly opposes such an unprecedented finding.

The Requester cites three cases to support their position that the requested documents on Diligent are public records, but none of the cases support a finding that information stored on Diligent is inherently a public record.

The instant matter is distinguishable from *Bagwell v. Pennsylvania Department of Education*, 76 A.3d 81 (Pa.Cmwlth. 2013), a case cited by the Requester, which dealt with correspondence sent to a public agency. The documents sought were “copies of letters, emails, reports and memorand[a]” that were “received by” the Secretary. *Id.* at 83. The court concluded that “records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as a supporter and influencer of education at state-related institutions.” *Id.* at 92. The court noted that, “Significantly, the Department did not challenge whether the records were “of” the Department or contest possession of the records.” *Id.* At 84.

In the instant matter, the documents were not received by the Secretary. To receive a document, it must come into one’s possession, that is, one must receive a modicum of control over the document. In *Bagwell*, the emails and other documents sought were received by the Secretary. The Secretary could forward, reply to, delete, download, print, or save the email or document. In contrast, in the instant matter, documents hosted on the Diligent server remain within the University’s control so long as they reside on that server. The University controls what documents are posted and whether the Secretary can print or download any such document. The Secretary does not have the ability to post or delete anything in the Diligent platform. *See* Affidavit of Shannon S. Harvey. The University invites Trustees to view Diligent documents, but the documents are not “sent to” or “received by” the Secretary. As noted in PDE’s Position Statement, they have not found any of the requested items in their records. Thus, the information remains outside the scope of the RTKL. Delivery of documents via email, as was the case in *Bagwell*, would be the electronic equivalent of “sending” documents that could be “received” by the Secretary. Access to Diligent is the electronic equivalent to inviting a Trustee to view a University document that remains in the University’s possession, custody, and control.

Another case cited by the Requester, *Edinboro University of Pennsylvania v. Ford*, 18 A.3d 1278 (Pa. Cmwlth. 2011), is also inapposite. The *Edinboro* case dealt with records that had been, but were no longer, in the possession of Edinboro. In the case at hand, the records were never in the possession of the PDE in the first instance. The *Edinboro* case did not delve into the question of what circumstances resulted in the records coming into the agency’s possession—the fact that the records had once been in the possession of the agency was simply stated as a known fact. Further distinguishing the *Edinboro* decision from the instant matter is the court’s citation to and reliance on RTKL Section 506 whereby documents that are in the possession of a third-party contracted to perform a governmental function on behalf of an agency are public records, even if the agency does not possess the records. That is certainly not the situation in the instant matter and any reliance on *Edinboro* is erroneous.

The case of *Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932 (Pa. Cmwlth. 2014), the third case cited by the Requester, does not support the proposition that Diligent records that remain on the Diligent platform are in the constructive possession of the agency. The court in *Dental Benefit* notes the purpose behind inferring constructive possession: “We recognize constructive possession under Section 901 as a means of access so agencies cannot frustrate the purposes of the RTKL by placing their records in the hands of third parties to avoid disclosure.” *Id.* at 938. As set forth above, none of the requested documents were in the possession of the Secretary and placed on the Diligent platform. The Secretary does not have the ability to do that. At all times, the University controls what documents are available for review on the Diligent platform. The Requester argues for the converse purpose and result, that constructive possession be used as a vehicle to overcome the careful drafting of the RTKL by converting

nonpublic documents to public records merely because they were shown to, or could be viewed by, a Trustee.

The University's position in this matter is grounded in legal authorities, but the practical implications of any other interpretation should also be considered if the Requester's theory of the RTKL's application to Diligent documents is advanced. The Diligent platform is the electronic equivalent of a University representative holding a University document in their hand, inviting the Secretary to read it and then putting it back in their briefcase. Such document never comes into the possession, custody, or control of the board member, because the materials remain in the control of the organization. The University acknowledges that if a board member obtains a University document, whether it be a hard copy that the board member retains in a meeting binder or an electronic file downloaded into the agency's possession, custody, or control, then those materials would be in the possession of that board member. That is not the situation in the instant matter, however, and the same RTKL analysis should apply whether the University invites the board member to review a document it is physically holding in its hand or whether it invites the board member to review a document on a platform where the University similarly continues to "hold" the document.

The Requester also made two requests for screenshots from the Diligent platform. To the extent that documents on the Diligent platform were determined to be within the possession, custody, or control of the PDE, screenshots are not subject to disclosure as this would require the PDE to create a record that does not now exist in violation of RTKL. *See* 65 P.S. § 67.705.

Further, despite Requester's assertion that no RTKL exceptions apply to the materials requested, to the extent that documents on the Diligent platform are determined to be within the possession, custody, or control of the PDE, the documents would be subject to exclusions and the exceptions provided in the RTKL under 65 P.S. § 67.708 (b), as well as any other relevant protections afforded through other legal authorities.

### **Conclusion**

The Requester provides no legal support for their position, relying instead upon case law that does not promote its position. In contrast, the University's position is in accord with current legal authorities. The Requester's arguments would lead to an untenable interpretation of the RTKL that would transform every University document viewed by the Secretary, as well as every document that the Secretary is merely invited to view, into a public record. PDE does not have possession, custody, or control of the documents sought in this Request and, therefore, they are not public documents subject to disclosure under the RTKL. Thank you for allowing the University to participate as a party of interest.

Respectfully submitted,



Natalie Voris Grosse  
Associate General Counsel  
The Pennsylvania State University

Deputy Chief Counsel Magdalene C. Zeppos, Esquire  
July 24, 2023

Cc: *Via Email only to:*

Zachary Stritzinger, Assistant Counsel, Pennsylvania Department of Education,  
[zstritzing@pa.gov](mailto:zstritzing@pa.gov)

Wyatt Massey, Spotlight PA, [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)

# Attachment to PSU Position Statement

**AFFIDAVIT OF SHANNON S. HARVEY**

I, Shannon S. Harvey, declare:

1. My name is Shannon S. Harvey. I am over the age of 18 and fully competent to make this affidavit. The facts stated herein are true and correct and based on my personal knowledge.

2. I am the Assistant Vice President and Secretary, Office of the Board of Trustees at The Pennsylvania State University (“Penn State” or the “University”). In this capacity, I serve as the elected Secretary of the University with responsibilities as outlined in Section 5.06 of the University Bylaws (Exhibit PSU #1). I am also responsible for the management and operation of the Office of the Board of Trustees including oversight of all activities, meetings, agenda preparation and filing of minutes, Trustee certifications and questionnaires in compliance with legal requirements and University policy to ensure the Board is as effective and efficient as possible in the conduct of its oversight responsibilities.

3. My business address is Office of the Board of Trustees at The Pennsylvania State University, 201 Old Main, University Park, Pennsylvania 16802.

4. For approximately three years, the University’s Office of the Board of Trustees (the “Board Office”) has utilized the services of Diligent as a platform for sharing documents and other information with the members of its Board of Trustees (“Trustees”). Diligent Boards is an online board portal tool that facilitates secure digital communication from the Board Office to Trustees. We utilize Diligent to securely share board meeting agendas, meeting materials, and other documents.

5. The Board Office staff, with the assistance of other University staff members as appropriate, maintains all aspects of the Diligent site, including with respect to access controls, posting of documents, deleting documents and posting other information.

6. Former Acting Secretary of Education Eric Hagarty was an ex officio Trustee from April of 2022 to January 2023. Dr. Mumin became an ex officio member of the Board of Trustees in January of 2023 when he was appointed to serve as the Acting Secretary of the Department of Education.

7. Mr. Hagarty was granted Diligent access on May 18, 2022 and removed from access on January 22, 2023. Dr. Mumin was granted Diligent access on May 3, 2023.

8. The Board Office controls the Secretary's ability to print or download any document from the Diligent platform. The Secretary does not have the ability to post or delete anything in the Diligent platform.

9. Access is given to the Secretary of Education individually, in their capacity as a Trustee. No one else in the Pennsylvania Department of Education is given access to Diligent by the University.

10. The Secretary, like all other members of the Board of Trustees is subject to the University's Bylaws and Board of Trustees' Standing Orders, attached herein as Exhibits PSU #1 and PSU #2, stating in relevant part:

“Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.”

*Section 8.07 of the Bylaws (Fiduciary Duty) (See Exhibit PSU #1)*

“It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose ‘confidential information’ includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;”

*Order VIII, Section 1(d)(x) (Expectations of Membership) (See Exhibit PSU #2)*

Further affiant sayeth not. I hereby certify and declare that the above information is true and correct and that the statements contained herein are made subject to the penalties of 18 Pa.

C.S.A. § 4904.

Executed on July 17, 2023.

*Shannon S. Harvey*  
Shannon S. Harvey

# Exhibit PSU #1

## Bylaws

AMENDED AND RESTATED

BYLAWS

of

THE PENNSYLVANIA STATE UNIVERSITY

Adopted May 6, 2016

Amended November 4, 2016

Amended July 21, 2017

Amended November 10, 2017

Amended May 3, 2019

Amended November 15, 2019

Amended May 8, 2020

Amended September 18, 2020

Amended May 7, 2021

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I NAME AND PURPOSE .....	1
Section 1.01    Name .....	1
Section 1.02    History .....	1
Section 1.03    Purpose .....	1
ARTICLE II TRUSTEES .....	2
Section 2.01    Number, Election and Term of Office.....	2
Section 2.02    Qualifications for Membership .....	4
Section 2.03    Removal.....	5
Section 2.04    Regular Meetings; Notice.....	6
Section 2.05    Annual Meeting of the Board.....	6
Section 2.06    Special Meetings; Notice.....	6
Section 2.07    Quorum.....	7
Section 2.08    Actions.....	7
Section 2.09    Meetings via Electronic Communication .....	7
Section 2.10    Resignations .....	8
Section 2.11    Vacancies.....	8
Section 2.12    Compensation; Reimbursement of Travel Expenses.....	8
Section 2.13    Certain Meetings .....	8
ARTICLE III COMMITTEES AND SUBCOMMITTEES .....	8
Section 3.01    Committees and Subcommittees .....	8
Section 3.02    Executive Committee .....	9
Section 3.03    Standing Committees and Subcommittees .....	10
Section 3.04    Quorum and Actions .....	19

Section 3.05	Authority of Board .....	19
Section 3.06	Special Assignments.....	20
ARTICLE IV LIABILITY AND INDEMNIFICATION .....		20
Section 4.01	Personal Liability of Trustees.....	20
Section 4.02	Indemnification .....	21
ARTICLE V OFFICERS AND EMPLOYEES .....		24
Section 5.01	Officers .....	24
Section 5.02	Additional Officers; Other Agents and Employees.....	25
Section 5.03	The Chair .....	26
Section 5.04	The President.....	26
Section 5.05	The Vice President(s) .....	27
Section 5.06	The Secretary, Associate Secretary and Assistant Secretaries .....	28
Section 5.07	The Treasurer and Assistant Treasurers .....	28
Section 5.08	Vacancies.....	29
Section 5.09	Delegation of Duties.....	29
ARTICLE VI MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS ..		37
Section 6.01	Execution of Notes, Checks, Contracts and Other Instruments .....	37
Section 6.02	Voting Securities Owned by the University .....	37
ARTICLE VII GENERAL PROVISIONS.....		38
Section 7.01	Offices .....	38
Section 7.02	Corporate Seal .....	38
Section 7.03	Fiscal Year.....	38
Section 7.04	Private Inurement .....	38
ARTICLE VIII CONFLICTS OF INTEREST .....		38
Section 8.01	Definitions. ....	38

Section 8.02	Disclosure .....	40
Section 8.03	Annual Disclosure .....	40
Section 8.04	Recusal .....	40
Section 8.05	Contracts or Transactions with the University .....	40
Section 8.06	Annual Statements.....	41
Section 8.07	Fiduciary Duty.....	42
Section 8.08	Misuse of Information .....	42
Section 8.09	Gifts and Favors .....	42
Section 8.10	Pre-Existing Contract or Transaction .....	42
Section 8.11	Family Members as Employees .....	42
Section 8.12	Employment of Trustees .....	43
Section 8.13	Disclosure of Potential Conflict of Interest by Employees of the University	43
Section 8.14	Consultation.....	43
ARTICLE IX AMENDMENTS .....		43
Section 9.01	Amendments.....	43

# THE PENNSYLVANIA STATE UNIVERSITY

## Amended and Restated Bylaws

### ARTICLE I

#### NAME AND PURPOSE

**Section 1.01 Name.** The name of the corporation is The Pennsylvania State University (hereinafter referred to as the “University”), existing under the Pennsylvania Nonprofit Corporation Law of 1988.

**Section 1.02 History.** The University was created as the Farmers’ High School by special act of the Pennsylvania legislature on February 22, 1855. The name of the institution has been changed successively to the Agricultural College of Pennsylvania in 1862, the Pennsylvania State College in 1874 and The Pennsylvania State University in 1953. On August 28, 1878, after the enactment of Pennsylvania’s first corporation law, and pursuant to the provisions thereof, the institution elected to be subject to such corporation law and thereafter, has been existing under such law, as such law has been amended, supplemented and modified from time to time.

**Section 1.03 Purpose.** The University was formed in 1855 as an institution for the education of youth in the various branches of science, learning and practical agriculture, as they are connected with each other. The University currently exists as a multi-campus public research university that educates students from Pennsylvania, the nation and the world, and improves the wellbeing and health of individuals and communities through integrated programs of teaching, research, and service.

## ARTICLE II

### TRUSTEES

**Section 2.01 Number, Election and Term of Office.** The affairs of the University shall be managed by a Board of Trustees.

(a) The number of Trustees which shall constitute the full Board of Trustees shall be fixed at thirty-eight (38), as set forth herein.

(i) Ex Officio Voting Members. The Secretary of Education, the Secretary of Agriculture and the Secretary of Conservation and Natural Resources shall be *ex officio* voting members of the Board of Trustees.

(ii) Ex-Officio Non-Voting Members. The Governor of the Commonwealth of Pennsylvania and the President of the University shall be *ex officio* non-voting members of the Board of Trustees.

(iii) Members Appointed by the Governor. Six voting members of the Board of Trustees shall be appointed by the Governor of the Commonwealth of Pennsylvania.

(iv) Members Elected by the Alumni. Nine voting members of the Board of Trustees shall be elected by the alumni and former students of the University.

(v) Members Elected by Agricultural Organizations. Six voting members of the Board of Trustees, who shall be members of and represent organized agricultural societies and associations, shall be elected by three delegates from each county in the Commonwealth representing organized agricultural societies or associations of the said county.

**(vi)** Members Elected Representing Business and Industry. Six voting members of the Board of Trustees representing business and industry endeavors shall be elected by the Board of Trustees.

**(vii)** A Member Elected Representing the Student Body. In May 2015 and bi-annually thereafter, a voting member of the Board of Trustees representing the student body (the “Student Trustee”) shall be elected by the Board of Trustees.

**(viii)** A Member Elected Representing the Faculty. In May 2015 and every three years thereafter, a voting member of the Board of Trustees representing the faculty shall be elected by the Board of Trustees.

**(ix)** A Member Representing the Penn State Alumni Association. Commencing July 1, 2015, and bi-annually thereafter, the immediate past President of the Penn State Alumni Association shall become an *ex officio* voting member of the Board of Trustees.

**(x)** At-Large Members Elected by the Board of Trustees. In May 2015 three at-large voting members shall be elected by the Board of Trustees. Thereafter, one at-large voting member shall be elected annually by the Board of Trustees.

**(b)** Each Trustee shall serve for a term of three (3) years, except that the Student Trustee and the Trustee who serves ex-officio as the immediate past President of the Penn State Alumni Association shall each have a two (2) year term. No individual may serve as a Trustee for more than a total of twelve years, whether or not in consecutive terms; provided, however, that

(i) Any Trustee who has served for twelve years or more as of November 15, 2019 may complete the term for which such Trustee was most recently elected or appointed but shall not be eligible

for subsequent election or appointment as a Trustee; (ii) Any Trustee as of November 15, 2019 whose next reelection or reappointment would cause such Trustee, if such Trustee serves for the entirety of such new term, to exceed twelve total years of service may complete the term for which such Trustee is reelected or reappointed but shall not be eligible for subsequent election or appointment as a Trustee; and (iii) this subsection (b) shall not apply to any Trustee who serves in an *ex officio* capacity. Trustees shall be separated into three groups of substantially equal number so that the terms of one third of the Trustees shall expire each year. Each Trustee shall serve until his or her term expires, and thereafter until such Trustee's successor is duly elected or appointed, or until such Trustee's earlier death or resignation.

**Section 2.02 Qualifications for Membership. (a)** Members of the Board of Trustees shall be natural persons of full age who need not be residents of the Commonwealth of Pennsylvania. A person who is employed in any capacity by the University shall not be eligible to serve as a member of the Board of Trustees. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, a trustee elected pursuant to Section 2.01(a)(viii), or to a person who is a student employed part-time by the University. A person shall not be eligible to serve as a member of the Board of Trustees for a period of five (5) years from the July 1 coincident with or next following the date of (a) last employment in any capacity by the University or (b) the last day of such person's employment with the Commonwealth of Pennsylvania as Governor, Lieutenant Governor, Attorney General, Auditor General or State Treasurer. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, nor to a person who is a student employed part-time by the University. Only graduates of The Pennsylvania State University who shall have received an associate degree, a bachelor's degree, or an advanced degree from the University shall

be eligible to serve as a trustee elected by the alumni. No member of the faculty or the governing board of any other college or university in Pennsylvania shall be eligible to serve as a trustee elected by the alumni.

(b) The Student Trustee shall be a full-time undergraduate, graduate or professional student, in good academic standing and in a degree seeking program at the University.

**Section 2.03 Removal.** Any member of the Board of Trustees other an *ex officio* member may be removed from his or her position as a Trustee in accordance with this Section 2.03.

(a) Any Trustee who believes that another Trustee has breached his or her fiduciary duty to the University shall raise the issue with the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning.

(b) Removal of a Trustee shall require a joint proposal to the Board of Trustees by the chairperson of the Board of Trustees and the chairperson of the committee on governance and long-range planning that the Board of Trustees take action to remove a Trustee on the basis that the Trustee has breached his or her fiduciary duty to the University. Such joint proposal shall be furnished in writing to each member of the Board of Trustees not less than 30 days prior to the meeting of the Board of Trustees at which such matter is to be considered. Removal shall require the determination of not less than two-thirds of the Trustees present at a duly called meeting that the Trustee has breached his or her fiduciary duty.

(c) In the event that the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning is the subject of a removal action under this Section 2.03, the Vice Chair of the Board of Trustees shall be substituted for such affected Trustee for purposes of this Section 2.03.

**Section 2.04 Regular Meetings; Notice.** Regular meetings of the Board of Trustees shall be held at such time and place as shall be designated by the Board of Trustees from time to time. There shall be at least one (1) regular meeting of the Board of Trustees per year. Notice of such regular meetings shall not be required, except as otherwise expressly required herein or by law, and except that whenever the time or place of regular meetings shall be initially fixed and then changed, notice of such action shall be given promptly by telephone, facsimile, electronic mail or otherwise to each Trustee not participating in such action. Any business may be transacted at any regular meeting.

**Section 2.05 Annual Meeting of the Board.** One regular meeting of the Board of Trustees shall be designated the annual organization meeting at which the Board of Trustees shall organize itself and elect officers of the University for the ensuing year and may transact any other business.

**Section 2.06 Special Meetings; Notice.** Special meetings of the Board of Trustees may be called at any time by the Chair of the Board or by seven members of the Board of Trustees, to be held at such place and day and hour as shall be specified by the person or persons calling the meeting. Notice of every special meeting of the Board of Trustees shall be given by the Secretary to each Trustee by telephone, facsimile, electronic mail or otherwise at least three (3) days before the meeting unless the meeting is being called in the event of an emergency, in which case as much advance notice shall be given to the Trustees as is practicable under the circumstances. In addition, public notice of any special meeting shall be given as required by law. Except as otherwise provided herein or required by law, any business may be transacted at any special meeting regardless of whether the notice calling such meeting contains a reference thereto.

**Section 2.07 Quorum.** At all meetings of the Board of Trustees, the presence of at least a majority of the voting members of the Board of Trustees in office shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum is not present at any meeting, the meeting may be adjourned from time to time by a majority of the Trustees present until a quorum as aforesaid shall be present, but notice of the time and place to which such meeting is adjourned shall be given to any Trustees not present either by facsimile or electronic mail or given personally or by telephone at least eight hours prior to the hour of reconvening.

**Section 2.08 Actions.** Except as expressly provided herein, resolutions of the Board of Trustees shall be adopted, and any action of the Board of Trustees upon any matter shall be valid and effective, with the affirmative vote of a majority of the Trustees present at a meeting duly convened and at which a quorum is present. The Chair, if one has been elected and is present, or if not, the Vice Chair, if present, or if not, a Trustee designated by the Board of Trustees, shall preside at each meeting of the Board of Trustees. The Secretary, or in his or her absence the Associate Secretary, shall be responsible for ensuring that the minutes of all meetings of the Board of Trustees are recorded in some reasonable manner. In the absence of the Secretary and the Associate Secretary, the presiding officer shall designate any person to take the minutes of the meeting. Unless otherwise modified in these Bylaws, the conduct of business in meetings of the Board of Trustees and any committees thereof shall be in accordance with the parliamentary procedures prescribed in Robert's "Rules of Order".

**Section 2.09 Meetings Via Electronic Communication.** Subject to the requirements of any applicable open meeting laws, one or more Trustees may participate in any regular or special meeting of the Board of Trustees or of a committee of the Board of Trustees by means of conference telephone, video conference or similar communications equipment by means

of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner by a Trustee will be considered to be attendance in person for all purposes under these Bylaws.

**Section 2.10 Resignations.** Any Trustee may resign by submitting his resignation to the Secretary. Such resignation shall become effective upon its receipt by the Secretary or as otherwise specified therein.

**Section 2.11 Vacancies.** Vacancies in the membership of the Board of Trustees created by death, resignation, removal or any other reason may be filled by appointment by the Chair of the Board of Trustees for the unexpired term in all cases except memberships reserved for gubernatorial appointment and *ex officio* memberships established by the University's Charter.

**Section 2.12 Compensation; Reimbursement of Travel Expenses.** Members of the Board of Trustees serve as volunteers and shall not be compensated for their services. Upon the request of a Trustee, the University shall reimburse the Trustee's reasonable direct travel expenses, including transportation expenses, incurred while the Trustee was engaged in the discharge of his or her official duties. Reimbursement of travel expenses shall be determined in accordance with the University's travel reimbursement policies in effect from time to time.

**Section 2.13 Certain Meetings.** The Chair of the Board of Trustees may, at his discretion, request that one or more of the non-voting members of the Board of Trustees be excused from any regular or special meeting of the Board of Trustees or any portion thereof.

### **ARTICLE III**

#### **COMMITTEES AND SUBCOMMITTEES**

**Section 3.01 Committees and Subcommittees.** Standing or temporary committees or subcommittees consisting of at least one (1) Trustee may be appointed by the Board

of Trustees from time to time; provided, however, that a temporary committee may not be created for the purpose of acting on any matter appropriate to be acted on by a standing committee or subcommittee thereof. Committees and subcommittees may include non-voting members that are not Trustees of the University. Each such committee and subcommittee shall have and exercise such authority of the Board of Trustees in the management of the business and affairs of the University as the Board of Trustees may specify from time to time.

**Section 3.02 Executive Committee.** The executive committee shall have thirteen (13) members, all of whom shall be voting members. The executive committee shall be composed of the Chair of the Board of Trustees (who shall also be the chair of the executive committee), the Vice Chair of the Board of Trustees, the Chairs of the standing committees, the Chair of the Board of Directors of Penn State Health (or, if such chair is not a voting member of the Board of Trustees, a member of the Board of Directors of Penn State Health who is also a voting member of the Board of Trustees), the immediate past Chair of the Board of Trustees and such number of at-large members, nominated by the committee on governance and long-range planning and elected by the Board of Trustees, as may be necessary to have an executive committee of thirteen (13) members. In addition, the President of the University shall be an *ex officio* non-voting member of the executive committee.

**(a) Purpose of the Executive Committee.** The purpose of the executive committee shall be to transact all necessary business as may arise in the intervals between regular meetings of the Board of Trustees; it being understood that action by the executive committee would not be expected to be taken except in extraordinary circumstances. Notice of any action by the executive committee shall be provided to the Board of Trustees at its next regular meeting.

(b) Meetings of the Executive Committee. Meetings of the executive committee may be called by the Chair of the Board of Trustees or by any three (3) members of the executive committee. No action may be taken by the executive committee without the affirmative vote of at least seven (7) members of the executive committee.

(c) Place of Meetings of the Executive Committee. All meetings of the executive committee shall be held at the executive offices of the University unless otherwise ordered by the Chair of the executive committee.

(d) Notice of Meetings of the Executive Committee. Notice of the time and place of all meetings of the executive committee shall be given in the same manner as for meetings of the Board of Trustees.

**Section 3.03 Standing Committees and Subcommittees.** The Board may adopt standing committees and subcommittees thereof in addition to the executive committee in accordance with the terms of these Bylaws.

(a) Function of Standing Committees and Subcommittees. The purpose of the standing committees and subcommittees is to facilitate consideration of the business and management of the Board of Trustees and of the University, as hereinafter set forth.

(b) Referral of Matters to Standing Committees and Subcommittees. Any matters appropriate for consideration by a standing committee or a subcommittee first shall be referred thereto by the Board of Trustees or the Chair of the Board of Trustees; except that a two-thirds (2/3) vote of the Trustees present at a meeting of the Board of Trustees but in no event by an affirmative vote of less than nine (9) Trustees will permit initial consideration by the full Board of Trustees; provided, however, that any matter referred to and considered by a standing committee or a subcommittee, but upon which the committee or subcommittee makes no recommendation or

report to the Board of Trustees may be brought before the Board of Trustees for consideration at the request of any Trustee.

(c) Matters Appropriate to More Than One Committee or Subcommittee. Except as otherwise provided in these Bylaws, matters determined to be appropriate for consideration by more than one committee or subcommittee may be referred by the Chair of the Board of Trustees to one committee or subcommittee or more.

(d) Final Authority of the Board. Unless otherwise specifically delegated and except as otherwise provided herein, in the Standing Orders or in the approved operating guidelines of any standing committee or subcommittee, authority to act on all matters is reserved to the Board of Trustees, and the duty of each standing committee and subcommittee shall be only to consider and to report or make recommendations to the Board of Trustees upon appropriate matters.

(e) Specific Responsibility of Standing Committees. The several standing committees are charged specifically with the immediate care and supervision of the subject matters respectively indicated by and properly relating to their titles. Standing committees shall assume such additional responsibilities as may from time to time be assigned by the Chair of the Board of Trustees.

(f) Standing Committees Established. The following shall be the standing committees of the Board of Trustees:

(i) Committee on Academic Affairs, Research and Student Life. The committee on academic affairs, research and student life shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) the educational policies and programs of the University, including the long range educational development of the University with respect to instruction and continuing education;

(2) the faculty;

(3) the University's research enterprise; and

(4) all phases of student life.

(ii) Committee on Finance, Business and Capital Planning. The committee on finance, business and capital planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) finance, business, budgets, non-budget expenditures, human resources, investments, trust funds, insurance, real estate contracts, government and private contracts, and grants, fees, room and board charges, and the long-range financial planning and development of the University;

(2) endowments, gifts, and fund raising;

(3) the purchase and sale of real estate, master plans, construction, the award of contracts, and the honorific naming of buildings and roads; and

(4) the University's capital plan, the long-range comprehensive physical plant and infrastructure development of the University at each campus, consistent with the long-range educational development of the University.

**(iii)** Committee on Governance and Long-Range Planning. The committee on governance and long-range planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

**(1)** in fulfillment of its governance responsibilities, providing counsel and advice to the Board of Trustees in matters concerning the development of strategies, policies, and practices that orient, educate, organize, motivate, and assess the performance of trustees.

**(2)** The committee's responsibilities shall also include, but not be limited to:

- a.** reviewing and recommending to the Board any changes to the expectations of membership and code of conduct for all trustees, including trustees emeriti;
- b.** recommending to the Board of Trustees candidates for election to membership on the executive committee;
- c.** recommending to the Board of Trustees proposed Student and Academic Trustees;
- d.** reviewing the service of a Trustee upon retirement and recommending candidates for emeritus status;
- e.** evaluating and making recommendations on committee and subcommittee operating guidelines

and with respect to the working effectiveness of the Board of Trustees and its committees and subcommittees; and

**f.** evaluating, recommending and reporting on the qualifications and skill sets to be considered in the process of nominating board of trustee candidates.

**(3)** in fulfillment of its long-range planning responsibilities:

**a.** charging and supporting the President in leading a strategic planning process, participating in that process, making recommendations to the Board of Trustees with respect to the Strategic Plan, and monitoring its progress; and

**b.** providing oversight of the growth, development, and sustainability of the University for future generations in order to achieve its full potential as one of the world's great universities.

**(iv)** Committee on Audit and Risk. The committee on audit and risk shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall oversee the auditing of the University's financial statements and internal controls as set forth more fully in the operating guidelines of the committee. In fulfilling its responsibility, the committee on audit and risk shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) regular and special audits; and

(2) the identification and management of risks including financial, material, and reputational.

(v) Committee on Legal and Compliance. The committee on legal and compliance shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall oversee adherence to laws, regulations, and policies that pertain to University operations. In fulfilling its responsibility, the committee on legal and compliance shall consider and report or recommend to the Board of Trustees on matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed.

(vi) Committee on Outreach, Development and Community Relations. The committee on outreach, development and community relations shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall provide advice and support to, and help inform the public of, the University's efforts to build support among its major constituents, from faculty, staff and students to alumni and donors, business and civic leaders and elected officials. In fulfilling its responsibility, the committee on outreach, development and community relations shall consider and report or recommend to the Board of Trustees on matters pertaining to outreach, development and community relations, including, but not limited to:

(1) Short and long-term communications plans and initiatives that support University priorities and protect and advance its reputation;

(2) Key outreach programs, such as extension and “Invent Penn State” that advance community and economic development priorities;

(3) Fundraising priorities and campaigns, including those that promote access and affordability and ensure academic excellence;

(4) Community and governmental relations activities that help ensure budget and policy decisions meet University needs;

(5) Major alumni association activities; and

(6) Opportunities to showcase the accomplishments of faculty, staff, students and others that merit public recognition.

(vii) Committee on Equity and Human Resources. The committee on equity and human resources shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) Compensation, benefits, performance management, talent management, succession planning and leadership development for the broader University;

(2) Recruitment, enrollment, retention, and graduation of students representing all aspects of diversity;

(3) Enhancement of diversity in the racial, ethnic and gender composition of faculty and staff at all levels;

(4) Accessibility, accommodation, and support for veterans and individuals with disabilities; and

(5) Engagement by the University of qualified diversity business enterprises, including minority- and women-owned businesses, as suppliers of goods and services.

(g) Selection of Committee Members. Members of the standing committees and subcommittees, and the chairperson and vice chairperson thereof, shall be appointed by the Chair of the Board of Trustees. The Chair and, in his or her absence, the Vice Chair of the Board of Trustees shall be an *ex officio* member of all standing committees, of all special committees and of all subcommittees. No Trustee shall serve as chairperson of any standing committee for more than five (5) consecutive years, except as specifically approved by a two-thirds vote of the Board of Trustees.

(h) Term of Committee Members. Committee members shall serve until their successors are appointed in accordance with this Bylaw.

(i) Vacancies on Standing Committees. Vacancies on all standing committees shall be filled through appointment by the Chair of the Board to serve the unexpired term created by the vacancy.

(j) Consultation with Constituent Groups. Standing committees shall seek consultation from representative constituent groups as appropriate in the exercise of their responsibilities.

(k) The following shall be the subcommittees of the Board of Trustees:

(i) The subcommittee on finance (of the committee on finance, business and capital planning) shall be composed of up to three members of the committee on finance, business and capital planning. This subcommittee shall be responsible for reviewing on a regular basis certain of the University's material financial

matters, including the operating and capital budgets, balance sheet management and debt strategy, non-endowed investments, review and endorsement of endowment spending rates, and informing the committee on finance, business and capital planning regarding relevant financial oversight matters.

**(ii)** The subcommittee on compensation (of the committee on equity and human resources) shall consist of up to five members, all of whom need not be members of the committee on equity and human resources, in addition to the *ex officio* members. This subcommittee shall assist the Board with executive compensation philosophy and strategy pertaining to the University's senior leadership positions; the annual review and approval of the President's personal goals and objectives, performance and annual compensation, including salary and incentive compensation, if applicable; and will make decisions and recommendations for and on behalf of the Board of Trustees, when appropriate, relating to the effectiveness of executive compensation, benefits, performance management, and leadership development.

**(iii)** The subcommittee on legal (of the committee on legal and compliance) shall be composed of up to five members of the committee on legal and compliance. This subcommittee shall be responsible for reviewing matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed, including but not limited to litigation strategies and other matters.

**(iv)** The subcommittee on risk (of the committee on audit and risk) shall be composed of up to five members, at least two of whom shall be members of the committee on audit and risk. This subcommittee shall be responsible for reviewing

matters pertaining to the identification and management of risks, including financial, operational, strategic and compliance risks.

(v) The subcommittee on long-range planning (of the committee on governance and long-range planning) shall be composed of up to five members, at least two of whom shall be members of the committee on governance and long-range planning. This subcommittee shall be responsible for reviewing matters related to the University's long-range planning activities, including supporting the strategic planning process, participating in that process, and monitoring its progress.

(l) Operating Guidelines. All standing committees and subcommittees shall operate pursuant to written operating guidelines which shall be submitted to and approved by the Board upon the recommendation of the committee on governance and long-range planning.

**Section 3.04 Quorum and Actions.** At all meetings of a committee, the presence of at least a majority of the members of such committee (including any ex officio members of such committee) shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as set forth in Section 3.02(b), resolutions of a committee shall be adopted, and any action of the committee upon any matter shall be valid and effective, with the affirmative vote of a majority of the members of the committee present at a meeting duly convened and at which a quorum is present.

**Section 3.05 Authority of Board.** Any action taken by any committee or subcommittee shall be subject to alteration or revocation by the Board of Trustees; provided, however, that third parties shall not be prejudiced by such alteration or revocation.

**Section 3.06 Special Assignments.** The Chair of the Board of Trustees may make special assignments to the Trustees from time to time in furtherance of the Board's duties and obligations. Such assignments shall include, but not be limited to, the following:

(a) **Trustee Representative at All Commencements.** The Board of Trustees shall be represented at all Commencements by the Chair of the Board of Trustees or by Trustees designated by the Chair of the Board of Trustees.

(b) **Trustee Liaison to Capital Campaigns.** The Chair of the Board of Trustees is directed to appoint a liaison Trustee to interact with developmental activities for capital campaigns and to apprise the Board of Trustees of the activities and the progress of campaigns.

#### **ARTICLE IV**

#### **LIABILITY AND INDEMNIFICATION**

##### **Section 4.01 Personal Liability of Trustees.**

(a) **Elimination of Liability.** To the fullest extent that the laws of the Commonwealth of Pennsylvania, as now in effect or as hereafter amended, permit elimination or limitation of the liability of Trustees for monetary damages, no Trustee of the University shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a Trustee.

(b) **Nature and Extent of Rights.** The provisions of this Section shall be deemed to be a contract with each Trustee of the University who serves as such at any time while this Section is in effect and each such Trustee shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the University which has the effect of increasing Trustee liability for

monetary damages shall operate prospectively only and shall not affect any action taken, or any failure to act, prior to the adoption of such amendment, repeal, Bylaw or provision.

**Section 4.02 Indemnification.**

**(a) Right to Indemnification.**

**(i)** As used herein, the word “Action” shall mean any action, suit or proceeding, administrative, investigative or other, (A) in which such person is named as a defendant (other than in an action, suit or proceeding by the University) or (B) in connection with which such person is not named as a defendant but is a witness, subject to investigation or otherwise involved, in either case by reason of such person being or having been a Trustee or officer of the University or by reason of such person serving or having served at the request of the University as a director, officer, employee, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other entity.

**(ii)** Except as prohibited by law, each Trustee and officer of the University shall be entitled as of right to be indemnified by the University against expenses and any liability paid or incurred by such person in connection with any Action.

**(iii)** Except as provided in Section 4.02(c) below, the University shall not indemnify any Trustee or officer, or pay, advance or reimburse any Trustee or officer, for any legal fees and expenses incurred in connection with any action, suit or proceeding, administrative, investigative or other, which such Trustee or officer brings, directly or indirectly, against the University, the Board of Trustees or any

officer, Trustee, employee, agent or representative of the University or the Board of Trustees.

(iv) A person who is not a Trustee or officer of the University may be similarly indemnified in respect of service to the University to the extent the Board of Trustees at any time designates such person as entitled to the benefits of this Section. The Board of Trustees has delegated to the Vice President and General Counsel the authority to make the determination, after consideration of relevant facts and circumstances, as to whether a person who is not a Trustee or officer of the University shall be indemnified in respect of his or her service to the University pursuant to this paragraph.

(v) As used in this Section, “indemnitee” shall include each Trustee and each officer of the University and each other person designated by the Board of Trustees as entitled to the benefits of this Section; “liability” shall include amounts of judgments, excise taxes, fines, penalties and amounts paid in settlement; and “expenses” shall include fees and expenses of counsel incurred by the indemnitee only (A) if the University has not at its expense assumed the defense of the Action on behalf of the indemnitee with reputable and experienced counsel selected by the University, or (B) if it shall have been determined pursuant to Section (c) hereof that the indemnitee was entitled to indemnification for expenses in respect of an Action brought under that Section

(b) Right to Advancement of Expenses. Every indemnitee shall be entitled as of right to have his expenses in defending any Action paid in advance by the University, as incurred; provided, however, that the University receives a written undertaking by or on behalf of

the indemnitee to repay the amount advanced if it should ultimately be determined that such person's conduct was such that the University is prohibited by law from indemnifying such person

**(c) Right of Indemnitee to Initiate Action; Defenses.**

**(i)** If a written claim for indemnification or advancement of expenses under paragraph (a) or paragraph (b) of this Section is not paid in full by the University within thirty days after such claim has been received by the University, the indemnitee may at any time thereafter commence a lawsuit to recover the unpaid amount of the claim and, if successful in whole or in part, the indemnitee shall also be entitled to be paid the reasonable expenses of prosecuting such suit..

**(ii)** The only defenses to a lawsuit to recover a claim for indemnification otherwise properly asserted under paragraph (a) shall be that the indemnitee's conduct was such that under applicable law the University is prohibited from indemnifying the indemnitee for the amount claimed, but the burden of proving any such defense shall be on the University.

**(iii)** The only defense to a lawsuit to recover a claim for advancement of expenses otherwise properly asserted under paragraph (b) shall be that the indemnitee failed to provide the undertaking required by paragraph (b), but the burden of proving any such defense shall be on the University.

**(d) Non-Exclusivity; Nature and Extent of Rights; Insurance.** The rights to indemnification and advancement of expenses provided for in this Section shall (i) not be deemed exclusive of any other rights to which any indemnitee may be entitled, (ii) be deemed to create contractual rights in favor of each indemnitee who serves the University at any time while this Section is in effect (and each such indemnitee shall be deemed to be so serving in reliance on the

provisions of this Section), and (iii) continue as to each indemnitee who has ceased to have the status pursuant to which he was entitled or was designated as entitled to indemnification under this Section and shall inure to the benefit of the heirs and legal representatives of each indemnitee. The University may provide, at its cost, insurance, or may self-insure, to protect itself and any Trustee, officer, agent or employee eligible to be indemnified hereunder against any liability or expense whether or not the University would have the power to indemnify such trustee, officer, agent or employee.

## ARTICLE V

### OFFICERS AND EMPLOYEES

#### **Section 5.01 Officers.**

(a) Officers. The officers of the Board of Trustees shall be a President (also referred to as the “Chair”), a Vice President (also referred to as the “Vice Chair”), each of whom shall be a member of the Board of Trustees, and a Secretary.

(b) Election and Term of Officers. All officers of the Board of Trustees shall be chosen each year by ballot of the voting members of the Board of Trustees present at the stated meeting of the Board of Trustees in November to serve for a period of one year and until their successors are chosen according to these Bylaws.

(c) Duties of Officers. The Chair of the Board of Trustees shall perform the corporate duties which pertain to that office. The Chair shall appoint all committees and subcommittees of the Board of Trustees and the chairperson thereof (except the executive committee) unless otherwise ordered by the Board of Trustees. The Vice Chair shall, in the absence of the Chair, perform the duties of the Chair. The Secretary shall perform the corporate duties which pertain to that office, be custodian of the corporate seal, conduct the ordinary

correspondence of the Board of Trustees and maintain an accurate record of all proceedings of the Board of Trustees and of the executive committee.

(d) Vacancies in Office. Vacancies in any office or offices may be filled by ballot of the voting members present at any meeting of the Board of Trustees.

(e) Officers of the University. The executive officers of the University shall be the President, one or more Vice Presidents as the Board of Trustees may from time to time determine, an associate secretary, three assistant secretaries, a Treasurer, and three assistant treasurers, all of whom shall be elected by the Board of Trustees. Except for the office of the President and Secretary, any two or more offices may be held by the same person. Each executive officer shall hold office at the pleasure of the Board of Trustees, or until his or her death or resignation.

(f) The associate secretary shall assist the secretary in the performance of his/her duties and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The assistant secretaries shall assist the associate secretary and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The Treasurer shall receive and disburse all monies of the corporation under procedures and safeguards prescribed by the Board of Trustees. The assistant treasurers shall assist the treasurer in the performance of these duties and shall act for and on behalf of the University in the same manner and with the same authority as the treasurer.

**Section 5.02 Additional Officers; Other Agents and Employees.** The Board of Trustees may from time to time appoint or employ such additional officers, assistant officers, agents, employees and independent contractors as the Board of Trustees deems advisable; the Board of Trustees shall prescribe their duties, conditions of employment and compensation; and

the Board of Trustees shall have the right to dismiss them at any time, without prejudice to their contract rights, if any. The President of the University may employ from time to time such other agents, employees and independent contractors as he may deem advisable for the prompt and orderly transaction of the business of the University, and he may prescribe their duties and the conditions of their employment, fix their compensation and dismiss them at any time, without prejudice to their contract rights, if any.

**Section 5.03 The Chair.** The Chair of the Board of Trustees, if any, shall be elected from among the voting members of the Board of Trustees, shall preside at all meetings of the Board of Trustees as provided herein, and shall have such other powers and duties as from time to time may be prescribed by the Board of Trustees. The Chair shall be an *ex officio* member of all standing committees and subcommittees, entitled to vote thereon. In the absence or disability of the Chair, the Vice Chair shall have the powers and perform the duties of the Chair.

**Section 5.04 The President.** The President of the University shall be the chief executive officer of the University. Subject to the control of the Board of Trustees, the President shall have general supervision of and general management and executive powers over all the property, operations, business, affairs and employees of the University, and shall see that the policies and programs adopted or approved by the Board of Trustees are carried out. The President shall exercise such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees. The President of the University, as chief administrative officer, shall carry out all orders and directives of the Board of Trustees and shall administer all policies of the Board of Trustees, as well as the policies established by him or her and by the faculty. The President may delegate such administrative authority as he or she deems appropriate to his or her staff, to the Treasurer, to the deans of the various academic units, and to others, who

shall exercise such delegated authority in the name of the President. The establishment of senior administrative positions responsible directly to the President and the determination of the functions of such positions shall be made by the President of the University. All administrative officers with the title of vice president or dean shall be appointed by the President, subject to the approval of the Board of Trustees. Removal of such administrative officers with the title of vice president or dean shall be made by the President and, in such event, the President shall inform the Board of Trustees of such removal at the next regular meeting of the Board. The President, as chief policy officer, shall have final authority, subject to the revisions and orders of the Board of Trustees, to establish policy concerning educational policy and planning, student affairs, the instructional program, courses and curricula, personnel, admissions, graduation requirements, scholarships and honors, calendar requirements, business, planning, research, and finance; provided, however, that the President shall delegate to the faculty, as appropriately organized, subject to the orders of the President, the authority to establish policy concerning the approval and supervision of the instructional program, including courses and curricula, academic admission standards, graduation requirements, and scholarships and honors. The President shall consult with the faculty, as appropriately organized, in the establishment of policy concerning educational policy and planning, including general admissions policy, calendar, academic personnel, student affairs, and any other matter he or she shall deem appropriate. In addition, the President shall consult with the student body, as appropriately organized, in the area of student affairs.

**Section 5.05 The Vice President(s).** The University may have one or more Vice Presidents. The Vice President(s) may be given by resolution of the Board of Trustees general executive powers, subject to the control of the President, concerning one or more or all segments of the operations of the University. The Vice President(s) shall exercise such further

powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. At the request of the President, or in his or her absence or disability, the Executive Vice President and Provost shall exercise the powers and duties of the President.

**Section 5.06 The Secretary, Associate Secretary and Assistant Secretaries.**

It shall be the duty of the Secretary (a) to keep an original or duplicate record of the proceedings of the Board of Trustees, and a copy of the Charter and of the Bylaws; (b) to give such notices as may be required by law or these Bylaws; (c) to be custodian of the corporate records and of the seal of the University and see that the seal is affixed to such documents as may be necessary or advisable; and (d) to exercise all powers and duties incident to the office of Secretary; and such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. The Associate Secretary and the assistant secretaries shall assist the Secretary in the performance of his duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Secretary. At the direction of the Secretary or in his or her absence or disability, the Associate Secretary shall exercise the powers and duties of the Secretary.

**Section 5.07 The Treasurer and Assistant Treasurers.** It shall be the duty of the Treasurer (a) to keep the University's contracts, insurance policies, leases, deeds and other business records; (b) to see that the University's lists, books, reports, statements, tax returns, certificates and other documents and records required by law are properly prepared, kept and filed; (c) to be the principal officer in charge of tax and financial matters, budgeting and accounting of the University; (d) to have charge and custody of and be responsible for the University's funds, securities and investments; (e) to receive and give receipts for checks, notes, obligations, funds and securities of the University, and deposit monies and other valuable effects in the name and to

the credit of the University, in such depositories as shall be designated by the Board of Trustees; (f) to cause the funds of the University to be disbursed by payment in cash or by checks or drafts upon the authorized depositories of the University, and to cause to be taken and preserved proper vouchers for such disbursements; (g) to render to the President and the Board of Trustees whenever they may require it an account of all his transactions as Treasurer, and reports as to the financial position and operations of the University; (h) to keep appropriate, complete and accurate books and records of account of all the University's business and transactions; and (i) to exercise all powers and duties incident to the office of Treasurer; and such further duties from time to time as may be prescribed in these Bylaws or by the Board of Trustees or the President. The assistant treasurers shall assist the Treasurer in the performance of his or her duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Treasurer. At the direction of the Treasurer or in his absence or disability, an assistant treasurer shall exercise the powers and duties of the Treasurer.

**Section 5.08 Vacancies.** Any vacancy in any office or position by reason of death, resignation, removal, disqualification, disability or other cause shall be filled in the manner provided in this Article V for regular election or appointment to such office.

**Section 5.09 Delegation of Duties.** The Board of Trustees may in its discretion delegate for the time being the powers and duties, or any of them, of any officer to any other person whom it may select. Upon authorization by the Board of Trustees, an officer may delegate performance of specific duties to employees and agents of the University.

(a) Notwithstanding the foregoing, the following matters shall require the approval of the Board of Trustees:

(i) Basic University Organization and Policy

- (1) Amendments to the Charter, Bylaws and Standing Orders;
  - (2) All reports of standing or special committees of the University's Board of Trustees;
  - (3) All major modifications of educational policy;
  - (4) Authorization to grant degrees to graduates;
  - (5) The University's Strategic Plan; and
  - (6) University intellectual property policy.
- (ii) Fiscal Matters
- (1) Establishment of, or changes in existing, major University fiscal policies;
  - (2) State appropriation requests and annual operating budgets;
  - (3) Acceptance of gifts, bequests, grants, fellowships, scholarships, loan funds that are not in accord with established policy;
  - (4) Establishment of, or changes in, tuition, room and board rates and mandatory student fees;
  - (5) Authorization to borrow money; authorization of persons to sign checks, contracts, legal documents, and other obligations, and to endorse, sell, or assign securities; and
  - (6) Selection of a firm to make annual audit of University accounts.
- (iii) Capital Projects
- (1) Establishment of, or changes in the University's five-year Capital Plan;

(2) Establishment of, or changes in existing policies, on matters such as honorific naming of buildings and roads and preservation of campus landmarks;

(3) Purchase of land and other real estate with a purchase price of \$1 million or more;

(4) Sale of land or other real estate, with the exception of the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale with proceeds benefitting the University;

(5) Honorific names for individual buildings and roads;

(6) Any new construction or renovation project for which the total project cost is \$10 million or more, including

(A) Total project cost; provided however, that the Officers of the University shall have the discretion to expend up to an additional 10 percent of the approved total project cost, as necessary; and

(B) Awarding of contracts for construction;

(7) Projects under \$10 million in cost that are bond-financed;

(8) Other capital expenditures of \$10 million or more.

(iv) Personnel Matters.

(1) The selection, evaluation, compensation and removal of the President of the University, in accordance with policies and procedures adopted by the Board of Trustees from time to time. This responsibility

includes a commitment to grant the President broad delegated authority, to support the President in his/her exercise of such authority, to judge the performance of the President, and if necessary, to remove the President. In the selection of a President, the Board shall consult with representatives of the faculty and the student body.

(2) The establishment of and any changes to the University's executive compensation philosophy.

(3) The establishment of and any changes to the employment terms and conditions of the President of the University.

(4) The appointment and removal of the Vice President and General Counsel and the process by which Vice Presidents (other than the Vice President and General Counsel) and Deans are appointed, and any material amendments or modifications to such process.

(v) Subsidiaries

(1) Appointment of the Board of Directors of each direct subsidiary of the University as provided in such subsidiary's articles of incorporation;

(2) Amendments to the articles of incorporation of each direct subsidiary of the University; and

(3) Exercise of rights reserved to the University in the articles of incorporation, bylaws or other governing documents of any direct or indirect subsidiary of the University.

(vi) Miscellaneous

(1) Selection of the recipients of Distinguished Alumni Awards, honorary degrees and the Penn State Medal; and

(2) Selection of specific dates for regular meetings of the Board of Trustees.

(b) The delegation of authority set forth in this Section 5.09 requires that the Board of Trustees rely on the judgment and decisions of those who operate under its authority. However, this reliance of the Board of Trustees must be based upon its continuing awareness of the operations of the University. Therefore, the Board of Trustees shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designated by the President. The Board of Trustees has a continuing obligation to require information or answers on any University matter with which it is concerned. In addition to such matters as the President of the University may determine, or as requested by the Chair of the Board of Trustees, the following matters shall be presented to the Board of Trustees for information:

(i) Basic University Organization and Policy

(1) New curricula and major changes in existing curricula;

(2) Major policy matters affecting student welfare and activities;

and

(3) Major policy matters affecting research.

(ii) Fiscal Matters

(1) Financial statements, and gifts, bequests, grants, fellowship, scholarships, loan funds that are in accord with established policy; and

(2) The University's annual reports filed under the Clery Act and the Pennsylvania Right to Know Act.

**(iii) Personnel Matters**

**(1) Policies.** New policies or changes in existing policies governing appointments, promotions in academic rank, leaves of absence, resignations, retirements, academic freedom and tenure, hours and conditions of employment, and fringe benefits; and

**(2) Executive Compensation.** Information regarding

**(A)** the evaluation and compensation of University executives (other than the President of the University), in accordance with policies and procedures recommended by the subcommittee on compensation from time to time.

**(B)** the establishment of and any changes to executive compensation and benefit programs and policies.

**(3)** Information regarding the appointment and removal of Vice Presidents and Deans.

**(iv) Capital Projects**

**(1)** New construction or renovations projects with a total project cost equal to or greater than \$5 million but less than \$10 million;

**(2)** Generic naming of individual buildings and roads and honorific naming of University facilities other than individual buildings and roads;

**(3)** Purchase of real estate with a purchase price of less than \$1 million;

(4) Reports on the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale;

(5) Capital budget request submitted to the Commonwealth of Pennsylvania;

(6) An annual capital plan informational update; and

(7) Reports on the progress of new construction or renovation projects with a total project cost of \$10 million or more.

(c) Board of Trustees Delegation of Authority to Certain University Administrative Officers.

(i) The President, Vice President, Secretary, Treasurer, Assistant Treasurer, Senior Vice President for Finance and Business, and Corporate Controller of the University, or any one of such officers be and they are hereby fully authorized and empowered on behalf of the University to execute and acknowledge all deeds, agreements and contracts, and to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness or other securities now or hereafter standing in the name of or owned by this University, and to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(ii) The Treasurer, or in the absence of the Treasurer, the Senior Vice President for Finance and Business, may delegate in writing to such employees of the University as they may deem appropriate, the authority to execute and

acknowledge on behalf of the University standardized agreements and contracts for which those employees have administrative responsibility.

**(iii)** The Chief Investment Officer, or in such person's absence, the Managing Director, Operations of the Office of Investment Management, is hereby fully authorized and empowered on behalf of the University to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes or other securities now or hereafter standing in the name of or owned by the University, and to make, execute, acknowledge, and deliver, under the corporate seal of the University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

**(iv)** The Associate Vice President for Finance and Business and Controller, or, in his or her absence, the Associate Controller, be and is hereby fully authorized and empowered on behalf of the University to execute and acknowledge all agreements and contracts related to the affairs of the College of Medicine.

**(v)** The Associate Secretary and Assistant Secretary of this University, or any one of such officers, be and they are hereby fully authorized and empowered on behalf of this University to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

**(d)** Subject to the provisions of Section 5.09(a)(v), the affairs of any direct or indirect subsidiary of the University shall be governed by the Board of Directors of such subsidiary

in accordance with the articles of incorporation, bylaws or other governing documents of such subsidiary.

## ARTICLE VI

### MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS

**Section 6.01 Execution of Notes, Checks, Contracts and Other Instruments.** All notes, bonds, drafts, acceptances, checks, endorsements (other than for deposit), guarantees and all evidences of indebtedness of the University whatsoever, and all deeds, mortgages, contracts and other instruments requiring execution by the University, may be signed by the Chair, the President, any Vice President or the Treasurer, and authority to sign any of the foregoing, which may be general or confined to specific instances, may be conferred by the Board of Trustees upon any other person or persons. Any person having authority to sign on behalf of the University may delegate, from time to time, by instrument in writing, all or any part of such authority to any other person or persons if authorized to do so by the Board of Trustees, which authority may be general or confined to specific instances. Facsimile signatures on checks may be used if authorized by the Board of Trustees.

**Section 6.02 Voting Securities Owned by the University.** Securities owned by the University and having voting power in any other University shall be voted by the President or any Vice President, unless the Board of Trustees confers authority to vote with respect thereto, which may be general or confined to specific investments, upon some other person. Any person authorized to vote such securities shall have the power to appoint proxies, with general power of substitution.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 7.01 Offices.** The principal business office of the University shall be located at 201 Old Main, University Park, Pennsylvania 16802. The University may also have offices at such other places within or without the Commonwealth of Pennsylvania as the business of the University may require.

**Section 7.02 Corporate Seal.** The Board of Trustees shall prescribe the form of a suitable corporate seal, which shall contain the full name of the University and the year and state of its creation.

**Section 7.03 Fiscal Year.** The fiscal year of the University shall end on June 30 or on such other day as shall be fixed by the Board of Trustees.

**Section 7.04 Private Inurement.** No part of the net earnings of the University shall inure to the benefit of, or be distributable to, its Trustees, officers or other private persons, except that the University shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Bylaws and the University's Charter.

## ARTICLE VIII

### CONFLICTS OF INTEREST

**Section 8.01 Definitions.** For purposes of Sections 8.01 – 8.11 hereof, the following terms shall have the meanings set forth below.

(a) **Conflict of Interest.** A “conflict of interest” exists when a reasonable observer, having knowledge of all of the relevant facts and circumstances, would conclude that a Trustee has an actual or apparent conflict of interest in a matter related to the University. In

addition to financial conflicts of interest, a conflict of interest includes a situation in which a Trustee, family member or related entity has an interest that may lead the Trustee to act in a way that is incompatible with or a breach of the Trustee's fiduciary duty to the institution or use such Trustee's role to achieve personal gain or benefit or gain or benefit to family, friends or associates.

**(b)** Family Member. A "family member" means a Trustee's spouse or dependent child.

**(c)** Financial Conflict of Interest. A "financial conflict of interest" exists when a Trustee, a family member or related entity has an actual or potential financial interest in a matter (i) that is pending before the Board for discussion or vote or (ii) in which the Trustee or a family member is personally involved. A financial conflict of interest does not include a student or employment relationship of a family member.

**(d)** Related Entity. A "related entity" means a corporation, partnership, association or other entity where the Trustee or family member serves as an officer, director, partner or employee; expects to receive \$5,000 or more in compensation for services in a calendar year; holds any equity in a non-publicly traded entity; or holds an interest of 5% or more in a publicly traded entity.

**(e)** Known. "Known" means that the Trustee has actual knowledge of the conflict of interest.

**(f)** Board. "Board" includes any standing or ad hoc committee of the Board.

**(g)** Disclose or Disclosure. "Disclose" or "disclosure" means to provide a brief summary of the transaction, agreement or business arrangement and the Trustee's financial or other interest.

(h) For purposes of this Article VIII, the term “University” includes all direct and indirect subsidiaries thereof.

**Section 8.02 Disclosure.** Each Trustee must disclose in writing to the Office of the Board of Trustees and to the Chair of the Board all situations that involve actual or apparent conflicts of interest if and as the conflict of interest becomes known to such Trustee.

**Section 8.03 Annual Disclosure.** In addition to other annual disclosures required by law or policy, each Trustee must disclose annually and in writing to the Secretary of the Board all conflicts of interest that are known to such Trustee. The annual disclosures of known conflicts of interest will be publicly available upon request.

**Section 8.04 Recusal.** If a matter in which a Trustee has a known conflict of interest comes before the Board for discussion or decision, the interested Trustee shall leave the Board meeting while the matter is discussed and voted upon. The Trustee’s interest and recusal shall be noted in the minutes, which shall be publicly available.

**Section 8.05 Contracts or Transactions with the University.** (a) A contract or transaction between the University and a Trustee, family member or an entity in which a Trustee or family member has a beneficial interest of ten percent (10%) or more and the contract or transaction is valued at \$10,000 or more must be approved by the Board of Trustees in accordance with this Section. The University official responsible for the matter must first conclude that it is in the best interests of the University to consider entering into such a contract or transaction. In circumstances where the Trustee, family member or related entity is purchasing goods or services from the University, as opposed to selling such goods or services, the matter is presumptively in the University’s interests if the price is fair and reasonable and the contract or transaction does not foreclose a similar transaction with another individual or entity. In other circumstances where the

University is purchasing goods or services, the officer must first explore alternatives that do not involve an interest of the Trustee, family member or entity in which the Trustee or family member owns a beneficial interest of ten percent (10%) or more. If, after exercising such due diligence, the official determines that it is in the best interests of the University to proceed, the matter must be submitted to the Board for approval. The written materials submitted to the Board shall include a description of the contracting process, including the use of open and public bidding if possible and practical, and the official's analysis of why it is in the best interests of the University to proceed with the agreement or relationship. The interested Trustee shall leave the meeting during the discussion and voting. The Board shall determine by a majority vote of the disinterested Trustees whether the transaction or arrangement is in the University's best interests, the price and value provided are fair and reasonable to the University and whether to approve the transaction or arrangement. Any such decision shall be recorded in the minutes, which shall be publicly available.

**(b)** Contracts or transactions of less than \$10,000 between the University and a Trustee, family member or an entity in which the Trustee or a family member has a beneficial interest of ten percent (10%) or more will be disclosed to the Board of Trustees annually in a written report which shall be available to the public. The report shall include a certification by the appropriate officers of the University that such contracts or transactions were made in the normal course of business and were fair to the University.

**Section 8.06 Annual Statements.** Each Trustee shall annually sign a statement that affirms that such Trustee (a) has received a copy of the Board's conflict of interest policy as expressed in this Article VIII, (b) has read and understands the policy, and (c) has agreed to comply with the policy.

**Section 8.07 Fiduciary Duty.** Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.

**Section 8.08 Misuse of Information.** No member of the Board of Trustees shall for personal gain or benefit or for the gain or benefit of others use any information not available to the public at large and obtained as a result of service to the University.

**Section 8.09 Gifts and Favors.** No member of the Board of Trustees shall solicit or accept for personal use or for the use of others any gift, loan, gratuity, reward, promise of future employment or any other thing of monetary value based on any understanding that the vote, official action or judgment of the member would be influenced thereby.

**Section 8.10 Pre-Existing Contract or Transaction.** A contract or transaction that would be required to be disclosed under this Article but which was entered into before the interested Trustee assumed office, or which became subject to this Article as a result of amendments to the Article, and which remains to be performed in whole or in part, shall be disclosed by the Trustee pursuant to Section 8.03 but is not subject to the voting and other requirements of this Article.

**Section 8.11 Family Members as Employees.** A record of all spouses or dependent children of Trustees who are employed by the University or an affiliated entity and where compensation exceeds \$10,000 per year shall be maintained in the Office of the Board of

Trustees and the names and positions but not the amount of compensation shall be posted on the University's public website.

**Section 8.12 Employment of Trustees.** No Trustee may be employed by the University in any capacity before the fifth (5th) anniversary of the date on which such person last served as a Trustee, except as approved by action of the Board of Trustees.

**Section 8.13 Disclosure of Potential Conflict of Interest by Employees of the University.** Employees of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. They shall not use their positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise between the interest of the University and that of the individual. Employees shall disclose to the administrative head of the college or other unit in which they are employed, or other appropriate superior officer, any potential conflict of interest which they are aware before a contract or transaction is consummated. This bylaw shall be published to the University community at least once annually.

**Section 8.14 Consultation.** Any Trustee or University official may consult with the Secretary of the Board or the University General Counsel concerning the interpretation or application of any of the provisions of Article VIII.

## **ARTICLE IX**

### **AMENDMENTS**

**Section 9.01 Amendments.** These Bylaws may be amended, altered or repealed, and new bylaws may be adopted, by the Board of Trustees at any regular or special

meeting. Except as specifically set forth in Section 4.01, no provision of these Bylaws shall vest any property or contract right in any person.

## BYLAWS AMENDMENT HISTORY

May 6, 2016	Amended and Restated Bylaws adopted
November 4, 2016	Section 3.03(f)(vi) amended
July 21, 2017	Section 5.09 amended
November 10, 2017	Sections 2.12, 4.01 and 4.02 amended
May 3, 2019	Sections 5.09 and 8.01 amended
November 15, 2019	Section 2.01(b) amended
May 8, 2020	Sections 3.03 and 5.09 amended
September 18, 2020	Sections 2.01(a), 2.09, 3.02, 3.03(d), 3.03(e), 3.03(f)(i), 3.03(f)(iii), 3.03(f)(vii), 3.03(g), 3.03(h), 3.03(k), 3.03(l), 3.05, 3.06(b), 5.09(b)(iii) and 5.09(c)(iii) amended
May 7, 2021	Section 5.01(b) amended

# Exhibit PSU #2

## Standing Orders

**Standing Orders of the Board of Trustees**

**As Amended as of September 18, 2020**

		<b>Page</b>
ORDER I.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI .....	1
ORDER II.	PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES .....	2
ORDER III.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES .....	3
ORDER IV.	PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE .....	5
ORDER V.	PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE.....	5
ORDER VI	PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES.....	6
ORDER VII.	RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES.....	7
ORDER VIII.	GOVERNANCE OF THE UNIVERSITY .....	11
ORDER IX.	TRUSTEES EMERITI.....	16
ORDER X.	PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS .....	17

## STANDING ORDERS OF THE BOARD OF TRUSTEES

### **ORDER I. PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI (see also *the Charter*)**

- (1) Date of Election. Elections for alumni members of the Board of Trustees shall be held each year on the day preceding the annual Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees, and may be held either in connection with the Delegate Convention for the election of other members of the Board, or at such other hour of the same day, and such other place, as the Chair of the Board of Trustees may from time to time direct.
- (2) Nominations. The Secretary of the Board of Trustees, or such other officer as may be from time to time designated by the Chair of the Board of Trustees, shall send to each qualified elector, as established in the Charter, whose email address is known a notice stating the date at which the next election will be held and the names of alumni trustees whose terms will expire by law on the thirtieth day of June next following. Such notice shall be sent each year not less than ninety days preceding the date on which such election is to be held, and shall invite nominations for vacancies then to occur. All persons who are nominated by as many as 250 electors shall be announced as soon as practical after the tenth day of April each year in a circular sent to all electors, with a form of ballot.
- (3) Form of Ballot. Only the official nominating and voting ballots may be used to nominate and vote for candidates.
- (4) Position on Ballot. Immediately after the last day fixed for depositing ballots to nominate candidates for alumni trustee, the Chair of the Board of Trustees shall fix a day and hour for casting lots for the position of names upon the election ballots. The Secretary of the Board of Trustees shall give at least three days' notice of said date and hour to all candidates nominated. Any candidate may appear in person or by a representative duly authorized in writing. In the event that any candidate is not present in person or by duly authorized representative at the time of casting of lots, it shall be the duty of the Secretary to appoint some person to represent such absentee. After said lots are cast, the Secretary shall accordingly establish the order in which the names of said candidates are to appear on the election ballot.
- (5) Designation of Incumbents. Incumbents shall not be identified as such on election ballots, but biographical sketches shall identify incumbents with an asterisk.
- (6) Position in Booklet of Biographical Sketches. Candidates' names shall be in alphabetical order in any publication of biographical sketches.
- (7) Duplicate Ballots. A duplicate ballot may be issued to a voter only on a written or personal application to the Secretary of the Board of Trustees stating that the original ballot has been lost, mutilated, or destroyed.

- (8) Deadline for Receipt of Nominations. Ballots for the nomination of alumni trustees must be received at the office of the Secretary of the Board of Trustees before 5:00 p.m., February 25.
- (9) Candidate May Withdraw Name. Each candidate nominated shall be given the privilege of withdrawing his/her name.
- (10) Election Returns. All ballots for alumni trustees returned to the proper official in response to said circular and received by him/her on or before the day of election shall be safely kept by him/her, and by him/her delivered at the time and place of election to the two judges selected by the Chair of the Board of Trustees and shall by them be counted as cast at that time and place. Said judges shall make return to the Board of Trustees of the persons for whom ballots have been cast, either by letter or by electors in person, with the number of votes for each person; and the Board of Trustees shall thereupon determine and declare what persons have been elected to fill the vacancies aforesaid. A plurality of votes only shall be required to elect and, in case of an equality of votes between two or more candidates, the person or persons who shall hold said office or offices of trustee shall be designated by ballot of the Board of Trustees.
- (11) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.
- (12) Electronic Notices and Voting. In order to be good stewards of the limited financial resources of the University, electronic mail may be used to communicate any required notices or other correspondence under this Order I and an electronic balloting and voting process may be used so long as reasonable accommodations are made to permit any qualified elector without access to electronic mail to participate in the election.

**ORDER II. PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for Business and Industry Trustees shall be composed of five seated Trustees (three Trustees representing business and industry endeavors excepting those standing for reelection; and two trustees from among those elected by the alumni, elected by agricultural associations, or appointed by the Governor). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, two candidates for membership on the Board of Trustees representing business and industry endeavors. The names and qualifications of the candidates shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidates only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board as a representative of business and industry. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop business and industry candidates may continue through the end of the month of June following the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of trustees representing business and industry endeavors shall be held at the May meeting of the Board of Trustees.

**ORDER III. PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES** (*see also the Charter and the Bylaws*)

The Charter of the Board of Trustees of The Pennsylvania State University provides for the election of six trustees who represent the organized agricultural societies or associations in the Commonwealth ("Agricultural Organizations").

- (1) Date of Election. Election for two members of the Board of Trustees representing agricultural interests shall be held each year on the Thursday prior to the day for the annual Spring Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees.
- (2) Delegates. Agricultural Organizations are not entitled to send delegates to participate in the election of Trustees unless they have at least fifteen (15) members in good standing and have been organized and in existence at least twelve (12) months preceding the election, and have duly notified the Secretary of the Board of Trustees of this fact at least sixty days prior to the election. Each Agricultural Organization is invited to send up to three delegates to participate in the election; provided, however, that if an Agricultural Organization has more than fifteen (15) members in good standing in more than one county, such Agricultural Organization may send up to three delegates from each such county and provided, further that the maximum number of delegates that may be sent by any Agricultural Organization to participate in the election shall be nine (9). Each Delegate must be a member of the Agricultural Organization that he or she represents. Employees of The Pennsylvania State University are not permitted to serve as delegates. The secretary or another authorized officer of each Agricultural Organization shall provide proof to the Secretary of the Board of Trustees, in form and substance satisfactory to the Secretary of the Board of Trustees, of the authority and eligibility of each delegate sent by such Agricultural Organization to participate in the election. No proxies are permitted.

- (3) Candidates. Each Candidate must be an active member of an Agricultural Organization. Individual candidates are invited to notify the Secretary of the Board of Trustees by February 25 of each year. The names of the candidates (along with a biographical sketch and position statement for each candidate, the agenda for the meeting, and the governance provisions for the election) will be distributed to the secretaries or other authorized officers of each Agricultural Organization whose contact information is on file with the Secretary of the Board of Trustees in advance of the election in order to better inform Agricultural Organization delegates.
- (4) Nominations. Nominations will be required for all trustee candidates on the day of the election. Nominations of additional candidates not included in the election mailing are also permitted.
- (5) Registration. The names of the delegates representing each Agricultural Organization must be provided by the secretary or another authorized officer of such Agricultural Organization to the Secretary of the Board of Trustees, in a form approved by the Secretary of the Board of Trustees, at least 30 days prior to the election. An Agricultural Organization may amend its submission after that time but in no event shall changes be accepted if received by the Secretary of the Board of Trustees after 4:00 p.m. on the Monday prior to the election. Delegates must present a valid Pennsylvania driver's license or some other form of photo identification acceptable to the Secretary of the Board of Trustees in order to participate in the election, and may be registered as a delegate of only one Agricultural Organization and in only one county.
- (6) Eligibility and Voting. Only those delegates in attendance and duly registered are permitted to participate in the election and voting. The following provisions also apply:
  - (i) Each county is permitted a maximum of three votes for the candidates.
  - (ii) If a county is represented by more than three delegates, a caucus is required to determine the three from their number who will represent the county.
  - (iii) If fewer than three delegates represent a county, the county is permitted only as many votes as there are delegates.
  - (iv) Each voter must vote for two nominated candidates. Any ballot indicating a vote for a single candidate shall not be counted.
- (7) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.

**ORDER IV. PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE (see also the Charter and the Bylaws)**

- (1) The Selection Group on Board Membership for the Student Trustee shall be composed of eleven members (the incumbent Student Trustee, the President of the University Park Undergraduate Association, the President of the Graduate and Professional Student Association, the President of the Council of Commonwealth Student Governments and the President of the World Campus Student Government Association (the “Core Committee”) plus six at-large undergraduate, graduate or professional student members selected by the Core Committee. The Selection Group shall recommend, in accordance with guidelines established by the Selection Group and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the student body of the University.<sup>1</sup>
- (2) Three trustees to be appointed by the Chair of the Board of Trustees (including the incumbent Student Trustee) shall interview the preferred candidate (and, if necessary, any alternate candidates) and shall forward the recommended candidate’s name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Selection Group unless issues with the recommended candidate’s background check, student conduct issues, academic standing issues or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Selection Group shall treat as confidential the identities of all candidates.
- (4) The election of the Student Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER V. PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE (see also the Charter and the Bylaws)**

- (1) The University Faculty Senate shall recommend, in accordance with procedures and guidelines established by the Faculty Senate and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the faculty of the University.<sup>2</sup>

---

<sup>1</sup> The Guidelines provide that the Selection Group would identify a preferred candidate and two ranked candidates.

<sup>2</sup> The Guidelines provide that the Faculty Senate would identify a preferred candidate and two ranked candidates.

- (2) Three trustees to be appointed by the Chair of the Board of Trustees shall interview the preferred candidate (and, if necessary, the alternate candidates) and shall forward the recommended candidate's name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Faculty Senate unless issues with the recommended candidate's background check or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Faculty Senate shall treat as confidential the identities of all candidates.
- (4) The election of the Academic Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER VI. PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for At-Large Trustees shall be composed of five seated Trustees (one Trustee elected by the alumni, one Trustee representing business and industry endeavors, one Trustee elected by agricultural associations, one Trustee appointed by the Governor, and one Trustee from among the group of the Student Trustee, the Academic Trustee, the Trustee serving ex officio by virtue of his or her past presidency of the Penn State Alumni Association and the At-Large Trustees, if any). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, a candidate for at-large membership on the Board of Trustees. The name and qualifications of the candidate shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidate only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop trustee candidates may continue through the end of the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of at-large trustees shall be held at the May meeting of the Board of Trustees.

**ORDER VII. RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES**

- (1) Meetings Open to the Public. A meeting of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be open to the public as required by applicable law.
- (2) Annual Public Notice of All Meetings. Public notice of the date, time, and place of all regularly scheduled public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees for the calendar year shall be published annually in all daily newspapers of general circulation published in Centre County, and in at least one daily newspaper of general circulation in Pennsylvania, as required by law. Such notice for public meetings at locations other than University Park shall be published in a daily newspaper of general circulation in the political subdivision in which such meetings are to be held. Notice of all regularly scheduled public meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (3) Public Notice of Individual Meetings. Public notice of the date, time, and place of each regular meeting shall be given and published in the daily newspapers of general circulation as indicated above, at least three days prior to the time of each regularly scheduled meeting, and at least twenty-four hours prior to the time of the meeting in the case of special or rescheduled meetings. This provision shall not apply in case of a meeting called to deal with an emergency involving a clear and present danger to life or property. Notice of all special meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (4) Posting of Notices. Notice of all public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be posted at the offices of the Secretary of the Board of Trustees at University Park, Pennsylvania, as required by law.
- (5) News Media Notices. Notice of the date, time, and place of meetings shall be furnished on request to any newspaper publishing in the political subdivision in which the meeting will be held and to any radio and television station which regularly broadcasts into the political subdivision (Centre County in the case of meetings at University Park).

- (6) Notice to Others. Notice of meetings shall also be furnished to anyone providing a stamped, self-addressed envelope prior to the meeting.
- (7) Meeting Room. Except for telephonic meetings, public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be held in a room large enough to accommodate the members of the Board of Trustees, officers of the University, and invited guests. Space shall also be available for up to twenty-five visitors, including representatives of the news media, on a first-come, first-served basis. The room will be opened one-half hour prior to the starting time of the meeting.
- (8) Arrangements for News Media Area and Press Conferences. An area in the meeting room shall be designated by the University for use by the press and other news media, subject to such rules and regulations as the University may adopt. To further facilitate communications between the Board and the public, the Chair of the Board of Trustees and/or the President of the University shall hold press conferences as necessary following meetings of the Board of Trustees.
- (9) Visitors to the Meetings. Visitors to the meetings, including representatives of the news media, shall be present as observers, and not as participants. Any form of participation including speaking, the presentation of petitions, and the display of banners, posters, and other forms of signs is prohibited. This rule does not apply to guests invited by the Chair of the Board of Trustees or the President of the University.
  - (a) The Chair of the Board of Trustees or the President of the University shall be authorized to invite non-voting faculty representatives, non-voting student representatives or other constituent representatives to attend and participate in the meetings of standing committees, subcommittees and of special committees, except executive sessions. The representatives shall be selected by the Chair of the Board of Trustees in such manner as he/she deems appropriate.
  - (b) Public Comment
    - (i) The Board of Trustees welcomes the opportunity for expression of public views on issues before the Board. To accommodate such expression the Board shall reserve a portion of its regular meeting cycle for individuals who wish to address the Board.
    - (ii) All persons wishing to speak must preregister by completing a Request to Address form and submit it to the Office of the Secretary of the Board of Trustees no later than 9:00 a.m. on the Wednesday preceding the meeting. The Secretary of the Board of Trustees will review this request and notify the person making the request whether he/she may give public comment at such meeting. The Board will allow up to thirty minutes for public comment per meeting. An individual speaker will be

permitted up to three minutes for a presentation. This will be strictly adhered to with assistance of a timekeeper. Thus, a maximum of ten speakers will be scheduled for each Board meeting.

- (iii) When the number of requests to address the Board of Trustees at a given session exceeds the time available, requests will be approved based on the date the written request was received by the Secretary of the Board. In addition, preference will be given to subject matters that relate to the agenda for the relevant Board meeting and to avoid repetitiveness.
  - (iv) The exact time of the public comment period will be set by the Chair of the Board, after consideration of the number of speakers and other matters on the Board's agenda. All public comments will be recorded.
  - (v) The Board will not hear presentations that include, in whole or in part, the following topics: the employment status of any specific individual; statements concerning the private activities, lifestyles or beliefs of any specific individual employed by or associated with the University; or grievances relating to any individual student or employee. In addition, the Board will not entertain requests to participate in the public comment period by a party to any pending or threatened litigation or any administrative or other proceeding to which the University is a party, or by legal counsel for such party.
  - (vi) Speakers who comply with the Board's rules will have their remarks archived and made available on the Board's website, with such posting to be made as soon as practicable. Remarks by speakers who do not comply with the Board's rules will not be archived or made available on the Board's website. The decision on whether a speaker has or has not complied with the Board's rules will be made by the Chair of the Board, in consultation with the Secretary of the Board and the Chair of the Committee on Outreach, Development and Community Relations.
  - (vii) The Chair of the Board of Trustees shall have the authority to modify the provisions of this subsection (b) in his or her discretion to permit additional speakers, extend the public comment session and to make such other accommodations as may be necessary or advisable in his or her opinion to achieve the purposes of the public comment period.
- (10) Photographic and Recording Equipment. Visitors to the meeting, including representatives of the news media, shall be allowed to use battery-operated audio tape recorders, television cameras and photographic equipment subject to the following regulations:
- (a) A designated area in the meeting room shall be used by all visitors to the meeting using television cameras or photographic equipment.

- (b) Television cameras and related equipment shall be allowed entry into the meeting room for set up purposes during the one-half hour period prior to the starting time of the morning and afternoon meetings. Television cameras and related equipment shall not be allowed entry into the meeting room after the starting time of the meeting, except during the course of a meeting recess, in which event entry will be permitted.
  - (c) Television cameras and photographic equipment shall be required to use available light during the meeting. Artificial lighting and flashes shall not be used during the meeting.
  - (d) No voice-over broadcasting shall be permitted during the meeting.
- (11) Procedures for Committee Meetings and Board Meetings. In conducting the business of the Board of Trustees, its Standing Committees, and its Special Committees, the procedures for the meetings of the Standing Committees and the Special Committees shall provide for full discussion of both information and action items. Following discussion of action items, Standing Committees will vote to recommend an action to the Board of Trustees. Subcommittees and Special committees recommend action to Standing Committees, except as specifically authorized by the Board of Trustees. The Board of Trustees meeting will be devoted primarily to (a) taking formal action on committee and subcommittee recommendations as a block, with Board members having the opportunity to raise questions concerning any of the recommended action items and to call for a separate vote on a given item; (b) considering and acting upon matters which have not come to the Board through a Standing Committee; and (c) receiving the report of the President of the University. The vote of each member of the Board or of a committee on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of a roll call vote, recorded. From time to time, the Board of Trustees, executive committee, standing committees and subcommittees may hold conferences, which need not be open to the public, for the purposes of providing training and information to Trustees on matters directly related to their official responsibilities; provided, however, that no “deliberations” (as defined in the Pennsylvania Sunshine Law) of University business may occur at a conference.
- (12) Agenda for the Meetings. The agenda and supporting material for public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees shall be available to the public (both in hard copy at the meeting and online) at the time of the meetings. In addition to making available to the public at the time of the meeting the agenda and supporting material, the University will make available five days in advance of the meeting an agenda of items to be considered with a note that the agenda of items is subject to change without notice prior to the meeting.

- (13) Executive Sessions. The Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees may hold executive sessions as permitted by applicable law. Attendance at executive sessions shall be limited to voting members of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees, as the case may be, unless the presiding officer of the Board or of such Executive Committee, Standing Committee, Subcommittee or Special Committee otherwise directs.
- (14) Maintaining Order. The presiding officer at public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall have the authority to maintain order during the public meeting. Any person who, in the opinion of the presiding officer, prevents, disturbs, or interrupts a public meeting may be requested to leave the public meeting, and, upon failure to comply, may be subject to forcible removal and/or arrest for violation of applicable law.
- (15) Minutes of Public Meetings. The minutes of public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be available for inspection and copying during regular business hours at the office of the Secretary of the Board of Trustees. A copy of minutes of public meetings shall be available to a member of the public upon payment of the reasonable cost of reproduction.
- (16) Revisions in the Rules and Regulations for Public Meetings. The Board of Trustees will periodically review the Rules and Regulations for the Conduct of Public Meetings and make such revisions as experience indicates are appropriate and desirable.

## **ORDER VIII. GOVERNANCE OF THE UNIVERSITY**

- (1) Role of the Board of Trustees in University Governance
  - (a) Guiding Policies. In the exercise of its responsibilities, the Board of Trustees shall be guided by the following policies:
    - (i) Delegation of authority. As set forth in the Bylaws, the authority for day-to-day management and control of the University, and the establishment of policies and procedures for the educational program and other operations of the University, is delegated to the President of the University, and by him or her either by delegation to or consultation with the faculty and the student body in accordance with a general directive of the Board of Trustees.
    - (ii) Advisor to the President. It is the duty of the Board of Trustees to advise the President on any University matter.
  - (b) Responsibility to Inform the Citizens of Pennsylvania. The Board of Trustees shall inform the citizens of the Commonwealth of Pennsylvania of

the University's performance of its role in the education of the youth of Pennsylvania.

- (c) Responsibility for Development of Effective Relationships. The Board of Trustees shall assist the President in the development of effective relationships between the University and the various agencies of the Commonwealth of Pennsylvania and the United States of America which provide to the University assistance and direction.
- (d) Expectations of Membership. In exercising the responsibilities of trusteeship, the Board of Trustees is guided by the expectations of membership, each of which is equally important. It is expected that each Trustee will:
  - (i) Understand and support the University's mission, vision, and values;
  - (ii) Act in good faith at all times and in the best interests of the University, maintain independence from external stakeholders and act without regard to the manner in which such Trustee was appointed or elected to the Board of Trustees;
  - (iii) Make the University a top philanthropic priority to the very best of one's personal ability and fulfill on a timely basis all financial obligations and pledges of support to the University;
  - (iv) Prepare diligently, attend faithfully, and participate constructively in all Board of Trustees meetings and related activities by reading the agenda and supporting materials;
  - (v) Speak openly, freely and candidly within the Board, while being mindful that any public dissent from Board decisions must be done in the context of being trusted stewards of a public institution. Because a University is a free marketplace of competing ideas and opinions, its governance mandates open communication as well as principled, civil and respectful debate. At the same time, trustees must always protect and act in the best interest of the University, being cognizant that the tone and substance of their words reflect on the University that they are dedicated to serve and have consequences on its overall wellbeing.
  - (vi) Make decisions and instruct the administration collectively as the governing body of the University; it being recognized and understood that unless specifically authorized by the Board or the Chair, no individual trustee has the authority to direct administrators with respect to the performance of their duties for the University or to otherwise act on behalf of the University or the Board;

- (vii) Participate regularly in events that are integral parts of the life of the University community;
- (viii) Disclose promptly and fully any potential or actual conflicts of interest in accordance with the Board's conflict of interest policies, and personally maintain exemplary ethical standards;
- (ix) Refrain from requests of the President or staff for special consideration or personal prerogatives, including admissions, employment, and contracts for business;
- (x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose "confidential information" includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;
- (xi) Advocate the University's interests, but speak for the Board or the University only when authorized to do so by the Board or the Chair; it being recognized and understood that it is important for the Board of Trustees to convey a consistent message and that the Chair of the Board of Trustees or his or her designee serves as the spokesperson for the Board;
- (xii) Respect University policies relating to the acquisition of information and communication; it being recognized and understood that all such information should be used only for purpose consistent with such Trustee's duties and responsibilities to the University; and
- (xiii) Extend goodwill to one another and to all members of the University community.

Regular attendance at meetings by members of the Board is expected. If a member of the Board is unable to attend at least four of the six scheduled meetings each year, such Board member should discuss with the Chair of the Board of Trustees the question of his or her ability to continue attendance appropriate to a Trustee.

For violation of the Board's expectations of membership as set forth in Standing Order VIII(1)(d), the chair of the Board, in consultation with the Board's vice-chair, shall have the discretion to take any or all of the following actions:

1. Remove a trustee from any Board leadership position, including the positions of chair or vice-chair of any committee or subcommittee;

2. Remove a trustee from any committee, subcommittee or other Board assignment;
3. Pursue the adoption of a full Board resolution, or publicly issue a letter from the chair, censuring the offending trustee;
4. Privately issue a letter of censure with or without notice to the Board; in the case of a private letter of censure with notice to the Board, the letter would be confidential, and Board members would be requested to maintain the confidentiality of the communication; and/or
5. Discuss the breach with the offending trustee and without notice to the Board.

Before taking any of the above-described actions (1) – (3), the chair of the Board shall also consult with the chair and vice-chair of the Committee on Governance and Long-Range Planning and, in the case of an action described in (2) above, with the chair of any affected Committee. In the event that the chair or vice chair of the Board, the chair or vice chair of the Committee on Governance and Long-Range Planning or the chair of any affected Committee is the subject of the action to be taken, such individual would be recused from participating in any such consultation.

Additionally, before taking any of the above-described actions, the chair and vice-chair of the Board shall communicate with the offending trustee to specify the nature of the perceived offense, to clarify the expectations of Board leadership, and to provide an opportunity for the trustee to explain his/her actions and otherwise respond to the alleged violation. In deciding whether to impose a sanction for violation the expectations of membership, the Board chair shall take into account the position of the trustee charged with the violation, and shall also consider whether the violation is a first-time, or repeated, offense, the public or private nature of the offense and the severity of the injury or potential injury to the Board or the university arising from the violation.

The imposition of any sanctions hereunder for violation of the Board's expectations of membership shall not inhibit the capacity of the Board to remove a trustee pursuant to §2.03 of the Bylaws for any misconduct that constitutes a breach of a trustee's fiduciary duties.

- (e) Final Responsibility of the Board. The Board of Trustees is the final repository of all legal responsibility and authority to govern the University, under the laws of Pennsylvania. It can delegate but it cannot abandon this

responsibility and authority. The Board has the responsibility and duty to direct all organizations and persons participating in governing the University, whether such participation be in the establishment of policies, rules, and regulations, or in the administration of such policies, rules, and regulations. In order to perform this responsibility and duty, and consistent with the Charter, the Board of Trustees hereby directs that governing of the University henceforth be conducted in accordance with the following general plan of organization.

(2) Internal Governance

- (a) What Internal Governance Is Concerned With. This plan of organization concerns only the internal governance of the University. It is not concerned with the operation of the Board of Trustees, with the functions of the officers of the corporation, or with the establishment of financial policy and fiscal and budgetary controls, which matters are the responsibility of the Board of Trustees, the President, and the Treasurer in accordance with established policy.
- (b) Who Performed By. The internal governance of the University shall be performed by the President and his or her administration, by the faculty, and by the student body in accordance with the delegations of authority and advisory roles hereinafter set forth.

(3) Faculty

- (a) Responsibilities. The faculty, as appropriately organized, pursuant to delegation from the President, and subject to the revisions and orders of the President, shall establish policy concerning the approval and supervision of the instructional programs including courses and curricula, academic admissions standards, graduation requirements, and scholarships and honors.
- (b) Consultation by the President. The faculty shall be consulted by the President concerning student affairs, educational policy and planning, academic personnel, and any other matter upon the request of the President.
- (c) Communication with the Board. Official faculty communication to the Board of Trustees shall be made through the President and through faculty participation on the standing committees.
- (d) Regular Meetings. In furtherance of the objective of appropriate communication among the faculty, the administration and the Board of Trustees, a meeting will be held at least once per semester, attended by the President, the Provost and the Vice President for Administration, the Chair, Chair-Elect and Secretary of the Faculty Senate and the Chair and Vice Chair of the Board of Trustees. Any of such individuals may initiate agenda items for any such meeting.

(4) Student Body

- (a) Consultation by the President. The student body shall be consulted by the President concerning the establishment of policy for student affairs.
- (b) Communication with the Board. Official student communication to the Board of Trustees shall be made through the President and through student participation on the standing committees.
- (c) Participation in the Deliberations of the Faculty. Students may also participate in an appropriate manner in the deliberations of the faculty subject to the revisions and orders of the President.

**ORDER IX. TRUSTEES EMERITI**

- (1) Granting the Status of Trustee Emeritus to Former Members of the Board. The status of Trustee Emeritus shall be reserved for any living former member of the Board of Trustees who has served as a board member for six years or more with distinction. Trustee shall be eligible for consideration to receive such status immediately upon retirement from active service on the Board of Trustees. The Committee on Governance and Long-Range Planning shall review the service of a Trustee upon such Trustee's retirement and shall make a recommendation to the Board of Trustees. Criteria to be considered by the Committee shall include offices held, attendance record, participation in the activities of the Board, length of service, or other significant contributions to the governance of the University. The Committee may also take into account the Trustee's fulfillment of the Board's expectations of membership as set forth in these Standing Orders. Each former Chair of the Board of Trustees will be entitled to automatic trustee emeritus status upon retirement or resignation.
- (2) The election of Trustees Emeriti will be held at the September meeting of the Board of Trustees.
- (3) The status of Trustee Emeritus shall be applicable for a term of six years. At the end of such six year period, individuals who have been granted Trustee Emeritus status shall retain the title and may be invited to continue to participate in University activities and events at the discretion of the Chair of the Board of Trustees. All other privileges associated with the status of Trustee Emeritus shall expire.
- (4) Individuals with the status of Trustee Emeritus shall be invited to attend public meetings of the Board of Trustees and Standing Committees thereof and may participate at the discretion of the presiding officer of such meeting. Trustees Emeriti shall not have the right to attend executive sessions of the Board of Trustees or any Standing Committees thereof or to attend any portion of any meeting at which attorney-client privileged discussions are held unless the presiding officer of such session determines, after consultation with counsel, that such attendance is appropriate and advisable. Trustees Emeriti shall receive or be given access to documents and other materials that are made public, and may receive or have access

to the University's confidential, proprietary or attorney-client privileged materials at the discretion of the presiding officer of the meeting at which such materials are to be discussed.

- (5) Trustees Emeriti may be appointed by the Chair of the Board of Trustees, at the Chair's discretion, to serve as non-voting members of certain Standing Committees or ad hoc committees.
- (6) At the discretion of the Chair of the Board of Trustees, Trustees Emeriti shall be invited to participate in University events and activities, to serve as an advisor or mentor, to consult on University matters and/or to serve the University in such other capacities as the Chair may determine are advisable and appropriate.
- (7) The University shall reimburse Trustees Emeriti for reasonable expenses associated with service as Trustees Emeriti in accordance with policies applicable to the Board of Trustees from time to time.

#### **ORDER X. PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS**

The following process will be followed in connection with the search for, and appointment of, Vice Presidents and Deans.

- (1) Members of the Board of Trustees will be notified in writing by the President or his or her designee when a vacancy occurs. This notification shall include:
  - a. Position description/advertisement.
  - b. Roster of search committee members.
  - c. Information about any search firm engaged to assist in the search.
  - d. A description of the search process, the projected timeline and a tentative interview schedule.
- (2) When a successful finalist has been chosen, the Executive Committee of the Board of Trustees will be notified and sent the application materials of the candidate, a summary of the interview feedback and any other relevant materials, as determined by the President or the Executive Vice President and Provost.
- (3) The notice to the Executive Committee members will specify a date by which the members of the Executive Committee shall have an opportunity to express any concerns to the President. If there are no concerns, the University may proceed with the hiring and announcement of the candidate and shall introduce the hire at the next meeting of the Board of Trustees. If any Executive Committee expresses a concern with respect to a candidate, a conference call will be held at which Executive Committee members may express their concerns and discuss any issues with the President.

- (4) The process set forth in this Standing Order X shall not be applicable to the Vice President and General Counsel. The appointment and removal of the Vice President and General Counsel shall remain subject to approval by the Board of Trustees as set forth in the Bylaws.

# OOR Exhibit 5



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF :  
 :  
 WYATT MASSEY AND SPOTLIGHT PA, :  
 Requester :  
 :  
 v. : **Docket No.: AP 2023-1492**  
 :  
 PENNSYLVANIA DEPARTMENT OF :  
 EDUCATION, :  
 Respondent :  
 :  
 And :  
 :  
 THE PENNSYLVANIA STATE :  
 UNIVERSITY, :  
 Direct Interest Participant :

### FACTUAL BACKGROUND

On May 18, 2023, Wyatt Massey, a reporter with Spotlight PA (collectively “Requester”), submitted a request (“Request”) to the Pennsylvania Department of Education (“Department” or “PDE”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.
2. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin’s role on the Penn

State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.

3. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.
4. An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.

On June 26, 2023, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), the Department denied the Request, stating that the records do not exist within the Department's possession, custody or control.

On July 6, 2023, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.<sup>1</sup> Specifically, the Requester states that "controlling law on this issue makes clear that the records are public." The Requester cites to three cases in support of his argument: (1) *Bagwell v. Pa. Dep't of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013); (2) *Edinboro Univ. of Pa. v. Ford*, 18 A.3d 1278 (Pa. Commw. Ct. 2010); and (3) *Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 939 (Pa. Commw. Ct. 2014), *aff'd*, 124 A.3d 1214 (Pa. 2015). The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

---

<sup>1</sup> In the appeal, the Requester granted the OOR an additional thirty days to issue this Final Determination. *See* 65 P.S. § 67.1101(b)(1).

On July 18, 2023, the Department submitted a position statement reiterating its grounds for denial. In support, the Department provided the attestations of Angela Riegel (“Riegel Attestation”), the Department’s Open Records Officer; Kari Worley (“Worley Attestation”), an Executive Assistant with the Department; and Shannon Harvey (“Harvey Attestation”), the Assistant Vice President and Secretary, Office of the Board of Trustees at The Pennsylvania State University.

On July 14, 2023, The Pennsylvania State University (“University” or “Penn State”) submitted a Request to Participate in the appeal pursuant to 65 P.S. § 67.1101(c). The University argues, in part, that the Department “does not have possession, custody or control of the requested documents....” On the same day, the OOR granted the request to participate.

### **LEGAL ANALYSIS**

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Commonwealth is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the factfinder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Department asserts that the responsive records do not exist in its possession, custody or control. By way of background, the Department explains that Eric Hagarty (“Hagarty”) “served as Pennsylvania Acting Secretary of Education beginning on or about April 2022 and he left

[C]ommonwealth service on or about January 15, 2023.” Dr. Khalid Mumin (“Mumin”) “began service as Pennsylvania Acting Secretary of Education on or about January 17, 2023 and was confirmed as Pennsylvania Secretary of Education on or about June 26, 2023.” The Department further states that the “Pennsylvania Secretary of Education serves [as] an Ex Officio Voting Member of the Pennsylvania State University Board of Trustees (“PSU Board”).” As such, Hagarty was an ex officio voting member from April 2022 to January 2023, and Mumin became an ex officio voting member of the PSU Board in January 2023.

With respect to Diligent, the Department explains that Diligent “is board management software used by the PSU Board as a platform for sharing documents and other information with the Trustees.” According to the Department, the PSU Board “maintains all aspects of Diligent, including with respect to access, controls, posting of documents, deleting documents and other posting information.” The Department contends that Hagarty and Mumin “do not have the ability to post or delete anything in Diligent” and that “there is no [Department] record that indicated ... Hagarty formerly or ... Mumin currently printed or downloaded the requested documents.”

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession.... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors.... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of the Department's argument that it does not possess responsive records, the Riegel Attestation<sup>2</sup> states, in part, as follows:

3. PDE does not have any records in its possession or under its custody or control that are responsive to the ... [R]equest.
4. I have confirmed this by personally checking with the appropriate PDE staff member Kari Worley, Executive Assistant.
5. Upon receipt of the Request, the Request was provided to Kari Worley, so that she could inform me as to whether Mr. Hagarty formerly and Dr. Mumin, currently, had any documents relevant to the [R]equest.
6. After Kari Worley was notified of the Request, she discussed the [R]equest with Secretary Mumin.
7. Kari Worley informed me that Mr. Hagarty did not screen capture, save, print, or in any way maintain information accessible on *Diligent* outside of the *Diligent* software.
8. After speaking with Secretary Mumin, Kari Worley informed me that Secretary Mumin did not receive access to *Diligent* until May 8, 2023 and that on the date of the [R]equest, May 18, 2023 Secretary Mumin still had not accessed *Diligent*.

Additionally, the Worley Attestation provides, in part, as follows:

---

<sup>2</sup> Under the RTKL, an attestation may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith, "the averments in [the attestations] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

2. In my capacity as Executive Assistant, I perform a wide variety of highly responsible management duties such as serving as the primary executive staff assistant to the Secretary and Executive Deputy Secretary of the Pennsylvania Department of Education (PDE). I work and collaborate with the senior leadership team to plan and direct PDE operations.
3. Eric Hagarty served as Pennsylvania Acting Secretary of Education beginning on or about April 2022, and he left [C]ommonwealth service on or about January 15, 2023.
4. Khalid N. Mumin, Ed.d., began serving as Pennsylvania Acting Secretary of Education on or about January 17, 2023 and was confirmed as Pennsylvania Secretary of Education on or about June 26, 2023.
5. As Executive Assistant, I worked closely with Mr. Hagarty during his tenure as Acting Pennsylvania Secretary of Education.
6. Since Secretary Mumin's appointment as Pennsylvania Acting Secretary of Education and currently since being confirmed as Pennsylvania Secretary of Education, as Executive Assistant I have worked closely with Secretary Mumin.
7. The Pennsylvania Secretary of Education serves an Ex Officio Voting Member of the ... [PSU Board].
8. Mr. Hagarty served as an Ex Officio Voting Member of the PSU Board during his term as Pennsylvania Acting Secretary of Education.
9. Dr. Mumin currently serves as an Ex Officio Voting Member of the PSU Board.
10. During his tenure as Acting Secretary, Mr. Hagarty was granted access to *Diligent* individually in his capacity as a trustee to the PSU Board. During Mr. Hagarty's tenure as Acting Secretary he was the only member of PDE who had access to *Diligent* for PSU Board purposes.
11. Secretary Mumin, as Pennsylvania Secretary of Education is currently granted access to *Diligent* individually in his capacity as a trustee to the Trustees. No one else in PDE has access to *Diligent* for PSU Board purposes.
12. As of the date of the Right-to-Know-Law [R]equest at issue in the above captioned appeal, May 18, 2023, Dr. Mumin did not attempt to access *Diligent*.

13. Mr. Hagarty has not screen captured, saved, printed, or in any way maintained information accessible on *Diligent* in any format outside of the *Diligent* software.
14. Secretary Mumin has not screen captured, saved, printed, or in any way maintained information accessible on *Diligent* in any format outside of the *Diligent* software.
15. Mr. Hagarty, while serving as Pennsylvania Acting Secretary of Education was the only member of PDE who had access to *Diligent*.
16. Currently, Secretary Mumin is the only member of PDE who has access to *Diligent*.

Both the Department and University submitted the Harvey Attestation, which states, in part, the following:

2. I am the Assistant Vice President and Secretary, Office of the Board of Trustees at [t]he ... University.... In this capacity, I serve as the elected Secretary of the University with responsibilities as outlined in Section 5.06 of the University Bylaws (Exhibit PSU #1). I am also responsible for the management and operation of the Office of the Board of Trustees including oversight of all activities, meetings, agenda preparation and filing of minutes, Trustee certifications and questionnaires in compliance with legal requirements and University policy to ensure the Board is as effective and efficient as possible in the conduct of its oversight responsibilities.

...

4. For approximately three years, the University's Office of the Board of Trustees (the "Board Office") has utilized the services of Diligent as a platform for sharing documents and other information with the members of its Board of Trustees ("Trustees"). Diligent Boards is an online board portal tool that facilitates secure digital communication from the Board Office to Trustees. We utilize Diligent to securely share board meeting agendas, meeting materials, and other documents.
5. The Board Office staff, with the assistance of other University staff members as appropriate, maintains all aspects of the Diligent site, including with respect to access controls, posting of documents, deleting documents and posting other information.

6. Former Acting Secretary of Education Eric Hagarty was an ex officio Trustee from April of 2022 to January 2023. Dr. Mumin became an ex officio member of the Board of Trustees in January of 2023 when he was appointed to serve as the Acting Secretary of the Department....
7. Mr. Hagarty was granted Diligent access on May 18, 2022 and removed from access on January 22, 2023. Dr. Mumin was granted Diligent access on May 3, 2023.
8. The Board Office controls the Secretary's ability to print or download any document from the Diligent platform. The Secretary does not have the ability to post or delete anything in the Diligent platform.
9. Access is given to the Secretary of Education individually, in their capacity as a Trustee. No one else in the ... Department ... is given access to Diligent by the University.
10. The Secretary, like all other members of the Board of Trustees is subject to the University's Bylaws and Board of Trustees' Standing Orders, attached herein as Exhibits PSU #1 and PSU #2, stating in relevant part:

“Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.”

*Section 8.07 of the Bylaws (Fiduciary Duty) (See Exhibit PSU #1)*

“It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose ‘confidential information’ includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;”

*Order VIII, Section 1(d)(x) (Expectations of Membership) (See Exhibit PSU #2)*

The Requester, in response, contends that “controlling law on this issue makes clear that the records are public.” The Requester relies on *Bagwell v. Pa. Dep’t of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013), in support of his claim. In *Bagwell*, the Commonwealth Court held that certain records received by the Secretary of the Department in his ex officio capacity as a board member of PSU Board constituted “records” that may be subject to public access. *Id.* at 90. The RTKL request at issue in *Bagwell* sought “copies of letters, emails, reports and memoranda received by Secretary of Education Ronald J. Tomalis....” *Id.* at 83. The Court determined that “the records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as supporter and influencer of education at state-related institutions. Because the records are received by a Commonwealth agency to enable it to perform its statutory governmental function, they qualify as ‘records’ under the RTKL.” *Id.* at 92.

Both the Department and the University attempt to distinguish the within matter from the facts set forth in *Bagwell*. Specifically, the Department asserts that unlike *Bagwell*, the instant Request “does not ask for any physical documents such as letters, emails, reports and memoranda.” Similarly, the University argues that the “documents were not received by the Secretary. To receive a document, it must come into one’s possession, that is, one must receive a modicum of control over the document.”

Contrary to the arguments raised, the documents hosted on Diligent are no different than the records at issue in *Bagwell*. In particular, Item 3 of the Request seeks materials hosted on Diligent related to the August 2022 PSU Board retreat, while Item 4 seeks materials hosted on Diligent “in relation to the November 16, 2022 meeting of Penn State’s Academic Affairs, Research and Student Life committee, of which ... Hagarty was a member.” Notably, these documents were accessible to Hagarty formerly and are accessible to Mumin currently for the sole

purpose of allowing them to carry out their respective role as an Ex Officio Voting Member of the PSU Board. Accordingly, *Bagwell* controls in this matter, and responsive records hosted on Diligent are accessible.<sup>3</sup>

The Department further maintains that it is not required to create a record that does not exist. Specifically, the Department argues that “[a]sking PDE to take electronic screen shots of the records in Diligent would require PDE to create records.”

Section 705 of the RTKL provides that when responding to a request, “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705; *see also Moore*, 992 A.2d at 909 (holding that an agency cannot be made to create a record that does not exist). Here, Items 1 and 2 of the Request seek an “electronic screenshot of all folders and files hosted on Diligent” relative to Hagarty and Mumin’s roles on the PSU Board. The Worley Attestation states that neither Hagarty nor Mumin have “screen captured ... information accessible on Diligent in any format outside of the Diligent software.” Worley Attestation, ¶¶ 13-14. Therefore, based on the evidence provided, the Department has met its burden of proof that it does not possess the screenshots responsive to Items 1 and 2 of the Request, and, pursuant to 65 P.S. § 67.705, the Department is not required to create a record, i.e., a screen shot, in order to respond to the Request. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep’t of Health v. Mahon*, 283 A.3d

---

<sup>3</sup> The Department did not raise any RTKL exemptions or other legal authority for denying access to the records. The University argues that “to the extent that documents on the Diligent platform are determined to be within the possession, custody, or control of the PDE, the documents would be subject to exclusions and the exceptions provided in the RTKL under 65 P.S. § 67.708(b), as well as any other relevant protections afforded through other legal authorities.” Notably, however, the University did not identify what RTKL exemptions or “other legal authorities” are applicable and did not submit any evidence in support of this argument. Although the University references its Bylaws, which state, in part, that “[i]t is expected that each Trustee will ... [m]aintain the confidentiality of confidential information ....” such Bylaws to not have the force and effect of law.

929, 936 (holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary....”); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry); *Moore*, 992 A.2d at 909.

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide all records responsive to Items 3 and 4 of the Request within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>4</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 1, 2023**

*/s/ Magdalene C. Zeppos-Brown*  
MAGDALENE C. ZEPPOS-BROWN, ESQ.  
DEPUTY CHIEF COUNSEL

Sent via OOR e-file portal: Wyatt Massey; Angela Riegel, AORO; Zachary Stritzinger, Esq.;  
and Natalie Voris Grosse, Esq.

---

<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

# OOR Exhibit 6

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

**IN THE MATTER OF  
WYATT MASSEY,**

**Complainant**

v.

**PENNSYLVANIA DEPARTMENT OF  
EDUCATION,**

**Respondent**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket # AP 2023-1492**

**PETITION FOR RECONSIDERATION**

Pursuant to Section 35.241 of the General Rules of Administrative Practice and Procedure, 1 Pa.Code § 35.241, the Pennsylvania Department of Education (PDE) respectfully petitions the Pennsylvania Office of Open Records (OOR) for reconsideration of its September 1, 2023 Final Determination entered partially in favor of Wyatt Massey pursuant to the Right-to-Know Law (RTKL), 65 P.S. § 67.101, *et seq.*, on the following grounds:

1. On May 18, 2023 PDE received an RTKL request from Wyatt Massey requesting the following:

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

“An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.”

“An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State’s Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.”

(Attached as Exhibit 1)

2. PDE’s open records officer advised Mr. Massey that PDE required up to an additional 30 days in which to respond to his request. (Attached as Exhibit 2).
3. In PDE’s final response dated June 26, 2023, PDE explained that “PDE does not have possession, custody, or control of the requested records. It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them.” (Attached as exhibit 3.)
4. On July 5, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging PDE’s response to the request.
5. On July 18, 2023, the Department submitted its position statement.
6. On September 1, 2023 OOR’s hearing officer uploaded a Final Determination regarding Mr. Massey’s appeal to PDE via the OOR Portal.

#### ERRORS ASSERTED

7. PDE asserts that the OOR erred in its ruling that the documents hosted on Diligent are no different than the records at issue in *Bagwell*.
8. In its position statement submitted July 18, 2023, the Department asserted that the ability to print or download documents on Diligent is controlled by Penn State University (PSU).
9. Further in its position statement submitted July, 18, 2023 the Department asserted that at the time of the request, former Acting Secretary Eric Hagarty and Secretary Mumin did not screen capture, save, print, or in any way maintain information accessible on Diligent outside of the Diligent software.
10. The OOR correctly ruled that the Department is not required to create a record in order to respond to the Request. Therefore, the Department is not required to produce the following documents:

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs,

Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

11. However, the OOR’s Final Determination requires the Department to produce the following documentation.

“An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.”

“An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State’s Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.”

12. The OOR’s ruling that PDE provide the documentation discussed in paragraph 11 is contrary to the OOR’s ruling that the Department is not required to create a record in order to respond to the Request.
13. In its position statement submitted July 18, 2023 PDE asserted that the instant matter is distinguishable from *Bagwell*, *Bagwell* dealt with letters, emails, reports and memoranda physically possessed by Secretary Tomalis. *Bagwell v. Pa. Dep’t of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013).
14. PDE does not currently have possession custody or control of the requested documents discussed in paragraph 11.
15. In *Bagwell* PDE had possession, custody or control over the requested documents.
16. Mr. Hagarty and Secretary Mumin did not screen capture, save, print, or in any way maintain information accessible on Diligent outside of the Diligent software.
17. As discussed, the Department does not have the ability to print or download documents on Diligent, the ability to print and download documents is controlled by PSU.
18. Section 705 of the RTKL reads “[w]hen responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705

19. If the Department is required to provide the documents discussed in paragraph 11 it would be required to create records in order to respond to the request.

WHEREFORE, Petitioner, Pennsylvania Department of Education, respectfully requests the Office of Open Records to reconsider its September 1, 2023, Final Determination that the records on Diligent are no different than the records at issue in *Bagwell*.

Respectfully submitted,

*Zachary Stritzinger*

---

Zachary Stritzinger  
Attorney I.D. No.328879  
Pennsylvania Department of Education  
333 Market Street, 9<sup>th</sup> Floor  
Harrisburg, PA 17126-0333  
Phone: 717-787-5500  
Fax: 717-783-0347  
e-mail: [zstritzing@pa.gov](mailto:zstritzing@pa.gov)

Date filed: September 15, 2023

# PDE EXHIBIT 1



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Pennsylvania Dept of Education (Attn: AORO)

Date of Request: May 18, 2023 Submitted via: [X] Email [ ] U.S. Mail [ ] Fax [ ] In Person

PERSON MAKING REQUEST:

Name: Wyatt Massey Company (if applicable): Spotlight PA

Mailing Address: 210 W. Hamilton Ave. #331

City: State College State: PA Zip: 16801 Email: wmassey@spotlightpa.org

Telephone: 445-236-0562 Fax:

How do you prefer to be contacted if the agency has questions? [ ] Telephone [X] Email [ ] U.S. Mail

RECORDS REQUESTED: Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.

Please see attached

DO YOU WANT COPIES? [ ] Yes, printed copies (default if none are checked) [X] Yes, electronic copies preferred if available [ ] No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? [ ] Yes (may be subject to additional costs) [X] No RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than [ ] \$100 (or) [ ] \$\_\_\_\_\_.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: Date Received: Response Due (5 bus. days):

30-Day Ext.? [ ] Yes [ ] No (If Yes, Final Due Date: ) Actual Response Date:

Request was: [ ] Granted [ ] Partially Granted & Denied [ ] Denied Cost to Requester: \$\_\_\_\_\_

[ ] Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. More information about the RTKL is available at https://www.openrecords.pa.gov

Form updated Feb. 3, 2020

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.

An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.

# PDE EXHIBIT 4



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
333 MARKET STREET  
HARRISBURG, PA 17126-0333  
[www.education.pa.gov](http://www.education.pa.gov)

May 25, 2023

**Via Electronic Mail** ([wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org))

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Ave., #331  
State College, PA 16801

**Re: Right-to-Know Law Request No. 2023-108**

Dear Mr. Massey:

The Pennsylvania Department of Education (PDE) is in receipt of your request pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. § 67.101, *et seq.* Your request was received on May 18, 2023 and is as follows:

*An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat. An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.*

Under the provisions of 65 P.S. §67.902(b)(2), you are hereby notified that your request is being reviewed for the reasons listed below and that PDE requires up to an additional 30 days, until Monday, June 26, 2023 in which to respond to your request.

- Compliance with your request may require the redaction of certain information that is not subject to access under the RTKL.
- The extent or nature of the request precludes a response within the required time period.
- A legal review is necessary to determine whether the record is a record subject to access under the RTKL.

This is an interim response, not a final response, to your request. Please note that the estimated or actual total for any fees that will be owed when the records become available will be included in our subsequent response. Prepayment is required before providing access when the estimated cost to fulfill a request exceeds \$100.00. 65 P.S. § 67.1307(h). Please contact me with questions.

Sincerely,

*Angela Riegel*

Angela Riegel  
Agency Open Records Officer  
(717) 783-9810

# PDE EXHIBIT 5



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
333 MARKET STREET  
HARRISBURG, PA 17126-0333  
[www.education.pa.gov](http://www.education.pa.gov)

June 26, 2023

Via Electronic Mail ([wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org))

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Ave., #331  
State College, PA 16801

Re: Right-to-Know Law Request No. 2023-108

Dear Mr. Massey:

The Pennsylvania Department of Education (PDE) is in receipt of your request pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. § 67.101, *et seq.* Your request was received on May 18, 2023. By letter dated May 25, 2023, you were advised that PDE required up to an additional 30 days, i.e., until Monday, June 26, 2023 in which to respond to your request. Your request is as follows:

*An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat. An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.*

PDE does not have possession, custody, or control of the requested records. It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them." *In the Matter of Jenkins v. Pennsylvania Dept. of State*, OOR Dkt. AP 2009-065, dated 4/2/2009.

If you have questions regarding this letter, please contact me.

Sincerely,

*Angela Riegel*

Angela Riegel  
Agency Open Records Officer  
(717) 783-9810

# OOR Exhibit 7

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

<b>IN THE MATTER OF</b>	:	
<b>WYATT MASSEY AND SPOTLIGHT PA,</b>	:	
<b>Complainant</b>	:	
	:	<b>Docket # AP 2023-1492</b>
v.	:	
	:	
<b>PENNSYLVANIA DEPARTMENT OF</b>	:	
<b>EDUCATION,</b>	:	
<b>Respondent</b>	:	
<b>and</b>	:	
	:	
<b>THE PENNSYLVANIA STATE UNIVERSITY,</b>	:	
<b>Direct Interest</b>	:	
<b>Participant</b>	:	

**PETITION FOR RECONSIDERATION**

Pursuant to Section 35.241 of the General Rules of Administrative Practice and Procedure, 1 Pa.Code § 35.241, The Pennsylvania State University (“PSU” or “the University”) respectfully petitions the Pennsylvania Office of Open Records (“OOR”) for reconsideration of its September 1, 2023 Final Determination pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. § 67.101, *et seq.*, on the following grounds:

1. The University concurs with and relies upon the factual recitation provided in paragraphs 1 through 6 of the Petition for Reconsideration filed by the Pennsylvania Department of Education (“PDE”) on September 15, 2023.
2. On July 24, 2023, the University submitted its Request to Participate.

**ERRORS ASSERTED**

3. The University concurs with PDE’s arguments in their Petition for Reconsideration that the OOR erred in its ruling that the documents hosted on Diligent are no different than the records at issue in *Bagwell*.

4. The University concurs with PDE that the OOR correctly ruled that PDE is not required to create a record to respond to the Request. Thus, as noted in OOR's Final

Determination, PDE is not required to produce the following requested documents:

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

“An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.”

5. The University concurs with PDE that OOR's Final Determination requiring PDE to produce the remaining information requested by Complainant is erroneous. Specifically, the following documentation is not within the possession, custody, or control of PDE:

“An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.”

“An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.”

6. In its position statement submitted on July 24, 2023, the University asserted that the documents at issue are University documents in the possession, custody, and control of the University, not PDE.
7. Further, the University asserted that the requested documents were created or curated by the University, an entity that is neither a “Commonwealth Agency” nor a “Local Agency” under the RTKL but is instead a “state-related institution” subject to different RTKL public disclosure requirements than PDE, a Commonwealth Agency.

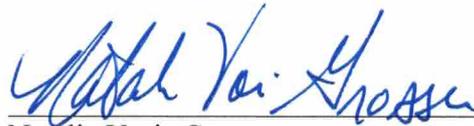
8. As described in PDE's position statement submitted on July 18, 2023, and its Petition for Consideration filed on September 15, 2023, PDE has not located any of the requested documents in their possession, custody, or control. PDE also does not have the ability to print or download documents on Diligent.
9. The University concurs with PDE that OOR's ruling that PDE provide the documentation discussed in paragraph 5, *supra*, directly conflicts with OOR's ruling that PDE is not required to create a record to respond to the Request.
10. In its position statement submitted July 24, 2023, the University, like PDE, asserted that the instant matter is distinguishable from *Bagwell*. The University concurs with PDE's asserted arguments in its Petition for Reconsideration distinguishing *Bagwell* from the instant matter. As noted in the University's position statement, possession was not raised as an issue in *Bagwell*, but it is a decisive issue in the instant matter.
11. In its position statement, the University noted that Diligent is a cloud-based and closed network platform maintained by the University, not by PDE. A clarification to a statement that was not critical to the University's position statement and did not appear to be instrumental in the OOR Final Determination is necessary in this filing: data residing in Diligent is not housed on the University network but is on a secure non-Commonwealth Agency platform that requires University credentials to access. The OOR Final Determination is erroneous in finding that information a University Board member who is also a Commonwealth Agency Secretary can simply view becomes a public record. The OOR Final Determination would seem to include information on the Diligent platform that the Commonwealth Secretary might not have ever viewed, which highlights

the untenable nature of the OOR Final Determination when contrasted with the legislative intent of the RTKL.

12. As noted in its Request for Reconsideration, unlike the situation in *Bagwell* wherein PDE had possession, custody, or control over the requested documents, PDE does not have possession, custody, or control of the requested documents discussed in paragraph 5, *supra*, nor does PDE have the ability to print or download documents on Diligent.
13. The University reserves the right to raise additional legal arguments should this matter proceed to the judicial system for adjudication.

WHEREFORE, Petitioner, The Pennsylvania State University, respectfully requests the Pennsylvania Office of Open Records to reconsider its September 1, 2023, Final Determination that the records on Diligent are no different than the records at issue in *Bagwell* for the reasons set forth herein and the reasons set out more fully in the University's July 24, 2023 submission.

Respectfully submitted,



---

Natalie Voris Grosse  
Attorney I.D. No. 326651  
Associate General Counsel  
The Pennsylvania State University  
227 West Beaver Avenue, Suite 507  
State College, PA 16801-4842  
Email: [nvg5267@psu.edu](mailto:nvg5267@psu.edu)

Date filed: September 16, 2023

# OOR Exhibit 8

## **RESPONSE TO PETITIONS FOR RECONSIDERATION**

DATE ISSUED AND MAILED: September 20, 2023

IN RE: *Wyatt Massey and Spotlight PA v. Pa. Dep't of Educ. and the Pennsylvania State Univ.*, OOR Dkt. AP 2023-1492

The Office of Open Records (“OOR”) is in receipt of Petitions for Reconsideration (“Petitions”) submitted by the Pennsylvania Department of Education (“Department”) and the Pennsylvania State University (“PSU”), respectively. The Petitions largely challenge the underlying Final Determination’s holding that documents hosted on Diligent<sup>1</sup> are subject to public access under Pennsylvania’s Right-to-Know Law (“RTKL”).

I have reviewed the Final Determination, as well as the Petitions, and I find the arguments set forth in the Petitions to be unavailing. The Request at issue seeks two categories of records: 1) electronic screenshots “of all folders and files hosted on Diligent” as related to the Department’s former Acting Secretary and current Secretary, and 2) records hosted on Diligent concerning the former Department Acting Secretary’s role as an ex officio member of the PSU Board of Trustees. The Final Determination treats the two categories of records differently. It finds that the Department met its burden of proving that it does not possess the requested screenshots, and is not required to create them; however, it grants access to the records hosted on Diligent. Both the Department and PSU argue that this holding is contradictory. However, the first category of records (electronic screenshots of folders and files) clearly contemplates the creation of a record that does not currently exist,<sup>2</sup> while the second category of records (records hosted on Diligent) asks the Department to provide access to currently existing records/information. I cannot find that the holding is contradictory or warrants reconsideration.

The second category of records, those hosted on Diligent, are clearly subject to access under *Bagwell v. Pa. Dep't of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013). These records are not merely PSU records, but records of the PSU Board of Trustees, and specifically concern the former Department Acting Secretary’s participation on the Board.<sup>3</sup> The Commonwealth Court held in

---

<sup>1</sup> The Final Determination quotes the Department, who explains that Diligent “is board management software used by the PSU Board as a platform for sharing documents and other information with the Trustees.”

<sup>2</sup> A request for an electronic screenshot of folders and files is no different than asking an agency to take a photograph of a filing cabinet or box of records. While the documents contained within constitute records under the RTKL, 65 P.S. § 67.102, the organizational scheme is not its own record.

<sup>3</sup> Item 3 of the Request seeks “all materials ... related to the August 2022 [PSU] Board of Trustees retreat,” while Item 4 seeks “all materials ... in relation to the November 16, 2022 meeting of [PSU]’s Academic Affairs, Research and Student Life committee, of which [the former Acting Secretary] was a member.”

*Bagwell* that “the records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as supporter and influencer of education at state-related institutions.” *Id.* at 92. Both the Department and PSU argue that the records’ presence on Diligent somehow renders them inaccessible under the RTKL because access to Diligent is read-only, making the Department unable to print or download documents. There is no legal support for these arguments. Agencies or other parties that may possess public records cannot save or store records in software or databases as “read-only” and then argue the records are incapable of duplication; permitting that conduct would lead to an absurd result wherein the public would be unable to obtain public records. Further, it would encourage agencies in similar situations to use file sharing platforms and software to avoid releasing those records. The Commonwealth Court has interpreted the RTKL to avoid such loopholes to access. *See, e.g., Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012) (finding that pulling information from a database does not constitute the creation of a record because “[t]o hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases”). The fact remains that Department secretaries have access to public records on Diligent because of their status as an ex officio member of the PSU Board of Trustees.

As explained in *Bagwell*, the records “[d]ocument’ the Department’s participation on PSU’s Board.... The Secretary only has a place on PSU’s Board because he represents the Department. The records he receives to enable him to perform his *ex officio* duties thus evidence the Department’s governmental function of representing the Commonwealth’s education interests on the Board.” *Bagwell*, 76 A.3d at 91. While the Department Secretary in *Bagwell* had physical possession of the documents at issue, it is difficult to sanction an arrangement wherein a Department Secretary is able to view documents containing public information but is then permitted to avoid public disclosure of those documents simply by proclaiming they have never actually *received* them.<sup>4</sup> When Department secretaries are granted access to Diligent, they clearly **receive** the documents and information necessary to enable them to perform their duties. Regardless, I note that the definition of “record” under the RTKL does not necessarily require physical receipt; indeed, the document/information must merely be “created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. To the extent that access on Diligent does not constitute receipt, *Bagwell* makes clear that the records are retained on Diligent in connection with a Department

---

<sup>4</sup> PSU argues that the Final Determination “would seem to include information on the Diligent platform that the Commonwealth Secretary might not have ever viewed, which highlights the untenable nature of the ... Final Determination when contrasted with the legislative intent of the RTKL.” However, this argument is speculative, and it is unclear how PSU would demonstrate that the former Department Acting Secretary has not reviewed these records. This alleged ambiguity exists no matter how the records would have been transmitted, as there is no guarantee that an individual has actually reviewed the material transmitted to them. Regardless, the definition of “record” in the RTKL does not impose any requirement of proof that an individual has reviewed the document. 65 P.S. § 67.102.

Secretary's duties. Thus, they remain records of the Department. If the records did not have a connection to Department business or activity, there would not be any reason for a Department Secretary to access the records on Diligent.

The Harvey Attestation explains that “[t]he Board Office controls the Secretary’s ability to print or download any document from the Diligent platform.” As a result, a situation exists where a third party is directly impeding the public’s right to access public records. There is no legal authority for a third party to do so, and pursuant to *Bagwell*, PSU cannot dictate what records may be disclosed. The RTKL is clear that “[a] Commonwealth agency shall provide public records in accordance with this act.” 65 P.S. § 67.301(a). How the Department provides these records is within its discretion.

Finally, with respect to PSU’s argument that it “reserves the right to raise additional legal arguments should this matter proceed to the judicial system for adjudication,” we note that PSU had an ample opportunity to raise and support those arguments before the OOR, and PSU was clearly aware of the Commonwealth Court’s holding *Bagwell*. PSU’s Request to Participate in this matter acknowledges that “the request may seek information that is subject to protection from disclosure, whether that protection is afforded under the RTKL itself or other legal authorities and doctrines such as a privilege....,” but PSU did not provide any evidence in support of withholding records. PSU has had sufficient notice and an opportunity to participate in this appeal as a Direct Interest Participant. Nevertheless, as the record shows, PSU has not developed or supported any grounds for withholding the records at issue, and the consideration of any “additional legal arguments” would mean “the proverbial second bite at the apple.” *Highmark Inc. v. Voltz*, 163 A.3d 485, 491 (Pa. Commw. Ct. 2017) (declining to accept additional evidence or remand to the OOR when a third party had an adequate opportunity to submit evidence and defend itself).

For the above reasons, the Petitions are **DENIED**.

Issued by:

/s/ Kyle Applegate

---

CHIEF COUNSEL

Sent via email and portal to: Wyatt Massey; Zachary Stritzinger, Esq.; Natalie Voris Grosse, Esq.

# OOR Exhibit 9

**From:** no-reply@openrecordspennsylvania.com  
**To:** [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation  
**Date:** Monday, July 3, 2023 1:57:50 PM  
**Attachments:** oor\_logo\_email.png

---

**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

<b>Name:</b>	Wyatt Massey
<b>Company:</b>	Spotlight PA
<b>Address 1:</b>	210 W. Hamilton Ave., #331
<b>Address 2:</b>	
<b>City:</b>	State College
<b>State:</b>	Pennsylvania
<b>Zip:</b>	16801
<b>Phone:</b>	445-236-0562
<b>Email:</b>	<a href="mailto:wmassey@spotlightpa.org">wmassey@spotlightpa.org</a>
<b>Email2:</b>	
<b>Agency (list):</b>	Pennsylvania Department of Education
<b>Agency Address 1:</b>	333 Market Street, 15th Floor
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Harrisburg
<b>Agency State:</b>	Pennsylvania

**Agency Zip:** 17126-0333

**Agency Phone:** 717-783-9810

**Agency Email:** RA-RTK-Education@pa.gov

**Records at Issue in this Appeal:** See attached PDF "Massey OOR Appeal 070323" Also, please note this appeal also includes similar records sought from the Pennsylvania Department of Agriculture.

**Request Submitted to Agency Via:** e-mail

**Request Date:** 05/18/2023

**Response Date:** 06/26/2023

**Deemed Denied:** No

**Agency Open Records Officer:** Angela Riegel

**Attached a copy of my request for records:** Yes

**Attached a copy of all responses from the Agency regarding my request:** Yes

**Attached any letters or notices extending the Agency's time to respond to my request:** Yes

**Agree to permit the OOR additional time to issue a final determination:** 30 Days

**Interested in resolving this issue through OOR mediation:** No

**Attachments:**

- Massey OOR Appeal 070323.pdf
- Ed Dept Original RTK 051823.pdf
- Ed Dept RTK Extension 052523.pdf
- Ed Dept RTK Denial 062623.pdf
- Ag Dept Original RTK 051823.pdf
- Ag Dept - Emails 1 (including expedition).pdf
- Ag Dept - Emails 2 (including denial).pdf

**I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.**

---

333 Market Street, 16<sup>th</sup> Floor | Harrisburg, PA 17101-2234 | 717.346.9903 | F 717.425.5343 | [openrecords.pa.gov](http://openrecords.pa.gov)



# Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Pennsylvania Dept of Ag (Attn: AORO)

Date of Request: May 18, 2023 Submitted via:  Email  U.S. Mail  Fax  In Person

### PERSON MAKING REQUEST:

Name: Wyatt Massey Company (if applicable): Spotlight PA

Mailing Address: 210 W. Hamilton Ave. #331

City: State College State: PA Zip: 16801 Email: wmassey@spotlightpa.org

Telephone: 445-236-0562 Fax: \_\_\_\_\_

How do you prefer to be contacted if the agency has questions?  Telephone  Email  U.S. Mail

**RECORDS REQUESTED:** *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Russell Redding's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees.

An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

- DO YOU WANT COPIES?**  Yes, printed copies (*default if none are checked*)
- Yes, electronic copies preferred if available
- No, in-person inspection of records preferred (*may request copies later*)

Do you want **certified copies**?  Yes (*may be subject to additional costs*)  No  
RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than  \$100 (or)  \$\_\_\_\_\_.

### ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: \_\_\_\_\_ Date Received: \_\_\_\_\_ Response Due (5 bus. days): \_\_\_\_\_

30-Day Ext.?  Yes  No (If Yes, Final Due Date: \_\_\_\_\_) Actual Response Date: \_\_\_\_\_

Request was:  Granted  Partially Granted & Denied  Denied Cost to Requester: \$\_\_\_\_\_

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.  
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020

**From:** AG, AG-RTK RA-AG-RTK@pa.gov  
**Subject:** RE: [External] RTK - Spotlight PA May 18, 2023  
**Date:** June 29, 2023 at 3:04 PM  
**To:** Wyatt Massey wmassey@spotlightpa.org



I am searching my computer but not finding this. I don't know what could have happened.

Let me see what I can do to expedite a response on this for you. I am going to assign it Log # 230637 for tracking purposes.

Please allow me to try to get a response for you soon.

Sue

**From:** Wyatt Massey <wmassey@spotlightpa.org>  
**Sent:** Thursday, June 29, 2023 2:50 PM  
**To:** AG, AG-RTK <RA-AG-RTK@pa.gov>  
**Subject:** Re: [External] RTK - Spotlight PA May 18, 2023

Yes. Here's a screenshot of the original RTK request made on May 18, 2023 and the automated response.

**Wyatt Massey**  
Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

Forwarded from Wyatt Massey



**Wyatt Massey**  
RTK - Spotlight PA May 18, 2023  
To: RA-AG-RTK@pa.gov

May 18, 2023 at 1:59 PM

Attached is my Right-to-Know request. Thank you.

Wyatt

**Wyatt Massey**  
Investigative Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

**Standard Right-to-Know Law Request Form**

Copy - non-confidential - only to be used for RTK purposes. Complete and form thoroughly and make a copy. It may be required if an appeal is filed. You must file a request with the request office's receipt of the form of records. Details.

**SUBMITTED TO AGENCY NAME:** Pennsylvania Dept of Pa (Date: 2023)

**Date of Request:** 6/29/23 **Submitted via:** Email  US Mail  Fax  In Person

**PERSON MAKING REQUEST:**

**Name:** Wyatt Massey **Company (if applicable):** Spotlight PA

**Address:** 233 W. 3rd Street, Suite 1000, Harrisburg, PA 17102

**Phone:** 482-333-3333 **Fax:** 482-333-3333

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Email \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

How do you prefer to be contacted if the agency has questions?  Telephone  Email  U.S. Mail

**RECORDS REQUESTER:** In order to receive records as requested, please clearly identify subject matter, dates, times and locations of records being sought. If the records sought are not available, please list any alternative records which should be sought in the absence of the records unless otherwise requested by the requester upon discovery.

An electronic record of all actions and the content of all reports of the Public Access Team shall be maintained by the Pennsylvania State Board of Records, including but not limited to the role of a member of the Governance and Planning Committee, Legal and Compliance Committee and the Advisory Committee.

An electronic copy of all records received by the Agency shall be the property of the State Board of Records unless otherwise stated.

**DO YOU WANT COPIES?**  Yes, printed copies (please specify how many)  No

Yes, electronic copies preferred (if available)

No, I prefer digital copies of records generated from request applications

Do you want certified copies?  Yes (please specify the additional cost)  No

RTKL requests may require payment or preparation of fees. See the official RTKL Act for details for more details.

Please notify me if fees associated with this request will be more than \$100 (yes)  No  Yes

**ITEMS BELOW THIS LINE FOR AGENCY USE ONLY**

Processing \_\_\_\_\_ Days Required \_\_\_\_\_ Response Due (in how many days) \_\_\_\_\_

Ready for  Yes  No (if Yes, from what date) \_\_\_\_\_ Actual Response Date \_\_\_\_\_

Request was:  Granted  Partially Granted & Denied  Denied. Cost to Requester \$ \_\_\_\_\_

Approve these terms provided and give an opportunity to object to the release of requested records

NOTE: It is the requester's responsibility to provide a valid email address. For updates, see RTKL Act.

More information about the RTKL is available at <http://www.pa.gov/rtkl>



AG, AG-RTK

RE: (External) RTK - Spotlight PA May '18, 2023

To: Wyatt Manney

May 19, 2023 at 1:00 PM

The Department of Agriculture's Right-to-Know Law (RTKL) Office has received your correspondence. Requests for records will be processed in accordance with the provisions of the RTKL, 65 P.S. §§67.101, et seq.

Requests received by this account after regular business hours (5 pm) or when the Office is otherwise closed pursuant to Management Directive 530.17 will be marked as received on the next business day.

Thank you

On Jun 29, 2023, at 2:46 PM, AG, AG-RTK <RA-AG-RTK@pa.gov> wrote:

I just searched the RTKL Resource Account where all electronic requests are received and do not have this request. I looked by date as well as by your email address, which is how the last one was received. I checked my person In Box as well, but I don't have this.

Did you get an electronic receipt that it went through? I honestly don't know what could have happened but didn't receive it.

I can get this moving now for you. I'm glad you brought this to my attention.

Sue

---

**From:** Wyatt Massey <[wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)>  
**Sent:** Thursday, June 29, 2023 2:35 PM  
**To:** AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)>  
**Subject:** Re: [External] RTK - Spotlight PA May 18, 2023

The RTK I am asking about is a separate request than the one you forwarded with the interim response.

I am reattaching the request to this email. It was submitted on May 18, 2023.

---

**Wyatt Massey**  
Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

On Jun 29, 2023, at 2:22 PM, AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)> wrote:

I will forward the email sent to you on June 5 with the interim response attached. Our final response is due by 7/7/23.

Thanks for checking!  
Sue West

---

**From:** Wyatt Massey <[wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)>  
**Sent:** Thursday, June 29, 2023 9:18 AM  
**To:** AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)>  
**Subject:** Re: [External] RTK - Spotlight PA May 18, 2023

Good morning,

I have not received an interim response or decision on this records request that was filed on May 18, 2023.

Will the department be offering any response? Please let me know by the end of the day today. Thank you.  
Wyatt

---

**Wyatt Massey**  
Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

On May 18, 2023, at 1:35 PM, AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)> wrote:

The Department of Agriculture's Right-to-Know Law (RTKL) Office has received your correspondence. Requests for records will be processed in accordance with the provisions of the RTKL, 65 P.S. §§67.101, et seq.

Requests received by this account after regular business hours (5 pm) or when the Office is otherwise closed pursuant to Management Directive 530.17 will be marked as received on the next business day.

Thank you

**From:** AG, AG-RTK RA-AG-RTK@pa.gov  
**Subject:** RE: RTKL# 230637 [External] RTK - Spotlight PA May 18, 2023  
**Date:** July 3, 2023 at 9:42 AM  
**To:** Wyatt Massey wmassey@spotlightpa.org



Attached please find the response to your request for records.

Thank you,

**Susan West** | Agency Open Records Officer | Fleet Vehicle Officer |  
Property Control Officer | Records Coordinator  
PA Department of Agriculture | Bureau of Administrative Services  
2301 North Cameron Street, Room 204 | Hbg PA 17110-9408  
Telephone: 717.787.5653 | Fax: 717.346.3301  
[www.agriculture.pa.gov](http://www.agriculture.pa.gov)

**From:** Wyatt Massey <wmassey@spotlightpa.org>  
**Sent:** Thursday, June 29, 2023 2:50 PM  
**To:** AG, AG-RTK <RA-AG-RTK@pa.gov>  
**Subject:** Re: [External] RTK - Spotlight PA May 18, 2023

Yes. Here's a screenshot of the original RTK request made on May 18, 2023 and the automated response.

**Wyatt Massey**  
Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

1 | Wyatt Massey

 Wyatt Massey  
RTK - Spotlight PA May 18, 2023  
To: ra-ag-rtk@pa.gov

May 18, 2023 at 1:25 PM

Attached is my Right-to-Know request. Thank you.

Wyatt  
**Wyatt Massey**  
Investigative Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

  
**Standard Right-to-Know Law Request Form**  
(Send communication to you in the RTK process. Complete this form personally and return a copy. It may be reported if an appeal is filed. You have 10 business days to appeal after a request is denied or delayed.)

Per requestor's Consent to by \_\_\_\_\_ (Print Name)  
SUBMITTED TO AGENCY NAME \_\_\_\_\_ (Print Agency)  
May 18, 2023  
General Request  Information  Records  Data  Financial

**PERSON MAKING REQUEST:**

Name: Mark Massey      Spotlight PA  
 Title: County of applicability  
 P.O. Box (if applicable) RTK  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Country: \_\_\_\_\_  
 Telephone: 412 326 7552 Fax: \_\_\_\_\_

How do you prefer to be contacted if the agency has questions?  Telephone  Email  US Mail

**RECORDS REQUESTED:** In clear and concise format, in such words as to enable clearly identify subject matter, date, time and type of record or records. If the request should seek records, we will maintain. Requests are not required to contain the following information if it is not available to the requester or if it is not in the possession, custody or control of the agency.

An electronic record of all notices and this request. Subject to the Privacy Act, this information shall be made available to the Pennsylvania State of Records, including its use in the public records system, and to the Pennsylvania State of Records, Legal and Compliance Services, and the PA State Archives.

An electronic copy of all records received or obtained by the Requester from the State of Pennsylvania.

**DO YOU WANT COPIES?**  Yes, printed copies (if they are available)  
 Yes, electronic copies (if available)  
 No, or please specify if not available (may require explanation)  
 Copies were searched (yes/no)  Yes (they are subject to subsequent request)  No  
 If a response requires payment or preparation of fee in the future, the amount is hereby stated. Please notify me if fees associated with this request will be more than \$100 (or) \$10.

**ITEMS BELOW THIS LINE FOR AGENCY USE ONLY**

Training: \_\_\_\_\_ Date Received: \_\_\_\_\_ Response Due (in days): \_\_\_\_\_  
 By:  The  By (You have the date) \_\_\_\_\_ Actual Response Date: \_\_\_\_\_  
 Response:  Granted  Partially Granted & Denied  Denied (Specify Reason): \_\_\_\_\_  
 Appropriate third parties notified and given an opportunity to object to the release of requested records.  
 NOTE: In accordance with the RTKLA, requesters are entitled to a fee of \$100 (or) \$10.  
 More information about the RTKLA is available at <http://www.pas.gov>



AG, AG-RTK

RE: [External] RTK - Spotlight PA May 18, 2023

To: Mark Massey

May 18, 2023 at 1:35 PM

The Department of Agriculture's Right-to-Know Law (RTKL) Office has received your correspondence. Requests for records will be processed in accordance with the provisions of the RTKL, 65 P.S. §667.101, et seq.

Requests received by this account after regular business hours (5 pm) or when the Office is otherwise closed pursuant to Management Directive 533.17 will be marked as received on the next business day.

Thank you

On Jun 29, 2023, at 2:46 PM, AG, AG-RTK <RA-AG-RTK@pa.gov> wrote:

I just searched the RTKL Resource Account where all electronic requests are received and do not have this request. I looked by date as well as by your email address, which is how the last one was received. I checked my person In Box as well, but I don't have this.

Did you get an electronic receipt that it went through? I honestly don't know what could have happened but didn't receive it.

I can get this moving now for you. I'm glad you brought this to my attention.

attention.

Sue

---

**From:** Wyatt Massey <[wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)>  
**Sent:** Thursday, June 29, 2023 2:35 PM  
**To:** AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)>  
**Subject:** Re: [External] RTK - Spotlight PA May 18, 2023

The RTK I am asking about is a separate request than the one you forwarded with the interim response.

I am reattaching the request to this email. It was submitted on May 18, 2023.

---

**Wyatt Massey**  
Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

On Jun 29, 2023, at 2:22 PM, AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)> wrote:

I will forward the email sent to you on June 5 with the interim response attached. Our final response is due by 7/7/23.

Thanks for checking!  
Sue West

---

**From:** Wyatt Massey <[wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)>  
**Sent:** Thursday, June 29, 2023 9:18 AM  
**To:** AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)>  
**Subject:** Re: [External] RTK - Spotlight PA May 18, 2023

Good morning,

I have not received an interim response or decision on this records request that was filed on May 18, 2023.

Will the department be offering any response? Please let me know by the end of the day today. Thank you.  
Wyatt

---

**Wyatt Massey**  
Reporter, Spotlight PA  
Cell/Signal: 445-236-0562  
Here are ways you can [share information securely](#).

On May 18, 2023, at 1:35 PM, AG, AG-RTK <[RA-AG-RTK@pa.gov](mailto:RA-AG-RTK@pa.gov)> wrote:

The Department of Agriculture's Right-to-Know Law (RTKL) Office has received your correspondence. Requests for records will be processed in accordance with the provisions of the RTKL, 65 P.S. §§67.101, et seq.

Requests received by this account after regular business hours (5 pm) or when the Office is otherwise closed pursuant to Management Directive 530.17 will be marked as received on the next business day.

Thank you



230637  
RESPONSE.pdf

July 3, 2023

Wyatt Massey, Reporter  
Spotlight PA  
210 W. Hamilton Ave. #331  
State College, PA 16801

**Re: Right-to-Know Law Request No. 230637**

Dear Mr. Massey:

On June 29, 2023, the Agency Open Records Officer of the Pennsylvania Department of Agriculture (PDA) received your request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL). Your request is as follows:

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Russell Redding's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees.

An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

PDA does not have records related to this request. These records are not in PDA's possession, under its custody or its control. Pursuant to the Office of Open Records Final Decision in *Jenkins vs. Pennsylvania Department of State*, Docket # AP 2009-065, it should be noted that: "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (see, e.g. section 67.506 (d)(1))."

Further, an agency is not required "to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

You have a right to appeal this response in writing to the Executive Director, Office of Open Records (OOR), 333 Market Street, 16<sup>th</sup> Floor, Harrisburg, PA 17101-2234. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response.

In order to appeal, you must send to the OOR and simultaneously to me, in the same manner as the appeal is sent to the Office of Open Records (e-mail, fax, mail or hand delivery):

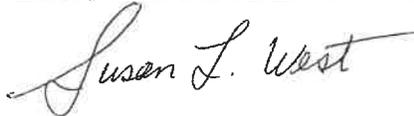
- 1) This response;
- 2) Your request;
- 3) The appeal form that is available on the OOR website at:  
<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm>

You must also include on the appeal form the reasons why you think the Agency was wrong in its response to your request and what relief or agency action you are seeking. All of the above must be submitted for your appeal to be valid.

Please let me know if you have any questions related to this response.

Very truly yours,

PENNSYLVANIA DEPARTMENT OF AGRICULTURE



Susan West, Agency Open Records Officer  
2301 North Cameron Street  
Harrisburg, PA 17110  
Telephone: (717) 787-5653  
suewest@pa.gov

I am a reporter with Spotlight PA who filed two similar Right-to-Know requests with the Pennsylvania Department of Education and the Pennsylvania Department of Agriculture seeking records connected to the respective department secretaries and their roles on the Pennsylvania State University's Board of Trustees.

Given the similarities of both the requests and the subsequent denials, I am arguing for the right to access in both cases in the appeal detailed below.

### **Pennsylvania Department of Education Request**

On May 18, 2023, I filed an open records request with the Department of Education seeking the following:

1. *An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Eric Hagarty's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.*
2. *An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Khalid Mumin's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Academic Affairs, Research and Student Life committee, Outreach, Development and Community Relations Committee, and the full board of trustees.*
3. *An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.*
4. *An electronic copy of all materials hosted on Diligent in relation to the November 16, 2022 meeting of Penn State's Academic Affairs, Research and Student Life committee, of which Mr. Hagarty was a member.*

By nature of his previous position as secretary, Eric Hagarty was a voting member of Penn State's board of trustees in 2022. Similarly, current education secretary Khalid Mumin serves on Penn State's board of trustees as an ex officio and voting member.

For context, Diligent is a file-sharing service that Penn State's Board of Trustees uses for sharing information related to its meetings. These files can include agendas, background information, and other materials directly connected to items trustees vote on during committee and full board meetings.

Rather than requesting a copy of all documents hosted on Diligent, I requested an electronic screenshot of the files there so that, in the future, I could make more tailored requests (see requests #1 and #2). Using information I gathered before filing my request, I also made a specific request for documents hosted on Diligent concerning two events that involved the board (see requests #3 and #4).

On May 25, 2023, The Department of Education requested a 30-day extension to my request. On June 26, 2023, the department denied the request, writing that the department “does not have possession, custody, or control of the requested records. It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them,” citing *Jenkins v. Pennsylvania Dept. of State* from April 2009.

### **Pennsylvania Department of Agriculture Request**

On May 18, 2023, I filed an open records request with the Department of Education seeking the following:

1. *An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Russell Redding’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees.*
2. *An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.*

By nature of his position as secretary, Russell Redding was a voting member of Penn State’s board of trustees in 2022 and remains a voting member today.

On May 18, 2023, I received confirmation via email that the department received my request. However, after inquiring with the department on June 29, 2023, I was informed by Susan West, via email, that my request was not in the department’s records system. My request was subsequently expedited and provided Log #230637 for the purpose of tracking.

On July 3, 2023, the department denied my request, writing that the department “does not have records related to this request” and that such records are not “under its custody or its control.” The department also cited *Jenkins v. Pennsylvania Dept. of State* from April 2009 in its denial.

The department also cited Section 705 of the Right-to-Know Law in that an agency is not mandated to “create a record which does not currently exist or to compile, maintain, format or

organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

### **Argument for Appeal**

According to the Pennsylvania Office of Open Records, which cites the state’s open records law, “all records are presumed to be public records unless disclosure is barred by: (1) state or federal law or regulation; (2) judicial order; (3), privilege, e.g., attorney-client or doctor-patient; or (4) one of the exceptions in Section 708 of the Right-to-Know Law.”

None of the exceptions outlined in Section 708 of the Right-to-Know Law pertain to these records requests and, to the best of my knowledge, the specific documents requested. The materials sought directly concern a public official’s work and statutory responsibilities as a member of the Penn State Board of Trustees.

Additionally, controlling law on this issue makes clear that the records are public. In a 2013 opinion in Bagwell v. Pennsylvania Department of Education, the Commonwealth Court of Pennsylvania concluded that records connected to a Secretary of Education in their role as a member of the Penn State Board of Trustees are not exempt and are subject to the Right-to-Know Law:

Pursuant to a statutory requirement, the Secretary serves on behalf of the Department when serving on the PSU Board. Thus, the records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as supporter and influencer of education at state-related institutions. Because the records are received by a Commonwealth agency to enable it to perform its statutory governmental function, they qualify as “records” under the RTKL.

The 2013 opinion also states that records held by Penn State may still be accessed through an agency subject to the RTKL because “the records of [Penn State] may be reached through the connection between the Department and PSU.”

Similarly, in Edinboro University of Pennsylvania v. Ford, the Commonwealth Court of Pennsylvania ruled that an agency’s argument that it does not maintain, or never maintained, certain records does not constitute grounds for denial.

In that case, the court ruled that “The RTKL contains no requirement that the record be ‘maintained’ by the Commonwealth agency, and where the record is created or received by the Commonwealth agency, there is no requirement that it then be retained by the agency.”

The records sought in the requests outlined above relate directly to the roles and responsibilities of the respective secretaries as public officials. Through the file-sharing service Diligent, the records requested are sent to and received by a secretary to carry out the trustee position.

Moreover, the RTKL reaches records in an agency's actual or *constructive* possession under Section 901 of the law. See *Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214 (Pa. 2015). In *Eiseman*, the Commonwealth Court explained the concept of constructive possession under the RTKL as follows:

Constructive possession focuses on an agency's access to a record. The analysis emphasizes the statutory language in Section 901 of the RTKL that mandates an agency "determine whether [it] has possession, custody or control of the identified record." 65 P.S. § 67.901. We recognize constructive possession under Section 901 as a means of access so agencies cannot frustrate the purposes of the RTKL by placing their records in the hands of third parties to avoid disclosure. See *Barkeyville Borough v. Stearns*, 35 A.3d 91 (Pa. Cmwlth. 2012); *Office of the Budget v. Office of Open Records*, 11 A.3d 618 (Pa. Cmwlth. 2011)... The litmus test under Section 901 remains whether the records document a transaction of the agency to which the request was directed.... *Office of the Budget*, 11 A.3d at 621.

Whether the Department of Education or the Department of Agriculture has "custody" or actual physical possession of the records is irrelevant given the nature of the requested records and the fact that they document a statutory duty of the respective secretaries.

The RTKL cannot be applied in a manner that allows agencies to thwart public access by claiming records exist solely in the possession, custody or control of a third party, and the RTKL was intentionally and expressly designed to prevent such an outcome.

Given previous rulings in open records cases and the remedial letter and intent of the act itself, it is clear that the requested records are subject to the RTKL and the Department of Education and the Department of Agriculture each has an affirmative legal duty to facilitate access to them.

For all the foregoing reasons, I respectfully request the OOR to grant access to the requested records and order the Department of Education and the Department of Agriculture to facilitate access.

# OOR Exhibit 10

## **NOTICE OF DEADLINES**

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **September 5, 2023**.

**The timeline for this RTKL appeal may be extended by the OOR during the appeal.** This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **July 18, 2023**.

**If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.**

Due to delays in U.S. mail, we urge agencies and requesters to use email or the E-File Appeal Portal for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



July 7, 2023

**Via Email Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue  
#331  
State College, PA 16801  
wmassey@spotlightpa.org

**Via Email Only:**

Susan West  
Agency Open Records Officer  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: OFFICIAL NOTICE OF APPEAL - Massey and Spotlight PA v. Pennsylvania Department of Agriculture OOR Dkt. AP 2023-1520**

Dear Parties:

**Review this information and all enclosures carefully as they affect your legal rights.**

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on July 5, 2023. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

**Notes for both parties (more information in the enclosed documents):**

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Elizabeth Wagenseller  
Executive Director

Enc.: Description of RTKL appeal process  
Assigned Appeals Officer contact information  
Entire appeal as filed with OOR

# The Right-to-Know Law Appeal Process

**Please review this information carefully as it affects your legal rights.**

The Office of Open Records (“OOOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

## **Submissions to the OOOR**

**Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.**

**Any information provided to the OOOR must be provided to all parties involved in this appeal.** Information submitted to the OOOR will not be considered unless it is also shared with all parties.

**Include the docket number on all submissions.**

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

It is strongly advised that attorneys and other party representatives **file an Entry of Appearance** by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>.

*NOTE TO AGENCIES: In cases assigned to the E-File Portal, if an Entry of Appearance is not filed, the AORO is responsible to inform attorneys and other party representatives of all docket activity.*

Generally, submissions to the OOOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

## **Agency Must Notify Third Parties**

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

**A third party's failure to participate in a RTKL appeal before the OOOR**

**may be construed as a waiver of objections regarding release of requested records.**

*NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.*

---

---

## Statements of Fact & Burden of Proof

Statements of fact **must** be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, [openrecords.pa.gov](http://openrecords.pa.gov).

*Any evidence or legal arguments not submitted or made to the OOR may be waived.*

---

## Preserving Responsive Records

**The agency must preserve all potentially responsive records during the RTKL appeal process**, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

---

## Mediation

**The OOR offers a mediation program as an alternative to the standard appeal process.** To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

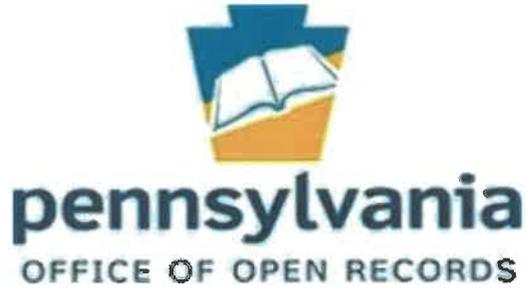
If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.

---



**APPEALS OFFICER:**

**Magdalene C. Zeppos-Brown, Esq.**

**CONTACT INFORMATION:**

**Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234**

**FACSIMILE:**

**(717) 425-5343**

**EMAIL:**

**mazepposbr@pa.gov**

**Preferred method of contact and  
submission of information:**

**EMAIL  
(Except cases assigned to the E-File  
Appeal Portal)**

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.  
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot  
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review  
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff  
are also available to provide general information about the appeals process by calling (717) 346-9903.



## REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

**PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.**

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

Name of Requester: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Record at issue: \_\_\_\_\_

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted, \_\_\_\_\_ (must be signed)

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**

# OOR Exhibit 11



**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

**IN THE MATTER OF:**

<b>Massey and Spotlight PA</b>	:	
<b>Requester</b>	:	
<b>v.</b>	:	<b>OOR Dkt. AP 2023-1520</b>
	:	
<b>Commonwealth of Pennsylvania,</b>	:	
<b>Department of Agriculture,</b>	:	
<b>Respondent</b>	:	

**NOTICE OF APPEARANCE**

Please enter my appearance in the above-captioned matter on behalf of the Commonwealth of Pennsylvania, Department of Agriculture.

I am authorized to accept service on behalf of Respondent in this matter.

Based on this Notice, I request a copy of each document hereinafter issued by the Office of Open Records in this matter.



Marija K. Kuren, Assistant Counsel  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
Telephone: (717) 724-6991

# OOR Exhibit 12



July 11, 2023

**Via Email Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue  
#331  
State College, PA 16801  
wmassey@spotlightpa.org

**Via Email Only:**

Marija K Kuren  
2301 North Cameron St  
Harrisburg, PA 17110  
mkuren@pa.gov

Susan West  
Agency Open Records Officer  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: OFFICIAL NOTICE OF APPEAL - Massey and Spotlight PA v. Pennsylvania Department of Agriculture OOR Dkt. AP 2023-1520**

Dear Parties:

**Review this information and all enclosures carefully as they affect your legal rights.**

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on July 5, 2023. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

**Notes for both parties (more information in the enclosed documents):**

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Elizabeth Wagenseller  
Executive Director

Enc.: Description of RTKL appeal process  
Assigned Appeals Officer contact information  
Entire appeal as filed with OOR

# The Right-to-Know Law Appeal Process

**Please review this information carefully as it affects your legal rights.**

The Office of Open Records (“OOOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

## **Submissions to the OOOR**

**Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.**

**Any information provided to the OOOR must be provided to all parties involved in this appeal.** Information submitted to the OOOR will not be considered unless it is also shared with all parties.

**Include the docket number on all submissions.**

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

It is strongly advised that attorneys and other party representatives **file an Entry of Appearance** by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>.

*NOTE TO AGENCIES: In cases assigned to the E-File Portal, if an Entry of Appearance is not filed, the AORO is responsible to inform attorneys and other party representatives of all docket activity.*

Generally, submissions to the OOOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

## **Agency Must Notify Third Parties**

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

**A third party's failure to participate in a RTKL appeal before the OOOR**

**may be construed as a waiver of objections regarding release of requested records.**

*NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.*

---

---

## **Statements of Fact & Burden of Proof**

Statements of fact **must** be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, [openrecords.pa.gov](http://openrecords.pa.gov).

*Any evidence or legal arguments not submitted or made to the OOR may be waived.*

---

## **Preserving Responsive Records**

**The agency must preserve all potentially responsive records during the RTKL appeal process**, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

---

## **Mediation**

**The OOR offers a mediation program as an alternative to the standard appeal process.** To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



**APPEALS OFFICER:**

**Angela Edris, Esq.**

**CONTACT INFORMATION:**

**Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234**

**FACSIMILE:**

**(717) 425-5343**

**EMAIL:**

**aedris@pa.gov**

**Preferred method of contact and  
submission of information:**

**EMAIL  
(Except cases assigned to the E-File  
Appeal Portal)**

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.  
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot  
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review  
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff  
are also available to provide general information about the appeals process by calling (717) 346-9903.



## REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

**PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.**

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

Name of Requester: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Record at issue: \_\_\_\_\_

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted, \_\_\_\_\_ (must be signed)

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**

# OOR Exhibit 13

July 16, 2023

**Via Email Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue  
#331  
State College, PA 16801  
wmassey@spotlightpa.org

**Via Email Only:**

Marija K Kuren  
2301 North Cameron St  
Harrisburg, PA 17110  
mkuren@pa.gov

Susan West  
Agency Open Records Officer  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: Massey and Spotlight PA v. Pennsylvania Department of Agriculture; OOR Dkt.  
AP 2023-1520**

Dear Parties:

This message is to inform you that the above-captioned appeal has been reassigned and I will be serving as the appeals officer for purposes of issuing a final determination.

The deadlines established for submissions and the issuance of the OOR's decision, as stated in the OOR's Notice of Appeal, will remain in place.

Thank you for your cooperation in this process. Please contact me should you have any concerns or questions.

Sincerely,

*/s/ Angela Edris*

Angela Edris

# OOR Exhibit 14



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 18, 2023

Commonwealth of Pennsylvania  
Office of Open Records  
ATTN: Angela Edris, Appeals Officer  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

**By OOR E-File Portal and by Regular Mail**

**In the Matter of:**

**OOR Docket No. AP 2023-1520  
Massey and Spotlight PA v. Pennsylvania Department of Agriculture Agency  
Response**

Dear Appeals Officer Edris:

I have previously entered my Notice of Appearance on behalf of the Pennsylvania Department of Agriculture (“PDA”) in the above matter (the “subject appeal”).

By letter of July 7, 2023, Office of Open Records (“OOR”) Executive Director Elizabeth Wagenseller provided PDA notice of the subject appeal and notice of the window within which additional argument and factual information might be submitted. PDA’s response is due on July 18, 2023. The Requester in this matter is Wyatt Massey (“Mr. Massey”). This letter and its accompanying attachments are offered on PDA’s behalf.

The RTKL request that is the subject of this appeal are as follows (PDA RTKL# 230637):

An electronic screenshot of all folders and files hosted on Diligent, the file sharing service Penn State uses, related to Russell Redding’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

In summary:

At the time of PDA's response letter dated July 3, 2023, PDA believed that it did not have records related to Mr. Massey's initial RTKL request. No records related to screenshots were found in PDA's possession, custody or control. As a courtesy to the third party involved, PDA made a good-faith effort and contacted the Penn State Board of Trustees' legal counsel to let them know this request was received. Past Right-to-Know Law requests received which were related to Penn State Board of Trustee records resulted in the identification of confidential, third-party proprietary information. This required contact with Penn State University ("PSU") legal counsel based on section 67.707(b) and section 67.708(b)(11) of the Pennsylvania *Right-To-Know Law* 65 P.S. §§ 67.101, *et seq.*

Penn State Board of Trustees' legal counsel informed PDA that only trustees have access to the Diligent file-sharing platform and the Board Office controls a Trustee's ability to print or export documents from the platform. Therefore, PDA believed records related to the August 2022 retreat to not be in its possession, under its custody or its control. Pursuant to the Office of Open Records Final Decision in *Jenkins vs. Pennsylvania Department of State*, Docket # AP 2009-065, it should be noted that: "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (see, e.g. section 67.506 (d)(1))."

Following receipt of Mr. Massey's appeal on July 7, 2023, PDA conducted further due diligence and discovered a document in its possession, which PDA was previously unaware of, that met the criteria of Mr. Massey's RTKL request. This document was responsive to the second part of Mr. Massey's RTKL request: *materials related to the August 2022 Penn State Board of Trustees Retreat*. The responsive materials, with applicable exemptions allowable under the RTKL, are hereby provided with PDA's position statement. Although PDA did not raise these exemptions from the onset in its response to Mr. Massey's initial RTKL request, the Commonwealth Court stated in *Levy v. Senate of Pa.*, 94 A.3d 436 (Pa. Commw. 2014) that "[a]n agency must raise all its challenges before the fact-finder closes the record. This will allow efficient receipt of evidence from which facts may be found to resolve the challenges." *Id.* at 441. Thus, PDA raises these exemptions as this position statement is now before the appeals officer. *Id.* at 442.

PDA, however, still maintains that it does not have documents related to Mr. Massey's first part of his request regarding screenshots of the Diligent platform.

I have attached an Affidavit by Shannon S. Harvey, Assistant Vice President, Office of the Board of Trustees/Secretary of the Pennsylvania State University ("Board"). This Attestation is marked as Attachment A and is incorporated herein.

Under the Bylaws of the Pennsylvania State University, Article II Trustees Section 2.01 Number, Election and Term of Office (a)(i) the Pennsylvania Secretary of Agriculture shall serve as an Ex

Officio Voting Member of the Pennsylvania State University Board of Trustees (“PSU Board”). *See Attachment C PSU Exhibits #1 and #2*, Article II Section 2.01(a)(i) (May 7, 2021); *See also, Affidavit of Shannon S. Harvey*.

Secretary Russell Redding became an ex officio member of the Board of Trustees in January of 2015 when he was appointed to serve as Secretary of the Pennsylvania Department of Agriculture. Secretary Redding was granted Diligent access on July 16, 2020. The Board Office controls the Secretary’s ability to print or download any document from the Diligent platform. The Secretary does not have the ability to post or delete anything in the Diligent platform. Access is given to the Secretary of Agriculture individually, in his capacity as a Trustee. No one else in the Pennsylvania Department of Agriculture is given access to Diligent. *See Attachment A Affidavit of Shannon S. Harvey, Assistant Vice President, Office of the Board of Trustees/Secretary Pennsylvania State University*. The Secretary, like all other members of the Board of Trustees is subject to the University’s Bylaws and Board of Trustees’ Standing Orders. *See Attachment C PSU Exhibits #1 and #2 The Pennsylvania State University Bylaws and Standing Orders of the Board of Trustees*.

*Diligent* is a board management software used by the PSU Board as a platform for sharing documents and other information with the Trustees. *See Attachment A Affidavit of Shannon S. Harvey*. For approximately three years PSU’s Office of the Board of Trustees (the “Board Office”) has utilized *Diligent* as a platform for sharing documents and other information with members of the PSU Board. *Id.* *Diligent* is an online board portal tool that facilitates secure digital communication from the Board Office to the PSU Board. *Id.* PSU utilizes *Diligent* to securely share board meeting agendas and meeting materials, and other documents. *Id.* The Board Office, with the assistance of other PSU staff members as appropriate, maintains all aspects of *Diligent*, including with respect to access, controls, posting of documents, deleting documents and other posting information. *Id.*

Secretary Redding like all other members of the PSU Board are subject to the University’s Bylaws and Board of Trustees’ Standing Orders, attached hereto as *Attachment C Exhibits PSU #1 and #2*, stating in relevant part:

“Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.”

*Section 8.07 of the Bylaws (Fiduciary Duty) See also a copy of PSU's Bylaws Section 8.07 attached as Exhibit PSU #1 to the Affidavit of Shannon S. Harvey.*

"It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose "confidential information" includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;"

*Order VIII, Section 1(d)(x) (Expectations of Membership) See also a copy of Order VIII, Section 1(d)(x) (Expectations of Membership) attached as Exhibit PSU #1 to the Affidavit of Shannon S. Harvey.*

Section 705 of the RTKL reads "[w]hen responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705. Asking PDA to take electronic screen shots of the records in *Diligent* would require PDA to create record. PDA is not required to create records under 65 P.S. § 67.705 and therefore, does not need to create screen shots of the documents stored on *Diligent*.

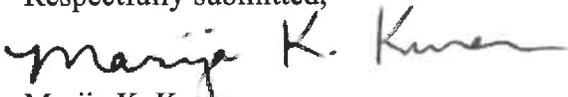
I have also attached an Attestation by Susan L. West, PDA's Agency Open Records Officer, confirming that PDA did not have the requested records responsive to the first part of Mr. Massey's RTKL request in PDA's possession, custody or control. However, after further due diligence PDA discovered records responsive to the second part of Mr. Massey's RTKL request. This Attestation is marked as Attachment B and is incorporated herein.

In the absence of any competent evidence that PDA acted in bad faith or that additional responsive records exist, "the averments in [the attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

It is PDA's position that it has acted in good faith and conducted a thorough examination of records in its possession, custody and control, seeking records responsive to the subject RTKL request quoted above. The attestation of PDA's Agency Open Records Officer verifies this and warrants a conclusion by the OOR that PDA has fulfilled its obligations under the RTKL in this matter.

If there is anything more I can answer or provide, please advise. Thank you.

Respectfully submitted,



Marija K. Kuren  
Assistant Counsel

---

**Verification**

Pursuant to 18 Pa.C.S.A. § 4904(a), and subject to the penalties applicable to unsworn falsification to authorities, and under penalty of perjury, I declare the averments of fact in the foregoing document to be true and correct to the best of my knowledge.



---

Marija K. Kuren  
Assistant Counsel  
Pennsylvania Department of Agriculture

Atts:

- Attachment A – Affidavit of Shannon S. Harvey, Assistant Vice President, Office of the Board of Trustees/Secretary Pennsylvania State University
- Attachment B – Attestation by Susan L. West, Open Records Officer, PDA
- Attachment C - PSU Exhibits #1 and #2 The Pennsylvania State University Bylaws and Standing Orders of the Board of Trustees

by regular mail, with all attachments, to:

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue #331  
State College, PA 16801

# **ATTACHMENT A**

**Affidavit of Shannon S. Harvey  
Assistant Vice President, Office of the Board of  
Trustees/Secretary  
Pennsylvania State University**

**AFFIDAVIT OF SHANNON S. HARVEY**

I, Shannon S. Harvey, declare:

1. My name is Shannon S. Harvey. I am over the age of 18 and fully competent to make this affidavit. The facts stated herein are true and correct and based on my personal knowledge.

2. I am the Assistant Vice President and Secretary, Office of the Board of Trustees at The Pennsylvania State University (“Penn State” or the “University”). In this capacity, I serve as the elected Secretary of the University with responsibilities as outlined in Section 5.06 of the University Bylaws (Exhibit PSU #1). I am also responsible for the management and operation of the Office of the Board of Trustees including oversight of all activities, meetings, agenda preparation and filing of minutes, Trustee certifications and questionnaires in compliance with legal requirements and University policy to ensure the Board is as effective and efficient as possible in the conduct of its oversight responsibilities.

3. My business address is Office of the Board of Trustees at The Pennsylvania State University, 201 Old Main, University Park, Pennsylvania 16802.

4. For approximately three years, the University’s Office of the Board of Trustees (the “Board Office”) has utilized the services of Diligent as a platform for sharing documents and other information with the members of its Board of Trustees (“Trustees”). Diligent Boards is an online board portal tool that facilitates secure digital communication from the Board Office to Trustees. We utilize Diligent to securely share board meeting agendas, meeting materials, and other documents.

5. The Board Office staff, with the assistance of other University staff members as appropriate, maintains all aspects of the Diligent site, including with respect to access controls, posting of documents, deleting documents and posting other information.

6. Secretary Russell Redding became an ex officio member of the Board of Trustees in January of 2015 when he was appointed to serve as Secretary of the Pennsylvania Department of Agriculture.

7. Secretary Redding was granted Diligent access on July 16, 2020.

8. The Board Office controls the Secretary's ability to print or download any document from the Diligent platform. The Secretary does not have the ability to post or delete anything in the Diligent platform.

9. Access is given to the Secretary of Agriculture individually, in their capacity as a Trustee. No one else in the Pennsylvania Department of Agriculture is given access to Diligent by the University.

10. The Secretary, like all other members of the Board of Trustees is subject to the University's Bylaws and Board of Trustees' Standing Orders, attached herein as Exhibits PSU #1 and PSU #2, stating in relevant part:

"Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount."

*Section 8.07 of the Bylaws (Fiduciary Duty) (See Exhibit PSU #1)*

“It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose ‘confidential information’ includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;”

*Order VIII, Section 1(d)(x) (Expectations of Membership) (See Exhibit PSU #2)*

Further affiant sayeth not. I hereby certify and declare that the above information is true and correct and that the statements contained herein are made subject to the penalties of 18 Pa.C.S.A. § 4904.

Executed on July 17, 2023.

*Shannon S. Harvey*  
\_\_\_\_\_  
Shannon S. Harvey

# **ATTACHMENT B**

**Attestation of Susan L. West  
Agency Open Records Officer  
Pennsylvania Department of Agriculture**

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF AGRICULTURE**

**ATTESTATION THAT AGENCY PROVIDED ALL RESPONSIVE RECORDS**

**Name of Requester:**

Wyatt Massey

**Records Requested:**

The Requester filed a request with PDA, as part of PDA RTKL #230637, which is the subject of this appeal.

An electronic screenshot of all folders and files hosted on Diligent, the filesharing service Penn State uses, related to Russell Redding's role on the Penn State Board of Trustees, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees. An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

**Appeal Caption:**

OOR Docket No. AP 2023-1520

*Massey and Spotlight PA vs. PA Department of Agriculture*

I, Susan L. West, hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge, information and belief:

1. I serve as the Open Records Officer for the Pennsylvania Department of Agriculture ("PDA").
2. I am responsible for responding to Right-to-Know requests filed with PDA.
3. In my capacity as the Open Records Officer, I am familiar with the records of PDA.
4. I conducted a thorough examination of files in the possession, custody and control of PDA for records responsive to this request. This search entailed coordinating with staff within PDA's Executive Office.

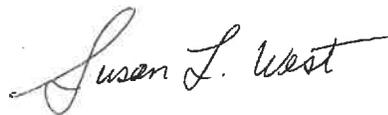
5. As a courtesy following receipt of this request for records, contact was made with the Penn State Board of Trustees' legal counsel to let them know this request was received. Past Right-to-Know Law requests received which were related to Penn State Board of Trustees records resulted in the identification of confidential, third-party proprietary information. This required contact with Penn State University (PSU) legal counsel based on section 67.707(b) and section 67.708(b)(11) of the Pennsylvania *Right-To-Know Law 65 P.S. §§ 67.101, et seq.*
6. As a result of contacting Penn State legal counsel regarding this request, this agency was informed that the Diligent platform is the property of PSU. Trustees are able to view documents contained therein without the ability to print or download information hosted on the Diligent platform. Other than Secretary Russell Redding, we were informed that no other individuals within the PA Department of Agriculture have been given access to the Diligent platform.
7. Secretary Redding in his capacity as a Trustee had and has no business reason to take electronic screenshots of all folders and files hosted on Diligent, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees. Such files and folders are readily available to the Secretary as needed when on the Diligent Platform; therefore, screen shots of what is contained on the platform provides no benefit and serves no purpose to his participation on the Board. No records were found related to screenshots of the Diligent platform as stated in the RTKL request above. Additionally, pursuant to section 67.705 of the RTKL, agencies are not required to create records which do not exist.
8. Regarding records related to the August 2022 Penn State Board of Trustees retreat, when initially checking with the Executive Office, it was confirmed such records were not in PDA's possession.
9. Based upon the search of PDA's files and inquiries with relevant PDA personnel prior issuing the letter of response, I made the determination that: (a) PDA does not have records related to this request in its possession, custody or control; (b) PDA does not own or maintain the Diligent database where the requested records reside; and (c) in conjunction with the appointment to the Penn State Board of Trustees, the Secretary of Agriculture, Russell Redding, does have access to the Diligent platform; however, such access is restricted to a read-only status which precludes documents being downloaded or otherwise in PDA's possession.
10. Following the receipt of the appeal by Wyatt Massey regarding PDA's response to RTKL No. 230637, additional due diligence ensued related to the preparation of PDA's position statement in this matter.
11. The staff person within the Executive Office was again contacted regarding records. Additional information surfaced; not all duties were consistently handled by only one individual since the Diligent Platform became the data source for the

PSU Board of Trustees. This could be due to changes following a new administration or other reasons. Additional clarification with the staff person resulted in learning that one record which applies to this request is in PDA's possession, custody and control.

12. Records from a one-day attendance at the August 2022 Penn State Board of Trustees retreat were produced. The applicable record was marked "Confidential" and in conjunction with section 67.707(b), legal counsel at Penn State was contacted and provided a copy of the confidential, third-party proprietary information for review.
13. The August 2022 retreat record, consisting of 65 pages, has been returned with recommended redactions to pages 1, 2, 28, 29, 30, 31, 39, 43, and 44. Therefore, PDA willingly produces this public record to the requester with the assertion of the following exemption:
  - a) A record that constitutes or reveals a trade secret or confidential proprietary information is exempt from disclosure pursuant to section 67.708(b)(11) of the Pennsylvania *Right-To-Know Law 65 P.S. §§ 67.101, et seq.*
14. This agency maintains that screenshots of information from the Diligent platform were not previously, and are not currently, in the possession, custody or control of PDA.
15. Therefore, following additional due diligence on the part of PDA related to RTKL Request No. 230637, and in response to the statements provided by this requester in his initial filing before the OOR in this matter, this agency is providing one responsive record, with redactions, related to the August 2022 PSU Board of Trustee Retreat while maintaining all other requested records are not in the possession, custody or control of PDA.

Date: July 18, 2023

Signature: \_\_\_\_\_



Susan L. West,  
Agency Open Records Officer  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

# **ATTACHMENT C**

## **PSU Exhibits #1 and #2**

### **The Pennsylvania State University Bylaws and Standing Orders of the Board of Trustees**

# Exhibit PSU #1

## Bylaws

AMENDED AND RESTATED

BYLAWS

of

THE PENNSYLVANIA STATE UNIVERSITY

Adopted May 6, 2016

Amended November 4, 2016

Amended July 21, 2017

Amended November 10, 2017

Amended May 3, 2019

Amended November 15, 2019

Amended May 8, 2020

Amended September 18, 2020

Amended May 7, 2021

## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE I NAME AND PURPOSE .....	1
Section 1.01    Name .....	1
Section 1.02    History .....	1
Section 1.03    Purpose .....	1
ARTICLE II TRUSTEES .....	2
Section 2.01    Number, Election and Term of Office.....	2
Section 2.02    Qualifications for Membership .....	4
Section 2.03    Removal.....	5
Section 2.04    Regular Meetings; Notice.....	6
Section 2.05    Annual Meeting of the Board.....	6
Section 2.06    Special Meetings; Notice.....	6
Section 2.07    Quorum.....	7
Section 2.08    Actions.....	7
Section 2.09    Meetings via Electronic Communication .....	7
Section 2.10    Resignations .....	8
Section 2.11    Vacancies.....	8
Section 2.12    Compensation; Reimbursement of Travel Expenses.....	8
Section 2.13    Certain Meetings .....	8
ARTICLE III COMMITTEES AND SUBCOMMITTEES .....	8
Section 3.01    Committees and Subcommittees .....	8
Section 3.02    Executive Committee .....	9
Section 3.03    Standing Committees and Subcommittees .....	10
Section 3.04    Quorum and Actions .....	19

Section 3.05	Authority of Board .....	19
Section 3.06	Special Assignments.....	20
ARTICLE IV LIABILITY AND INDEMNIFICATION .....		20
Section 4.01	Personal Liability of Trustees.....	20
Section 4.02	Indemnification .....	21
ARTICLE V OFFICERS AND EMPLOYEES .....		24
Section 5.01	Officers .....	24
Section 5.02	Additional Officers; Other Agents and Employees.....	25
Section 5.03	The Chair .....	26
Section 5.04	The President.....	26
Section 5.05	The Vice President(s) .....	27
Section 5.06	The Secretary, Associate Secretary and Assistant Secretaries .....	28
Section 5.07	The Treasurer and Assistant Treasurers .....	28
Section 5.08	Vacancies.....	29
Section 5.09	Delegation of Duties.....	29
ARTICLE VI MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS ..		37
Section 6.01	Execution of Notes, Checks, Contracts and Other Instruments .....	37
Section 6.02	Voting Securities Owned by the University.....	37
ARTICLE VII GENERAL PROVISIONS .....		38
Section 7.01	Offices .....	38
Section 7.02	Corporate Seal .....	38
Section 7.03	Fiscal Year.....	38
Section 7.04	Private Inurement .....	38
ARTICLE VIII CONFLICTS OF INTEREST .....		38
Section 8.01	Definitions.....	38

Section 8.02	Disclosure .....	40
Section 8.03	Annual Disclosure .....	40
Section 8.04	Recusal .....	40
Section 8.05	Contracts or Transactions with the University .....	40
Section 8.06	Annual Statements.....	41
Section 8.07	Fiduciary Duty.....	42
Section 8.08	Misuse of Information .....	42
Section 8.09	Gifts and Favors .....	42
Section 8.10	Pre-Existing Contract or Transaction .....	42
Section 8.11	Family Members as Employees .....	42
Section 8.12	Employment of Trustees .....	43
Section 8.13	Disclosure of Potential Conflict of Interest by Employees of the University	43
Section 8.14	Consultation.....	43
ARTICLE IX AMENDMENTS .....		43
Section 9.01	Amendments.....	43

# THE PENNSYLVANIA STATE UNIVERSITY

## Amended and Restated Bylaws

### ARTICLE I

#### NAME AND PURPOSE

**Section 1.01 Name.** The name of the corporation is The Pennsylvania State University (hereinafter referred to as the “University”), existing under the Pennsylvania Nonprofit Corporation Law of 1988.

**Section 1.02 History.** The University was created as the Farmers’ High School by special act of the Pennsylvania legislature on February 22, 1855. The name of the institution has been changed successively to the Agricultural College of Pennsylvania in 1862, the Pennsylvania State College in 1874 and The Pennsylvania State University in 1953. On August 28, 1878, after the enactment of Pennsylvania’s first corporation law, and pursuant to the provisions thereof, the institution elected to be subject to such corporation law and thereafter, has been existing under such law, as such law has been amended, supplemented and modified from time to time.

**Section 1.03 Purpose.** The University was formed in 1855 as an institution for the education of youth in the various branches of science, learning and practical agriculture, as they are connected with each other. The University currently exists as a multi-campus public research university that educates students from Pennsylvania, the nation and the world, and improves the wellbeing and health of individuals and communities through integrated programs of teaching, research, and service.

## ARTICLE II

### TRUSTEES

**Section 2.01 Number, Election and Term of Office.** The affairs of the University shall be managed by a Board of Trustees.

(a) The number of Trustees which shall constitute the full Board of Trustees shall be fixed at thirty-eight (38), as set forth herein.

(i) Ex Officio Voting Members. The Secretary of Education, the Secretary of Agriculture and the Secretary of Conservation and Natural Resources shall be *ex officio* voting members of the Board of Trustees.

(ii) Ex-Officio Non-Voting Members. The Governor of the Commonwealth of Pennsylvania and the President of the University shall be *ex officio* non-voting members of the Board of Trustees.

(iii) Members Appointed by the Governor. Six voting members of the Board of Trustees shall be appointed by the Governor of the Commonwealth of Pennsylvania.

(iv) Members Elected by the Alumni. Nine voting members of the Board of Trustees shall be elected by the alumni and former students of the University.

(v) Members Elected by Agricultural Organizations. Six voting members of the Board of Trustees, who shall be members of and represent organized agricultural societies and associations, shall be elected by three delegates from each county in the Commonwealth representing organized agricultural societies or associations of the said county.

(vi) Members Elected Representing Business and Industry. Six voting members of the Board of Trustees representing business and industry endeavors shall be elected by the Board of Trustees.

(vii) A Member Elected Representing the Student Body. In May 2015 and bi-annually thereafter, a voting member of the Board of Trustees representing the student body (the "Student Trustee") shall be elected by the Board of Trustees.

(viii) A Member Elected Representing the Faculty. In May 2015 and every three years thereafter, a voting member of the Board of Trustees representing the faculty shall be elected by the Board of Trustees.

(ix) A Member Representing the Penn State Alumni Association. Commencing July 1, 2015, and bi-annually thereafter, the immediate past President of the Penn State Alumni Association shall become an *ex officio* voting member of the Board of Trustees.

(x) At-Large Members Elected by the Board of Trustees. In May 2015 three at-large voting members shall be elected by the Board of Trustees. Thereafter, one at-large voting member shall be elected annually by the Board of Trustees.

(b) Each Trustee shall serve for a term of three (3) years, except that the Student Trustee and the Trustee who serves ex-officio as the immediate past President of the Penn State Alumni Association shall each have a two (2) year term. No individual may serve as a Trustee for more than a total of twelve years, whether or not in consecutive terms; provided, however, that (i) Any Trustee who has served for twelve years or more as of November 15, 2019 may complete the term for which such Trustee was most recently elected or appointed but shall not be eligible

for subsequent election or appointment as a Trustee; (ii) Any Trustee as of November 15, 2019 whose next reelection or reappointment would cause such Trustee, if such Trustee serves for the entirety of such new term, to exceed twelve total years of service may complete the term for which such Trustee is reelected or reappointed but shall not be eligible for subsequent election or appointment as a Trustee; and (iii) this subsection (b) shall not apply to any Trustee who serves in an *ex officio* capacity. Trustees shall be separated into three groups of substantially equal number so that the terms of one third of the Trustees shall expire each year. Each Trustee shall serve until his or her term expires, and thereafter until such Trustee's successor is duly elected or appointed, or until such Trustee's earlier death or resignation.

**Section 2.02 Qualifications for Membership. (a)** Members of the Board of Trustees shall be natural persons of full age who need not be residents of the Commonwealth of Pennsylvania. A person who is employed in any capacity by the University shall not be eligible to serve as a member of the Board of Trustees. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, a trustee elected pursuant to Section 2.01(a)(viii), or to a person who is a student employed part-time by the University. A person shall not be eligible to serve as a member of the Board of Trustees for a period of five (5) years from the July 1 coincident with or next following the date of (a) last employment in any capacity by the University or (b) the last day of such person's employment with the Commonwealth of Pennsylvania as Governor, Lieutenant Governor, Attorney General, Auditor General or State Treasurer. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, nor to a person who is a student employed part-time by the University. Only graduates of The Pennsylvania State University who shall have received an associate degree, a bachelor's degree, or an advanced degree from the University shall

be eligible to serve as a trustee elected by the alumni. No member of the faculty or the governing board of any other college or university in Pennsylvania shall be eligible to serve as a trustee elected by the alumni.

(b) The Student Trustee shall be a full-time undergraduate, graduate or professional student, in good academic standing and in a degree seeking program at the University.

**Section 2.03 Removal.** Any member of the Board of Trustees other an *ex officio* member may be removed from his or her position as a Trustee in accordance with this Section 2.03.

(a) Any Trustee who believes that another Trustee has breached his or her fiduciary duty to the University shall raise the issue with the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning.

(b) Removal of a Trustee shall require a joint proposal to the Board of Trustees by the chairperson of the Board of Trustees and the chairperson of the committee on governance and long-range planning that the Board of Trustees take action to remove a Trustee on the basis that the Trustee has breached his or her fiduciary duty to the University. Such joint proposal shall be furnished in writing to each member of the Board of Trustees not less than 30 days prior to the meeting of the Board of Trustees at which such matter is to be considered. Removal shall require the determination of not less than two-thirds of the Trustees present at a duly called meeting that the Trustee has breached his or her fiduciary duty.

(c) In the event that the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning is the subject of a removal action under this Section 2.03, the Vice Chair of the Board of Trustees shall be substituted for such affected Trustee for purposes of this Section 2.03.

**Section 2.04 Regular Meetings; Notice.** Regular meetings of the Board of Trustees shall be held at such time and place as shall be designated by the Board of Trustees from time to time. There shall be at least one (1) regular meeting of the Board of Trustees per year. Notice of such regular meetings shall not be required, except as otherwise expressly required herein or by law, and except that whenever the time or place of regular meetings shall be initially fixed and then changed, notice of such action shall be given promptly by telephone, facsimile, electronic mail or otherwise to each Trustee not participating in such action. Any business may be transacted at any regular meeting.

**Section 2.05 Annual Meeting of the Board.** One regular meeting of the Board of Trustees shall be designated the annual organization meeting at which the Board of Trustees shall organize itself and elect officers of the University for the ensuing year and may transact any other business.

**Section 2.06 Special Meetings; Notice.** Special meetings of the Board of Trustees may be called at any time by the Chair of the Board or by seven members of the Board of Trustees, to be held at such place and day and hour as shall be specified by the person or persons calling the meeting. Notice of every special meeting of the Board of Trustees shall be given by the Secretary to each Trustee by telephone, facsimile, electronic mail or otherwise at least three (3) days before the meeting unless the meeting is being called in the event of an emergency, in which case as much advance notice shall be given to the Trustees as is practicable under the circumstances. In addition, public notice of any special meeting shall be given as required by law. Except as otherwise provided herein or required by law, any business may be transacted at any special meeting regardless of whether the notice calling such meeting contains a reference thereto.

**Section 2.07 Quorum.** At all meetings of the Board of Trustees, the presence of at least a majority of the voting members of the Board of Trustees in office shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum is not present at any meeting, the meeting may be adjourned from time to time by a majority of the Trustees present until a quorum as aforesaid shall be present, but notice of the time and place to which such meeting is adjourned shall be given to any Trustees not present either by facsimile or electronic mail or given personally or by telephone at least eight hours prior to the hour of reconvening.

**Section 2.08 Actions.** Except as expressly provided herein, resolutions of the Board of Trustees shall be adopted, and any action of the Board of Trustees upon any matter shall be valid and effective, with the affirmative vote of a majority of the Trustees present at a meeting duly convened and at which a quorum is present. The Chair, if one has been elected and is present, or if not, the Vice Chair, if present, or if not, a Trustee designated by the Board of Trustees, shall preside at each meeting of the Board of Trustees. The Secretary, or in his or her absence the Associate Secretary, shall be responsible for ensuring that the minutes of all meetings of the Board of Trustees are recorded in some reasonable manner. In the absence of the Secretary and the Associate Secretary, the presiding officer shall designate any person to take the minutes of the meeting. Unless otherwise modified in these Bylaws, the conduct of business in meetings of the Board of Trustees and any committees thereof shall be in accordance with the parliamentary procedures prescribed in Robert's "Rules of Order".

**Section 2.09 Meetings Via Electronic Communication.** Subject to the requirements of any applicable open meeting laws, one or more Trustees may participate in any regular or special meeting of the Board of Trustees or of a committee of the Board of Trustees by means of conference telephone, video conference or similar communications equipment by means

of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner by a Trustee will be considered to be attendance in person for all purposes under these Bylaws.

**Section 2.10 Resignations.** Any Trustee may resign by submitting his resignation to the Secretary. Such resignation shall become effective upon its receipt by the Secretary or as otherwise specified therein.

**Section 2.11 Vacancies.** Vacancies in the membership of the Board of Trustees created by death, resignation, removal or any other reason may be filled by appointment by the Chair of the Board of Trustees for the unexpired term in all cases except memberships reserved for gubernatorial appointment and *ex officio* memberships established by the University's Charter.

**Section 2.12 Compensation; Reimbursement of Travel Expenses.** Members of the Board of Trustees serve as volunteers and shall not be compensated for their services. Upon the request of a Trustee, the University shall reimburse the Trustee's reasonable direct travel expenses, including transportation expenses, incurred while the Trustee was engaged in the discharge of his or her official duties. Reimbursement of travel expenses shall be determined in accordance with the University's travel reimbursement policies in effect from time to time.

**Section 2.13 Certain Meetings.** The Chair of the Board of Trustees may, at his discretion, request that one or more of the non-voting members of the Board of Trustees be excused from any regular or special meeting of the Board of Trustees or any portion thereof.

### ARTICLE III

#### COMMITTEES AND SUBCOMMITTEES

**Section 3.01 Committees and Subcommittees.** Standing or temporary committees or subcommittees consisting of at least one (1) Trustee may be appointed by the Board

of Trustees from time to time; provided, however, that a temporary committee may not be created for the purpose of acting on any matter appropriate to be acted on by a standing committee or subcommittee thereof. Committees and subcommittees may include non-voting members that are not Trustees of the University. Each such committee and subcommittee shall have and exercise such authority of the Board of Trustees in the management of the business and affairs of the University as the Board of Trustees may specify from time to time.

**Section 3.02 Executive Committee.** The executive committee shall have thirteen (13) members, all of whom shall be voting members. The executive committee shall be composed of the Chair of the Board of Trustees (who shall also be the chair of the executive committee), the Vice Chair of the Board of Trustees, the Chairs of the standing committees, the Chair of the Board of Directors of Penn State Health (or, if such chair is not a voting member of the Board of Trustees, a member of the Board of Directors of Penn State Health who is also a voting member of the Board of Trustees), the immediate past Chair of the Board of Trustees and such number of at-large members, nominated by the committee on governance and long-range planning and elected by the Board of Trustees, as may be necessary to have an executive committee of thirteen (13) members. In addition, the President of the University shall be an *ex officio* non-voting member of the executive committee.

(a) Purpose of the Executive Committee. The purpose of the executive committee shall be to transact all necessary business as may arise in the intervals between regular meetings of the Board of Trustees; it being understood that action by the executive committee would not be expected to be taken except in extraordinary circumstances. Notice of any action by the executive committee shall be provided to the Board of Trustees at its next regular meeting.

(b) Meetings of the Executive Committee. Meetings of the executive committee may be called by the Chair of the Board of Trustees or by any three (3) members of the executive committee. No action may be taken by the executive committee without the affirmative vote of at least seven (7) members of the executive committee.

(c) Place of Meetings of the Executive Committee. All meetings of the executive committee shall be held at the executive offices of the University unless otherwise ordered by the Chair of the executive committee.

(d) Notice of Meetings of the Executive Committee. Notice of the time and place of all meetings of the executive committee shall be given in the same manner as for meetings of the Board of Trustees.

**Section 3.03 Standing Committees and Subcommittees.** The Board may adopt standing committees and subcommittees thereof in addition to the executive committee in accordance with the terms of these Bylaws.

(a) Function of Standing Committees and Subcommittees. The purpose of the standing committees and subcommittees is to facilitate consideration of the business and management of the Board of Trustees and of the University, as hereinafter set forth.

(b) Referral of Matters to Standing Committees and Subcommittees. Any matters appropriate for consideration by a standing committee or a subcommittee first shall be referred thereto by the Board of Trustees or the Chair of the Board of Trustees; except that a two-thirds (2/3) vote of the Trustees present at a meeting of the Board of Trustees but in no event by an affirmative vote of less than nine (9) Trustees will permit initial consideration by the full Board of Trustees; provided, however, that any matter referred to and considered by a standing committee or a subcommittee, but upon which the committee or subcommittee makes no recommendation or

report to the Board of Trustees may be brought before the Board of Trustees for consideration at the request of any Trustee.

(c) Matters Appropriate to More Than One Committee or Subcommittee. Except as otherwise provided in these Bylaws, matters determined to be appropriate for consideration by more than one committee or subcommittee may be referred by the Chair of the Board of Trustees to one committee or subcommittee or more.

(d) Final Authority of the Board. Unless otherwise specifically delegated and except as otherwise provided herein, in the Standing Orders or in the approved operating guidelines of any standing committee or subcommittee, authority to act on all matters is reserved to the Board of Trustees, and the duty of each standing committee and subcommittee shall be only to consider and to report or make recommendations to the Board of Trustees upon appropriate matters.

(e) Specific Responsibility of Standing Committees. The several standing committees are charged specifically with the immediate care and supervision of the subject matters respectively indicated by and properly relating to their titles. Standing committees shall assume such additional responsibilities as may from time to time be assigned by the Chair of the Board of Trustees.

(f) Standing Committees Established. The following shall be the standing committees of the Board of Trustees:

(i) Committee on Academic Affairs, Research and Student Life. The committee on academic affairs, research and student life shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) the educational policies and programs of the University, including the long range educational development of the University with respect to instruction and continuing education;

(2) the faculty;

(3) the University's research enterprise; and

(4) all phases of student life.

(ii) Committee on Finance, Business and Capital Planning. The committee on finance, business and capital planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) finance, business, budgets, non-budget expenditures, human resources, investments, trust funds, insurance, real estate contracts, government and private contracts, and grants, fees, room and board charges, and the long-range financial planning and development of the University;

(2) endowments, gifts, and fund raising;

(3) the purchase and sale of real estate, master plans, construction, the award of contracts, and the honorific naming of buildings and roads; and

(4) the University's capital plan, the long-range comprehensive physical plant and infrastructure development of the University at each campus, consistent with the long-range educational development of the University.

(iii) Committee on Governance and Long-Range Planning. The committee on governance and long-range planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) in fulfillment of its governance responsibilities, providing counsel and advice to the Board of Trustees in matters concerning the development of strategies, policies, and practices that orient, educate, organize, motivate, and assess the performance of trustees.

(2) The committee's responsibilities shall also include, but not be limited to:

- a. reviewing and recommending to the Board any changes to the expectations of membership and code of conduct for all trustees, including trustees emeriti;
- b. recommending to the Board of Trustees candidates for election to membership on the executive committee;
- c. recommending to the Board of Trustees proposed Student and Academic Trustees;
- d. reviewing the service of a Trustee upon retirement and recommending candidates for emeritus status;
- e. evaluating and making recommendations on committee and subcommittee operating guidelines

and with respect to the working effectiveness of the Board of Trustees and its committees and subcommittees; and

- f. evaluating, recommending and reporting on the qualifications and skill sets to be considered in the process of nominating board of trustee candidates.

(3) in fulfillment of its long-range planning responsibilities:

- a. charging and supporting the President in leading a strategic planning process, participating in that process, making recommendations to the Board of Trustees with respect to the Strategic Plan, and monitoring its progress; and
- b. providing oversight of the growth, development, and sustainability of the University for future generations in order to achieve its full potential as one of the world's great universities.

(iv) Committee on Audit and Risk. The committee on audit and risk shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall oversee the auditing of the University's financial statements and internal controls as set forth more fully in the operating guidelines of the committee. In fulfilling its responsibility, the committee on audit and risk shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) regular and special audits; and

(2) the identification and management of risks including financial, material, and reputational.

(v) Committee on Legal and Compliance. The committee on legal and compliance shall consist of not less than five (5) appointive members; in addition to the *ex officio* members, and shall oversee adherence to laws, regulations, and policies that pertain to University operations. In fulfilling its responsibility, the committee on legal and compliance shall consider and report or recommend to the Board of Trustees on matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed.

(vi) Committee on Outreach, Development and Community Relations. The committee on outreach, development and community relations shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall provide advice and support to, and help inform the public of, the University's efforts to build support among its major constituents, from faculty, staff and students to alumni and donors, business and civic leaders and elected officials. In fulfilling its responsibility, the committee on outreach, development and community relations shall consider and report or recommend to the Board of Trustees on matters pertaining to outreach, development and community relations, including, but not limited to:

(1) Short and long-term communications plans and initiatives that support University priorities and protect and advance its reputation;

(2) Key outreach programs, such as extension and “Invent Penn State” that advance community and economic development priorities;

(3) Fundraising priorities and campaigns, including those that promote access and affordability and ensure academic excellence;

(4) Community and governmental relations activities that help ensure budget and policy decisions meet University needs;

(5) Major alumni association activities; and

(6) Opportunities to showcase the accomplishments of faculty, staff, students and others that merit public recognition.

(vii) Committee on Equity and Human Resources. The committee on equity and human resources shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) Compensation, benefits, performance management, talent management, succession planning and leadership development for the broader University;

(2) Recruitment, enrollment, retention, and graduation of students representing all aspects of diversity;

(3) Enhancement of diversity in the racial, ethnic and gender composition of faculty and staff at all levels;

(4) Accessibility, accommodation, and support for veterans and individuals with disabilities; and

(5) Engagement by the University of qualified diversity business enterprises, including minority- and women-owned businesses, as suppliers of goods and services.

(g) Selection of Committee Members. Members of the standing committees and subcommittees, and the chairperson and vice chairperson thereof, shall be appointed by the Chair of the Board of Trustees. The Chair and, in his or her absence, the Vice Chair of the Board of Trustees shall be an *ex officio* member of all standing committees, of all special committees and of all subcommittees. No Trustee shall serve as chairperson of any standing committee for more than five (5) consecutive years, except as specifically approved by a two-thirds vote of the Board of Trustees.

(h) Term of Committee Members. Committee members shall serve until their successors are appointed in accordance with this Bylaw.

(i) Vacancies on Standing Committees. Vacancies on all standing committees shall be filled through appointment by the Chair of the Board to serve the unexpired term created by the vacancy.

(j) Consultation with Constituent Groups. Standing committees shall seek consultation from representative constituent groups as appropriate in the exercise of their responsibilities.

(k) The following shall be the subcommittees of the Board of Trustees:

(i) The subcommittee on finance (of the committee on finance, business and capital planning) shall be composed of up to three members of the committee on finance, business and capital planning. This subcommittee shall be responsible for reviewing on a regular basis certain of the University's material financial

matters, including the operating and capital budgets, balance sheet management and debt strategy, non-endowed investments, review and endorsement of endowment spending rates, and informing the committee on finance, business and capital planning regarding relevant financial oversight matters.

(ii) The subcommittee on compensation (of the committee on equity and human resources) shall consist of up to five members, all of whom need not be members of the committee on equity and human resources, in addition to the *ex officio* members. This subcommittee shall assist the Board with executive compensation philosophy and strategy pertaining to the University's senior leadership positions; the annual review and approval of the President's personal goals and objectives, performance and annual compensation, including salary and incentive compensation, if applicable; and will make decisions and recommendations for and on behalf of the Board of Trustees, when appropriate, relating to the effectiveness of executive compensation, benefits, performance management, and leadership development.

(iii) The subcommittee on legal (of the committee on legal and compliance) shall be composed of up to five members of the committee on legal and compliance. This subcommittee shall be responsible for reviewing matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed, including but not limited to litigation strategies and other matters.

(iv) The subcommittee on risk (of the committee on audit and risk) shall be composed of up to five members, at least two of whom shall be members of the committee on audit and risk. This subcommittee shall be responsible for reviewing

matters pertaining to the identification and management of risks, including financial, operational, strategic and compliance risks.

(v) The subcommittee on long-range planning (of the committee on governance and long-range planning) shall be composed of up to five members, at least two of whom shall be members of the committee on governance and long-range planning. This subcommittee shall be responsible for reviewing matters related to the University's long-range planning activities, including supporting the strategic planning process, participating in that process, and monitoring its progress.

(l) Operating Guidelines. All standing committees and subcommittees shall operate pursuant to written operating guidelines which shall be submitted to and approved by the Board upon the recommendation of the committee on governance and long-range planning.

**Section 3.04 Quorum and Actions.** At all meetings of a committee, the presence of at least a majority of the members of such committee (including any ex officio members of such committee) shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as set forth in Section 3.02(b), resolutions of a committee shall be adopted, and any action of the committee upon any matter shall be valid and effective, with the affirmative vote of a majority of the members of the committee present at a meeting duly convened and at which a quorum is present.

**Section 3.05 Authority of Board.** Any action taken by any committee or subcommittee shall be subject to alteration or revocation by the Board of Trustees; provided, however, that third parties shall not be prejudiced by such alteration or revocation.

**Section 3.06 Special Assignments.** The Chair of the Board of Trustees may make special assignments to the Trustees from time to time in furtherance of the Board's duties and obligations. Such assignments shall include, but not be limited to, the following:

(a) **Trustee Representative at All Commencements.** The Board of Trustees shall be represented at all Commencements by the Chair of the Board of Trustees or by Trustees designated by the Chair of the Board of Trustees.

(b) **Trustee Liaison to Capital Campaigns.** The Chair of the Board of Trustees is directed to appoint a liaison Trustee to interact with developmental activities for capital campaigns and to apprise the Board of Trustees of the activities and the progress of campaigns.

#### **ARTICLE IV**

#### **LIABILITY AND INDEMNIFICATION**

**Section 4.01 Personal Liability of Trustees.**

(a) **Elimination of Liability.** To the fullest extent that the laws of the Commonwealth of Pennsylvania, as now in effect or as hereafter amended, permit elimination or limitation of the liability of Trustees for monetary damages, no Trustee of the University shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a Trustee.

(b) **Nature and Extent of Rights.** The provisions of this Section shall be deemed to be a contract with each Trustee of the University who serves as such at any time while this Section is in effect and each such Trustee shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the University which has the effect of increasing Trustee liability for

monetary damages shall operate prospectively only and shall not affect any action taken, or any failure to act, prior to the adoption of such amendment, repeal, Bylaw or provision.

**Section 4.02 Indemnification.**

**(a) Right to Indemnification.**

**(i)** As used herein, the word “Action” shall mean any action, suit or proceeding, administrative, investigative or other, (A) in which such person is named as a defendant (other than in an action, suit or proceeding by the University) or (B) in connection with which such person is not named as a defendant but is a witness, subject to investigation or otherwise involved, in either case by reason of such person being or having been a Trustee or officer of the University or by reason of such person serving or having served at the request of the University as a director, officer, employee, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other entity.

**(ii)** Except as prohibited by law, each Trustee and officer of the University shall be entitled as of right to be indemnified by the University against expenses and any liability paid or incurred by such person in connection with any Action.

**(iii)** Except as provided in Section 4.02(c) below, the University shall not indemnify any Trustee or officer, or pay, advance or reimburse any Trustee or officer, for any legal fees and expenses incurred in connection with any action, suit or proceeding, administrative, investigative or other, which such Trustee or officer brings, directly or indirectly, against the University, the Board of Trustees or any

officer, Trustee, employee, agent or representative of the University or the Board of Trustees.

(iv) A person who is not a Trustee or officer of the University may be similarly indemnified in respect of service to the University to the extent the Board of Trustees at any time designates such person as entitled to the benefits of this Section. The Board of Trustees has delegated to the Vice President and General Counsel the authority to make the determination, after consideration of relevant facts and circumstances, as to whether a person who is not a Trustee or officer of the University shall be indemnified in respect of his or her service to the University pursuant to this paragraph.

(v) As used in this Section, "indemnitee" shall include each Trustee and each officer of the University and each other person designated by the Board of Trustees as entitled to the benefits of this Section; "liability" shall include amounts of judgments, excise taxes, fines, penalties and amounts paid in settlement; and "expenses" shall include fees and expenses of counsel incurred by the indemnitee only (A) if the University has not at its expense assumed the defense of the Action on behalf of the indemnitee with reputable and experienced counsel selected by the University, or (B) if it shall have been determined pursuant to Section (c) hereof that the indemnitee was entitled to indemnification for expenses in respect of an Action brought under that Section

(b) Right to Advancement of Expenses. Every indemnitee shall be entitled as of right to have his expenses in defending any Action paid in advance by the University, as incurred; provided, however, that the University receives a written undertaking by or on behalf of

the indemnitee to repay the amount advanced if it should ultimately be determined that such person's conduct was such that the University is prohibited by law from indemnifying such person

**(c) Right of Indemnitee to Initiate Action; Defenses.**

**(i)** If a written claim for indemnification or advancement of expenses under paragraph (a) or paragraph (b) of this Section is not paid in full by the University within thirty days after such claim has been received by the University, the indemnitee may at any time thereafter commence a lawsuit to recover the unpaid amount of the claim and, if successful in whole or in part, the indemnitee shall also be entitled to be paid the reasonable expenses of prosecuting such suit..

**(ii)** The only defenses to a lawsuit to recover a claim for indemnification otherwise properly asserted under paragraph (a) shall be that the indemnitee's conduct was such that under applicable law the University is prohibited from indemnifying the indemnitee for the amount claimed, but the burden of proving any such defense shall be on the University.

**(iii)** The only defense to a lawsuit to recover a claim for advancement of expenses otherwise properly asserted under paragraph (b) shall be that the indemnitee failed to provide the undertaking required by paragraph (b), but the burden of proving any such defense shall be on the University.

**(d) Non-Exclusivity; Nature and Extent of Rights; Insurance.** The rights to indemnification and advancement of expenses provided for in this Section shall (i) not be deemed exclusive of any other rights to which any indemnitee may be entitled, (ii) be deemed to create contractual rights in favor of each indemnitee who serves the University at any time while this Section is in effect (and each such indemnitee shall be deemed to be so serving in reliance on the

provisions of this Section), and (iii) continue as to each indemnitee who has ceased to have the status pursuant to which he was entitled or was designated as entitled to indemnification under this Section and shall inure to the benefit of the heirs and legal representatives of each indemnitee. The University may provide, at its cost, insurance, or may self-insure, to protect itself and any Trustee, officer, agent or employee eligible to be indemnified hereunder against any liability or expense whether or not the University would have the power to indemnify such trustee, officer, agent or employee.

## **ARTICLE V**

### **OFFICERS AND EMPLOYEES**

#### **Section 5.01 Officers.**

(a) Officers. The officers of the Board of Trustees shall be a President (also referred to as the “Chair”), a Vice President (also referred to as the “Vice Chair”), each of whom shall be a member of the Board of Trustees, and a Secretary.

(b) Election and Term of Officers. All officers of the Board of Trustees shall be chosen each year by ballot of the voting members of the Board of Trustees present at the stated meeting of the Board of Trustees in November to serve for a period of one year and until their successors are chosen according to these Bylaws.

(c) Duties of Officers. The Chair of the Board of Trustees shall perform the corporate duties which pertain to that office. The Chair shall appoint all committees and subcommittees of the Board of Trustees and the chairperson thereof (except the executive committee) unless otherwise ordered by the Board of Trustees. The Vice Chair shall, in the absence of the Chair, perform the duties of the Chair. The Secretary shall perform the corporate duties which pertain to that office, be custodian of the corporate seal, conduct the ordinary

correspondence of the Board of Trustees and maintain an accurate record of all proceedings of the Board of Trustees and of the executive committee.

(d) Vacancies in Office. Vacancies in any office or offices may be filled by ballot of the voting members present at any meeting of the Board of Trustees.

(e) Officers of the University. The executive officers of the University shall be the President, one or more Vice Presidents as the Board of Trustees may from time to time determine, an associate secretary, three assistant secretaries, a Treasurer, and three assistant treasurers, all of whom shall be elected by the Board of Trustees. Except for the office of the President and Secretary, any two or more offices may be held by the same person. Each executive officer shall hold office at the pleasure of the Board of Trustees, or until his or her death or resignation.

(f) The associate secretary shall assist the secretary in the performance of his/her duties and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The assistant secretaries shall assist the associate secretary and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The Treasurer shall receive and disburse all monies of the corporation under procedures and safeguards prescribed by the Board of Trustees. The assistant treasurers shall assist the treasurer in the performance of these duties and shall act for and on behalf of the University in the same manner and with the same authority as the treasurer.

**Section 5.02 Additional Officers; Other Agents and Employees.** The Board of Trustees may from time to time appoint or employ such additional officers, assistant officers, agents, employees and independent contractors as the Board of Trustees deems advisable; the Board of Trustees shall prescribe their duties, conditions of employment and compensation; and

the Board of Trustees shall have the right to dismiss them at any time, without prejudice to their contract rights, if any. The President of the University may employ from time to time such other agents, employees and independent contractors as he may deem advisable for the prompt and orderly transaction of the business of the University, and he may prescribe their duties and the conditions of their employment, fix their compensation and dismiss them at any time, without prejudice to their contract rights, if any.

**Section 5.03 The Chair.** The Chair of the Board of Trustees, if any, shall be elected from among the voting members of the Board of Trustees, shall preside at all meetings of the Board of Trustees as provided herein, and shall have such other powers and duties as from time to time may be prescribed by the Board of Trustees. The Chair shall be an *ex officio* member of all standing committees and subcommittees, entitled to vote thereon. In the absence or disability of the Chair, the Vice Chair shall have the powers and perform the duties of the Chair.

**Section 5.04 The President.** The President of the University shall be the chief executive officer of the University. Subject to the control of the Board of Trustees, the President shall have general supervision of and general management and executive powers over all the property, operations, business, affairs and employees of the University, and shall see that the policies and programs adopted or approved by the Board of Trustees are carried out. The President shall exercise such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees. The President of the University, as chief administrative officer, shall carry out all orders and directives of the Board of Trustees and shall administer all policies of the Board of Trustees, as well as the policies established by him or her and by the faculty. The President may delegate such administrative authority as he or she deems appropriate to his or her staff, to the Treasurer, to the deans of the various academic units, and to others, who

shall exercise such delegated authority in the name of the President. The establishment of senior administrative positions responsible directly to the President and the determination of the functions of such positions shall be made by the President of the University. All administrative officers with the title of vice president or dean shall be appointed by the President, subject to the approval of the Board of Trustees. Removal of such administrative officers with the title of vice president or dean shall be made by the President and, in such event, the President shall inform the Board of Trustees of such removal at the next regular meeting of the Board. The President, as chief policy officer, shall have final authority, subject to the revisions and orders of the Board of Trustees, to establish policy concerning educational policy and planning, student affairs, the instructional program, courses and curricula, personnel, admissions, graduation requirements, scholarships and honors, calendar requirements, business, planning, research, and finance; provided, however, that the President shall delegate to the faculty, as appropriately organized, subject to the orders of the President, the authority to establish policy concerning the approval and supervision of the instructional program, including courses and curricula, academic admission standards, graduation requirements, and scholarships and honors. The President shall consult with the faculty, as appropriately organized, in the establishment of policy concerning educational policy and planning, including general admissions policy, calendar, academic personnel, student affairs, and any other matter he or she shall deem appropriate. In addition, the President shall consult with the student body, as appropriately organized, in the area of student affairs.

**Section 5.05 The Vice President(s).** The University may have one or more Vice Presidents. The Vice President(s) may be given by resolution of the Board of Trustees general executive powers, subject to the control of the President, concerning one or more or all segments of the operations of the University. The Vice President(s) shall exercise such further

powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. At the request of the President, or in his or her absence or disability, the Executive Vice President and Provost shall exercise the powers and duties of the President.

**Section 5.06 The Secretary, Associate Secretary and Assistant Secretaries.**

It shall be the duty of the Secretary (a) to keep an original or duplicate record of the proceedings of the Board of Trustees, and a copy of the Charter and of the Bylaws; (b) to give such notices as may be required by law or these Bylaws; (c) to be custodian of the corporate records and of the seal of the University and see that the seal is affixed to such documents as may be necessary or advisable; and (d) to exercise all powers and duties incident to the office of Secretary; and such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. The Associate Secretary and the assistant secretaries shall assist the Secretary in the performance of his duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Secretary. At the direction of the Secretary or in his or her absence or disability, the Associate Secretary shall exercise the powers and duties of the Secretary.

**Section 5.07 The Treasurer and Assistant Treasurers.** It shall be the duty of the Treasurer (a) to keep the University's contracts, insurance policies, leases, deeds and other business records; (b) to see that the University's lists, books, reports, statements, tax returns, certificates and other documents and records required by law are properly prepared, kept and filed; (c) to be the principal officer in charge of tax and financial matters, budgeting and accounting of the University; (d) to have charge and custody of and be responsible for the University's funds, securities and investments; (e) to receive and give receipts for checks, notes, obligations, funds and securities of the University, and deposit monies and other valuable effects in the name and to

the credit of the University, in such depositories as shall be designated by the Board of Trustees; (f) to cause the funds of the University to be disbursed by payment in cash or by checks or drafts upon the authorized depositories of the University, and to cause to be taken and preserved proper vouchers for such disbursements; (g) to render to the President and the Board of Trustees whenever they may require it an account of all his transactions as Treasurer, and reports as to the financial position and operations of the University; (h) to keep appropriate, complete and accurate books and records of account of all the University's business and transactions; and (i) to exercise all powers and duties incident to the office of Treasurer; and such further duties from time to time as may be prescribed in these Bylaws or by the Board of Trustees or the President. The assistant treasurers shall assist the Treasurer in the performance of his or her duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Treasurer. At the direction of the Treasurer or in his absence or disability, an assistant treasurer shall exercise the powers and duties of the Treasurer.

**Section 5.08 Vacancies.** Any vacancy in any office or position by reason of death, resignation, removal, disqualification, disability or other cause shall be filled in the manner provided in this Article V for regular election or appointment to such office.

**Section 5.09 Delegation of Duties.** The Board of Trustees may in its discretion delegate for the time being the powers and duties, or any of them, of any officer to any other person whom it may select. Upon authorization by the Board of Trustees, an officer may delegate performance of specific duties to employees and agents of the University.

(a) Notwithstanding the foregoing, the following matters shall require the approval of the Board of Trustees:

(i) Basic University Organization and Policy

- (1) Amendments to the Charter, Bylaws and Standing Orders;
  - (2) All reports of standing or special committees of the University's Board of Trustees;
  - (3) All major modifications of educational policy;
  - (4) Authorization to grant degrees to graduates;
  - (5) The University's Strategic Plan; and
  - (6) University intellectual property policy.
- (ii) Fiscal Matters
- (1) Establishment of, or changes in existing, major University fiscal policies;
  - (2) State appropriation requests and annual operating budgets;
  - (3) Acceptance of gifts, bequests, grants, fellowships, scholarships, loan funds that are not in accord with established policy;
  - (4) Establishment of, or changes in, tuition, room and board rates and mandatory student fees;
  - (5) Authorization to borrow money; authorization of persons to sign checks, contracts, legal documents, and other obligations, and to endorse, sell, or assign securities; and
  - (6) Selection of a firm to make annual audit of University accounts.
- (iii) Capital Projects
- (1) Establishment of, or changes in the University's five-year Capital Plan;

(2) Establishment of, or changes in existing policies, on matters such as honorific naming of buildings and roads and preservation of campus landmarks;

(3) Purchase of land and other real estate with a purchase price of \$1 million or more;

(4) Sale of land or other real estate, with the exception of the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale with proceeds benefitting the University;

(5) Honorific names for individual buildings and roads;

(6) Any new construction or renovation project for which the total project cost is \$10 million or more, including

(A) Total project cost; provided however, that the Officers of the University shall have the discretion to expend up to an additional 10 percent of the approved total project cost, as necessary; and

(B) Awarding of contracts for construction;

(7) Projects under \$10 million in cost that are bond-financed;

(8) Other capital expenditures of \$10 million or more.

(iv) Personnel Matters.

(1) The selection, evaluation, compensation and removal of the President of the University, in accordance with policies and procedures adopted by the Board of Trustees from time to time. This responsibility

includes a commitment to grant the President broad delegated authority, to support the President in his/her exercise of such authority, to judge the performance of the President, and if necessary, to remove the President. In the selection of a President, the Board shall consult with representatives of the faculty and the student body.

(2) The establishment of and any changes to the University's executive compensation philosophy.

(3) The establishment of and any changes to the employment terms and conditions of the President of the University.

(4) The appointment and removal of the Vice President and General Counsel and the process by which Vice Presidents (other than the Vice President and General Counsel) and Deans are appointed, and any material amendments or modifications to such process.

(v) Subsidiaries

(1) Appointment of the Board of Directors of each direct subsidiary of the University as provided in such subsidiary's articles of incorporation;

(2) Amendments to the articles of incorporation of each direct subsidiary of the University; and

(3) Exercise of rights reserved to the University in the articles of incorporation, bylaws or other governing documents of any direct or indirect subsidiary of the University.

(vi) Miscellaneous

(1) Selection of the recipients of Distinguished Alumni Awards, honorary degrees and the Penn State Medal; and

(2) Selection of specific dates for regular meetings of the Board of Trustees.

(b) The delegation of authority set forth in this Section 5.09 requires that the Board of Trustees rely on the judgment and decisions of those who operate under its authority. However, this reliance of the Board of Trustees must be based upon its continuing awareness of the operations of the University. Therefore, the Board of Trustees shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designated by the President. The Board of Trustees has a continuing obligation to require information or answers on any University matter with which it is concerned. In addition to such matters as the President of the University may determine, or as requested by the Chair of the Board of Trustees, the following matters shall be presented to the Board of Trustees for information:

(i) Basic University Organization and Policy

(1) New curricula and major changes in existing curricula;

(2) Major policy matters affecting student welfare and activities;

and

(3) Major policy matters affecting research.

(ii) Fiscal Matters

(1) Financial statements, and gifts, bequests, grants, fellowship, scholarships, loan funds that are in accord with established policy; and

(2) The University's annual reports filed under the Clery Act and the Pennsylvania Right to Know Act.

**(iii) Personnel Matters**

**(1) Policies.** New policies or changes in existing policies governing appointments, promotions in academic rank, leaves of absence, resignations, retirements, academic freedom and tenure, hours and conditions of employment, and fringe benefits; and

**(2) Executive Compensation.** Information regarding

**(A)** the evaluation and compensation of University executives (other than the President of the University), in accordance with policies and procedures recommended by the subcommittee on compensation from time to time.

**(B)** the establishment of and any changes to executive compensation and benefit programs and policies.

**(3)** Information regarding the appointment and removal of Vice Presidents and Deans.

**(iv) Capital Projects**

**(1)** New construction or renovations projects with a total project cost equal to or greater than \$5 million but less than \$10 million;

**(2)** Generic naming of individual buildings and roads and honorific naming of University facilities other than individual buildings and roads;

**(3)** Purchase of real estate with a purchase price of less than \$1 million;

(4) Reports on the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale;

(5) Capital budget request submitted to the Commonwealth of Pennsylvania;

(6) An annual capital plan informational update; and

(7) Reports on the progress of new construction or renovation projects with a total project cost of \$10 million or more.

(c) Board of Trustees Delegation of Authority to Certain University Administrative Officers.

(i) The President, Vice President, Secretary, Treasurer, Assistant Treasurer, Senior Vice President for Finance and Business, and Corporate Controller of the University, or any one of such officers be and they are hereby fully authorized and empowered on behalf of the University to execute and acknowledge all deeds, agreements and contracts, and to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness or other securities now or hereafter standing in the name of or owned by this University, and to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(ii) The Treasurer, or in the absence of the Treasurer, the Senior Vice President for Finance and Business, may delegate in writing to such employees of the University as they may deem appropriate, the authority to execute and

acknowledge on behalf of the University standardized agreements and contracts for which those employees have administrative responsibility.

(iii) The Chief Investment Officer, or in such person's absence, the Managing Director, Operations of the Office of Investment Management, is hereby fully authorized and empowered on behalf of the University to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes or other securities now or hereafter standing in the name of or owned by the University, and to make, execute, acknowledge, and deliver, under the corporate seal of the University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(iv) The Associate Vice President for Finance and Business and Controller, or, in his or her absence, the Associate Controller, be and is hereby fully authorized and empowered on behalf of the University to execute and acknowledge all agreements and contracts related to the affairs of the College of Medicine.

(v) The Associate Secretary and Assistant Secretary of this University, or any one of such officers, be and they are hereby fully authorized and empowered on behalf of this University to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(d) Subject to the provisions of Section 5.09(a)(v), the affairs of any direct or indirect subsidiary of the University shall be governed by the Board of Directors of such subsidiary

in accordance with the articles of incorporation, bylaws or other governing documents of such subsidiary.

## ARTICLE VI

### MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS

**Section 6.01 Execution of Notes, Checks, Contracts and Other Instruments.** All notes, bonds, drafts, acceptances, checks, endorsements (other than for deposit), guarantees and all evidences of indebtedness of the University whatsoever, and all deeds, mortgages, contracts and other instruments requiring execution by the University, may be signed by the Chair, the President, any Vice President or the Treasurer, and authority to sign any of the foregoing, which may be general or confined to specific instances, may be conferred by the Board of Trustees upon any other person or persons. Any person having authority to sign on behalf of the University may delegate, from time to time, by instrument in writing, all or any part of such authority to any other person or persons if authorized to do so by the Board of Trustees, which authority may be general or confined to specific instances. Facsimile signatures on checks may be used if authorized by the Board of Trustees.

**Section 6.02 Voting Securities Owned by the University.** Securities owned by the University and having voting power in any other University shall be voted by the President or any Vice President, unless the Board of Trustees confers authority to vote with respect thereto, which may be general or confined to specific investments, upon some other person. Any person authorized to vote such securities shall have the power to appoint proxies, with general power of substitution.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 7.01 Offices.** The principal business office of the University shall be located at 201 Old Main, University Park, Pennsylvania 16802. The University may also have offices at such other places within or without the Commonwealth of Pennsylvania as the business of the University may require.

**Section 7.02 Corporate Seal.** The Board of Trustees shall prescribe the form of a suitable corporate seal, which shall contain the full name of the University and the year and state of its creation.

**Section 7.03 Fiscal Year.** The fiscal year of the University shall end on June 30 or on such other day as shall be fixed by the Board of Trustees.

**Section 7.04 Private Inurement.** No part of the net earnings of the University shall inure to the benefit of, or be distributable to, its Trustees, officers or other private persons, except that the University shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Bylaws and the University's Charter.

## ARTICLE VIII

### CONFLICTS OF INTEREST

**Section 8.01 Definitions.** For purposes of Sections 8.01 – 8.11 hereof, the following terms shall have the meanings set forth below.

(a) **Conflict of Interest.** A “conflict of interest” exists when a reasonable observer, having knowledge of all of the relevant facts and circumstances, would conclude that a Trustee has an actual or apparent conflict of interest in a matter related to the University. In

addition to financial conflicts of interest, a conflict of interest includes a situation in which a Trustee, family member or related entity has an interest that may lead the Trustee to act in a way that is incompatible with or a breach of the Trustee's fiduciary duty to the institution or use such Trustee's role to achieve personal gain or benefit or gain or benefit to family, friends or associates.

**(b) Family Member.** A "family member" means a Trustee's spouse or dependent child.

**(c) Financial Conflict of Interest.** A "financial conflict of interest" exists when a Trustee, a family member or related entity has an actual or potential financial interest in a matter (i) that is pending before the Board for discussion or vote or (ii) in which the Trustee or a family member is personally involved. A financial conflict of interest does not include a student or employment relationship of a family member.

**(d) Related Entity.** A "related entity" means a corporation, partnership, association or other entity where the Trustee or family member serves as an officer, director, partner or employee; expects to receive \$5,000 or more in compensation for services in a calendar year; holds any equity in a non-publicly traded entity; or holds an interest of 5% or more in a publicly traded entity.

**(e) Known.** "Known" means that the Trustee has actual knowledge of the conflict of interest.

**(f) Board.** "Board" includes any standing or ad hoc committee of the Board.

**(g) Disclose or Disclosure.** "Disclose" or "disclosure" means to provide a brief summary of the transaction, agreement or business arrangement and the Trustee's financial or other interest.

(h) For purposes of this Article VIII, the term “University” includes all direct and indirect subsidiaries thereof.

**Section 8.02 Disclosure.** Each Trustee must disclose in writing to the Office of the Board of Trustees and to the Chair of the Board all situations that involve actual or apparent conflicts of interest if and as the conflict of interest becomes known to such Trustee.

**Section 8.03 Annual Disclosure.** In addition to other annual disclosures required by law or policy, each Trustee must disclose annually and in writing to the Secretary of the Board all conflicts of interest that are known to such Trustee. The annual disclosures of known conflicts of interest will be publicly available upon request.

**Section 8.04 Recusal.** If a matter in which a Trustee has a known conflict of interest comes before the Board for discussion or decision, the interested Trustee shall leave the Board meeting while the matter is discussed and voted upon. The Trustee’s interest and recusal shall be noted in the minutes, which shall be publicly available.

**Section 8.05 Contracts or Transactions with the University.** (a) A contract or transaction between the University and a Trustee, family member or an entity in which a Trustee or family member has a beneficial interest of ten percent (10%) or more and the contract or transaction is valued at \$10,000 or more must be approved by the Board of Trustees in accordance with this Section. The University official responsible for the matter must first conclude that it is in the best interests of the University to consider entering into such a contract or transaction. In circumstances where the Trustee, family member or related entity is purchasing goods or services from the University, as opposed to selling such goods or services, the matter is presumptively in the University’s interests if the price is fair and reasonable and the contract or transaction does not foreclose a similar transaction with another individual or entity. In other circumstances where the

University is purchasing goods or services, the officer must first explore alternatives that do not involve an interest of the Trustee, family member or entity in which the Trustee or family member owns a beneficial interest of ten percent (10%) or more. If, after exercising such due diligence, the official determines that it is in the best interests of the University to proceed, the matter must be submitted to the Board for approval. The written materials submitted to the Board shall include a description of the contracting process, including the use of open and public bidding if possible and practical, and the official's analysis of why it is in the best interests of the University to proceed with the agreement or relationship. The interested Trustee shall leave the meeting during the discussion and voting. The Board shall determine by a majority vote of the disinterested Trustees whether the transaction or arrangement is in the University's best interests, the price and value provided are fair and reasonable to the University and whether to approve the transaction or arrangement. Any such decision shall be recorded in the minutes, which shall be publicly available.

**(b)** Contracts or transactions of less than \$10,000 between the University and a Trustee, family member or an entity in which the Trustee or a family member has a beneficial interest of ten percent (10%) or more will be disclosed to the Board of Trustees annually in a written report which shall be available to the public. The report shall include a certification by the appropriate officers of the University that such contracts or transactions were made in the normal course of business and were fair to the University.

**Section 8.06 Annual Statements.** Each Trustee shall annually sign a statement that affirms that such Trustee (a) has received a copy of the Board's conflict of interest policy as expressed in this Article VIII, (b) has read and understands the policy, and (c) has agreed to comply with the policy.

**Section 8.07 Fiduciary Duty.** Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.

**Section 8.08 Misuse of Information.** No member of the Board of Trustees shall for personal gain or benefit or for the gain or benefit of others use any information not available to the public at large and obtained as a result of service to the University.

**Section 8.09 Gifts and Favors.** No member of the Board of Trustees shall solicit or accept for personal use or for the use of others any gift, loan, gratuity, reward, promise of future employment or any other thing of monetary value based on any understanding that the vote, official action or judgment of the member would be influenced thereby.

**Section 8.10 Pre-Existing Contract or Transaction.** A contract or transaction that would be required to be disclosed under this Article but which was entered into before the interested Trustee assumed office, or which became subject to this Article as a result of amendments to the Article, and which remains to be performed in whole or in part, shall be disclosed by the Trustee pursuant to Section 8.03 but is not subject to the voting and other requirements of this Article.

**Section 8.11 Family Members as Employees.** A record of all spouses or dependent children of Trustees who are employed by the University or an affiliated entity and where compensation exceeds \$10,000 per year shall be maintained in the Office of the Board of

Trustees and the names and positions but not the amount of compensation shall be posted on the University's public website.

**Section 8.12 Employment of Trustees.** No Trustee may be employed by the University in any capacity before the fifth (5th) anniversary of the date on which such person last served as a Trustee, except as approved by action of the Board of Trustees.

**Section 8.13 Disclosure of Potential Conflict of Interest by Employees of the University.** Employees of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. They shall not use their positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise between the interest of the University and that of the individual. Employees shall disclose to the administrative head of the college or other unit in which they are employed, or other appropriate superior officer, any potential conflict of interest which they are aware before a contract or transaction is consummated. This bylaw shall be published to the University community at least once annually.

**Section 8.14 Consultation.** Any Trustee or University official may consult with the Secretary of the Board or the University General Counsel concerning the interpretation or application of any of the provisions of Article VIII.

## ARTICLE IX

### AMENDMENTS

**Section 9.01 Amendments.** These Bylaws may be amended, altered or repealed, and new bylaws may be adopted, by the Board of Trustees at any regular or special

meeting. Except as specifically set forth in Section 4.01, no provision of these Bylaws shall vest any property or contract right in any person.

## BYLAWS AMENDMENT HISTORY

May 6, 2016	Amended and Restated Bylaws adopted
November 4, 2016	Section 3.03(f)(vi) amended
July 21, 2017	Section 5.09 amended
November 10, 2017	Sections 2.12, 4.01 and 4.02 amended
May 3, 2019	Sections 5.09 and 8.01 amended
November 15, 2019	Section 2.01(b) amended
May 8, 2020	Sections 3.03 and 5.09 amended
September 18, 2020	Sections 2.01(a), 2.09, 3.02, 3.03(d), 3.03(e), 3.03(f)(i), 3.03(f)(iii), 3.03(f)(vii), 3.03(g), 3.03(h), 3.03(k), 3.03(l), 3.05, 3.06(b), 5.09(b)(iii) and 5.09(c)(iii) amended
May 7, 2021	Section 5.01(b) amended

# Exhibit PSU #2

## Standing Orders

**Standing Orders of the Board of Trustees**

**As Amended as of September 18, 2020**

		<b>Page</b>
ORDER I.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI .....	1
ORDER II.	PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES .....	2
ORDER III.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES .....	3
ORDER IV.	PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE .....	5
ORDER V.	PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE.....	5
ORDER VI	PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES.....	6
ORDER VII.	RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES.....	7
ORDER VIII.	GOVERNANCE OF THE UNIVERSITY .....	11
ORDER IX.	TRUSTEES EMERITI.....	16
ORDER X.	PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS .....	17

## STANDING ORDERS OF THE BOARD OF TRUSTEES

### **ORDER I. PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI (see also *the Charter*)**

- (1) Date of Election. Elections for alumni members of the Board of Trustees shall be held each year on the day preceding the annual Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees, and may be held either in connection with the Delegate Convention for the election of other members of the Board, or at such other hour of the same day, and such other place, as the Chair of the Board of Trustees may from time to time direct.
- (2) Nominations. The Secretary of the Board of Trustees, or such other officer as may be from time to time designated by the Chair of the Board of Trustees, shall send to each qualified elector, as established in the Charter, whose email address is known a notice stating the date at which the next election will be held and the names of alumni trustees whose terms will expire by law on the thirtieth day of June next following. Such notice shall be sent each year not less than ninety days preceding the date on which such election is to be held, and shall invite nominations for vacancies then to occur. All persons who are nominated by as many as 250 electors shall be announced as soon as practical after the tenth day of April each year in a circular sent to all electors, with a form of ballot.
- (3) Form of Ballot. Only the official nominating and voting ballots may be used to nominate and vote for candidates.
- (4) Position on Ballot. Immediately after the last day fixed for depositing ballots to nominate candidates for alumni trustee, the Chair of the Board of Trustees shall fix a day and hour for casting lots for the position of names upon the election ballots. The Secretary of the Board of Trustees shall give at least three days' notice of said date and hour to all candidates nominated. Any candidate may appear in person or by a representative duly authorized in writing. In the event that any candidate is not present in person or by duly authorized representative at the time of casting of lots, it shall be the duty of the Secretary to appoint some person to represent such absentee. After said lots are cast, the Secretary shall accordingly establish the order in which the names of said candidates are to appear on the election ballot.
- (5) Designation of Incumbents. Incumbents shall not be identified as such on election ballots, but biographical sketches shall identify incumbents with an asterisk.
- (6) Position in Booklet of Biographical Sketches. Candidates' names shall be in alphabetical order in any publication of biographical sketches.
- (7) Duplicate Ballots. A duplicate ballot may be issued to a voter only on a written or personal application to the Secretary of the Board of Trustees stating that the original ballot has been lost, mutilated, or destroyed.

- (8) Deadline for Receipt of Nominations. Ballots for the nomination of alumni trustees must be received at the office of the Secretary of the Board of Trustees before 5:00 p.m., February 25.
- (9) Candidate May Withdraw Name. Each candidate nominated shall be given the privilege of withdrawing his/her name.
- (10) Election Returns. All ballots for alumni trustees returned to the proper official in response to said circular and received by him/her on or before the day of election shall be safely kept by him/her, and by him/her delivered at the time and place of election to the two judges selected by the Chair of the Board of Trustees and shall by them be counted as cast at that time and place. Said judges shall make return to the Board of Trustees of the persons for whom ballots have been cast, either by letter or by electors in person, with the number of votes for each person; and the Board of Trustees shall thereupon determine and declare what persons have been elected to fill the vacancies aforesaid. A plurality of votes only shall be required to elect and, in case of an equality of votes between two or more candidates, the person or persons who shall hold said office or offices of trustee shall be designated by ballot of the Board of Trustees.
- (11) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.
- (12) Electronic Notices and Voting. In order to be good stewards of the limited financial resources of the University, electronic mail may be used to communicate any required notices or other correspondence under this Order I and an electronic balloting and voting process may be used so long as reasonable accommodations are made to permit any qualified elector without access to electronic mail to participate in the election.

**ORDER II. PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for Business and Industry Trustees shall be composed of five seated Trustees (three Trustees representing business and industry endeavors excepting those standing for reelection; and two trustees from among those elected by the alumni, elected by agricultural associations, or appointed by the Governor). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, two candidates for membership on the Board of Trustees representing business and industry endeavors. The names and qualifications of the candidates shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidates only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board as a representative of business and industry. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop business and industry candidates may continue through the end of the month of June following the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of trustees representing business and industry endeavors shall be held at the May meeting of the Board of Trustees.

**ORDER III. PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES** (*see also the Charter and the Bylaws*)

The Charter of the Board of Trustees of The Pennsylvania State University provides for the election of six trustees who represent the organized agricultural societies or associations in the Commonwealth ("Agricultural Organizations").

- (1) Date of Election. Election for two members of the Board of Trustees representing agricultural interests shall be held each year on the Thursday prior to the day for the annual Spring Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees.
- (2) Delegates. Agricultural Organizations are not entitled to send delegates to participate in the election of Trustees unless they have at least fifteen (15) members in good standing and have been organized and in existence at least twelve (12) months preceding the election, and have duly notified the Secretary of the Board of Trustees of this fact at least sixty days prior to the election. Each Agricultural Organization is invited to send up to three delegates to participate in the election; provided, however, that if an Agricultural Organization has more than fifteen (15) members in good standing in more than one county, such Agricultural Organization may send up to three delegates from each such county and provided, further that the maximum number of delegates that may be sent by any Agricultural Organization to participate in the election shall be nine (9). Each Delegate must be a member of the Agricultural Organization that he or she represents. Employees of The Pennsylvania State University are not permitted to serve as delegates. The secretary or another authorized officer of each Agricultural Organization shall provide proof to the Secretary of the Board of Trustees, in form and substance satisfactory to the Secretary of the Board of Trustees, of the authority and eligibility of each delegate sent by such Agricultural Organization to participate in the election. No proxies are permitted.

- (3) Candidates. Each Candidate must be an active member of an Agricultural Organization. Individual candidates are invited to notify the Secretary of the Board of Trustees by February 25 of each year. The names of the candidates (along with a biographical sketch and position statement for each candidate, the agenda for the meeting, and the governance provisions for the election) will be distributed to the secretaries or other authorized officers of each Agricultural Organization whose contact information is on file with the Secretary of the Board of Trustees in advance of the election in order to better inform Agricultural Organization delegates.
- (4) Nominations. Nominations will be required for all trustee candidates on the day of the election. Nominations of additional candidates not included in the election mailing are also permitted.
- (5) Registration. The names of the delegates representing each Agricultural Organization must be provided by the secretary or another authorized officer of such Agricultural Organization to the Secretary of the Board of Trustees, in a form approved by the Secretary of the Board of Trustees, at least 30 days prior to the election. An Agricultural Organization may amend its submission after that time but in no event shall changes be accepted if received by the Secretary of the Board of Trustees after 4:00 p.m. on the Monday prior to the election. Delegates must present a valid Pennsylvania driver's license or some other form of photo identification acceptable to the Secretary of the Board of Trustees in order to participate in the election, and may be registered as a delegate of only one Agricultural Organization and in only one county.
- (6) Eligibility and Voting. Only those delegates in attendance and duly registered are permitted to participate in the election and voting. The following provisions also apply:
  - (i) Each county is permitted a maximum of three votes for the candidates.
  - (ii) If a county is represented by more than three delegates, a caucus is required to determine the three from their number who will represent the county.
  - (iii) If fewer than three delegates represent a county, the county is permitted only as many votes as there are delegates.
  - (iv) Each voter must vote for two nominated candidates. Any ballot indicating a vote for a single candidate shall not be counted.
- (7) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.

**ORDER IV. PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE (see also the Charter and the Bylaws)**

- (1) The Selection Group on Board Membership for the Student Trustee shall be composed of eleven members (the incumbent Student Trustee, the President of the University Park Undergraduate Association, the President of the Graduate and Professional Student Association, the President of the Council of Commonwealth Student Governments and the President of the World Campus Student Government Association (the “Core Committee”) plus six at-large undergraduate, graduate or professional student members selected by the Core Committee. The Selection Group shall recommend, in accordance with guidelines established by the Selection Group and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the student body of the University.<sup>1</sup>
- (2) Three trustees to be appointed by the Chair of the Board of Trustees (including the incumbent Student Trustee) shall interview the preferred candidate (and, if necessary, any alternate candidates) and shall forward the recommended candidate’s name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Selection Group unless issues with the recommended candidate’s background check, student conduct issues, academic standing issues or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Selection Group shall treat as confidential the identities of all candidates.
- (4) The election of the Student Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER V. PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE (see also the Charter and the Bylaws)**

- (1) The University Faculty Senate shall recommend, in accordance with procedures and guidelines established by the Faculty Senate and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the faculty of the University.<sup>2</sup>

---

<sup>1</sup> The Guidelines provide that the Selection Group would identify a preferred candidate and two ranked candidates.

<sup>2</sup> The Guidelines provide that the Faculty Senate would identify a preferred candidate and two ranked candidates.

- (2) Three trustees to be appointed by the Chair of the Board of Trustees shall interview the preferred candidate (and, if necessary, the alternate candidates) and shall forward the recommended candidate's name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Faculty Senate unless issues with the recommended candidate's background check or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Faculty Senate shall treat as confidential the identities of all candidates.
- (4) The election of the Academic Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER VI. PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for At-Large Trustees shall be composed of five seated Trustees (one Trustee elected by the alumni, one Trustee representing business and industry endeavors, one Trustee elected by agricultural associations, one Trustee appointed by the Governor, and one Trustee from among the group of the Student Trustee, the Academic Trustee, the Trustee serving ex officio by virtue of his or her past presidency of the Penn State Alumni Association and the At-Large Trustees, if any). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, a candidate for at-large membership on the Board of Trustees. The name and qualifications of the candidate shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidate only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop trustee candidates may continue through the end of the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of at-large trustees shall be held at the May meeting of the Board of Trustees.

**ORDER VII. RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES**

- (1) Meetings Open to the Public. A meeting of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be open to the public as required by applicable law.
- (2) Annual Public Notice of All Meetings. Public notice of the date, time, and place of all regularly scheduled public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees for the calendar year shall be published annually in all daily newspapers of general circulation published in Centre County, and in at least one daily newspaper of general circulation in Pennsylvania, as required by law. Such notice for public meetings at locations other than University Park shall be published in a daily newspaper of general circulation in the political subdivision in which such meetings are to be held. Notice of all regularly scheduled public meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (3) Public Notice of Individual Meetings. Public notice of the date, time, and place of each regular meeting shall be given and published in the daily newspapers of general circulation as indicated above, at least three days prior to the time of each regularly scheduled meeting, and at least twenty-four hours prior to the time of the meeting in the case of special or rescheduled meetings. This provision shall not apply in case of a meeting called to deal with an emergency involving a clear and present danger to life or property. Notice of all special meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (4) Posting of Notices. Notice of all public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be posted at the offices of the Secretary of the Board of Trustees at University Park, Pennsylvania, as required by law.
- (5) News Media Notices. Notice of the date, time, and place of meetings shall be furnished on request to any newspaper publishing in the political subdivision in which the meeting will be held and to any radio and television station which regularly broadcasts into the political subdivision (Centre County in the case of meetings at University Park).

- (6) Notice to Others. Notice of meetings shall also be furnished to anyone providing a stamped, self-addressed envelope prior to the meeting.
- (7) Meeting Room. Except for telephonic meetings, public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be held in a room large enough to accommodate the members of the Board of Trustees, officers of the University, and invited guests. Space shall also be available for up to twenty-five visitors, including representatives of the news media, on a first-come, first-served basis. The room will be opened one-half hour prior to the starting time of the meeting.
- (8) Arrangements for News Media Area and Press Conferences. An area in the meeting room shall be designated by the University for use by the press and other news media, subject to such rules and regulations as the University may adopt. To further facilitate communications between the Board and the public, the Chair of the Board of Trustees and/or the President of the University shall hold press conferences as necessary following meetings of the Board of Trustees.
- (9) Visitors to the Meetings. Visitors to the meetings, including representatives of the news media, shall be present as observers, and not as participants. Any form of participation including speaking, the presentation of petitions, and the display of banners, posters, and other forms of signs is prohibited. This rule does not apply to guests invited by the Chair of the Board of Trustees or the President of the University.
  - (a) The Chair of the Board of Trustees or the President of the University shall be authorized to invite non-voting faculty representatives, non-voting student representatives or other constituent representatives to attend and participate in the meetings of standing committees, subcommittees and of special committees, except executive sessions. The representatives shall be selected by the Chair of the Board of Trustees in such manner as he/she deems appropriate.
  - (b) Public Comment
    - (i) The Board of Trustees welcomes the opportunity for expression of public views on issues before the Board. To accommodate such expression the Board shall reserve a portion of its regular meeting cycle for individuals who wish to address the Board.
    - (ii) All persons wishing to speak must preregister by completing a Request to Address form and submit it to the Office of the Secretary of the Board of Trustees no later than 9:00 a.m. on the Wednesday preceding the meeting. The Secretary of the Board of Trustees will review this request and notify the person making the request whether he/she may give public comment at such meeting. The Board will allow up to thirty minutes for public comment per meeting. An individual speaker will be

permitted up to three minutes for a presentation. This will be strictly adhered to with assistance of a timekeeper. Thus, a maximum of ten speakers will be scheduled for each Board meeting.

- (iii) When the number of requests to address the Board of Trustees at a given session exceeds the time available, requests will be approved based on the date the written request was received by the Secretary of the Board. In addition, preference will be given to subject matters that relate to the agenda for the relevant Board meeting and to avoid repetitiveness.
  - (iv) The exact time of the public comment period will be set by the Chair of the Board, after consideration of the number of speakers and other matters on the Board's agenda. All public comments will be recorded.
  - (v) The Board will not hear presentations that include, in whole or in part, the following topics: the employment status of any specific individual; statements concerning the private activities, lifestyles or beliefs of any specific individual employed by or associated with the University; or grievances relating to any individual student or employee. In addition, the Board will not entertain requests to participate in the public comment period by a party to any pending or threatened litigation or any administrative or other proceeding to which the University is a party, or by legal counsel for such party.
  - (vi) Speakers who comply with the Board's rules will have their remarks archived and made available on the Board's website, with such posting to be made as soon as practicable. Remarks by speakers who do not comply with the Board's rules will not be archived or made available on the Board's website. The decision on whether a speaker has or has not complied with the Board's rules will be made by the Chair of the Board, in consultation with the Secretary of the Board and the Chair of the Committee on Outreach, Development and Community Relations.
  - (vii) The Chair of the Board of Trustees shall have the authority to modify the provisions of this subsection (b) in his or her discretion to permit additional speakers, extend the public comment session and to make such other accommodations as may be necessary or advisable in his or her opinion to achieve the purposes of the public comment period.
- (10) Photographic and Recording Equipment. Visitors to the meeting, including representatives of the news media, shall be allowed to use battery-operated audio tape recorders, television cameras and photographic equipment subject to the following regulations:
- (a) A designated area in the meeting room shall be used by all visitors to the meeting using television cameras or photographic equipment.

- (b) Television cameras and related equipment shall be allowed entry into the meeting room for set up purposes during the one-half hour period prior to the starting time of the morning and afternoon meetings. Television cameras and related equipment shall not be allowed entry into the meeting room after the starting time of the meeting, except during the course of a meeting recess, in which event entry will be permitted.
  - (c) Television cameras and photographic equipment shall be required to use available light during the meeting. Artificial lighting and flashes shall not be used during the meeting.
  - (d) No voice-over broadcasting shall be permitted during the meeting.
- (11) Procedures for Committee Meetings and Board Meetings. In conducting the business of the Board of Trustees, its Standing Committees, and its Special Committees, the procedures for the meetings of the Standing Committees and the Special Committees shall provide for full discussion of both information and action items. Following discussion of action items, Standing Committees will vote to recommend an action to the Board of Trustees. Subcommittees and Special committees recommend action to Standing Committees, except as specifically authorized by the Board of Trustees. The Board of Trustees meeting will be devoted primarily to (a) taking formal action on committee and subcommittee recommendations as a block, with Board members having the opportunity to raise questions concerning any of the recommended action items and to call for a separate vote on a given item; (b) considering and acting upon matters which have not come to the Board through a Standing Committee; and (c) receiving the report of the President of the University. The vote of each member of the Board or of a committee on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of a roll call vote, recorded. From time to time, the Board of Trustees, executive committee, standing committees and subcommittees may hold conferences, which need not be open to the public, for the purposes of providing training and information to Trustees on matters directly related to their official responsibilities; provided, however, that no “deliberations” (as defined in the Pennsylvania Sunshine Law) of University business may occur at a conference.
- (12) Agenda for the Meetings. The agenda and supporting material for public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees shall be available to the public (both in hard copy at the meeting and online) at the time of the meetings. In addition to making available to the public at the time of the meeting the agenda and supporting material, the University will make available five days in advance of the meeting an agenda of items to be considered with a note that the agenda of items is subject to change without notice prior to the meeting.

- (13) Executive Sessions. The Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees may hold executive sessions as permitted by applicable law. Attendance at executive sessions shall be limited to voting members of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees, as the case may be, unless the presiding officer of the Board or of such Executive Committee, Standing Committee, Subcommittee or Special Committee otherwise directs.
- (14) Maintaining Order. The presiding officer at public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall have the authority to maintain order during the public meeting. Any person who, in the opinion of the presiding officer, prevents, disturbs, or interrupts a public meeting may be requested to leave the public meeting, and, upon failure to comply, may be subject to forcible removal and/or arrest for violation of applicable law.
- (15) Minutes of Public Meetings. The minutes of public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be available for inspection and copying during regular business hours at the office of the Secretary of the Board of Trustees. A copy of minutes of public meetings shall be available to a member of the public upon payment of the reasonable cost of reproduction.
- (16) Revisions in the Rules and Regulations for Public Meetings. The Board of Trustees will periodically review the Rules and Regulations for the Conduct of Public Meetings and make such revisions as experience indicates are appropriate and desirable.

## **ORDER VIII. GOVERNANCE OF THE UNIVERSITY**

- (1) Role of the Board of Trustees in University Governance
  - (a) Guiding Policies. In the exercise of its responsibilities, the Board of Trustees shall be guided by the following policies:
    - (i) Delegation of authority. As set forth in the Bylaws, the authority for day-to-day management and control of the University, and the establishment of policies and procedures for the educational program and other operations of the University, is delegated to the President of the University, and by him or her either by delegation to or consultation with the faculty and the student body in accordance with a general directive of the Board of Trustees.
    - (ii) Advisor to the President. It is the duty of the Board of Trustees to advise the President on any University matter.
  - (b) Responsibility to Inform the Citizens of Pennsylvania. The Board of Trustees shall inform the citizens of the Commonwealth of Pennsylvania of

the University's performance of its role in the education of the youth of Pennsylvania.

- (c) Responsibility for Development of Effective Relationships. The Board of Trustees shall assist the President in the development of effective relationships between the University and the various agencies of the Commonwealth of Pennsylvania and the United States of America which provide to the University assistance and direction.
- (d) Expectations of Membership. In exercising the responsibilities of trusteeship, the Board of Trustees is guided by the expectations of membership, each of which is equally important. It is expected that each Trustee will:
  - (i) Understand and support the University's mission, vision, and values;
  - (ii) Act in good faith at all times and in the best interests of the University, maintain independence from external stakeholders and act without regard to the manner in which such Trustee was appointed or elected to the Board of Trustees;
  - (iii) Make the University a top philanthropic priority to the very best of one's personal ability and fulfill on a timely basis all financial obligations and pledges of support to the University;
  - (iv) Prepare diligently, attend faithfully, and participate constructively in all Board of Trustees meetings and related activities by reading the agenda and supporting materials;
  - (v) Speak openly, freely and candidly within the Board, while being mindful that any public dissent from Board decisions must be done in the context of being trusted stewards of a public institution. Because a University is a free marketplace of competing ideas and opinions, its governance mandates open communication as well as principled, civil and respectful debate. At the same time, trustees must always protect and act in the best interest of the University, being cognizant that the tone and substance of their words reflect on the University that they are dedicated to serve and have consequences on its overall wellbeing.
  - (vi) Make decisions and instruct the administration collectively as the governing body of the University; it being recognized and understood that unless specifically authorized by the Board or the Chair, no individual trustee has the authority to direct administrators with respect to the performance of their duties for the University or to otherwise act on behalf of the University or the Board;

- (vii) Participate regularly in events that are integral parts of the life of the University community;
- (viii) Disclose promptly and fully any potential or actual conflicts of interest in accordance with the Board's conflict of interest policies, and personally maintain exemplary ethical standards;
- (ix) Refrain from requests of the President or staff for special consideration or personal prerogatives, including admissions, employment, and contracts for business;
- (x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose "confidential information" includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;
- (xi) Advocate the University's interests, but speak for the Board or the University only when authorized to do so by the Board or the Chair; it being recognized and understood that it is important for the Board of Trustees to convey a consistent message and that the Chair of the Board of Trustees or his or her designee serves as the spokesperson for the Board;
- (xii) Respect University policies relating to the acquisition of information and communication; it being recognized and understood that all such information should be used only for purpose consistent with such Trustee's duties and responsibilities to the University; and
- (xiii) Extend goodwill to one another and to all members of the University community.

Regular attendance at meetings by members of the Board is expected. If a member of the Board is unable to attend at least four of the six scheduled meetings each year, such Board member should discuss with the Chair of the Board of Trustees the question of his or her ability to continue attendance appropriate to a Trustee.

For violation of the Board's expectations of membership as set forth in Standing Order VIII(1)(d), the chair of the Board, in consultation with the Board's vice-chair, shall have the discretion to take any or all of the following actions:

1. Remove a trustee from any Board leadership position, including the positions of chair or vice-chair of any committee or subcommittee;

2. Remove a trustee from any committee, subcommittee or other Board assignment;
3. Pursue the adoption of a full Board resolution, or publicly issue a letter from the chair, censuring the offending trustee;
4. Privately issue a letter of censure with or without notice to the Board; in the case of a private letter of censure with notice to the Board, the letter would be confidential, and Board members would be requested to maintain the confidentiality of the communication; and/or
5. Discuss the breach with the offending trustee and without notice to the Board.

Before taking any of the above-described actions (1) – (3), the chair of the Board shall also consult with the chair and vice-chair of the Committee on Governance and Long-Range Planning and, in the case of an action described in (2) above, with the chair of any affected Committee. In the event that the chair or vice chair of the Board, the chair or vice chair of the Committee on Governance and Long-Range Planning or the chair of any affected Committee is the subject of the action to be taken, such individual would be recused from participating in any such consultation.

Additionally, before taking any of the above-described actions, the chair and vice-chair of the Board shall communicate with the offending trustee to specify the nature of the perceived offense, to clarify the expectations of Board leadership, and to provide an opportunity for the trustee to explain his/her actions and otherwise respond to the alleged violation. In deciding whether to impose a sanction for violation the expectations of membership, the Board chair shall take into account the position of the trustee charged with the violation, and shall also consider whether the violation is a first-time, or repeated, offense, the public or private nature of the offense and the severity of the injury or potential injury to the Board or the university arising from the violation.

The imposition of any sanctions hereunder for violation of the Board's expectations of membership shall not inhibit the capacity of the Board to remove a trustee pursuant to §2.03 of the Bylaws for any misconduct that constitutes a breach of a trustee's fiduciary duties.

- (e) Final Responsibility of the Board. The Board of Trustees is the final repository of all legal responsibility and authority to govern the University, under the laws of Pennsylvania. It can delegate but it cannot abandon this

responsibility and authority. The Board has the responsibility and duty to direct all organizations and persons participating in governing the University, whether such participation be in the establishment of policies, rules, and regulations, or in the administration of such policies, rules, and regulations. In order to perform this responsibility and duty, and consistent with the Charter, the Board of Trustees hereby directs that governing of the University henceforth be conducted in accordance with the following general plan of organization.

(2) Internal Governance

- (a) What Internal Governance Is Concerned With. This plan of organization concerns only the internal governance of the University. It is not concerned with the operation of the Board of Trustees, with the functions of the officers of the corporation, or with the establishment of financial policy and fiscal and budgetary controls, which matters are the responsibility of the Board of Trustees, the President, and the Treasurer in accordance with established policy.
- (b) Who Performed By. The internal governance of the University shall be performed by the President and his or her administration, by the faculty, and by the student body in accordance with the delegations of authority and advisory roles hereinafter set forth.

(3) Faculty

- (a) Responsibilities. The faculty, as appropriately organized, pursuant to delegation from the President, and subject to the revisions and orders of the President, shall establish policy concerning the approval and supervision of the instructional programs including courses and curricula, academic admissions standards, graduation requirements, and scholarships and honors.
- (b) Consultation by the President. The faculty shall be consulted by the President concerning student affairs, educational policy and planning, academic personnel, and any other matter upon the request of the President.
- (c) Communication with the Board. Official faculty communication to the Board of Trustees shall be made through the President and through faculty participation on the standing committees.
- (d) Regular Meetings. In furtherance of the objective of appropriate communication among the faculty, the administration and the Board of Trustees, a meeting will be held at least once per semester, attended by the President, the Provost and the Vice President for Administration, the Chair, Chair-Elect and Secretary of the Faculty Senate and the Chair and Vice Chair of the Board of Trustees. Any of such individuals may initiate agenda items for any such meeting.

(4) Student Body

- (a) Consultation by the President. The student body shall be consulted by the President concerning the establishment of policy for student affairs.
- (b) Communication with the Board. Official student communication to the Board of Trustees shall be made through the President and through student participation on the standing committees.
- (c) Participation in the Deliberations of the Faculty. Students may also participate in an appropriate manner in the deliberations of the faculty subject to the revisions and orders of the President.

**ORDER IX. TRUSTEES EMERITI**

- (1) Granting the Status of Trustee Emeritus to Former Members of the Board. The status of Trustee Emeritus shall be reserved for any living former member of the Board of Trustees who has served as a board member for six years or more with distinction. Trustee shall be eligible for consideration to receive such status immediately upon retirement from active service on the Board of Trustees. The Committee on Governance and Long-Range Planning shall review the service of a Trustee upon such Trustee's retirement and shall make a recommendation to the Board of Trustees. Criteria to be considered by the Committee shall include offices held, attendance record, participation in the activities of the Board, length of service, or other significant contributions to the governance of the University. The Committee may also take into account the Trustee's fulfillment of the Board's expectations of membership as set forth in these Standing Orders. Each former Chair of the Board of Trustees will be entitled to automatic trustee emeritus status upon retirement or resignation.
- (2) The election of Trustees Emeriti will be held at the September meeting of the Board of Trustees.
- (3) The status of Trustee Emeritus shall be applicable for a term of six years. At the end of such six year period, individuals who have been granted Trustee Emeritus status shall retain the title and may be invited to continue to participate in University activities and events at the discretion of the Chair of the Board of Trustees. All other privileges associated with the status of Trustee Emeritus shall expire.
- (4) Individuals with the status of Trustee Emeritus shall be invited to attend public meetings of the Board of Trustees and Standing Committees thereof and may participate at the discretion of the presiding officer of such meeting. Trustees Emeriti shall not have the right to attend executive sessions of the Board of Trustees or any Standing Committees thereof or to attend any portion of any meeting at which attorney-client privileged discussions are held unless the presiding officer of such session determines, after consultation with counsel, that such attendance is appropriate and advisable. Trustees Emeriti shall receive or be given access to documents and other materials that are made public, and may receive or have access

to the University's confidential, proprietary or attorney-client privileged materials at the discretion of the presiding officer of the meeting at which such materials are to be discussed.

- (5) Trustees Emeriti may be appointed by the Chair of the Board of Trustees, at the Chair's discretion, to serve as non-voting members of certain Standing Committees or ad hoc committees.
- (6) At the discretion of the Chair of the Board of Trustees, Trustees Emeriti shall be invited to participate in University events and activities, to serve as an advisor or mentor, to consult on University matters and/or to serve the University in such other capacities as the Chair may determine are advisable and appropriate.
- (7) The University shall reimburse Trustees Emeriti for reasonable expenses associated with service as Trustees Emeriti in accordance with policies applicable to the Board of Trustees from time to time.

#### **ORDER X. PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS**

The following process will be followed in connection with the search for, and appointment of, Vice Presidents and Deans.

- (1) Members of the Board of Trustees will be notified in writing by the President or his or her designee when a vacancy occurs. This notification shall include:
  - a. Position description/advertisement.
  - b. Roster of search committee members.
  - c. Information about any search firm engaged to assist in the search.
  - d. A description of the search process, the projected timeline and a tentative interview schedule.
- (2) When a successful finalist has been chosen, the Executive Committee of the Board of Trustees will be notified and sent the application materials of the candidate, a summary of the interview feedback and any other relevant materials, as determined by the President or the Executive Vice President and Provost.
- (3) The notice to the Executive Committee members will specify a date by which the members of the Executive Committee shall have an opportunity to express any concerns to the President. If there are no concerns, the University may proceed with the hiring and announcement of the candidate and shall introduce the hire at the next meeting of the Board of Trustees. If any Executive Committee expresses a concern with respect to a candidate, a conference call will be held at which Executive Committee members may express their concerns and discuss any issues with the President.

- (4) The process set forth in this Standing Order X shall not be applicable to the Vice President and General Counsel. The appointment and removal of the Vice President and General Counsel shall remain subject to approval by the Board of Trustees as set forth in the Bylaws.

**CONFIDENTIAL**  
**Trustee Conference Retreat Session**

**Thursday, August 18, 2022**  
**Robb Hall and Conference Room, Hintz Family Alumni Center**  
To join from PC, Mac, Linux, iOS or Android:



Dress Code: Casual

TIME	TOPIC
7:00 – 8:00 AM	Breakfast
8:00 – 8:15 AM	Welcome – Review of Agenda and Objectives  <b>Matt Schuyler, Chair, Board of Trustees</b> <b>Julie Anna Potts, Chair, Governance and Long-Range Planning</b>
8:15 – 9:30 AM	Institutionalizing the <u>We Are</u> Spirit Services Edge  <b>Neeli Bendapudi, President</b>
9:30 – 9:45 AM	<b>BREAK</b>
9:45 – 10:15 AM	The Student Success Imperative: Focus on the ABCs  <b>Michael Wade Smith, Senior Vice President &amp; Chief of Staff</b>
10:15 – 12:15 PM	The Student Success Imperative: Academic Preparedness <ul style="list-style-type: none"><li>• Enrollment Management</li><li>• Undergraduate Education</li></ul> <b>Matt Melvin, Vice President for Enrollment Management</b> <b>Yvonne Gaudelius, Vice President for Undergraduate Education</b>
12:15 – 1:30 PM	<b>Lunch</b>
1:30 – 3:30 PM	The Student Success Imperative: Belonging <ul style="list-style-type: none"><li>• Athletics as a driver of belonging</li><li>• Driving belonging in our student experience</li></ul> <b>Pat Kraft, Vice President for Intercollegiate Athletics</b> <b>Damon Sims, Vice President for Student Affairs</b>

Trustee Retreat - BOT Retreat Agenda

3:30 – 5:00 PM	<p><b>The Student Success Imperative: Cost</b></p> <ul style="list-style-type: none"> <li>Aligning the budget with our priorities and values</li> <li>Leading in a resource-constrained environment</li> <li>Transforming budgets = transforming culture</li> </ul> <p><b>Sara Thorndike, Senior Vice President for Finance and Business</b></p>
6:00 – 7:30 PM	<p><b>Dinner and Drinks – The Tavern</b>  <b>220 E. College Avenue, State College</b></p>

**Friday, August 19, 2022**  
**Room 603, Eric J. Barron Innovation Hub**  
**123 S. Burrowes Street, State College**

To join from PC, Mac, Linux, iOS or Android:

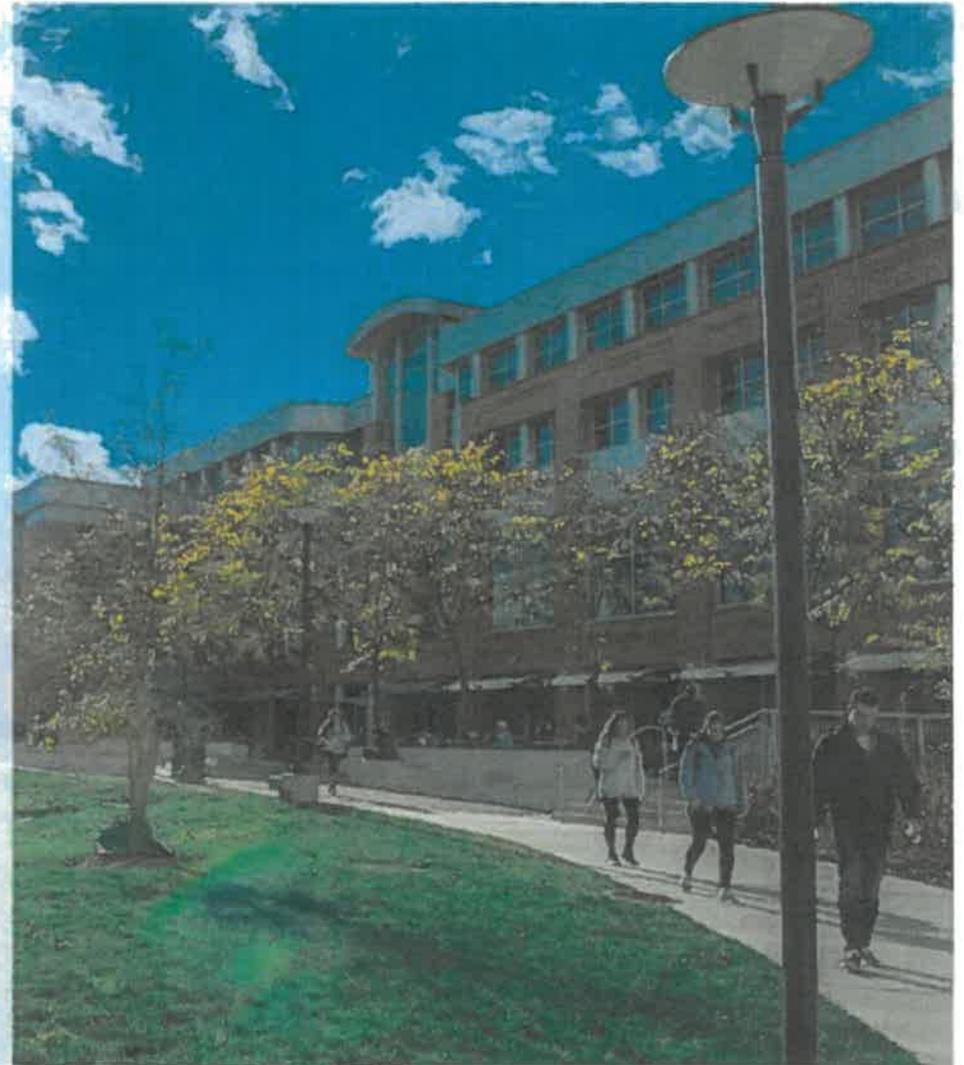


Dress Code: Casual

7:30 – 8:30 AM	<b>Breakfast</b>
8:30 – 10:30 AM	<p><b>Activating the Student Success Imperative: Commonwealth Campuses and the Penn State Brand</b></p> <ul style="list-style-type: none"> <li>Leveraging the Commonwealth Campuses for strategic impact as 96% of citizens of PA live within 30 miles of a CWC.</li> <li>Telling the Penn State/We Are story</li> </ul> <p><b>Kelly Austin, Vice President for Commonwealth Campuses</b>  <b>Lawrence Lokman, Vice President for Strategic Communications</b></p>
10:30 – 10:45 AM	<b>Break</b>
10:45 – 11:30 AM	<p><b>The Student Success Imperative: Where do we go from here?</b></p> <p><b>Neeli Bendapudi, President</b>  <b>Michael Wade Smith, Senior Vice President &amp; Chief of Staff</b></p>
11:30 – 12:30 PM	<p><b>Committees finalize goals for next year</b></p> <p><b>Matt Schuyler, Chair, Board of Trustees</b>  <b>Julie Anna Potts, Chair, Governance and Long-Range Planning</b></p> <p><b>11:30 – Noon: AARSL, FBCP, LC</b>  <b>Noon – 12:30: EQHR, GLRP, ODCR</b></p>
11:30 AM	<p><b>Lunch - Boxed Lunches will be available for those who wish to get on the road or remain onsite for lunch.</b></p>



To look forward rather than backward is no easy feat. Colleges must confront their tendency toward magical thinking — their belief that institutional challenges will somehow vanish. Another trap is complacency and an assumption of institutional exceptionalism — the idea that each college is special, shielded, somehow, from the woes confronting other institutions. Colleges must also stress genuine long-term thinking: Despite the frequency of five-year plans, they tend to think about their future a year at time, which discourages investing in the future.





## Strategic Plan Structure

- One University mission and vision
- Six institutional values
- Six foundations
- Five thematic priorities
- Three supporting elements (organizational excellence)
- 64-unit level strategic plans

# 1. Leverage Commonwealth Campus Strategy

- Reestablish Penn State's positive reputation
- Confirm that a Penn State degree is relevant in today's workforce
- Offer Commonwealth Campus summer programs for students at a younger age



# 1. Leverage Commonwealth Campus Strategy

---

## Strategic Plan Alignment

- Thematic priority:  
Transforming education
- Signature initiative:  
One Penn State 2025
- Foundation:  
Driving economic development

## Proposed Metrics/Next Steps

- Occupational projections data analysis
- Analysis of University data by discipline and campus

## 2. Student Success/Graduation Rates

### Recruit, Retain and Graduate

- Focus on getting ALL students to the finish line
- Track metrics associated with measuring graduation rates  
In [Data Digest](#)
- Need clear recruiting strategy



## 2. Student Success/Graduation Rates

---

### Strategic Plan Alignment

- Foundation: Enabling access to education
- Foundation: Advancing diversity, equity, and inclusion
- Foundation: Engaging our students
- Major focus on student engagement

### Existing Metrics/Next Steps

- Retention and graduation rates by student group – [Data Digest](#)
- Institutional Data Repository provides easier access to student data
- Monitoring classroom success/need for intervention early indicators

### **3. One Penn State 2025**

**Leverage LIFELONG learning into PA corporations through internships, jobs, etc.**

- Strong tradition of one University
- Education, attainment, learning
- Drive to be a more integrated, flexible, and responsive institution



## 3. One Penn State 2025

---

### Strategic Plan Alignment

- **Five Guiding Principles:**
  - **GP 1** - Provide a seamless student experience
  - **GP 2** - Achieve curricular coherence
  - **GP 3** - Design relevant and responsive programs
  - **GP 4** - Engage learners throughout their lifetimes
  - **GP 5** - Achieve the highest level of efficient use of University resources

### Existing Metrics/Next Steps

- Continuing Education programs
- University Park online courses; Commonwealth Campuses courses
- Adult PT learners by campus and home country
- Micro-credential programs and enrollment/completion rates

## 4. The Value of a Penn State Degree

- Clear value proposition; demonstrate positive return on investment
- Leverage Penn State alumni network
- Clarify and leverage the value proposition. Value is equivalent to ROI



## 4. The Value of a Penn State Degree

---

### Strategic Plan Alignment

- Foundation: Engaging our students
- Organizational excellence: Constituent outreach and engagement
- Thematic priority: Transforming education

### Existing Metrics/Next Steps

- [WeEarn](#) alumni data
- Data on student participation in programs that improve career readiness
- Value of experiential learning

## 5. Student Recruitment Strategy

### Who do we serve?

- Recruit, support, and advance a diverse student body
- Inclusion, equity, and diversity at the core



## 5. Student Recruitment Strategy

---

### Strategic Plan Alignment

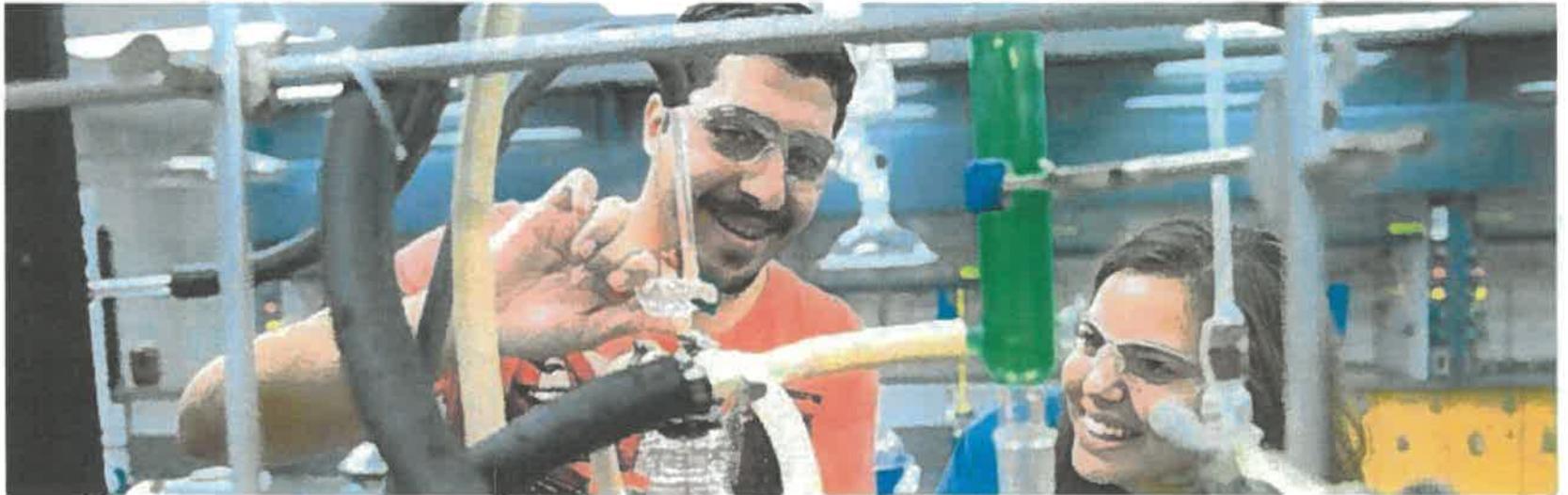
- Foundation: Enabling access to education
- Foundation: Advancing diversity, equity, and inclusion
- University-wide commitment to supporting and welcoming environment

### Existing Metrics/Next Steps

- Student enrollment and retention
- Positive experiences per community-wide survey
- Comparison of enrollment stats
- Findings from the tuition taskforce

## 6. Research, Innovation, and Land Grant Mission

- A leader among institutions of higher education – extending impact
- Leadership role in developing and understanding the impact of solutions on the workforce and community



## 6. Research, Innovation, and Land Grant Mission

### Strategic Plan Alignment

- Foundation: Driving economic development
- Foundation: Ensuring a sustainable future
- Thematic priority: Enhancing health
- Thematic priority: Stewarding our planet's resources

### Existing Metrics/Next Steps

- Interdisciplinary research data
- Technology transfer
- Graduate student stipends for research
- Extension programs/Companies in incubator programs

## 7. Transformative Experiences for All Students

### Online and in person

- Residential experience
- Impact of machine learning



## 7. Transformative Experiences for All Students

---

### Strategic Plan Alignment

- Foundation: Engaging our students
- Foundation: Enhancing global engagement
- Thematic priority: Transforming education
- Signature initiative: OPS 2025

### Existing Metrics/Next Steps

- Rate of participation in co-curricular activities
- Robust machine-learning approach
- Results from student experience survey (SES)

## 8. Strategy for Capital Plan to Deliver Teaching, Remote Work, Deferred Maintenance Needs



## 8. Strategy for Capital Plan to Deliver Teaching, Remote Work, Deferred Maintenance Needs

---

### Strategic Plan Alignment

- Organizational excellence: Organizational processes
- UBO multi-year strategic budgeting process
- Capital planning working group

### Existing Metrics/Next Steps

- Workforce data in Data Digest and Human Resources
- Various OPP metrics and data
- Recommendations from strategic budget task force and tuition task force underway
- Remote work task force findings

## 9. Revenue Innovation that is Creative, Monetizing, and Focused on Philanthropy

- Fundraising strategies
- Seed grants; College specific research grants
- Open educational resources



## 9. Revenue Innovation that is Creative, Monetizing, and Focused on Philanthropy

---

### Strategic Plan Alignment

- Thematic priority: Advancing the arts and humanities
- Achieving fundraising goals across the University
- Strategic plan seed grant process

### Existing Metrics/Next Steps

- Average alumni giving rate/change in average alumni giving rate
- Peer comparison of giving rates per [Peer Comparison Dashboard](#)
- Expanding and monetizing intellectual property

## 10. Role of Technology



## 10. Role of Technology

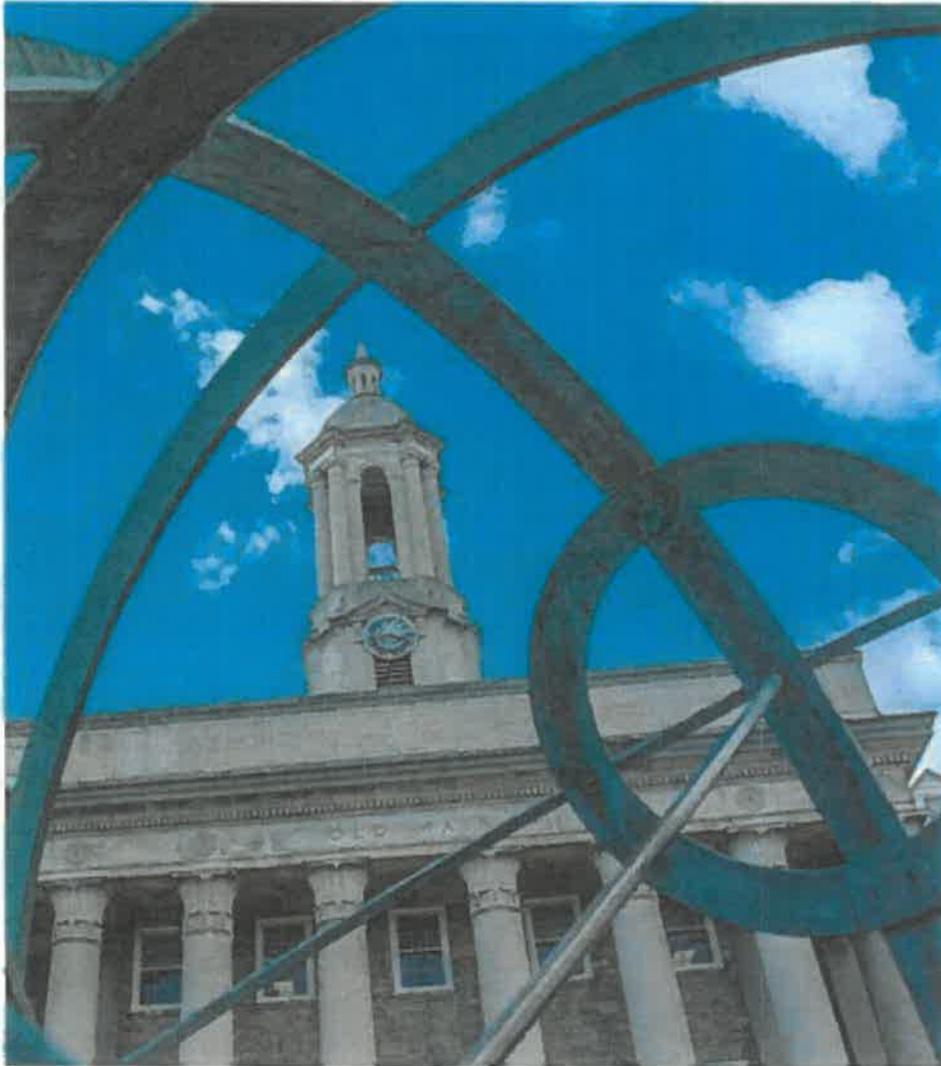
---

### Strategic Plan Alignment

- Thematic priority: Empowering through digital innovation
- Organizational excellence: Infrastructure and support
- Signature initiative: OPS 2025
- Researching innovation and technology in the classroom

### Existing Metrics/Next Steps

- Capacity and utilization of technology resources among employees
- Indicators that might indicate risk and pending upgrades
- Penn State IT – Data integration platform



**Questions?**  
THANK YOU





# The Student Success Imperative: Cost

- **Aligning the budget with our priorities and values**
- **Leading in a resource-constrained environment**
- **Transforming budgets = transforming culture**

August 2022 Board Retreat

Sara Thorndike, Senior Vice President for Finance and Business



## Aligning the budget with our priorities and values

### President's Budget Priorities

- Prioritize access and affordability to education
- Invest in our employees

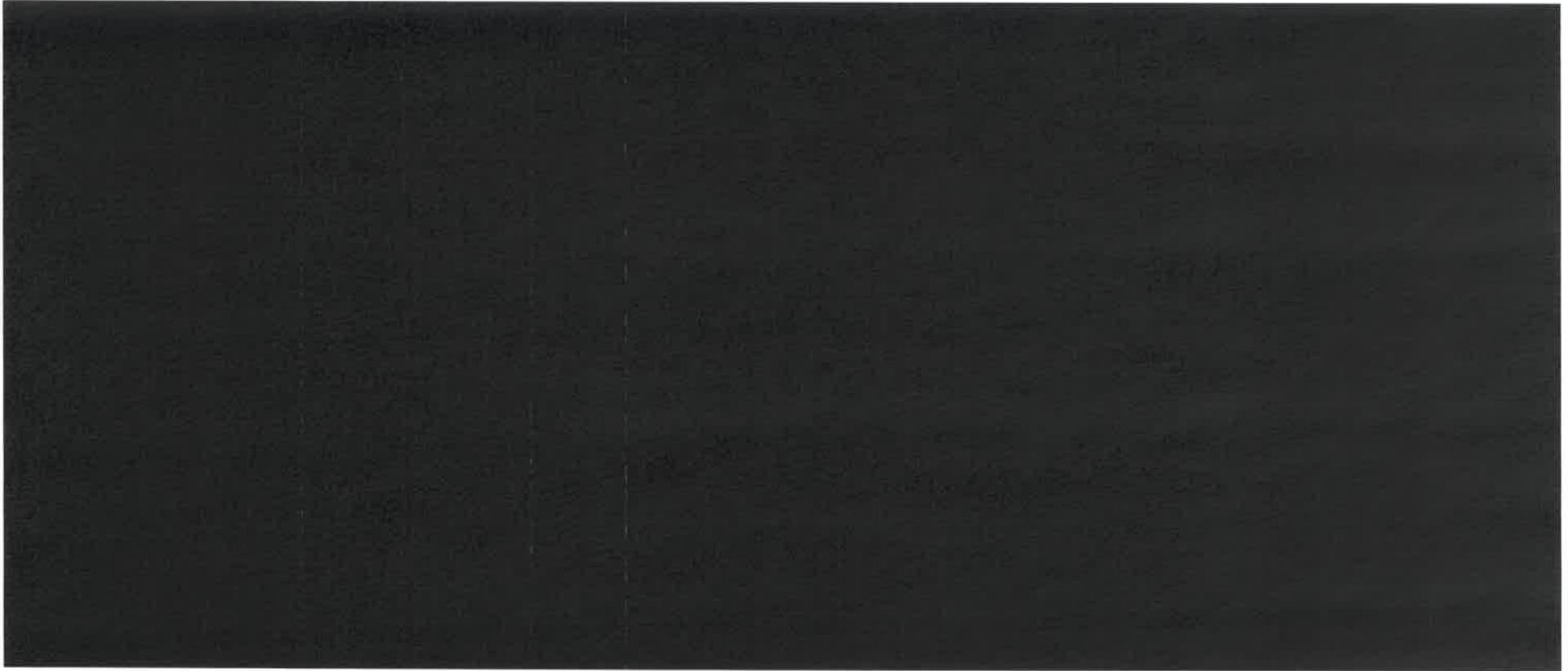
### Focus on Core Academic Assets

- Evaluate divesting of non-core assets

- [REDACTED]

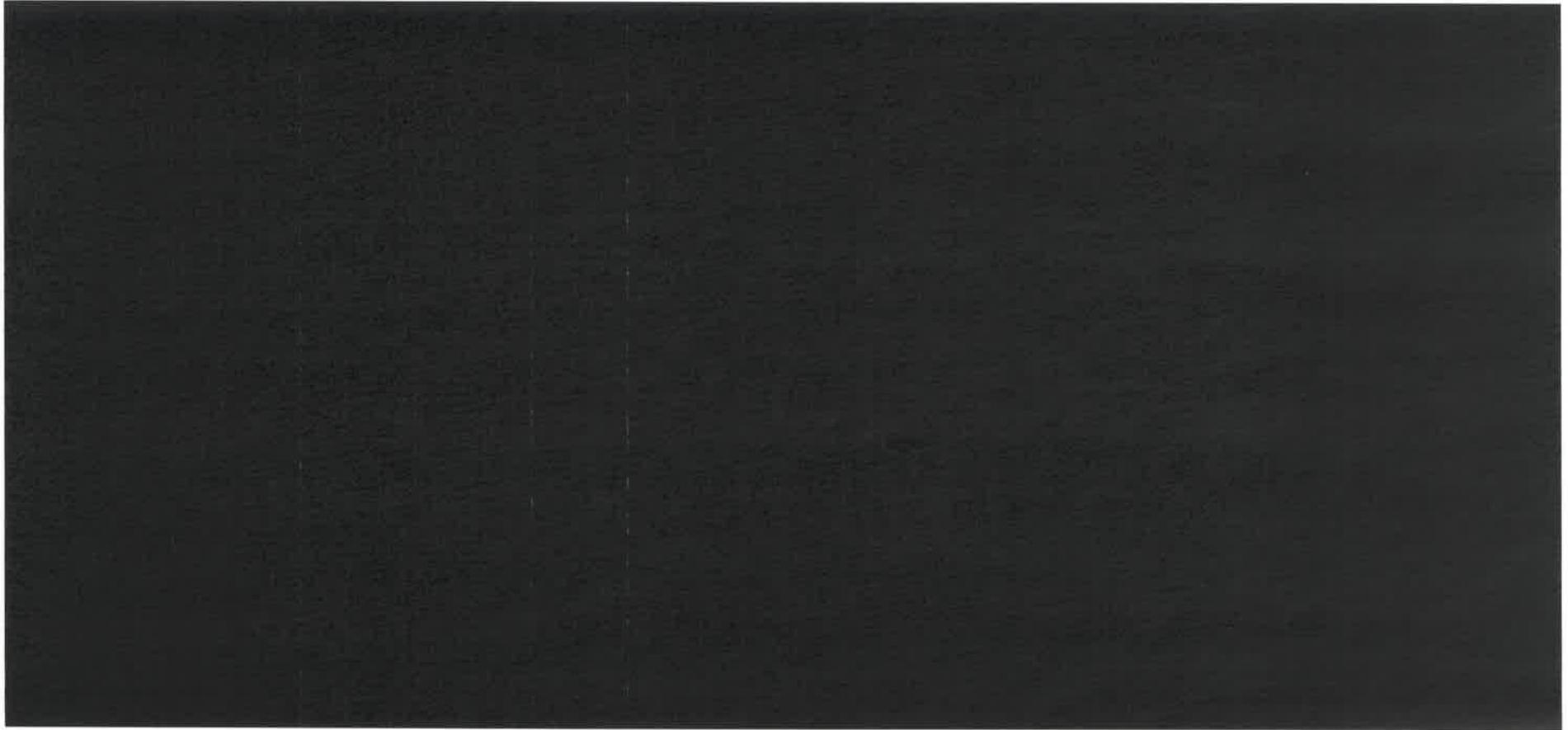


## Aligning the budget with our priorities and values





## Aligning the budget with our priorities and values





## Aligning the budget with our priorities and values



## Aligning the budget with our priorities and values

Currently student fee allocations are determined by students and aren't used for activities funded by general funds

### University Park Student Fees

Fee Board requested student fee of \$274.74 per student per semester for 2022-2023 year; generates approx. \$26M a year

Students contributed \$9M, \$8.5M, and \$9.9M to the student facilities reserve fund in FY21, FY22, & FY23

Unit	2021-2022 Allocation	2022-2023 Request	2022-2023 Allocation
Student Legal Services	\$520,000	\$485,000	\$485,000
Gender Equity Center	\$58,000	\$117,181.05	\$117,182
Center for Sexual and Gender Diversity	\$147,838	\$156,048	\$156,048
Paul Robeson Cultural Center	\$233,000	\$206,000	\$206,000
Student Parent Child Care Subsidy	\$206,362	\$154,771.50	\$154,772
Student Orientation & Transition Programs	\$97,000	\$109,000	\$104,000
Counseling & Psychological Services	\$872,008	\$1,071,908	\$1,071,908
Bryce Jordan Center	\$200,000	\$200,000	\$175,000
Center for Performing Arts	\$205,000	\$205,000	\$205,000
Campus Recreation	\$4,937,809	\$4,937,809	\$4,937,809
UPAC	\$4,178,500	\$4,178,500	\$4,178,500
Office of Student Activities	\$1,870,534.75	\$1,866,411.67	\$1,855,642
Student Farm	\$200,000	\$215,800	\$215,800
UPUA	\$139,628.55	\$139,628.55	\$139,629
GPSA	\$59,542	\$59,542	\$59,542
CCSG	\$5,000	\$5,000	\$5,000
University Health Services	\$420,000	\$420,000	\$315,000
Lion's Pantry	N/A	\$150,300	\$150,300
Sustainability Institute	N/A	\$90,500	\$90,500
Student Disability Resources	N/A	\$65,000	\$65,000
Office of Graduate Educational Equity Programs	N/A	\$181,807.92	\$162,371
Lion's Pantry Renovation (Equity Fund)	N/A	\$34,964	\$34,964
Equity Fund Reserve	N/A	\$365,036	\$365,036
Student Health Debt Service	\$376,000	\$268,959	\$268,959
HUB Debt Service	\$1,358,007	\$122,124	\$122,124
HUB Reserve	\$200,000	\$200,000	\$200,000
Sustainable Landscapes Master Plan (ESF)	N/A	\$75,000	\$50,000 + \$25k reserve
Engagement Space, Student Farm (ESF)	N/A	\$200,000	\$200,000
Environmental Sustainability Fund Reserve	\$80,000	N/A	N/A
Facilities Reserve	\$8,533,529.63	\$9,908,168	\$9,908,168



## Aligning the budget with our priorities and values

### Commonwealth Campus Student Fees

Generates approx. \$11M a year; \$258 per student per semester

Breakdown of the Student Initiated Fee (Proposed) for 2022-2023		
Item	Tier 1	Tier 2
Activities, Campus Recreation, and Services	\$114.74	\$114.74
Facilities	\$131.00	\$70.00
Counseling & Psychological Services (CAPS)	\$8.58	\$8.58
Student Legal Services (SLS)	\$3.00	\$3.00
Council of Commonwealth Student Governments (CCSG)	\$0.65	\$0.65
Commonwealth Fee Board (CFB)	\$0.03	\$0.03
<b>Total</b>	<b>\$258</b>	<b>\$197</b>



## Leading in a resource-constrained environment

Appropriations have increased 2.1% in total since 2001

Tuition increases have been declining, as has inflation until recently

	<b>Avg Annual Tuition</b>	<b>Avg Annual Inflation</b>
<b>1970s</b>	<b>10.1%</b>	<b>7.1%</b>
<b>1980s</b>	<b>10.1%</b>	<b>5.6%</b>
<b>1990s</b>	<b>4.9%</b>	<b>3.0%</b>
<b>2000s</b>	<b>7.8%</b>	<b>2.6%</b>
<b>2010s</b>	<b>3.0%</b>	<b>1.8%</b>
<b>2020s</b>	<b>1.9%</b>	<b>5.0%</b>



## Leading in a resource-constrained environment

Estimated appropriations per PA undergraduate resident student are much lower at Penn State than other universities supported by the Commonwealth

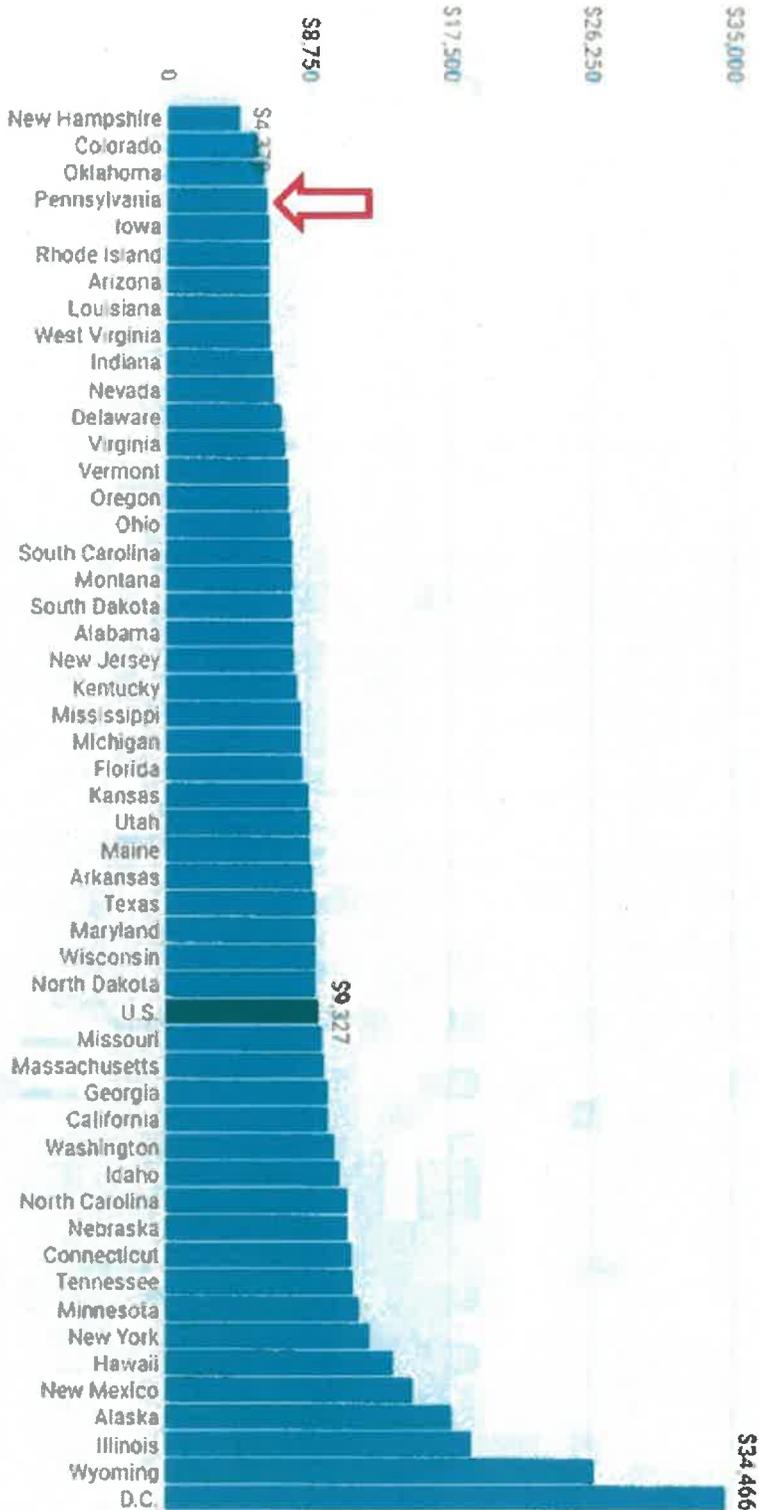
	<b>PA UG Enroll</b>	<b>21-22 Approp</b>	<b>Approp per Student</b>
<b>Lincoln</b>	875	15,166,000	17,333
<b>Pitt</b>	16,743	151,507,000	9,049
<b>Temple</b>	19,117	158,206,000	8,276
<b>PASSHE</b>	65,945	477,470,000	7,240
<b>Penn State</b>	43,272	242,096,000	5,595

New funding for PASSHE in FY23 makes approp. per student closer to amount Temple is receiving



# Leading in a resource-constrained environment

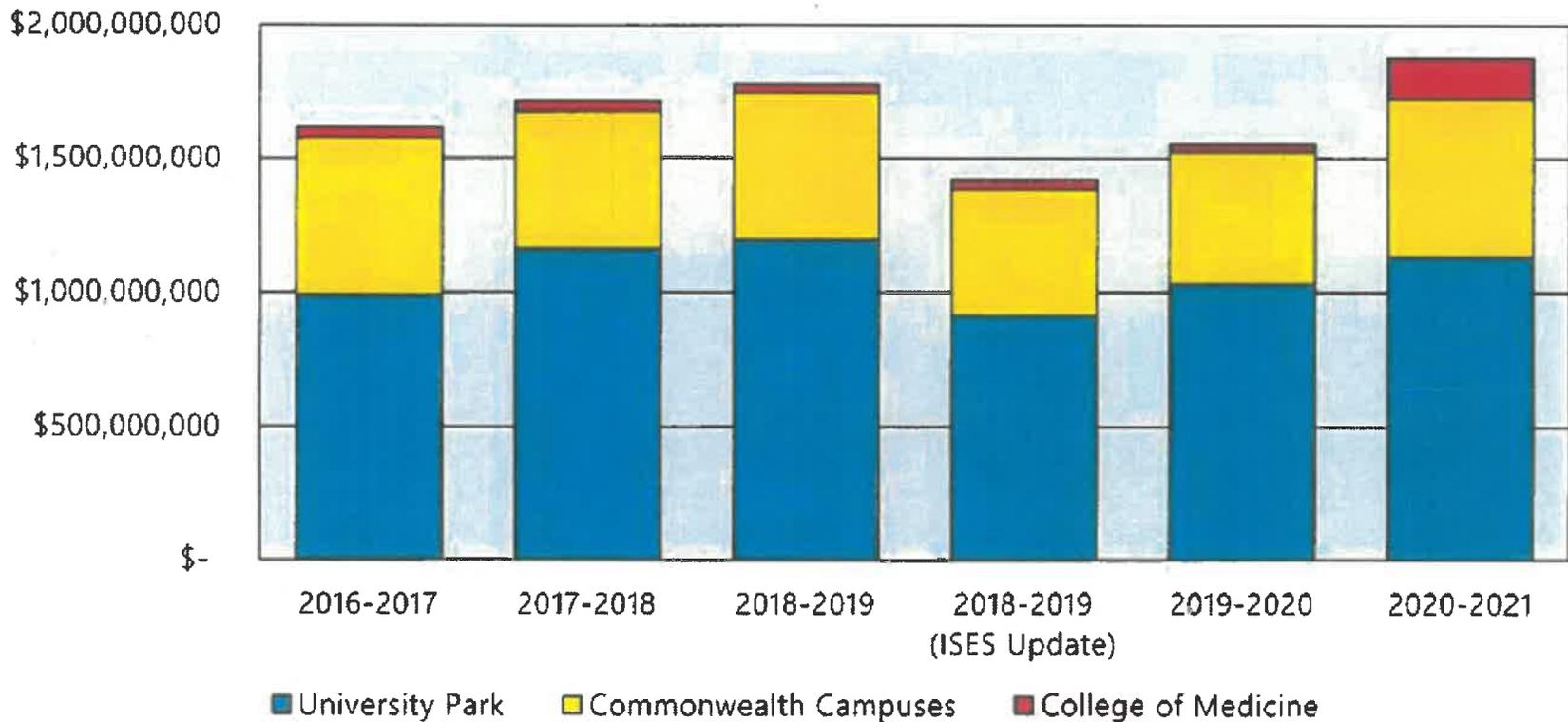
Education Appropriations per FTE





# Leading in a resource-constrained environment

## Education & General Facilities Backlog - \$1.9B



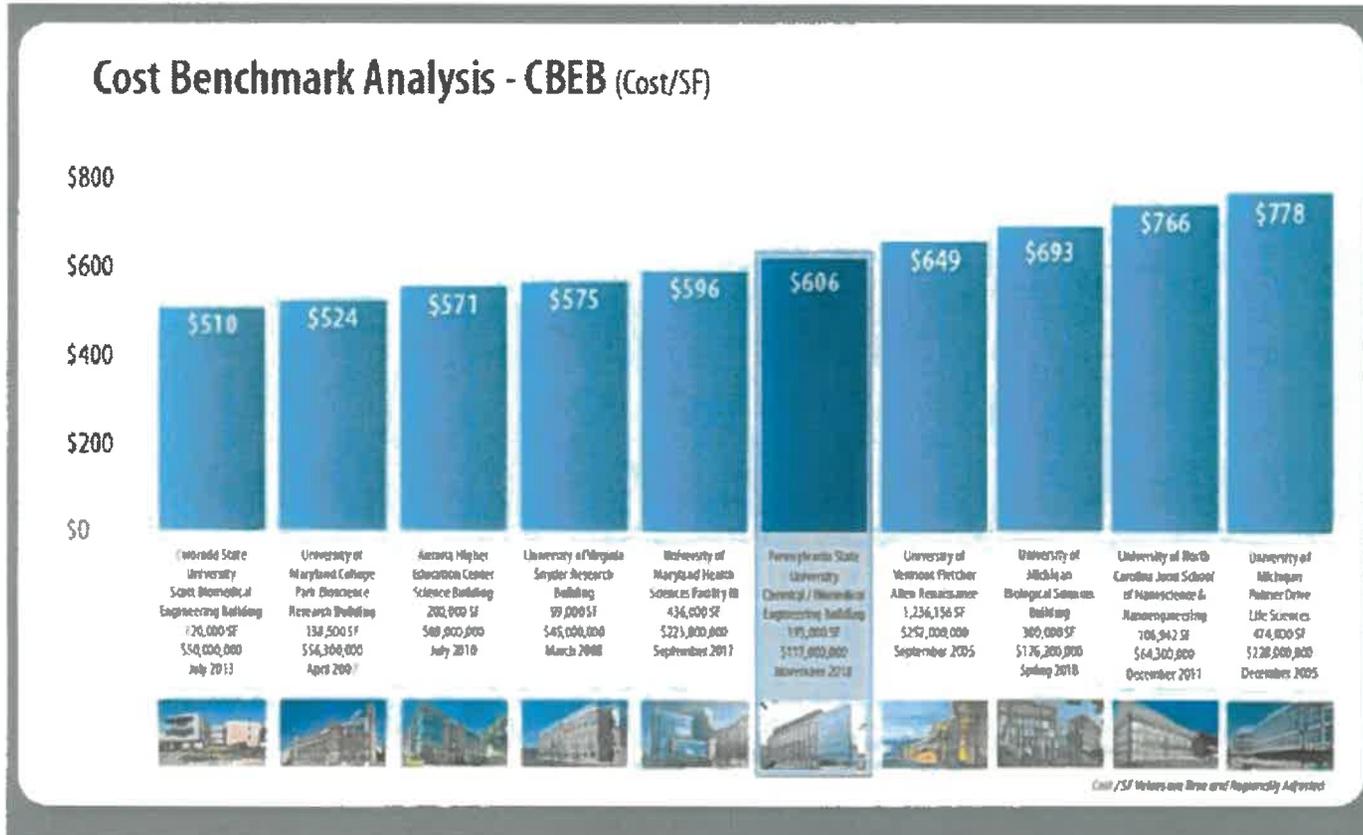
Backlog is estimated to increase more than 10% as a result of inflation



# Leading in a resource-constrained environment

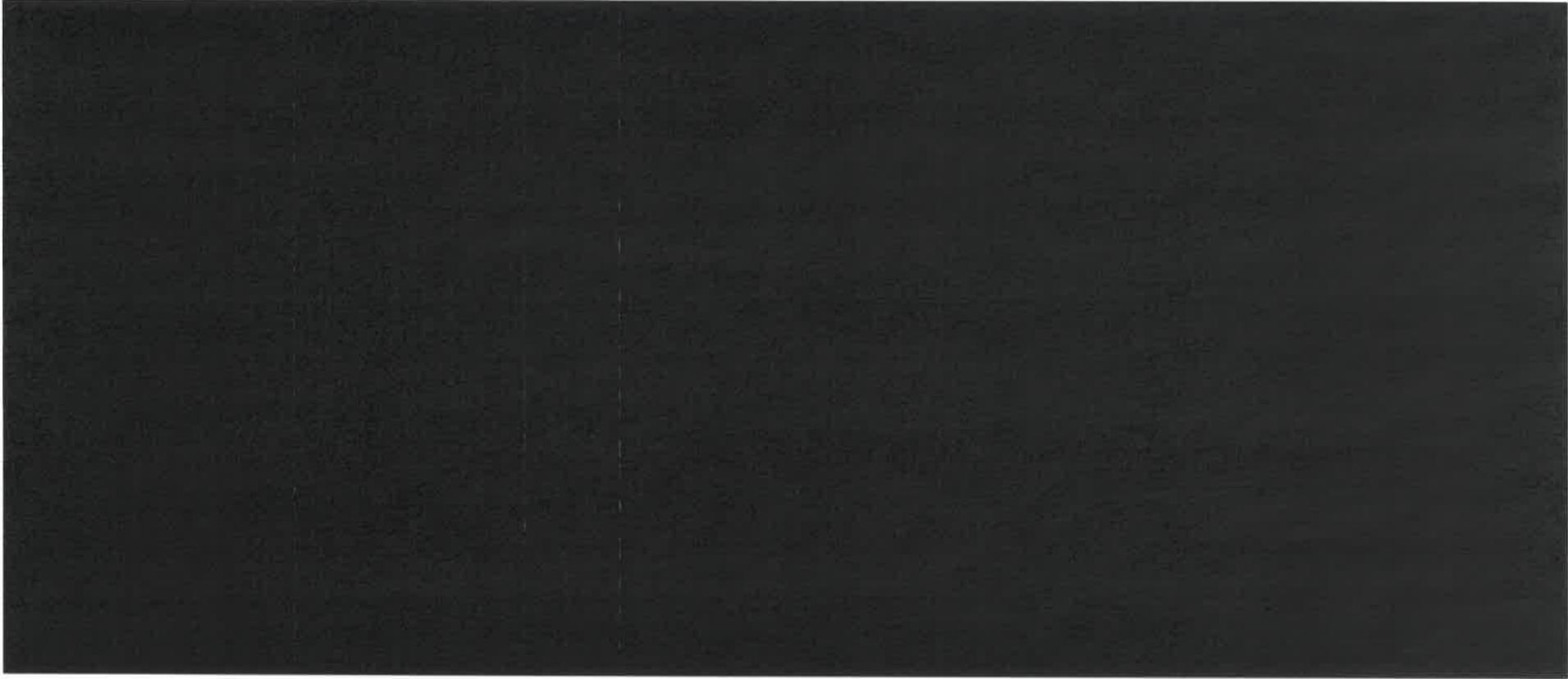
Construction costs are projected to increase 14.1% in 2022

Benchmark Construction Cost Comparison





## Leading in a resource-constrained environment





## Transforming budgets = transforming culture

- New budget allocation model
- Aligning budgets with student credit hour productivity

### 5-Year Change

Undergraduate Student Credit Hours	-10.20%
Undergraduate Student Headcount	-7.20%
Full Time Employee Headcount	4.00%

- Budget accountability
- Retaining funds centrally



## Transforming budgets = transforming culture

### Budget Allocation and Total Student Credit Hour Changes by College

	8 Year Change (2015 vs 2022)				5 Year Change (2018 vs 2022)				3 Year Change (2020 vs 2022)			
	Budget Recurring Allocation	% change	Student Credit Hours	% change	Budget Recurring Allocation	% change	Student Credit Hours	% change	Budget Recurring Allocation	% change	Student Credit Hours	% change
Agricultural Sciences	4,325,894	18%	(1,439)	-3%	1,838,846	7%	(3,619)	-7%	788,701	3%	(680)	-1%
Arts & Architecture	4,421,699	13%	(5,081)	-6%	756,119	2%	6,331	8%	(1,319,518)	-3%	3,414	4%
Business, Smeal	13,284,916	29%	(1,720)	-1%	7,113,354	14%	6,421	5%	763,659	1%	10,400	9%
Communications, Bellisario	1,721,172	13%	(2,440)	-6%	433,195	3%	(2,147)	-5%	(594,656)	-4%	(772)	-2%
Earth & Mineral Sciences	7,020,799	20%	(17,454)	-21%	1,997,992	5%	(14,001)	-17%	(1,244,945)	-3%	(3,707)	-5%
Education	4,565,961	18%	163	0%	1,769,796	6%	4,003	9%	(191,910)	-1%	2,685	6%
Engineering	15,356,198	19%	24,168	16%	4,413,315	5%	8,792	5%	(2,912,985)	-3%	(674)	0%
Health & Human Development	4,421,198	11%	(16,341)	-12%	2,525,215	6%	(11,172)	-9%	(723,225)	-2%	(7,569)	-6%
Information Sciences & Tech	2,813,783	20%	16,680	65%	1,060,266	7%	8,123	24%	(233,727)	-1%	863	2%
International Affairs, School	707,024	24%	1,047	94%	294,265	9%	564	35%	(180,125)	-5%	452	26%
Liberal Arts	21,461,103	25%	(25,683)	-7%	8,696,078	9%	(20,027)	-5%	(1,323,922)	-1%	(5,109)	-1%
Nursing, Nese	2,351,378	51%	(724)	-6%	1,251,075	25%	772	7%	392,620	7%	(415)	-4%
Science, Eberly	11,991,289	16%	522	0%	1,692,635	2%	(7,535)	-3%	(3,333,360)	-4%	(12,918)	-4%
<b>Total University Park</b>	<b>94,442,414</b>	<b>20%</b>	<b>(28,302)</b>	<b>-2%</b>	<b>33,842,151</b>	<b>6%</b>	<b>(23,496)</b>	<b>-2%</b>	<b>(10,113,393)</b>	<b>-2%</b>	<b>(14,028)</b>	<b>-1%</b>



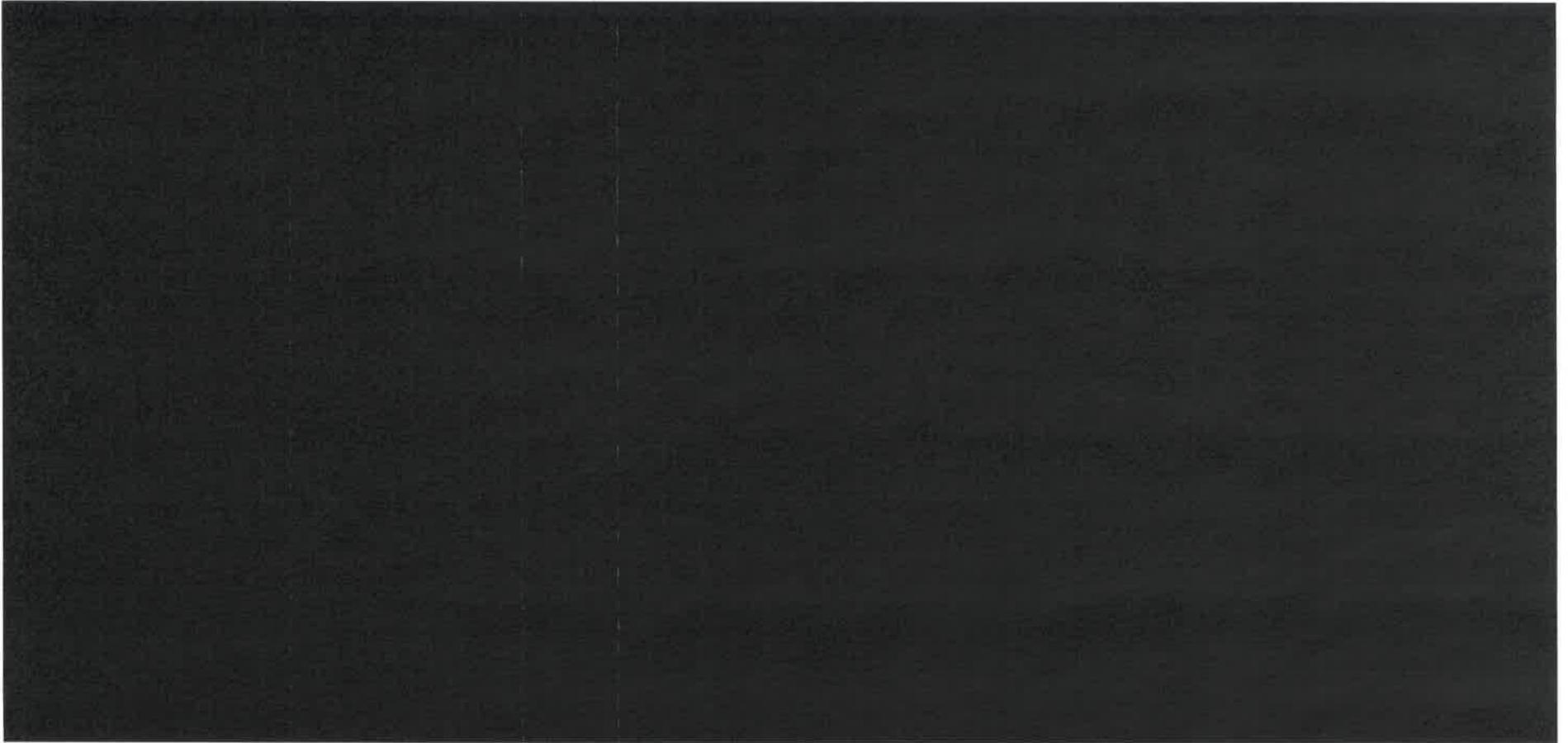
# Transforming budgets = transforming culture

## Budget Allocation and Total Student Credit Hour Changes by Campus

	8 Year Change (2015 vs 2022)				5 Year Change (2018 vs 2022)				3 Year Change (2020 vs 2022)			
Abington	5,152,882	19%	(16,866)	-15%	1,823,911	6%	(22,224)	-19%	(186,147)	-1%	(20,643)	-18%
Altoona	3,889,984	11%	(38,359)	-32%	914,402	2%	(25,921)	-24%	(932,831)	-2%	(13,747)	-15%
Berks	1,940,967	8%	(21,081)	-25%	731,426	3%	(19,177)	-23%	(171,105)	-1%	(11,477)	-15%
Erie	6,174,603	13%	(42,245)	-33%	2,855,512	6%	(46,488)	-35%	(1,025,671)	-2%	(21,849)	-20%
Harrisburg	4,981,193	12%	10,476	9%	2,542,670	6%	(8,146)	-6%	(287,384)	-1%	(6,210)	-4%
Beaver	676,473	8%	(5,237)	-25%	634,303	8%	(4,223)	-21%	494,315	6%	(3,157)	-17%
Brandywine	1,924,831	13%	(6,404)	-15%	783,120	5%	(6,453)	-15%	(351,891)	-2%	(4,900)	-12%
DuBois	303,659	4%	(4,850)	-27%	101,871	1%	(5,462)	-29%	(360,373)	-4%	(4,131)	-24%
Fayette, Eberly	135,516	1%	(5,169)	-26%	57,704	1%	(5,167)	-26%	(284,695)	-3%	(3,209)	-18%
Greater Allegheny	311,020	4%	(7,129)	-38%	597,455	7%	(4,788)	-29%	(26,290)	0%	(3,396)	-23%
Hazleton	(502,474)	-4%	(10,877)	-41%	(745,207)	-6%	(8,065)	-34%	(1,348,299)	-11%	(3,853)	-20%
Lehigh Valley	1,901,255	24%	(101)	0%	1,144,192	13%	(2,414)	-8%	821,682	9%	(4,381)	-14%
Mont Alto	573,508	6%	(6,101)	-24%	595,283	6%	(5,203)	-21%	(178,848)	-2%	(2,972)	-13%
New Kensington	574,801	7%	(4,644)	-24%	142,505	2%	(3,274)	-19%	(297,244)	-3%	(1,755)	-11%
Schuylkill	260,727	2%	(4,714)	-20%	503,239	5%	(3,078)	-14%	(46,655)	0%	(1,675)	-8%
Scranton	335,783	3%	(5,983)	-18%	376,073	3%	(3,533)	-12%	(5,706)	0%	(2,077)	-7%
Shenango	169,488	3%	(4,035)	-32%	109,931	2%	(2,155)	-20%	48,877	1%	(1,971)	-18%
Wilkes-Barre	140,077	2%	(6,686)	-39%	(237,546)	-3%	(4,771)	-32%	(249,344)	-3%	(4,052)	-28%
York	(879,310)	-7%	(10,131)	-33%	(708,663)	-5%	(8,320)	-29%	(1,499,474)	-11%	(3,389)	-14%
Great Valley	(2,816,591)	-39%	6,270	84%	(2,165,113)	-33%	(2,802)	-17%	(2,567,495)	-36%	(4,243)	-24%
<b>Total Commonwealth Campuses</b>	<b>25,248,392</b>	<b>8%</b>	<b>(183,866)</b>	<b>-20%</b>	<b>10,057,068</b>	<b>3%</b>	<b>(191,660)</b>	<b>-21%</b>	<b>(8,454,578)</b>	<b>-2%</b>	<b>(123,083)</b>	<b>-14%</b>
<b>Total</b>	<b>119,690,806</b>	<b>15%</b>	<b>(212,168)</b>	<b>-9%</b>	<b>43,899,219</b>	<b>5%</b>	<b>(215,156)</b>	<b>-9%</b>	<b>(18,567,972)</b>	<b>-2%</b>	<b>(137,110)</b>	<b>-6%</b>

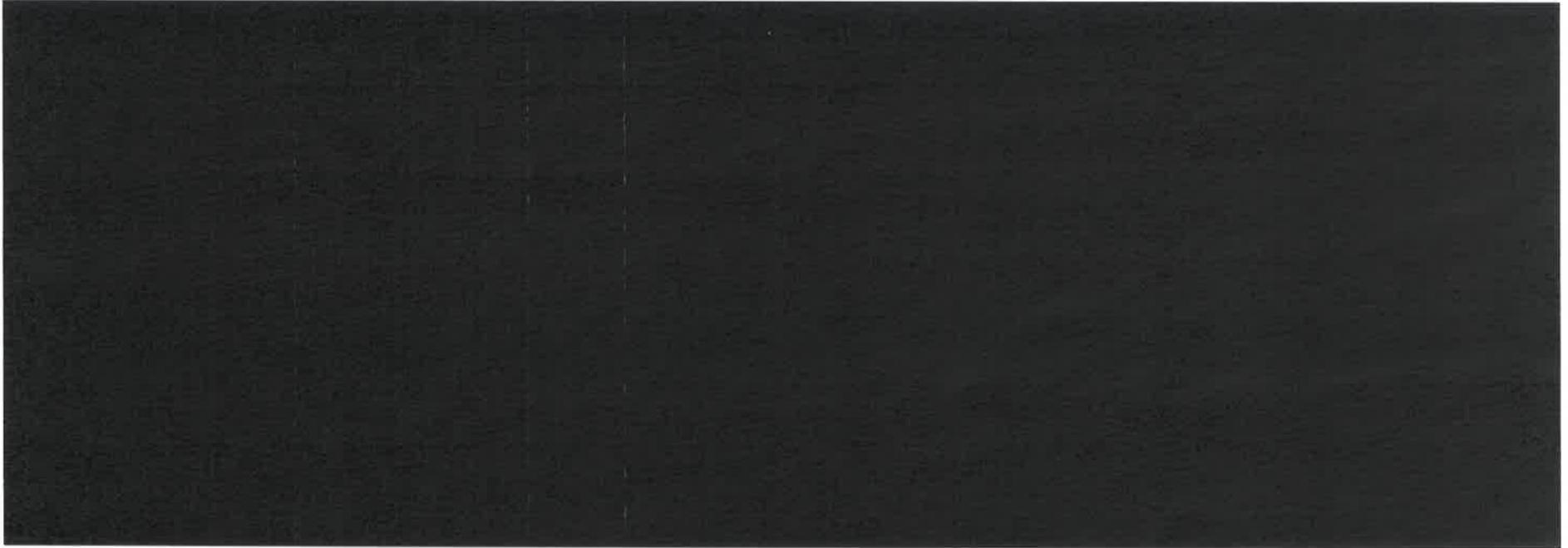


# Strategic Questions





# Strategic Questions



Daniel J. Julius  
JE J. Victor Baldrige  
Jeffrey Pfeffer

---

## A Memo from Machiavelli

**TO:** Presidents, Senior Administrators, and Faculty Leaders  
Who Would Seek Change  
**FROM:** Niccolo Machiavelli, Former Assistant to Presidents, Uni-  
versity of the Medici

Permit me to take a brief moment of your valuable time to introduce myself. I served for years as special assistant to kings, dukes, generals, several popes and, as well, numerous presidents, senior executives and faculty at the University of the Medici. I have significant domestic and international experience—for in this capacity I have also worked with governors, state and national legislators, wealthy donors, foundations, public relations firms, religious societies, city and county officials, law enforcement agencies, and community activists. I have also coordinated activities with ministers of education throughout Europe.

I had the distinct pleasure of hearing your recent address to the Faculty Senate. You spoke of a bold tomorrow, the need for change in your institution, including the manner in which work is accomplished and evaluated. You discussed technology, distance learning, diversity, student services, the need for alternative criteria to evaluate faculty, new relationships with unions, funding, and student and alumni constituencies. You discussed how the role of the university, with the state, the city, and the federal government will change. You cited emerging relationships

*Daniel J. Julius is associate vice president for academic affairs at the University of San Francisco and a Senior Fellow at the Stanford Institute for Higher Education Research; J. Victor Baldrige is president of Pacific Management Company and program manager at the Center for Strategic Leadership, University of San Francisco; and Jeffrey Pfeffer is Thomas D. Dee II professor of organizational behavior at the Stanford Graduate School of Business, Stanford University.*

*The Journal of Higher Education*, Vol. 70, No. 2 (March/April 1999)  
Copyright © 1999 by Ohio State University Press

Reprinted with permission from JHE

114 *The Journal of Higher Education*

with the business community and argued persuasively, in my opinion, that unless the academic establishment begins to refocus its priorities, the university, as it once existed, will lose the autonomy and freedom to offer sound educational programs.

I am in no position to quarrel with your premises. (I am unemployed at the moment.) I was impressed with your grasp of fundamental issues facing higher education. I am, however, curious as to how you will implement these new ideas. Because I have advised over one hundred senior executives and faculty on change and implementation strategies, I thought you might appreciate my observations. My comments are based on real experiences. They are offered to you as a gift, yours to keep or discard at your pleasure.

Parenthetically, I do not mean to be presumptuous or overbearing in this letter. University executives and faculty leaders are (on occasion) startled at my directness and characterization of the uses of power and influence. I understand you are a gifted individual and would not hold your position and title unless you possessed exemplary traits. Like most intelligent people with whom I have worked, they appreciate candor. (Please ignore my biases though!) I do not want to sound as though I were sending you into an armed battle. Neither should we pretend, if you are serious about your ideals and goals, that people will simply adopt "your" new vision.

*Decision Processes in Professional Organizations:  
Contemporary Realities*

The key to being effective and the ability to make change begins first with an accurate assessment of the type of organization in which you work. Secondly, you must appreciate how decisions are made and who, if anyone, implements them.

Universities and colleges have a number of unique characteristics. Fundamentally, they are people-processing organizations, and, in order to handle that complex and delicate task, they usually have large staffs of highly trained professionals. Because people cannot be divided into segmentalized tasks in the same way that physical products can, professionals with a high level of expertise are needed to deal holistically with clients' needs. Thus it is that the first characteristic of academic organizations is that they are highly professionalized, client-serving systems.

Second, "people-processing" organizations have extremely ambiguous goals, and a list of legitimate activities for a university is extremely long. Because goals are often unclear, almost any activity that serves a "client" may be considered legitimate. Though many activities can be

*Memo from Machiavelli* 115

considered legitimate, many are also questioned. This is important for understanding change processes. If a college or university does not know its specific objectives, then an individual with an idea (and the energy) can often bend the institution in his direction. Ambiguity and contest over goals pave the way for the skillful politician.

Finally, colleges and universities are extremely vulnerable to outside pressures. Because the clients themselves—students—are relatively powerless, society generally demands accountability from the organization. As a consequence, outsiders demand the right to influence internal decisions. Be assured, however, that the public's success varies considerably: in school systems outside voices are often influential; in hospitals or legal firms, the organization has generally listened with deaf ears.

*Characteristics of the Decision-Making Process*

You operate in an unusual kind of organization. It is one that serves clients, has a highly professionalized staff, has unclear and contested goals, and is subject to much external pressure. The decision-making process can be characterized by the following:

*Decision is by committee.* Because expertise, not hierarchical office, is the organizing principle, then committees of experts decide many of the critical issues.

*Fluid participation.* Many of the decision makers are amateurs, engaged in pursuing their professions, not in making decisions. As a consequence, they wander in and out of the decision process, and power belongs to those who stay long enough to exercise it.

*An issue carousel.* Issues have a way of always coming around again. Decisions do not last long because pressure from outside groups, from clients, and from other professionals push the same or similar issues full circle. Decisions are not made as much as they are pinned down temporarily.

*A "subsidiary" process.* The longer it takes to make a decision, the greater the number of issues that are piled onto the original subject. People, hoping to accomplish several things at one time, burden simple decisions with countless subsidiary ones.

*Conflict is common.* Professional groups, clients, and outsiders support divergent interests in setting the ambiguous goals of academic organizations. As a consequence, conflict over goals is common as decision makers cope with the pressures from diverse interest groups.

How can I summarize? The image that captures the spirit of the decision process in an academic organization does not resemble a normal bureaucracy; nor does it look like the "community of peers" that is often

116 *The Journal of Higher Education*

associated with the medieval guild. Several images capture the spirit of the decision-making process. First, the structure of the organization is fluid, can be challenged and is highly political. Second, the decision-making process reflects competing groups and who often conflict. Finally, the unsettled character of the decision-making process can be captured by using the term decision flowing instead of decision making. Decision making has a finality to it; decision flowing sounds like a never-ending process that must be continued in order to make outcomes really work.

*Change and the Ability to Make It*

In the academic organization, seeking change, or accommodation to new trends, ideas, contexts, political or fiscal realities, is not for the faint-hearted. This is so particularly in your school. At least in your case, you will have some formal authority over internal constituents—but it is not formal authority in the real sense. As one ascends the organizational hierarchy in academic organizations, one has less and less real authority over anyone needed to get the job accomplished. Put another way, if you ever have to “invoke” your authority, you have, in effect, lost it. Success depends on managerial savvy coupled with moral and political persuasiveness.

Most in higher education believe “change” is laudable, but it remains difficult to manage. Said another way, we are busy reacting to change instead of being proactive. We even ask our search consultants to bring us candidates who can implement “change.” In my experience, however, our colleagues in academe do not readily adopt new definitions of what is or is not important, or how work is accomplished or evaluated. (I suspect this may be attributable to the notion that professionals believe that what is good for them is also good for the student.) Everyone will sign on to the platitudes—the real work remains in the details of implementation: persuading; cajoling and, in reality, making it impossible for others not to follow you; exercising power and influence in non-hierarchical and informal settings. Implementation is the realm where the truly successful and effective administrators flourish.

The truth of the matter is that anyone who seeks to transcend the status quo will be met with opposition. Those who can neutralize or overcome opposing constituencies (or individuals) will succeed. Most senior executives and faculty, however, cannot and, for that reason, do not succeed in changing the organization in a positive way (and so they relegate their efforts around the margins of the institution, ignoring or shying away from the difficult structural issues). Of course the worst case sce-

nario results when change is effectuated without accommodating careers and egos of others. There are numerous examples of "negative" or destructive changes.

### *Rules and Tactics for the "Change-Oriented"*

#### *Rule No. 1: Integrity, Wisdom, Selflessness*

A new vision cannot be successfully implemented unless the individual (you) motivating others to change is perceived to have the highest of values; e.g., integrity, sensitivity, selflessness, striving for the good of the organization. Creative organizational evolution will not occur unless your constituency perceives you to be sincere, honest, fair; one who understands the university, scholarship and, as well, the role of other core constituents.<sup>1</sup> The one absolute I can offer is this: if the perception exists that you do not have integrity, wisdom, or selflessness, or if this issue is effectively presented or manipulated in a negative way by an opposing constituency, you will lose your influence and ability to manage change in the organization. There are presidents, for example, who are president in title only. This is fine as long as the organizational goal does not entail implementation of a new vision. Within the context of this first rule, I would offer a word about your personal relationships and the importance of managing external constituencies.

#### *Personal Relationships*

Protect those individuals and allies who risk their professional standing and administrative careers for you. Many good efforts flounder because senior executives or faculty (who desire institutional transition and convince others to implement it) do not support these individuals when conflict emerges. If those who articulated change (on your behalf) are abandoned, few will trust you again. Professional administrators and colleagues are a pretty smart lot. They can make or break you! You must guard those individuals (and honor formal lines of authority; e.g., those who report to them). Reward the constituents who give you their support. However, while engaging in this action be very wary of your "open door" policy! Few messengers are without a personal agenda. Reward those who are. Never expel the messenger though! Utilize their services wisely. Cultivate informal channels of communication without undermining the reporting or political relationships of others. Moderate your "reaction" to information gained through informal networks. If those around you feel you overreact to "negative" information, they will funnel only "good" news and, like most leaders who encourage or tolerate

118 *The Journal of Higher Education*

only good news, your authority and influence will eventually fracture and vanish, probably while you are busily engaged in what you consider important (and others consider trivial); e.g. designing the alumni magazine or visiting facilities off-site.

*External Constituencies*

As I noted earlier, colleges and universities usually have strong external constituents who apply pressure to the decision-making process. The wise strategist uses support from these external constituencies to influence the internal process. In building coalitions, it is useful to associate with outside groups as well as inside groups, particularly because major decision makers themselves are often tied to outside groups. Insiders, with their limited view of the outsiders' role, naively overlook the political strategy of cultivating external allies. Legislators, trustees, parents, alumni, and foundations can help change universities. The potential power of external constituencies must never be neglected.

*Rule No. 2: Build A Team*

You will need one. In this respect do not underestimate the value of loyalty as well as competency. New appointments will be important ones, particularly senior nonacademic appointments. Nonacademic administrators are crucial, because without them you cannot maintain your influence and run the institution effectively. Some academic types do not understand this. However, loss of confidence in your regime will come when your primary constituents (faculty, trustees, students, the public, academic administrators) feel they (a) cannot trust university data; (b) think that student services or student-related issues are out of control; (c) perceive that a crisis (usually fiscal) exists on campus with personnel, auxiliary services, etc.; (d) believe "funding" or "political" problems exist; (e) suspect that some senior advisors are out of control or incompetent.

Your agenda cannot be accomplished in the academic division alone. Good politicians know that much of their job is not influencing decisions as much as it is building a political base for influencing decisions. This means that a dedicated cadre of change agents must be formed, a committed group that exchanges ideas and reinforces each other's efforts. In addition, a strong change group needs equally strong links to those in viable political coalitions. In this respect, I should discuss the mechanics of building a team. This may entail making new appointments. Here is where many inexperienced administrators and faculty make fatal mistakes!

I advise that you break out of traditional recruitment and appointment processes. Be wary of a search committee's propensity to find the right

*Memo from Machiavelli* 119

people. Search committees often recommend those who are acceptable to the group (or those who may offend the fewest)! Assembling a team requires you to resist strong pressures to appoint "traditional" individuals. Traditionalists are not often comfortable with nor do they usually understand how to manage "change" or "conflict." Go outside of the traditional realm. The appointment of excellent and supportive academic administrators will be a task to which you should devote attention. Do not assume a search committee will simply do what you ask. Check the details of "who" serves on the committee, the charge of the committee, read the position description before the position is advertised. I would offer a word here about the concept of accountability.

*Accountability*

You must demand it. Unless there are consequences for "behavior" you cannot realize your objectives. Many in academe are not held accountable because much of what we do is not readily measurable (so it is difficult to determine success or failure!). People who care more about popularity than being strong managers (or effectuating change) do not hold others accountable. (I have rarely witnessed a situation where a well-liked individual could (a) remain on excellent terms with faculty and staff and (b) initiate change in the school, division or college.) Nor can you succeed with administrators who are vindictive, territorial, jealous, too lax (classic symptoms of "powerlessness"), or those who sanction inappropriate behavior, for example, when the "wrong" people are promoted. Unfortunately, many in academe often do a less than stellar job of evaluating managerial and academic effectiveness. It is not realistic to believe that senior faculty or administrators can be held accountable in an environment where there is little or no agreement on performance objectives. Appoint self-motivated people, set goals, ask for benchmark measures of success, demand more than "acquiescence."

In summary, your senior team must be provided with a positive emotional atmosphere: reward and encourage them in visible and immediate ways, express confidence, let them do their jobs, promote independence, initiative, and responsibility.

*Rule No. 3: Concentrate Your Efforts*

A basic mistake made by people interested in change is that they frequently squander their efforts by chasing too many rainbows. An effective political change agent, realizing that change is really difficult, concentrates efforts on only the important issues. Remember that in academe, most people do not care about all the issues. If you care

120 *The Journal of Higher Education*

enough to concentrate, you have enormous power to be effective. The frustration caused by the resistance offered by an immovable system is usually the result of scattered and dispersed efforts. Remember, if "fluid participation" is the rule, then most people wander in and out of the issue. If you stick with one or two critical issues, you are more likely to be effective. Make a list of priorities. Select the top three or four. Force yourself to ask the following questions in regard to these priorities:

- Who else is or will be influential as you endeavor to accomplish this priority?
- Whose cooperation and support will be needed?
- Whose opposition could delay or derail this action?
- In regard to those whose support is necessary or those who will oppose you, analyze:
  - What are the sources of their influence and authority?
  - Who will be more influential in the decision-making process?
  - Under what circumstances will (the) opposition coalesce?
  - Who will be affected by what you are trying to accomplish; e.g., effect on "their" power or status?
- Ask which strategies and tactics will be the most appropriate given faculty and administrative support (or opposition) for the idea or action.
- Ask who will determine success or failure.

In this context, may I offer advice on the notion of timing?

*Timing*

You must get a core constituency to (a) agree upon priority objectives early in the game and (b) agree on measurable criteria for success. Following this you should ensure that (someone) evaluates the effectiveness of actions against these measures. The sooner the process starts, the better. Academic organizations are tolerant of new presidents for short periods of time. They are, in a real sense, skeptical of anyone in a position of authority. The honeymoon will end quickly. Afterwards, a bureaucracy (and your opponents) can destroy creativity. Do not, however, take on the whole community at once! Choose your priorities (your allies and your adversaries) carefully.

Remember also, after one year, your predecessor's problems (largely through "nonaction") become your problems. Be a visionary and a missionary to constituents who object to your goals or who have power to

block new initiatives. Understand where those constituencies derive their status and support.

*Rule No. 4: Know When to Engage Conflict*

To concentrate is to choose a few issues, and a tactical genius knows which ones to choose. Most of the time, it makes sense to support issues when you know you can be effective. If it is obvious that you will lose, wait. Remember, with the "issue carousel," the situation will probably return, allowing you time to master your resources for the next battle. There are exceptions to the "fight to win" rule. Sometimes it is wise to engage confrontation because the moral issue is great, or because it is possible to make future martyrs. We do not always fight to win today; sometimes we fight today so that we can win tomorrow. Most of the time, however, the rule is to choose issues with high payoff.

The sophisticated and astute observer can usually tell the difference between who is effective and who is not. A word here about conflict in the academic environment. Don't avoid it, manage it. Many presidents and senior executives fail to grasp this. Redirecting the priorities, possibilities and, if you will, the mission of a university requires organizational tension. Very simply put, you must convince your core constituencies to support (and buy into) new ways of conceiving and evaluating work and, perhaps, new educational or process outcomes, e.g., new relationships with unions or other core constituencies. This will require those who are "secure" with the current mission or comfortable with present priorities and outcomes, to change. Change can evolve peacefully to be sure. However, when it is necessary to "redirect" institutional priorities, change is more often associated with conflict primarily because folks have a vested interest in the way work is accomplished now.

Remember that your institution is a place wedded to its "traditions." This cultural trait will manifest itself, cloaked in the argument that "we never did it that way here" or, those who oppose you will hear in your words, "he (or she) doesn't value my (our) work." Managing this kind of conflict successfully requires that you:

- Encourage opposing constituencies to choose a course of action early in the game.
- Offer real alternatives for those who oppose you.
- Advance the notion of "mutual interests" rather than focusing on the positions of those who disagree.
- Act decisively, act soon, act in a determined manner.
- If you feel senior administrators will not be supportive, find another

122 *The Journal of Higher Education*

- place for them soon. You are probably not going to win them over and you will not succeed as long as they hold their positions.
- Have a strategic plan, stay to it. Pay attention to detail. Develop measurable criteria for success. Remember that most academic folks are trained to make a critical analysis but are not trained to implement decisions. People need guidance and supervision.
  - You must love the academic soul. But remember, faculty, as a group, will complain. Offer them some cheese with their wine.
  - Find the right incentives. Do not assume others will follow you simply because you are right. People will embrace your vision when your ideas provide them with (intrinsic/extrinsic) rewards.
  - How you go about managing conflicting interests and personalities may be almost as important as what you actually do. Be very humane and civil.
  - Once a constituency (or an individual) is neutralized or won over, allow for face saving, but do not be obsequious to those who opposed you.
  - Declare your program a success; find small successes to celebrate along the way.
  - Utilize (rely) on external pressures to encourage internal change. Redirect and manage those pressures. Force convergence of internal and external policy.
  - Be wary of showing weakness. Do not readily admit you do not know something. Few are sanguine about following a person who has never "been there" before.
  - Colleges and universities are organizations with low tolerance for conflict. Use this resource wisely.

*Rule No. 5: Learn the History*

Every issue has roots deep in the past. The issue carousel has trotted it past several times before. Consequently, the wise tactician searches for the historical bases of an issue. When was it around before? Who took what position? Who won? Who lost? Knowing the history can reveal what coalitions fight together and what tactics prove useful—information that helps in planning strategy. Under most circumstances, the person who is historically naive about the issue is not effective.

A word here about two issues related to "history." The first concerns the use of data and research and the second involves policy convergence.

*Data/Research*

Many ideas go awry because the data and/or research underpinning these issues can be criticized or, worse, is faulty. Just as there is nothing

so good as good theory, there is no substitute for well-conceived and adequately presented institutional research. Be sure your opinions and ideas are based on solid assumptions and that they are defensible. Once anyone demolishes the basis of your (informational or research) objectives, you will lose your influence. In the academic milieu, if people cannot trust your data, they will not trust you.

### *Policy Convergence*

Unless institutional policies and procedures reflect new visions and priorities, you cannot succeed. Policies and procedures form the basis upon which others act and, through implementation of policy, how others are evaluated. Once you articulate a new direction, institutional policies must conform to them. A "vision" cannot overcome policy which in itself may serve as a disincentive. Take the example of "fiscal prudence." A seemingly harmless policy that requires returning unused funds to a central account, may undermine this idea. Policies such as these sometimes work as an incentive for an administrator or faculty member to spend funds unwisely or "hide" accounts in an effort to circumvent the policy. (Of course, those who hide moneys will do so for the best of academic reasons!)

The policy criteria upon which people are evaluated will determine, to a large extent, their behavior and priorities. For example, you must endeavor to modify standards for promotion and tenure if you want to redirect the academic priorities of faculty. (No mean feat!) Making even small changes in this realm will require agreement and assistance of deans and department chairpersons. Redirection will come, ultimately, only if new criteria are related to outcomes that the "academic establishment" can support. In this respect, new priorities can be engineered if they are not seen as "imposed" but come as a product of mutual agreement. I am not suggesting this be done in all disciplines, but it must be attempted for some, as I understood your goals.

### *Rule No. 6: Strategic Planning*

Your goals cannot be realized without a strategic plan. Everyone knows this. However, what many do not do is demand answers to the "right questions" in the plan. Review key priorities and concomitant strategic planning issues with your senior team. Next, force the team to address the following:

- Have you defined short-term and long-term objectives?
- Is a strategy adequately developed?

124 *The Journal of Higher Education*

Identify the key assumptions underlying your strategy. What evidence are you relying on to ensure assumptions are valid?

Is the action plan feasible given the constraints and opportunities inherent in the situation?

Is the action plan realistic given your sources of power?

- Has the impact of the action plan been assessed? (Is the plan ethical, will it benefit the institution?)

Are you cognizant of trade-offs, or who will be directly and indirectly affected by your plan?

Were the risks of the plan analyzed?

- Were all contingencies planned for?
- Are mechanisms in place to ensure the plan is periodically evaluated?  
Can the plan be modified?
- Have you assessed the timing and sequence of decisions?  
Differentiate between urgent and less important matters.  
Does the plan contain incremental steps?  
Do early steps preclude future alternatives?
- Will you be able to reflect on and communicate successes or failures with overarching plan objectives?

I have known of administrators who manage the development of elaborate plans (or "mission" statements) but fail to understand that unless these statements revolutionize the nature in which work is accomplished or the actual behavior of individuals responsible for merging fiscal and academic priorities, these documents will remain abstract concepts. Implementing a strategic plan requires closure on the following issues and actions (basic, yet essential):

- Assuming the identification of participants, accountability matters, institutional goals and objectives, and the timing and sequence of implementation;  
How will new initiatives or programs be introduced in different functional units?  
How will you approach the management of organizational resistance?  
What resources will be required?  
Who will coordinate the plan?  
How will everyone know when the plan becomes an integral part of the values and mission of the organization?  
What steps must be taken in each organizational unit to reflect integration in the way decisions are made, relationships are maintained, and services are provided?

- How will the organization (you) respond to any decrease in the will to sustain implementation of the plan? What is the appropriate response to loss of motivation and support? What is the minimum support needed in order to proceed?
- Assuming the plan will enhance the function, efficiency, and productivity of others;
    - What actions need to be taken to inform the organization of the plan and its purpose?
    - What will be the actual impact of the plan on people, functions, etc.? How will you know when everyone has possessed requisite knowledge and skills?
    - How will the consequences of the plan be identified and assessed?
    - What behavioral and process changes are expected of employees?
  - Assuming the plan will result in development of new standards of productivity, compensation, performance, or evaluation (to reflect desired changes or mitigate unacceptable actions or reactions);
    - How will the organization demonstrate the value of the plan?
    - Will it connect to performance and productivity?
    - At what point in the process are individuals and units expected to adopt new behaviors?
    - What behaviors and achievements should be acknowledged and rewarded?
    - How will formal and informal rewards be managed? Care should be taken to prevent the process of acknowledging and rewarding from being misinterpreted by others in the organization. (Always one of the challenges posed by compensation systems that purport to reward—competence and merit.)
  - Assuming the plan will measure the quality and quantity of change;
    - What information is needed? How will this information be acquired to determine the quality of changes?
    - How will “change” be reviewed and quantified to insure continual movement toward desired goals?
    - What are the agreed upon elements, functions, and services considered most important to the success of the plan? How will they be measured?
    - Will it be known that benchmarks have been met?
    - Will alternate strategies or assessments of benchmarks be developed?

As you can see, simply writing a plan is only a small first step. Small wonder then that most plans are eventually relegated to a store room in the library.

**Rule No. 7: Use Committees Effectively**

Most major decisions in academic organizations are made by committees of experts who combine their specialized knowledge to solve organizational problems. Therefore, organizational politics often center around committee politics. Having influence on a committee is frequently equal to having influence over the decision.

How can a committee be used to effect organizational change? First, appoint the right people to the right committee or get appointed by simply asking for an appointment from an incumbent official. If the organization has a "committee on committees," it is wise either to know someone on it or to be on it yourself. Such rule-making appointive committees wield power in all academic organizations, and this can be exploited to the best advantage. In addition, after acquiring membership, it is critical simply to *be there*. Remember, fluid participation is a characteristic of colleges and universities. The first tactic, then, is to get on the committee, be there with great regularity, stick it out even when others drop off.

The second tactic of committee success is to do your homework. Expertise is vital in a professional organization. If you observe the earlier rule of concentrating your efforts, you have more time to accumulate the knowledge that will put you ahead of others. In addition, it is always useful to make part of your homework the job of being secretary or chairperson of a group. The chairperson can set the agenda and often has the power to call committee meetings, while the secretary controls the memory of the committee. Committees are blessed with short memories, because most members do not recall or care what is recorded in the minutes. Controlling the memory of a committee means reiterating the issues that you consider important, a definite advantage for political bargaining. Doing your homework—whether it is gathering knowledge, learning the history, being the chairperson, or doing the secretarial chores—puts you in a strategically advantageous position.

A third tactical procedure in effective committee management is to keep ideas flowing. Because decision issues, like garbage dumps, attract various irrelevant material, they can be used to the change agent's advantage. Dump new ideas into the discussion and then compromise readily on the unimportant issues. Helping to load the garbage can leaves plenty to bargain over when the deadlines are close and allows you the chance to insist stubbornly about retaining key issues.

A fourth tactical consideration concerns structuring the decision-making process. Decisions do not, in themselves, result in action. More often, we spend a negligible amount of time making a decision and a great deal

of time (sometimes a lifetime) managing the consequences of our decisions! Decisions are effectuated through people. It is a well-known premise that more efficient and concrete outcomes of the decision-making process will result if the human processes used to implement decisions are structured; e.g., committees are appointed, tasks are defined, priorities are set, deadlines are met, and, perhaps most importantly, as decisions are prioritized and legitimized, core constituencies (who are represented on committees) are given a vested interest in decisional outcomes. Task forces, committees, group consultation, all are essential components of governance in higher education. I advocate a decision-making structure that blends ad hoc and permanent constituent members, legitimized through formal appointment. However, unless the consultative process is directed with a firm hand, endless debate may result.

A formalized approach permits administrators to effectuate decisions, when they lack the "status" of president. Used correctly it precludes the "end run" and it mandates that everyone in the room, after discussion, "agree." As decisions are legitimized by sources (groups) holding increased status, it becomes difficult for your opponents to undermine, ridicule, or sabotage (through inaction) decisions arrived at using this model. The structure is especially effective when implementation, discussion, review, and analysis must cross jurisdictional divisions. It will permit input from the best minds in the organization. Too often do we preclude ourselves from obtaining the benefit of the brightest and most intelligent in the organization because (a) there is no formal mechanism to accommodate their views in decision-making processes and (b) academic and administrative leaders rarely reach out beyond their division or school (or their trusted friends) when studying a critical issue. It remains your job to insure that the best opinions, even those voiced by organizational pariahs, are resourced. This normally does not occur in informal consultative systems or when institutional concerns cross organizational lines of authority.

*Rule No. 8: Use the Formal System*

Colleges and universities, like other bureaucracies, have complex formal systems to carry out their activities. Often naive change agents are not aware that they can achieve a desired outcome simply by asking the appropriate official for it. This requires savvy. It requires experience within the organization. It requires knowing where the levers are, and which ones to push.

Inexperienced change agents may fail to realize that most organization officials are eager to please. Success is difficult to judge in most

128 *The Journal of Higher Education*

professional organizations because the tasks are too ambiguous to be assessed. As a consequence, most officials depend upon "social validation" for judgments of success. That is, they are successful if people are pleased and think they have done a good job. The ambiguity of the task, the lack of hard evaluation criteria, and the psychological need of most faculty and administrators for approval gives tremendous advantage to partisans who want to get something done. Do not forget a basic idea: ask for what you want and you will be surprised how many times you get it.

*Rule No. 9: Follow Through to Push the Decision Flow*

I have said that the concept of "decision making" is a delusion. Decisions are not really made; instead, they come unstuck, are reversed, get unmade during the execution, or lose their impact as powerful political groups fight them. In real life, decisions go round and round in circles, and the best one can hope for in the political battle is a temporary win.

As a consequence, the effective individual knows that he must follow important decisions even after they have supposedly been made. What do most people do after the committee has reached its decision? They evaporate. The person who traces the decision flow on through to execution and who fights when issues are distorted is the person who really has power. The truly dedicated partisan who wants to implement change is a tenacious watchdog, monitoring the steps of the decision and calling public attention to lapses in implementation.

Permit a final word on tactics associated with this rule. Set deadlines in the process of making decisions. Delay is the enemy of change; deadlines are flags that help call attention to stalling. Second, give ideas "sheltered starts." If placed back into the regular routine of the organization, a new change will be smothered by powerful old routines. As a consequence, the shrewd individual builds a shelter around the change in its infancy. This often means giving the program or idea a home under the wing of a strong, hospitable executive or faculty member in the college. Only later, after the new idea has established roots, should it be placed into the regular structure of the organization.

Several follow-through techniques involve managing people. It is always useful to place your allies in the vanguard of those responsible for executing the decision. If allies embodying your ideas are influential, the change is more likely to succeed. Reward systems are also very important. Do you want things to change? Then reward people whose behavior helps promote the change. Rewards can be straightforward in the form of money, or they can take the equally valuable form of prestige, status, and public acclaim.

***Rule No. 10: Glance Backward***

Let us assume you have followed my advice and have been effective. The last admonition is the hardest to make: be skeptical about your own accomplishments. Few good changes have eternal lives. A deep ego-investment can be made in a project that does not work. In this sense, following through means evaluating, judging, and deciding whether performance lives up to expectations. If it does not, you must start again. Evaluating your own idea as objectively as possible and listening carefully to the evaluations of others are valuable and necessary skills for true change agents.

Any organization's vitality and creativity depend heavily on the constant influx of new ideas and people. Even the new idea that you worked so hard to establish will, in time, be dull and old. The conservatives of the present area championed ideas that, at one time, were considered radical. The last step, then, is the most ruthless of all: kill your own project when it has outlived its usefulness. This is where most fail. After building their investments they fight like Phoenicians to hang on to ideas long since grown old. Cycles must continue, and the change agent must once more struggle to infuse creativity and excitement into the academic organization.

***A Final Word to Academic Leaders***

A final word to would-be leaders. There are many books that concern themselves with leadership and mountains of articles. Much of what is written is valuable but it is written, by and large, by those who study the topic. As you are no doubt aware, there is a big difference. My concept of leadership is simple and direct—leaders identify an issue that is perceived by a larger community as an important dilemma or a critical problem. The true leader offers (and implements) a solution. For example, Moses conceived of freedom and a vision of the promised land—and led a group of former slaves through the desert. (And even Moses was allowed only to see Israel, never to set foot there!) Leaders are those who identify and articulate a vision and successfully manage a solution. Implementation demands a “buy-in” and sacrifice from key constituents/community members.

It is my hope you will find a few valuable ideas hidden within my rhetoric. Were it your pleasure, I would be honored to follow up and discuss your reactions to the enclosed. I am, at the moment, planting tomatoes in my garden and would welcome a return to the challenges of advising esteemed individuals such as yourself.

130 *The Journal of Higher Education**Notes*

<sup>1</sup>In the case of nontraditional executives or presidents you will be judged on a different (higher) standard than would a more "traditional" person.

*Bibliography*

- Adams, H. (1976). *The academic tribes*. New York: Liveright.
- Alinsky, S. (1969). *Reveille for radicals*. New York: Random House.
- Argyris, C. (1957). *Personality and organization: The conflict between system and the individual*. New York: Harper & Row.
- Baker, W. E. (1994). *Networking smart: How to build relationships for personal and organizational success*. New York: McGraw Hill.
- Barry, J. M. (1989). *The ambition and the power: The fall of Jim Wright: A true story of Washington*. New York: Viking.
- Baldrige, J. V. (1971). *Academic governance in the university*. Berkeley, CA: McCutchan.
- Baldrige, J. V. (1983). Rules for a Machiavellian change agent: Transforming the entrenched organization. In J. V. Baldrige & T. Deal (Eds.), *Managing change in educational organizations*. Berkeley, CA: McCutchan.
- Bazerman, M. H., & Lewicki, R. J. (1983). *Negotiating in organizations*. Beverly Hills, CA: Sage.
- Ben-David, J. (1972). *American higher education*. New York: McGraw-Hill.
- Bennis, W. G., & Nanus, B. (1985). *Leaders: The strategies for taking charge*. New York: Harper and Row.
- Bennis, W. G. (1989). *Why leaders can't lead: The unconscious conspiracy continues*. San Francisco: Jossey-Bass.
- Bergquist, W. H. (1992). *The four cultures of the academy*. San Francisco: Jossey-Bass.
- Bergquist, W. H., & Armstrong, J. L. (1986). *Planning effectively for educational quality: An outcomes-based approach for colleges committed to excellence*. San Francisco: Jossey-Bass.
- Birnbaum, R. (1988). *How colleges work: The cybernetics of academic organization and leadership*. San Francisco: Jossey-Bass.
- Blake, R., Mouton, J. S., & Williams, M. S. (1981). *The academic administrator grid*. San Francisco: Jossey-Bass.
- Blau, P. M. (1964). *Exchange and power in social life*. New York: John Wiley & Sons.
- Bolman, L. G., & Deal, T. E. (1991). *Reframing organizations: Artistry, choice, and leadership*. San Francisco: Jossey-Bass.
- Brubacher, J. S., & Rudy, W. (1958). *Higher education in transition*. New York: Harper Collins.
- Caro, R. A. (1974). *The power broker: Robert Moses and the fall of New York*. New York: Alfred A. Knopf.
- Caro, R. A. (1982). *The years of Lyndon Johnson: The path to power*. New York: Alfred A. Knopf.

- Charan, R. (1991, September-October). How networks reshape organizations for results. *Harvard Business Review*, 104-115.
- Cohen, A. R., & Bradford, D. L. (1990). *Influence without authority*. New York: John Wiley and Sons.
- Conger, J. A. (1989). Leadership: The art of empowering others. *Academy of Management Executive*, 45-53.
- Davis-Blake, A., Pfeffer, J., & Julius, D. J. (1995, January). The effect of affirmative action officer salary on changes in managerial diversity: Efficiency wages or power. *Industrial Relations*, 34(1), 73-95.
- Deal, T. E., & Kennedy, A. A. (1982). *Corporate cultures: The rites and rituals of corporate life*. Reading, MA: Addison-Wesley.
- Drucker, P. F. (1988, January-February). The coming of the new organization. *Harvard Business Review*, 45-53.
- Fulbright, J. W. (1966). *The arrogance of power*. New York: Vintage Books.
- Gabarro, J. J. (1986). The development of working relationships. In J. Lorsch (Ed.), *Handbook of organizational behavior* (pp. 172-189). Englewood Cliffs, NJ: Prentice Hall.
- Gabarro, J. J. (1987). *The dynamics of taking charge*. Boston: Harvard Business School Press.
- Gabarro, J. J., & Kotter, J. P. (1980, January-February). Managing your boss. *Harvard Business Review*, 92-100.
- Gillam, R. (1971). *Power in postwar America: Interdisciplinary perspectives on a historical problem*. Boston: Little, Brown and Company.
- Halberstam, D. (1979). *The powers that be*. New York: Alfred A. Knopf.
- Heifetz, R. A. (1994). *Leadership without easy answers*. Cambridge, MA: The Belknap Press of Harvard University Press.
- Hill, L. (1992). *Becoming a manager: Mastery of a new identity*. Boston: Harvard Business School Press.
- Hirschhorn, L., & Gilmore, T. (1992, May-June). The new boundaries of the boundary-less company. *Harvard Business Review*, 108-115.
- Jencks, C., & Riesman, D. (1968). *The academic revolution*. Chicago: University of Chicago Press.
- Julius, D. J. (1995). *Managing the industrial labor relations process in higher education*. Washington, DC: College and University Personnel Association.
- Julius, D. J. (1998, Spring). Applying Machiavellian principles to university management. *University Manager*, 6(2), 33-34.
- Kanter, R. M. (1977). *Men and women of the corporation*. New York: Basic Books.
- Kanter, R. M. (1979, July-August). Power failure in management circuits. *Harvard Business Review*, 65-75.
- Kanter, R. M. (1983). *The change masters: Innovation for productivity in the American corporation*. New York: Simon and Schuster.
- Kanter, R. M. (1989, November-December). The new managerial work. *Harvard Business Review*, 85-92.
- Kaplan, R. E. (1994, Spring). Trade routes: The manager's network of relationships. *Organizational Dynamics*, 37-52.

132 *The Journal of Higher Education*

- Katz, R. L. (1974, September-October ). Skills of an effective administrator. *Harvard Business Review*, 90-102.
- Kemerer, F. R., & Baldrige, J. V. (1975). *Unions on campus*. San Francisco: Jossey-Bass.
- Kerr, C. (1963). *The uses of the university*. Cambridge, MA: Harvard University Press.
- Keys, B., & Case, T. (1990). How to become an influential manager. *Academy of Management Executive*, 4, 38-49.
- Kotter, J. P. (1977, July-August). Power, dependence, and effective management. *Harvard Business Review*, 125-136.
- Kotter, J. P. (1982). *The general managers*. New York: Free Press.
- Kotter, J. P. (1985). *Power and influence: Beyond formal authority*. New York: Free Press.
- Kotter, J. P. (1988). *The leadership factor*. New York: Free Press.
- Krackhardt, D., & Hanson, J. R. (1993, July-August). Informal networks: The company behind the chart. *Harvard Business Review*, 104-111.
- Lawler, E. E., III. (1986). *High-involvement management: Participative strategies for improving organizational performance*. San Francisco: Jossey-Bass.
- Lawler, E. E., III. (1992). *The ultimate advantage: Creating the high-involvement organization*. San Francisco: Jossey-Bass.
- Lax, D. A., & Sebenius, J. K. (1986). *The manager as negotiator: Bargaining for cooperation and competitive gain*. New York: Free Press.
- Lenski, G. E. (1966). *Power and privilege: A theory of social stratification*. New York: McGraw-Hill.
- Lewicki, R. J., & Litterer, J. A. (1985). *Negotiation*. Boston: Irwin.
- Luthans, F. (1988, May). Successful versus effective real managers. *Academy of Management Executive*, 127-132.
- Luthans, F., Hogdetts, R.M., & Rosenkrantz, S. A. (1988). *Real managers*. Cambridge, MA: Ballinger.
- Maccoby, M. (1981). *The leader: A new face for American management*. New York: Simon and Schuster.
- Manz, C. C., & Sims, H. P. (1989). *Superleadership: Leading others to lead themselves*. Englewood Cliffs, NJ: Prentice Hall.
- McCall, M., Lombardo, M., & Morrison, A. (1988). *The lessons of experience*. Lexington, MA: Lexington Books.
- Mills, C. W. (1959). *The power elite*. New York: Oxford University Press.
- Mintzberg, H. (1973). *The nature of managerial work*. New York: Harper & Row.
- Mintzberg, H. (1975, July-August ). The manager's job: Folklore and fact. *Harvard Business Review*, 49-71.
- Mintzberg, H. (1983). *Power in and around organizations*. Englewood Cliffs, NJ: Prentice Hall.
- Pfeffer, J. (1981). *Power in organizations*. Marshfield, MA: Pitman Publishing.
- Pfeffer, J. (1992). *Managing with power: Politics and influence in organizations*. Boston: Harvard Business School Press.
- Pfeffer, J. (1994). *Competitive advantage through people*. Boston: Harvard Business School Press.

## Memo from Machiavelli 133

- Pfeffer, J., & Davis-Blake, A. (1987). Understanding organizational wage structures: A resource dependence approach. *Academy of Management Journal*, 30, 437-455.
- Pfeffer, J., & Konrad, A. (1991). The effects of individual power on earnings. *Work and Occupations*.
- Pfeffer, J., & Moore, W. L. (1980). Average tenure of academic department heads: The effects of paradigm, size, and departmental demography. *Administrative Science Quarterly*, 25, 387-406.
- Pfeffer, J., & Moore, W. L. (1980). Power in university budgeting: A replication and extension. *Administrative Science Quarterly*, 25, 637-653.
- Pfeffer, J., & Salancik, G. R. (1974). Organizational decision making as a political process: The case of a university budget. *Administrative Science Quarterly*, 19, 135-151.
- Pfeffer, J., & Salancik, G. R. (1977). Administrator effectiveness: The effects of advocacy and information on resource allocations. *Human Relations*, 30, 641-656.
- Pfeffer, J., & Salancik, G. R. (1978). *The external control of organizations: A resource dependence perspective*. New York: Harper and Row.
- Posner, B. Z., & Kouzes, J. R. (1993). *Credibility: How leaders gain and lose it, why people demand it*. San Francisco: Jossey Bass.
- Raymond, J. (1964). *Power at the Pentagon*. New York: Harper & Row.
- Reynolds, M. O. (1984). *Power and privilege: Labor unions in America*. New York: Universe Books.
- Russell, B. (1938). *Power: A new social analysis*. New York: W. W. Norton & Company.
- Sayles, L. R. (1980). *Managerial behavior: Administration in complex organizations*. Huntington, NY: Robert E. Krieger.
- Schien, E. J. (1981, Winter). Improving face-to-face relationships. *Sloan Management Review*, 43-52.
- Smith, H. (1988). *The power game: How Washington works*. New York: Random House.
- Snow, C. C., Miles, R. E., & Coleman, J. J., Jr. (1992, Winter). Managing 21st-century network organizations. *Organizational Dynamics*, 5-20.
- Summerfield, H. L. (1974). *Power and process: The formulation and limits of federal educational policy*. Berkeley, CA: McCutchan.
- Tuchman, B. W. (1984). *The march of folly: From Troy to Vietnam*. New York: Alfred A. Knopf.
- Ury, W. (1993). *Getting past no: Negotiating your way from confrontation to cooperation*. New York: Bantam Books.
- Walton, R. E. (1985, March-April). From control to commitment in the workplace. *Harvard Business Review*, 76-84.
- Whetten, D. A., & Cameron, K. S. (1993). *Developing Management Skills: Gaining power and influence*. New York: Harper Collins College.
- Zaleznik, A. (1970, May-June). Power and politics in organizational life. *Harvard Business Review*, 47-48.

# OOR Exhibit 15

**From:** [Grosse, Natalie V](#)  
**To:** [Edris, Angela](#)  
**Cc:** [Kuren, Marija](#); [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org); [Mroz, Kelly Ann](#)  
**Subject:** [External] Dkt. AP 2023-1520, Massey v. Pennsylvania Department of Agriculture; Request to Participate  
**Date:** Monday, July 24, 2023 3:28:38 PM  
**Attachments:** [PSU Request to Participate Position Statement Attachment\\_PDA.pdf](#)

---

***ATTENTION:*** *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Dear Appeals Officer Edris:

On behalf of The Pennsylvania State University, please find the attached Request to Participate in the above referenced appeal as an interested party. The filing includes the University's Position Statement, should the Request to Participate be granted. I have entered my appearance on behalf of the University via the online form and uploaded a copy of that request through that system as well. The parties are copied on this email in compliance with service requirements.

Should you have any questions regarding this filing or require additional information, please do not hesitate to contact me.

Sincerely,  
Natalie Voris Grosse

[Natalie Voris Grosse](#) | [Associate General Counsel](#)  
The Pennsylvania State University  
Office of the General Counsel  
227 West Beaver Avenue, Suite 507 | State College, PA 16801  
Phone: 814-867-5332 | [nvg5267@psu.edu](mailto:nvg5267@psu.edu) | Fax: 814-863-8469

*IMPORTANT WARNING: This message and its attachments may contain information that is confidential, privileged, or otherwise protected from disclosure. Do not distribute, forward, or retransmit without the prior approval of the sender. If you are not the intended recipient, you are prohibited from disclosing, printing, distributing, or saving this message. If you have received this message in error, please delete all electronic copies of this message (including any and all attachments), destroy any hard copies you may have created, and notify me immediately by replying to this email. Thank you.*



**PennState**

**Natalie Voris Grosse**  
Associate General Counsel  
Office of General Counsel  
The Pennsylvania State University  
227 West Beaver Avenue, Suite 507  
State College, PA 16801-4842

814-867-5332  
Fax: 814-863-8469  
nvg5267@psu.edu  
ogc.psu.edu

July 24, 2023

**Via Email only to: [aedris@pa.gov](mailto:aedris@pa.gov)**

Appeals Officer Angela Edris, Esquire  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
4000 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

**Re: Request of The Pennsylvania State University to Participate in Appeal;  
Wyatt Massey v. Pennsylvania Department of Agriculture (“PDA”),  
Dkt No. AP 2023-1520**

Dear Appeals Officer Edris:

Pursuant to Section 1101(c) of the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.1101 (c), The Pennsylvania State University (“the University”) hereby requests to participate in the above-captioned appeal as a party with a direct interest. The items subject to this appeal are University documents in the possession, custody, and control of the University and, therefore, the University has a direct interest in this matter. To the extent the University’s request to participate is granted, this letter includes the information and legal argument that the University would make in support of its position that the items subject to this appeal are not public records subject to disclosure. The University reserves the right to raise additional legal arguments should this matter proceed to the judicial system for adjudication.

### **REQUEST TO PARTICIPATE**

The University became aware of the above-docketed appeal on July 7, 2023 when the Pennsylvania Department of Education (“PDE”) notified the University’s Office of General Counsel of an appeal that it received and noted that the Pennsylvania Department of Agriculture (“PDA”) received the same appeal that day. On July 10, 2023, PDA sent the University’s Office of General Counsel the appeal for review. Thus, the University’s request to participate in the appeal and provide further information and legal argument is timely and appropriate. 65 P.S. § 67.1101 (c)(2).

### **The University Has a Direct Interest in the Records Subject to Appeal**

Section 1101(c) of the RTKL provides that a person “with a direct interest in the record subject to an appeal may ... file a written request to provide information or to appear before the appeals officer or to file information in support of the requester’s or agency’s position.” 65 P.S. § 67.1101(c). An Appeals Officer may grant a third party’s request to participate as a direct interest participant upon a showing of the party’s “direct interest and any reasons this interest is not adequately represented by the actual parties to the appeal.” Pennsylvania Office of Open Records Appeals Process – Procedural Guidelines, Section V(D)(6)(a)(i).

The request subject to this appeal is for University documents in the possession, custody, and control of the University. The requested documents were created or curated by the University. The University provides members of its Board of Trustees (the “Board”) with electronic access to University documents for the purpose of preparing for Board meetings and performing necessary functions of the Board. Each Board member is invited to view such documents via a secure two-factor authentication platform utilizing credentials provided by the University. If a document setting controlled by the University enables a member to print or download a document, then that document may be downloaded to a system belonging to the member or a printed version may be in the physical possession of the member. At this time, Secretary Redding’s access in Diligent is view-only, but at an earlier date, the Secretary was able to download and print a subset of the requested Diligent documents without violating Board protocols. Solely because of the Secretary’s printing of some requested Diligent documents, PDA has possession of these printed items; however, PDA does not have custody, control or possession of the entirety of the Requester’s document request. The University acknowledges that printed documents in the possession of Secretary Redding are considered public records under current case law, subject to the protections afforded to public records. These printed documents were provided in PDA’s response to the request with allowable redactions further described herein. Release of any public record that is subject to protection from disclosure, whether that protection is afforded under the RTKL itself or other legal authorities and doctrines, such as a privilege recognized by a court interpreting the laws of this Commonwealth, would be contrary to the RTKL’s intent and would be detrimental to the University.

Simply put, the Requester is seeking an interpretation of the RTKL’s application to the University that would transform University documents housed on the University’s secure network into public records by the simple act of a Board member who is also a Commonwealth Agency Secretary having access to view such information on the University’s system.

As a result, the University has an interest that is directly affected by this appeal. Moreover, the University’s interest in preventing disclosure of its nonpublic, confidential, and protected information cannot be adequately represented by the PDA. The PDA itself does not have a direct stake in such information and the University is the more appropriate party to explain how the University would be substantially harmed by a determination that University documents in its possession, custody, and control are subject to RTKL disclosure.

In light of the foregoing, the University respectfully requests that Appeals Officer Edris grant this request to participate as a party with a direct interest.

## POSITION STATEMENT

In the event the request to participate is granted, please accept the following as the Position Statement of the University in support of the PDA responses to the records request by Wyatt Massey on May 18, 2023, pursuant to the Pennsylvania Right-To-Know Law (“RTKL”), 65 P.S. § 67.101, *et seq.* Specifically, the University supports the analysis by PDA that the requested documents that were printed by the Secretary are public records under case law interpreting the RTKL and the University supports the PDA’s position that requested University documents residing on Diligent (i.e., not printed out by the Secretary and not downloaded by the Secretary) are not in the agency’s possession, custody, or control. As detailed within, the Office of Open Records (“OOR”) must deny the appeal for any requested Diligent documents that were not printed or downloaded by the PDA Secretary because University documents residing on Diligent are not public records under the RTKL.

### Procedural History

On May 18, 2023, appellant, Wyatt Massey of Spotlight PA (“Requester”), submitted to the PDA a request for the following documents (“Request”) under RTKL:

An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Russell Redding’s role on the Penn State Board of Trustees, including but not limited to his role as a member of the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees.

An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

On July 3, 2023, PDA responded with a Final Response that it does not have possession, custody, or control of the requested documents. This was based upon the University providing background information about the Diligent platform and informing PDA that the Secretary had view-only access, which is true at the current time. Requester subsequently filed an appeal of the PDA’s Final Response. After providing their Final Response, PDA discovered printed copies of materials of which they were previously unaware and which they believed were responsive to the second item requested by the Requester. Those materials were provided to Requester after redacting information that fell under disclosure exceptions provided by the RTKL. However the printed materials represent a small subset of the items that the Requester is seeking.

### Statement of Facts

The University is a state-related institution that is governed by a Board of Trustees (“Board” or “Board of Trustees”) comprised of thirty-six voting members and two *ex-officio* non-voting members, the University President and the Governor of the Commonwealth of Pennsylvania. Amongst the thirty-six voting members are three *ex officio* members: the Secretary of Education, the Secretary of Agriculture, and the Secretary of Conservation and Natural Resources. These three Commonwealth Secretaries serve as *ex officio* members of the Board of Trustees pursuant to the *Amended and Restated Bylaws of the Pennsylvania State University*, Article II, Section 2.01(a)(i) and the University’s Charter.

(Act of February 22, 1855, P.L. 46, sec. 3, 24 Purd.Comp. Stat. sec. 2533; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Act of June 2, 1893, P.L. 272, sec. 1; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Decree of the Court of Common Pleas of Centre County, July 19, 1951, No. 218, February Term, 1951; Resolution of the Board of Trustees, May 3, 2013).

As outlined in the University's Bylaws Section 8.07 and cited by PDA in its July 18, 2023 submission that included the Affidavit of Shannon S. Harvey, Assistant Vice President and Secretary of the Board of Trustees, all members of the Board of Trustees stand in a fiduciary relationship with the University. Further, each Trustee is expected to diligently prepare for meetings and maintain confidentiality of nonpublic information concerning the University. *See Standing Order VIII Section 1(d)(iv) and (x) attached to Affidavit of Shannon S. Harvey (copy attached hereto).*

The Request under appeal seeks documents housed on the Diligent platform. Diligent is a cloud-based and closed network platform maintained by the University for the purpose of facilitating the review by members of the Board of Trustees of University documents such as board meeting agendas, meeting materials, and other relevant documents. The University's Office of the Board of Trustees ("Board Office") controls access to the Diligent platform including access controls, posting of documents, deleting documents, and posting other information. *See Affidavit of Shannon S. Harvey.*

Diligent access is granted to the Secretary serving on the Board of Trustees individually, in the Secretary's capacity as a Trustee. No one else in the PDA is given access to Diligent by the University. The Board Office controls the Secretary of the PDA's ability to print or download any documents from the Diligent platform. The Secretary does not have the ability to post or delete anything from the Diligent platform. *See Affidavit of Shannon S. Harvey.*

### **Legal Analysis**

The PDA presents sufficient legal arguments for its position and the University supports the legal arguments contained within their Position Statement.

To further advance the University's interest in this matter, it should be noted that the University is not a "Commonwealth Agency" or "Local Agency" subject to the RTKL. *See Christina v. Pennsylvania State University*, OOR Dkt. AP 2012-0970, 2012 PA O.O.R.D. LEXIS 862. As a state-related institution defined within the RTKL, the University is subject to requirements outlined in RTKL Chapter 15 that include the public disclosure of certain University information. The University acknowledges that prior case law, cited below, has concluded that University documents physically in the possession of such Commonwealth Secretary on the Board of Trustees to be documents within the custody, possession, and control of a Commonwealth Agency and, accordingly, subject to the disclosure requirements outlined in the RTKL for Commonwealth Agencies. However, the University is not aware of any legal authority that would support the Requester's position that documents posted by the University on the Diligent platform which are not in the physical custody of the Secretary or agency, be it in hard copy or an electronic file on the agency network, are public records. To the extent this appeal seeks to classify any document on the Diligent platform that has not been printed or downloaded by the

member Secretary as a public record, then the University strongly opposes such an unprecedented finding.

The Requester cites three cases to support their position that documents on Diligent are public records, but none of the cases support a finding that information stored on Diligent is inherently a public record.

*Bagwell v. Pennsylvania Department of Education*, 76 A.3d 81 (Pa.Cmwlt. 2013), a case cited by the Requester, dealt with correspondence sent to a public agency. The documents sought were “copies of letters, emails, reports and memorand[a]” that were “received by” the Secretary. *Bagwell*, 76 A.3d at 83. The court concluded that “records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as a supporter and influencer of education at state-related institutions.” *Id.* at 92. The *Bagwell* decision does not provide any guidance for a situation where documents are merely available for the Secretary’s viewing. In fact, the court noted that, “Significantly, the Department did not challenge whether the records were “of” the Department or contest possession of the records.” *Id.* At 84.

In the instant matter, the requested documents not printed by the Secretary were not received by the Secretary. To receive a document, it must come into one’s possession, that is, one must receive a modicum of control over the document. In *Bagwell*, the emails and other documents sought were received by the Secretary. The Secretary could forward, reply to, delete, download, print, or save the email or document. In contrast, documents hosted on the Diligent server remain within the University’s control so long as they reside on that server. The University controls what documents are posted and whether the Secretary can print or download any such document. The Secretary does not have the ability to post or delete anything in the Diligent platform. *See* Affidavit of Shannon S. Harvey. The University invites Trustees to view Diligent documents, but the documents are not “sent to” or “received by” the Secretary. As noted in the Attestation of Susan L. West contained within PDA’s Position Statement, PDA located and produced 65 printed pages of the requested information. That is not the entirety of the requested information that resides on Diligent. Thus, the requested information that was not printed out remains outside the scope of the RTKL. Delivery of documents via email, as was the case in *Bagwell*, would be the electronic equivalent of “sending” documents that could be “received” by the Secretary. Access to Diligent is the electronic equivalent to inviting a Trustee to view a University document that remains in the University’s possession, custody, and control.

Another case cited by the Requester, *Edinboro University of Pennsylvania v. Ford*, 18 A.3d 1278 (Pa. Cmwlt. 2011), is also inapposite. The *Edinboro* case dealt with records that had been, but were no longer, in the possession of Edinboro. The *Edinboro* case did not delve into the question of what circumstances resulted in the records coming into the agency’s possession—the fact that the records had once been in the possession of the agency was simply stated as a known fact. In the case at hand, the records were not in the possession of PDA while housed on Diligent. It is the University’s position that the only reason some of the requested Diligent documents are public records under current case law is due to the Secretary printing the documents. Further distinguishing the *Edinboro* decision from the instant matter is the court’s citation to and reliance on RTKL Section 506 whereby documents that are in the possession of a third-party contracted to perform a governmental function on behalf of an agency are public records, even if the agency does not possess the records. That is certainly not the situation in the instant matter and any reliance on *Edinboro* is erroneous.

The case of *Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932 (Pa. Cmwlth. 2014), the third case cited by the Requester, does not support the proposition that Diligent records that remain on the Diligent platform are in the constructive possession of the agency. The court in *Dental Benefit* notes the purpose behind inferring constructive possession: “We recognize constructive possession under Section 901 as a means of access so agencies cannot frustrate the purposes of the RTKL by placing their records in the hands of third parties to avoid disclosure.” *Id.* at 938. As set forth above, none of the requested documents were in the possession of the Secretary and placed by him on the Diligent platform. The Secretary does not have the ability to do that. At all times, the University controls what documents are available for review on the Diligent platform. The Requester argues for the converse purpose and result, that constructive possession be used as a vehicle to overcome the careful drafting of the RTKL by converting nonpublic documents to public records merely because they were shown to, or could be viewed by, a Trustee.

The University’s position in this matter is grounded in legal authorities, but practical implications of any other interpretation should also be considered if the Requester’s theory of the RTKL’s application to Diligent documents is advanced. The Diligent platform is the electronic equivalent of a University representative holding a University document in their hand, inviting the Secretary to read it and then putting it back in their briefcase. Such document never comes into the possession, custody, or control of the board member, because the materials remain in the control of the organization. The University acknowledges that if a board member obtains a University document, whether it be a hard copy that the board member retains in a meeting binder or an electronic file downloaded into the agency’s possession, custody, or control, then those materials would be in the possession of that board member. For that reason, the University is not in opposition to disclosing the responsive printouts found at PDA, subject to the application of redactions that protect information carved out of public disclosure requirements in the RTKL. However, in situations wherein a Secretary is invited to view a document and no further act is made that brings that document under the possession, custody, or control of the Secretary, which is the situation with the requested documents in Diligent that the Secretary did not print out, then the same RTKL analysis should apply whether the University invites the board member to review a document it is physically holding in its hand or whether it invites the board member to review a document on a platform where the University similarly continues to “hold” the document.

The Requester also made a request for a screenshot from the Diligent platform. To the extent that records on the Diligent platform were determined to be within the possession, custody, or control of the PDA, screenshots are not subject to disclosure as this would require the PDA to create a record that does not now exist in violation of RTKL. *See* 65 P.S. § 67.705.

Further, despite Requester’s assertion that no RTKL exceptions apply to the materials requested, the printed materials discovered by the PDA after the initial response was provided to Requester do contain information that is excluded from disclosure under the RTKL. Specifically, nonpublic meeting call-in information and information protected under Exceptions 10 and 11 were properly redacted and disclosed to the Requester. The University can provide a supplemental response if additional information is required to support these limited redactions in PDA’s production. To the extent that nonprinted documents on the Diligent platform are determined to be within the possession, custody, or control of the PDE, the documents would be subject to exclusions and the exceptions provided in the

Appeals Officer Angela Edris, Esquire  
July 24, 2023

RTKL under 65 P.S. § 67.708 (b), as well as any other relevant protections afforded through other legal authorities.

**Conclusion**

Requester provides no legal support for their position, relying instead upon case law that does not promote its position. In contrast, the University's position is in accord with current legal authorities. The Requester's arguments would lead to an untenable interpretation of the RTKL that would transform every University document viewed by the Secretary, as well as every document that the Secretary is merely invited to view, into a public record. Because the Secretary previously had the ability to print certain requested Diligent documents and did indeed print a subset of the requested documents, the University acknowledges that these printed items are in agency possession. However, the University opposes any RTKL interpretation that would categorically classify information housed on Diligent as a public record. Thank you for allowing the University to participate as a party of interest.

Respectfully submitted,



Natalie Voris Grosse  
Associate General Counsel  
The Pennsylvania State University

Cc: *Via Email only to:*

Marija K. Kuren, Assistant Counsel, Pennsylvania Department of Agriculture, [mkuren@pa.gov](mailto:mkuren@pa.gov)

Wyatt Massey, Spotlight PA, [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)

# Attachment to PSU Position Statement

**AFFIDAVIT OF SHANNON S. HARVEY**

I, Shannon S. Harvey, declare:

1. My name is Shannon S. Harvey. I am over the age of 18 and fully competent to make this affidavit. The facts stated herein are true and correct and based on my personal knowledge.

2. I am the Assistant Vice President and Secretary, Office of the Board of Trustees at The Pennsylvania State University (“Penn State” or the “University”). In this capacity, I serve as the elected Secretary of the University with responsibilities as outlined in Section 5.06 of the University Bylaws (Exhibit PSU #1). I am also responsible for the management and operation of the Office of the Board of Trustees including oversight of all activities, meetings, agenda preparation and filing of minutes, Trustee certifications and questionnaires in compliance with legal requirements and University policy to ensure the Board is as effective and efficient as possible in the conduct of its oversight responsibilities.

3. My business address is Office of the Board of Trustees at The Pennsylvania State University, 201 Old Main, University Park, Pennsylvania 16802.

4. For approximately three years, the University’s Office of the Board of Trustees (the “Board Office”) has utilized the services of Diligent as a platform for sharing documents and other information with the members of its Board of Trustees (“Trustees”). Diligent Boards is an online board portal tool that facilitates secure digital communication from the Board Office to Trustees. We utilize Diligent to securely share board meeting agendas, meeting materials, and other documents.

5. The Board Office staff, with the assistance of other University staff members as appropriate, maintains all aspects of the Diligent site, including with respect to access controls, posting of documents, deleting documents and posting other information.

6. Secretary Russell Redding, became an ex officio member of the Board of Trustees in January of 2015 when he was appointed to serve as Secretary of the Pennsylvania Department of Agriculture.

7. Secretary Redding was granted Diligent access on July 16, 2020.

8. The Board Office controls the Secretary's ability to print or download any document from the Diligent platform. The Secretary does not have the ability to post or delete anything in the Diligent platform.

9. Access is given to the Secretary of Agriculture individually, in their capacity as a Trustee. No one else in the Pennsylvania Department of Agriculture is given access to Diligent by the University.

10. The Secretary, like all other members of the Board of Trustees is subject to the University's Bylaws and Board of Trustees' Standing Orders, attached herein as Exhibits PSU #1 and PSU #2, stating in relevant part:

“Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.”

*Section 8.07 of the Bylaws (Fiduciary Duty) (See Exhibit PSU #1)*

“It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose ‘confidential information’ includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;”

*Order VIII, Section 1(d)(x) (Expectations of Membership) (See Exhibit PSU #2)*

Further affiant sayeth not. I hereby certify and declare that the above information is true and correct and that the statements contained herein are made subject to the penalties of 18 Pa.

C.S.A. § 4904.

Executed on July 17, 2023.

  
Shannon S. Harvey

# Exhibit PSU #1

## Bylaws

AMENDED AND RESTATED

BYLAWS

of

THE PENNSYLVANIA STATE UNIVERSITY

Adopted May 6, 2016

Amended November 4, 2016

Amended July 21, 2017

Amended November 10, 2017

Amended May 3, 2019

Amended November 15, 2019

Amended May 8, 2020

Amended September 18, 2020

Amended May 7, 2021

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I NAME AND PURPOSE .....	1
Section 1.01    Name .....	1
Section 1.02    History .....	1
Section 1.03    Purpose .....	1
ARTICLE II TRUSTEES .....	2
Section 2.01    Number, Election and Term of Office.....	2
Section 2.02    Qualifications for Membership .....	4
Section 2.03    Removal.....	5
Section 2.04    Regular Meetings; Notice.....	6
Section 2.05    Annual Meeting of the Board.....	6
Section 2.06    Special Meetings; Notice.....	6
Section 2.07    Quorum.....	7
Section 2.08    Actions.....	7
Section 2.09    Meetings via Electronic Communication.....	7
Section 2.10    Resignations .....	8
Section 2.11    Vacancies.....	8
Section 2.12    Compensation; Reimbursement of Travel Expenses.....	8
Section 2.13    Certain Meetings .....	8
ARTICLE III COMMITTEES AND SUBCOMMITTEES .....	8
Section 3.01    Committees and Subcommittees .....	8
Section 3.02    Executive Committee .....	9
Section 3.03    Standing Committees and Subcommittees .....	10
Section 3.04    Quorum and Actions .....	19

Section 3.05	Authority of Board .....	19
Section 3.06	Special Assignments.....	20
ARTICLE IV LIABILITY AND INDEMNIFICATION .....		20
Section 4.01	Personal Liability of Trustees.....	20
Section 4.02	Indemnification .....	21
ARTICLE V OFFICERS AND EMPLOYEES.....		24
Section 5.01	Officers.....	24
Section 5.02	Additional Officers; Other Agents and Employees.....	25
Section 5.03	The Chair .....	26
Section 5.04	The President.....	26
Section 5.05	The Vice President(s) .....	27
Section 5.06	The Secretary, Associate Secretary and Assistant Secretaries .....	28
Section 5.07	The Treasurer and Assistant Treasurers .....	28
Section 5.08	Vacancies.....	29
Section 5.09	Delegation of Duties.....	29
ARTICLE VI MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS ..		37
Section 6.01	Execution of Notes, Checks, Contracts and Other Instruments .....	37
Section 6.02	Voting Securities Owned by the University.....	37
ARTICLE VII GENERAL PROVISIONS.....		38
Section 7.01	Offices .....	38
Section 7.02	Corporate Seal .....	38
Section 7.03	Fiscal Year.....	38
Section 7.04	Private Inurement .....	38
ARTICLE VIII CONFLICTS OF INTEREST .....		38
Section 8.01	Definitions.....	38

Section 8.02	Disclosure.....	40
Section 8.03	Annual Disclosure .....	40
Section 8.04	Recusal .....	40
Section 8.05	Contracts or Transactions with the University.....	40
Section 8.06	Annual Statements.....	41
Section 8.07	Fiduciary Duty.....	42
Section 8.08	Misuse of Information .....	42
Section 8.09	Gifts and Favors .....	42
Section 8.10	Pre-Existing Contract or Transaction.....	42
Section 8.11	Family Members as Employees .....	42
Section 8.12	Employment of Trustees .....	43
Section 8.13	Disclosure of Potential Conflict of Interest by Employees of the University.....	43
Section 8.14	Consultation.....	43
ARTICLE IX AMENDMENTS .....		43
Section 9.01	Amendments.....	43

# THE PENNSYLVANIA STATE UNIVERSITY

## Amended and Restated Bylaws

### ARTICLE I

#### NAME AND PURPOSE

**Section 1.01 Name.** The name of the corporation is The Pennsylvania State University (hereinafter referred to as the “University”), existing under the Pennsylvania Nonprofit Corporation Law of 1988.

**Section 1.02 History.** The University was created as the Farmers’ High School by special act of the Pennsylvania legislature on February 22, 1855. The name of the institution has been changed successively to the Agricultural College of Pennsylvania in 1862, the Pennsylvania State College in 1874 and The Pennsylvania State University in 1953. On August 28, 1878, after the enactment of Pennsylvania’s first corporation law, and pursuant to the provisions thereof, the institution elected to be subject to such corporation law and thereafter, has been existing under such law, as such law has been amended, supplemented and modified from time to time.

**Section 1.03 Purpose.** The University was formed in 1855 as an institution for the education of youth in the various branches of science, learning and practical agriculture, as they are connected with each other. The University currently exists as a multi-campus public research university that educates students from Pennsylvania, the nation and the world, and improves the wellbeing and health of individuals and communities through integrated programs of teaching, research, and service.

## ARTICLE II

### TRUSTEES

**Section 2.01 Number, Election and Term of Office.** The affairs of the University shall be managed by a Board of Trustees.

(a) The number of Trustees which shall constitute the full Board of Trustees shall be fixed at thirty-eight (38), as set forth herein.

(i) Ex Officio Voting Members. The Secretary of Education, the Secretary of Agriculture and the Secretary of Conservation and Natural Resources shall be *ex officio* voting members of the Board of Trustees.

(ii) Ex-Officio Non-Voting Members. The Governor of the Commonwealth of Pennsylvania and the President of the University shall be *ex officio* non-voting members of the Board of Trustees.

(iii) Members Appointed by the Governor. Six voting members of the Board of Trustees shall be appointed by the Governor of the Commonwealth of Pennsylvania.

(iv) Members Elected by the Alumni. Nine voting members of the Board of Trustees shall be elected by the alumni and former students of the University.

(v) Members Elected by Agricultural Organizations. Six voting members of the Board of Trustees, who shall be members of and represent organized agricultural societies and associations, shall be elected by three delegates from each county in the Commonwealth representing organized agricultural societies or associations of the said county.

(vi) Members Elected Representing Business and Industry. Six voting members of the Board of Trustees representing business and industry endeavors shall be elected by the Board of Trustees.

(vii) A Member Elected Representing the Student Body. In May 2015 and bi-annually thereafter, a voting member of the Board of Trustees representing the student body (the "Student Trustee") shall be elected by the Board of Trustees.

(viii) A Member Elected Representing the Faculty. In May 2015 and every three years thereafter, a voting member of the Board of Trustees representing the faculty shall be elected by the Board of Trustees.

(ix) A Member Representing the Penn State Alumni Association. Commencing July 1, 2015, and bi-annually thereafter, the immediate past President of the Penn State Alumni Association shall become an *ex officio* voting member of the Board of Trustees.

(x) At-Large Members Elected by the Board of Trustees. In May 2015 three at-large voting members shall be elected by the Board of Trustees. Thereafter, one at-large voting member shall be elected annually by the Board of Trustees.

(b) Each Trustee shall serve for a term of three (3) years, except that the Student Trustee and the Trustee who serves ex-officio as the immediate past President of the Penn State Alumni Association shall each have a two (2) year term. No individual may serve as a Trustee for more than a total of twelve years, whether or not in consecutive terms; provided, however, that

(i) Any Trustee who has served for twelve years or more as of November 15, 2019 may complete the term for which such Trustee was most recently elected or appointed but shall not be eligible

for subsequent election or appointment as a Trustee; (ii) Any Trustee as of November 15, 2019 whose next reelection or reappointment would cause such Trustee, if such Trustee serves for the entirety of such new term, to exceed twelve total years of service may complete the term for which such Trustee is reelected or reappointed but shall not be eligible for subsequent election or appointment as a Trustee; and (iii) this subsection (b) shall not apply to any Trustee who serves in an *ex officio* capacity. Trustees shall be separated into three groups of substantially equal number so that the terms of one third of the Trustees shall expire each year. Each Trustee shall serve until his or her term expires, and thereafter until such Trustee's successor is duly elected or appointed, or until such Trustee's earlier death or resignation.

**Section 2.02 Qualifications for Membership. (a)** Members of the Board of Trustees shall be natural persons of full age who need not be residents of the Commonwealth of Pennsylvania. A person who is employed in any capacity by the University shall not be eligible to serve as a member of the Board of Trustees. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, a trustee elected pursuant to Section 2.01(a)(viii), or to a person who is a student employed part-time by the University. A person shall not be eligible to serve as a member of the Board of Trustees for a period of five (5) years from the July 1 coincident with or next following the date of (a) last employment in any capacity by the University or (b) the last day of such person's employment with the Commonwealth of Pennsylvania as Governor, Lieutenant Governor, Attorney General, Auditor General or State Treasurer. This qualification for membership shall not apply to a person who is an *ex officio* member of the Board of Trustees, nor to a person who is a student employed part-time by the University. Only graduates of The Pennsylvania State University who shall have received an associate degree, a bachelor's degree, or an advanced degree from the University shall

be eligible to serve as a trustee elected by the alumni. No member of the faculty or the governing board of any other college or university in Pennsylvania shall be eligible to serve as a trustee elected by the alumni.

(b) The Student Trustee shall be a full-time undergraduate, graduate or professional student, in good academic standing and in a degree seeking program at the University.

**Section 2.03 Removal.** Any member of the Board of Trustees other an *ex officio* member may be removed from his or her position as a Trustee in accordance with this Section 2.03.

(a) Any Trustee who believes that another Trustee has breached his or her fiduciary duty to the University shall raise the issue with the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning.

(b) Removal of a Trustee shall require a joint proposal to the Board of Trustees by the chairperson of the Board of Trustees and the chairperson of the committee on governance and long-range planning that the Board of Trustees take action to remove a Trustee on the basis that the Trustee has breached his or her fiduciary duty to the University. Such joint proposal shall be furnished in writing to each member of the Board of Trustees not less than 30 days prior to the meeting of the Board of Trustees at which such matter is to be considered. Removal shall require the determination of not less than two-thirds of the Trustees present at a duly called meeting that the Trustee has breached his or her fiduciary duty.

(c) In the event that the Chair of the Board of Trustees or the chairperson of the committee on governance and long-range planning is the subject of a removal action under this Section 2.03, the Vice Chair of the Board of Trustees shall be substituted for such affected Trustee for purposes of this Section 2.03.

**Section 2.04 Regular Meetings; Notice.** Regular meetings of the Board of Trustees shall be held at such time and place as shall be designated by the Board of Trustees from time to time. There shall be at least one (1) regular meeting of the Board of Trustees per year. Notice of such regular meetings shall not be required, except as otherwise expressly required herein or by law, and except that whenever the time or place of regular meetings shall be initially fixed and then changed, notice of such action shall be given promptly by telephone, facsimile, electronic mail or otherwise to each Trustee not participating in such action. Any business may be transacted at any regular meeting.

**Section 2.05 Annual Meeting of the Board.** One regular meeting of the Board of Trustees shall be designated the annual organization meeting at which the Board of Trustees shall organize itself and elect officers of the University for the ensuing year and may transact any other business.

**Section 2.06 Special Meetings; Notice.** Special meetings of the Board of Trustees may be called at any time by the Chair of the Board or by seven members of the Board of Trustees, to be held at such place and day and hour as shall be specified by the person or persons calling the meeting. Notice of every special meeting of the Board of Trustees shall be given by the Secretary to each Trustee by telephone, facsimile, electronic mail or otherwise at least three (3) days before the meeting unless the meeting is being called in the event of an emergency, in which case as much advance notice shall be given to the Trustees as is practicable under the circumstances. In addition, public notice of any special meeting shall be given as required by law. Except as otherwise provided herein or required by law, any business may be transacted at any special meeting regardless of whether the notice calling such meeting contains a reference thereto.

**Section 2.07 Quorum.** At all meetings of the Board of Trustees, the presence of at least a majority of the voting members of the Board of Trustees in office shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum is not present at any meeting, the meeting may be adjourned from time to time by a majority of the Trustees present until a quorum as aforesaid shall be present, but notice of the time and place to which such meeting is adjourned shall be given to any Trustees not present either by facsimile or electronic mail or given personally or by telephone at least eight hours prior to the hour of reconvening.

**Section 2.08 Actions.** Except as expressly provided herein, resolutions of the Board of Trustees shall be adopted, and any action of the Board of Trustees upon any matter shall be valid and effective, with the affirmative vote of a majority of the Trustees present at a meeting duly convened and at which a quorum is present. The Chair, if one has been elected and is present, or if not, the Vice Chair, if present, or if not, a Trustee designated by the Board of Trustees, shall preside at each meeting of the Board of Trustees. The Secretary, or in his or her absence the Associate Secretary, shall be responsible for ensuring that the minutes of all meetings of the Board of Trustees are recorded in some reasonable manner. In the absence of the Secretary and the Associate Secretary, the presiding officer shall designate any person to take the minutes of the meeting. Unless otherwise modified in these Bylaws, the conduct of business in meetings of the Board of Trustees and any committees thereof shall be in accordance with the parliamentary procedures prescribed in Robert's "Rules of Order".

**Section 2.09 Meetings Via Electronic Communication.** Subject to the requirements of any applicable open meeting laws, one or more Trustees may participate in any regular or special meeting of the Board of Trustees or of a committee of the Board of Trustees by means of conference telephone, video conference or similar communications equipment by means

of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner by a Trustee will be considered to be attendance in person for all purposes under these Bylaws.

**Section 2.10 Resignations.** Any Trustee may resign by submitting his resignation to the Secretary. Such resignation shall become effective upon its receipt by the Secretary or as otherwise specified therein.

**Section 2.11 Vacancies.** Vacancies in the membership of the Board of Trustees created by death, resignation, removal or any other reason may be filled by appointment by the Chair of the Board of Trustees for the unexpired term in all cases except memberships reserved for gubernatorial appointment and *ex officio* memberships established by the University's Charter.

**Section 2.12 Compensation; Reimbursement of Travel Expenses.** Members of the Board of Trustees serve as volunteers and shall not be compensated for their services. Upon the request of a Trustee, the University shall reimburse the Trustee's reasonable direct travel expenses, including transportation expenses, incurred while the Trustee was engaged in the discharge of his or her official duties. Reimbursement of travel expenses shall be determined in accordance with the University's travel reimbursement policies in effect from time to time.

**Section 2.13 Certain Meetings.** The Chair of the Board of Trustees may, at his discretion, request that one or more of the non-voting members of the Board of Trustees be excused from any regular or special meeting of the Board of Trustees or any portion thereof.

### ARTICLE III

#### COMMITTEES AND SUBCOMMITTEES

**Section 3.01 Committees and Subcommittees.** Standing or temporary committees or subcommittees consisting of at least one (1) Trustee may be appointed by the Board

of Trustees from time to time; provided, however, that a temporary committee may not be created for the purpose of acting on any matter appropriate to be acted on by a standing committee or subcommittee thereof. Committees and subcommittees may include non-voting members that are not Trustees of the University. Each such committee and subcommittee shall have and exercise such authority of the Board of Trustees in the management of the business and affairs of the University as the Board of Trustees may specify from time to time.

**Section 3.02 Executive Committee.** The executive committee shall have thirteen (13) members, all of whom shall be voting members. The executive committee shall be composed of the Chair of the Board of Trustees (who shall also be the chair of the executive committee), the Vice Chair of the Board of Trustees, the Chairs of the standing committees, the Chair of the Board of Directors of Penn State Health (or, if such chair is not a voting member of the Board of Trustees, a member of the Board of Directors of Penn State Health who is also a voting member of the Board of Trustees), the immediate past Chair of the Board of Trustees and such number of at-large members, nominated by the committee on governance and long-range planning and elected by the Board of Trustees, as may be necessary to have an executive committee of thirteen (13) members. In addition, the President of the University shall be an *ex officio* non-voting member of the executive committee.

(a) **Purpose of the Executive Committee.** The purpose of the executive committee shall be to transact all necessary business as may arise in the intervals between regular meetings of the Board of Trustees; it being understood that action by the executive committee would not be expected to be taken except in extraordinary circumstances. Notice of any action by the executive committee shall be provided to the Board of Trustees at its next regular meeting.

(b) Meetings of the Executive Committee. Meetings of the executive committee may be called by the Chair of the Board of Trustees or by any three (3) members of the executive committee. No action may be taken by the executive committee without the affirmative vote of at least seven (7) members of the executive committee.

(c) Place of Meetings of the Executive Committee. All meetings of the executive committee shall be held at the executive offices of the University unless otherwise ordered by the Chair of the executive committee.

(d) Notice of Meetings of the Executive Committee. Notice of the time and place of all meetings of the executive committee shall be given in the same manner as for meetings of the Board of Trustees.

**Section 3.03 Standing Committees and Subcommittees.** The Board may adopt standing committees and subcommittees thereof in addition to the executive committee in accordance with the terms of these Bylaws.

(a) Function of Standing Committees and Subcommittees. The purpose of the standing committees and subcommittees is to facilitate consideration of the business and management of the Board of Trustees and of the University, as hereinafter set forth.

(b) Referral of Matters to Standing Committees and Subcommittees. Any matters appropriate for consideration by a standing committee or a subcommittee first shall be referred thereto by the Board of Trustees or the Chair of the Board of Trustees; except that a two-thirds (2/3) vote of the Trustees present at a meeting of the Board of Trustees but in no event by an affirmative vote of less than nine (9) Trustees will permit initial consideration by the full Board of Trustees; provided, however, that any matter referred to and considered by a standing committee or a subcommittee, but upon which the committee or subcommittee makes no recommendation or

report to the Board of Trustees may be brought before the Board of Trustees for consideration at the request of any Trustee.

(c) Matters Appropriate to More Than One Committee or Subcommittee. Except as otherwise provided in these Bylaws, matters determined to be appropriate for consideration by more than one committee or subcommittee may be referred by the Chair of the Board of Trustees to one committee or subcommittee or more.

(d) Final Authority of the Board. Unless otherwise specifically delegated and except as otherwise provided herein, in the Standing Orders or in the approved operating guidelines of any standing committee or subcommittee, authority to act on all matters is reserved to the Board of Trustees, and the duty of each standing committee and subcommittee shall be only to consider and to report or make recommendations to the Board of Trustees upon appropriate matters.

(e) Specific Responsibility of Standing Committees. The several standing committees are charged specifically with the immediate care and supervision of the subject matters respectively indicated by and properly relating to their titles. Standing committees shall assume such additional responsibilities as may from time to time be assigned by the Chair of the Board of Trustees.

(f) Standing Committees Established. The following shall be the standing committees of the Board of Trustees:

(i) Committee on Academic Affairs, Research and Student Life. The committee on academic affairs, research and student life shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) the educational policies and programs of the University, including the long range educational development of the University with respect to instruction and continuing education;

(2) the faculty;

(3) the University's research enterprise; and

(4) all phases of student life.

(ii) Committee on Finance, Business and Capital Planning. The committee on finance, business and capital planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) finance, business, budgets, non-budget expenditures, human resources, investments, trust funds, insurance, real estate contracts, government and private contracts, and grants, fees, room and board charges, and the long-range financial planning and development of the University;

(2) endowments, gifts, and fund raising;

(3) the purchase and sale of real estate, master plans, construction, the award of contracts, and the honorific naming of buildings and roads; and

(4) the University's capital plan, the long-range comprehensive physical plant and infrastructure development of the University at each campus, consistent with the long-range educational development of the University.

**(iii)** Committee on Governance and Long-Range Planning. The committee on governance and long-range planning shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

**(1)** in fulfillment of its governance responsibilities, providing counsel and advice to the Board of Trustees in matters concerning the development of strategies, policies, and practices that orient, educate, organize, motivate, and assess the performance of trustees.

**(2)** The committee's responsibilities shall also include, but not be limited to:

- a.** reviewing and recommending to the Board any changes to the expectations of membership and code of conduct for all trustees, including trustees emeriti;
- b.** recommending to the Board of Trustees candidates for election to membership on the executive committee;
- c.** recommending to the Board of Trustees proposed Student and Academic Trustees;
- d.** reviewing the service of a Trustee upon retirement and recommending candidates for emeritus status;
- e.** evaluating and making recommendations on committee and subcommittee operating guidelines

and with respect to the working effectiveness of the Board of Trustees and its committees and subcommittees; and

f. evaluating, recommending and reporting on the qualifications and skill sets to be considered in the process of nominating board of trustee candidates.

(3) in fulfillment of its long-range planning responsibilities:

a. charging and supporting the President in leading a strategic planning process, participating in that process, making recommendations to the Board of Trustees with respect to the Strategic Plan, and monitoring its progress; and

b. providing oversight of the growth, development, and sustainability of the University for future generations in order to achieve its full potential as one of the world's great universities.

(iv) Committee on Audit and Risk. The committee on audit and risk shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall oversee the auditing of the University's financial statements and internal controls as set forth more fully in the operating guidelines of the committee. In fulfilling its responsibility, the committee on audit and risk shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) regular and special audits; and

(2) the identification and management of risks including financial, material, and reputational.

(v) Committee on Legal and Compliance. The committee on legal and compliance shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall oversee adherence to laws, regulations, and policies that pertain to University operations. In fulfilling its responsibility, the committee on legal and compliance shall consider and report or recommend to the Board of Trustees on matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed.

(vi) Committee on Outreach, Development and Community Relations. The committee on outreach, development and community relations shall consist of not less than five (5) appointive members, in addition to the *ex officio* members and shall provide advice and support to, and help inform the public of, the University's efforts to build support among its major constituents, from faculty, staff and students to alumni and donors, business and civic leaders and elected officials. In fulfilling its responsibility, the committee on outreach, development and community relations shall consider and report or recommend to the Board of Trustees on matters pertaining to outreach, development and community relations, including, but not limited to:

(1) Short and long-term communications plans and initiatives that support University priorities and protect and advance its reputation;

(2) Key outreach programs, such as extension and “Invent Penn State” that advance community and economic development priorities;

(3) Fundraising priorities and campaigns, including those that promote access and affordability and ensure academic excellence;

(4) Community and governmental relations activities that help ensure budget and policy decisions meet University needs;

(5) Major alumni association activities; and

(6) Opportunities to showcase the accomplishments of faculty, staff, students and others that merit public recognition.

(vii) Committee on Equity and Human Resources. The committee on equity and human resources shall consist of not less than five (5) appointive members, in addition to the *ex officio* members, and shall consider and report or recommend to the Board of Trustees on matters pertaining to:

(1) Compensation, benefits, performance management, talent management, succession planning and leadership development for the broader University;

(2) Recruitment, enrollment, retention, and graduation of students representing all aspects of diversity;

(3) Enhancement of diversity in the racial, ethnic and gender composition of faculty and staff at all levels;

(4) Accessibility, accommodation, and support for veterans and individuals with disabilities; and

(5) Engagement by the University of qualified diversity business enterprises, including minority- and women-owned businesses, as suppliers of goods and services.

(g) Selection of Committee Members. Members of the standing committees and subcommittees, and the chairperson and vice chairperson thereof, shall be appointed by the Chair of the Board of Trustees. The Chair and, in his or her absence, the Vice Chair of the Board of Trustees shall be an *ex officio* member of all standing committees, of all special committees and of all subcommittees. No Trustee shall serve as chairperson of any standing committee for more than five (5) consecutive years, except as specifically approved by a two-thirds vote of the Board of Trustees.

(h) Term of Committee Members. Committee members shall serve until their successors are appointed in accordance with this Bylaw.

(i) Vacancies on Standing Committees. Vacancies on all standing committees shall be filled through appointment by the Chair of the Board to serve the unexpired term created by the vacancy.

(j) Consultation with Constituent Groups. Standing committees shall seek consultation from representative constituent groups as appropriate in the exercise of their responsibilities.

(k) The following shall be the subcommittees of the Board of Trustees:

(i) The subcommittee on finance (of the committee on finance, business and capital planning) shall be composed of up to three members of the committee on finance, business and capital planning. This subcommittee shall be responsible for reviewing on a regular basis certain of the University's material financial

matters, including the operating and capital budgets, balance sheet management and debt strategy, non-endowed investments, review and endorsement of endowment spending rates, and informing the committee on finance, business and capital planning regarding relevant financial oversight matters.

(ii) The subcommittee on compensation (of the committee on equity and human resources) shall consist of up to five members, all of whom need not be members of the committee on equity and human resources, in addition to the *ex officio* members. This subcommittee shall assist the Board with executive compensation philosophy and strategy pertaining to the University's senior leadership positions; the annual review and approval of the President's personal goals and objectives, performance and annual compensation, including salary and incentive compensation, if applicable; and will make decisions and recommendations for and on behalf of the Board of Trustees, when appropriate, relating to the effectiveness of executive compensation, benefits, performance management, and leadership development.

(iii) The subcommittee on legal (of the committee on legal and compliance) shall be composed of up to five members of the committee on legal and compliance. This subcommittee shall be responsible for reviewing matters pertaining to compliance, oversight and legal issues as legally or otherwise prescribed, including but not limited to litigation strategies and other matters.

(iv) The subcommittee on risk (of the committee on audit and risk) shall be composed of up to five members, at least two of whom shall be members of the committee on audit and risk. This subcommittee shall be responsible for reviewing

matters pertaining to the identification and management of risks, including financial, operational, strategic and compliance risks.

(v) The subcommittee on long-range planning (of the committee on governance and long-range planning) shall be composed of up to five members, at least two of whom shall be members of the committee on governance and long-range planning. This subcommittee shall be responsible for reviewing matters related to the University's long-range planning activities, including supporting the strategic planning process, participating in that process, and monitoring its progress.

(l) **Operating Guidelines.** All standing committees and subcommittees shall operate pursuant to written operating guidelines which shall be submitted to and approved by the Board upon the recommendation of the committee on governance and long-range planning.

**Section 3.04 Quorum and Actions.** At all meetings of a committee, the presence of at least a majority of the members of such committee (including any ex officio members of such committee) shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as set forth in Section 3.02(b), resolutions of a committee shall be adopted, and any action of the committee upon any matter shall be valid and effective, with the affirmative vote of a majority of the members of the committee present at a meeting duly convened and at which a quorum is present.

**Section 3.05 Authority of Board.** Any action taken by any committee or subcommittee shall be subject to alteration or revocation by the Board of Trustees; provided, however, that third parties shall not be prejudiced by such alteration or revocation.

**Section 3.06 Special Assignments.** The Chair of the Board of Trustees may make special assignments to the Trustees from time to time in furtherance of the Board's duties and obligations. Such assignments shall include, but not be limited to, the following:

(a) **Trustee Representative at All Commencements.** The Board of Trustees shall be represented at all Commencements by the Chair of the Board of Trustees or by Trustees designated by the Chair of the Board of Trustees.

(b) **Trustee Liaison to Capital Campaigns.** The Chair of the Board of Trustees is directed to appoint a liaison Trustee to interact with developmental activities for capital campaigns and to apprise the Board of Trustees of the activities and the progress of campaigns.

#### **ARTICLE IV**

#### **LIABILITY AND INDEMNIFICATION**

##### **Section 4.01 Personal Liability of Trustees.**

(a) **Elimination of Liability.** To the fullest extent that the laws of the Commonwealth of Pennsylvania, as now in effect or as hereafter amended, permit elimination or limitation of the liability of Trustees for monetary damages, no Trustee of the University shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a Trustee.

(b) **Nature and Extent of Rights.** The provisions of this Section shall be deemed to be a contract with each Trustee of the University who serves as such at any time while this Section is in effect and each such Trustee shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the University which has the effect of increasing Trustee liability for

monetary damages shall operate prospectively only and shall not affect any action taken, or any failure to act, prior to the adoption of such amendment, repeal, Bylaw or provision.

**Section 4.02 Indemnification.**

**(a) Right to Indemnification.**

**(i)** As used herein, the word “Action” shall mean any action, suit or proceeding, administrative, investigative or other, (A) in which such person is named as a defendant (other than in an action, suit or proceeding by the University) or (B) in connection with which such person is not named as a defendant but is a witness, subject to investigation or otherwise involved, in either case by reason of such person being or having been a Trustee or officer of the University or by reason of such person serving or having served at the request of the University as a director, officer, employee, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other entity.

**(ii)** Except as prohibited by law, each Trustee and officer of the University shall be entitled as of right to be indemnified by the University against expenses and any liability paid or incurred by such person in connection with any Action.

**(iii)** Except as provided in Section 4.02(c) below, the University shall not indemnify any Trustee or officer, or pay, advance or reimburse any Trustee or officer, for any legal fees and expenses incurred in connection with any action, suit or proceeding, administrative, investigative or other, which such Trustee or officer brings, directly or indirectly, against the University, the Board of Trustees or any

officer, Trustee, employee, agent or representative of the University or the Board of Trustees.

(iv) A person who is not a Trustee or officer of the University may be similarly indemnified in respect of service to the University to the extent the Board of Trustees at any time designates such person as entitled to the benefits of this Section. The Board of Trustees has delegated to the Vice President and General Counsel the authority to make the determination, after consideration of relevant facts and circumstances, as to whether a person who is not a Trustee or officer of the University shall be indemnified in respect of his or her service to the University pursuant to this paragraph.

(v) As used in this Section, "indemnitee" shall include each Trustee and each officer of the University and each other person designated by the Board of Trustees as entitled to the benefits of this Section; "liability" shall include amounts of judgments, excise taxes, fines, penalties and amounts paid in settlement; and "expenses" shall include fees and expenses of counsel incurred by the indemnitee only (A) if the University has not at its expense assumed the defense of the Action on behalf of the indemnitee with reputable and experienced counsel selected by the University, or (B) if it shall have been determined pursuant to Section (c) hereof that the indemnitee was entitled to indemnification for expenses in respect of an Action brought under that Section

(b) Right to Advancement of Expenses. Every indemnitee shall be entitled as of right to have his expenses in defending any Action paid in advance by the University, as incurred; provided, however, that the University receives a written undertaking by or on behalf of

the indemnitee to repay the amount advanced if it should ultimately be determined that such person's conduct was such that the University is prohibited by law from indemnifying such person

**(c) Right of Indemnitee to Initiate Action; Defenses.**

**(i)** If a written claim for indemnification or advancement of expenses under paragraph (a) or paragraph (b) of this Section is not paid in full by the University within thirty days after such claim has been received by the University, the indemnitee may at any time thereafter commence a lawsuit to recover the unpaid amount of the claim and, if successful in whole or in part, the indemnitee shall also be entitled to be paid the reasonable expenses of prosecuting such suit..

**(ii)** The only defenses to a lawsuit to recover a claim for indemnification otherwise properly asserted under paragraph (a) shall be that the indemnitee's conduct was such that under applicable law the University is prohibited from indemnifying the indemnitee for the amount claimed, but the burden of proving any such defense shall be on the University.

**(iii)** The only defense to a lawsuit to recover a claim for advancement of expenses otherwise properly asserted under paragraph (b) shall be that the indemnitee failed to provide the undertaking required by paragraph (b), but the burden of proving any such defense shall be on the University.

**(d) Non-Exclusivity; Nature and Extent of Rights; Insurance.** The rights to indemnification and advancement of expenses provided for in this Section shall (i) not be deemed exclusive of any other rights to which any indemnitee may be entitled, (ii) be deemed to create contractual rights in favor of each indemnitee who serves the University at any time while this Section is in effect (and each such indemnitee shall be deemed to be so serving in reliance on the

provisions of this Section), and (iii) continue as to each indemnitee who has ceased to have the status pursuant to which he was entitled or was designated as entitled to indemnification under this Section and shall inure to the benefit of the heirs and legal representatives of each indemnitee. The University may provide, at its cost, insurance, or may self-insure, to protect itself and any Trustee, officer, agent or employee eligible to be indemnified hereunder against any liability or expense whether or not the University would have the power to indemnify such trustee, officer, agent or employee.

## ARTICLE V

### OFFICERS AND EMPLOYEES

#### **Section 5.01 Officers.**

(a) Officers. The officers of the Board of Trustees shall be a President (also referred to as the “Chair”), a Vice President (also referred to as the “Vice Chair”), each of whom shall be a member of the Board of Trustees, and a Secretary.

(b) Election and Term of Officers. All officers of the Board of Trustees shall be chosen each year by ballot of the voting members of the Board of Trustees present at the stated meeting of the Board of Trustees in November to serve for a period of one year and until their successors are chosen according to these Bylaws.

(c) Duties of Officers. The Chair of the Board of Trustees shall perform the corporate duties which pertain to that office. The Chair shall appoint all committees and subcommittees of the Board of Trustees and the chairperson thereof (except the executive committee) unless otherwise ordered by the Board of Trustees. The Vice Chair shall, in the absence of the Chair, perform the duties of the Chair. The Secretary shall perform the corporate duties which pertain to that office, be custodian of the corporate seal, conduct the ordinary

correspondence of the Board of Trustees and maintain an accurate record of all proceedings of the Board of Trustees and of the executive committee.

(d) Vacancies in Office. Vacancies in any office or offices may be filled by ballot of the voting members present at any meeting of the Board of Trustees.

(e) Officers of the University. The executive officers of the University shall be the President, one or more Vice Presidents as the Board of Trustees may from time to time determine, an associate secretary, three assistant secretaries, a Treasurer, and three assistant treasurers, all of whom shall be elected by the Board of Trustees. Except for the office of the President and Secretary, any two or more offices may be held by the same person. Each executive officer shall hold office at the pleasure of the Board of Trustees, or until his or her death or resignation.

(f) The associate secretary shall assist the secretary in the performance of his/her duties and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The assistant secretaries shall assist the associate secretary and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The Treasurer shall receive and disburse all monies of the corporation under procedures and safeguards prescribed by the Board of Trustees. The assistant treasurers shall assist the treasurer in the performance of these duties and shall act for and on behalf of the University in the same manner and with the same authority as the treasurer.

**Section 5.02 Additional Officers; Other Agents and Employees.** The Board of Trustees may from time to time appoint or employ such additional officers, assistant officers, agents, employees and independent contractors as the Board of Trustees deems advisable; the Board of Trustees shall prescribe their duties, conditions of employment and compensation; and

the Board of Trustees shall have the right to dismiss them at any time, without prejudice to their contract rights, if any. The President of the University may employ from time to time such other agents, employees and independent contractors as he may deem advisable for the prompt and orderly transaction of the business of the University, and he may prescribe their duties and the conditions of their employment, fix their compensation and dismiss them at any time, without prejudice to their contract rights, if any.

**Section 5.03 The Chair.** The Chair of the Board of Trustees, if any, shall be elected from among the voting members of the Board of Trustees, shall preside at all meetings of the Board of Trustees as provided herein, and shall have such other powers and duties as from time to time may be prescribed by the Board of Trustees. The Chair shall be an *ex officio* member of all standing committees and subcommittees, entitled to vote thereon. In the absence or disability of the Chair, the Vice Chair shall have the powers and perform the duties of the Chair.

**Section 5.04 The President.** The President of the University shall be the chief executive officer of the University. Subject to the control of the Board of Trustees, the President shall have general supervision of and general management and executive powers over all the property, operations, business, affairs and employees of the University, and shall see that the policies and programs adopted or approved by the Board of Trustees are carried out. The President shall exercise such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees. The President of the University, as chief administrative officer, shall carry out all orders and directives of the Board of Trustees and shall administer all policies of the Board of Trustees, as well as the policies established by him or her and by the faculty. The President may delegate such administrative authority as he or she deems appropriate to his or her staff, to the Treasurer, to the deans of the various academic units, and to others, who

shall exercise such delegated authority in the name of the President. The establishment of senior administrative positions responsible directly to the President and the determination of the functions of such positions shall be made by the President of the University. All administrative officers with the title of vice president or dean shall be appointed by the President, subject to the approval of the Board of Trustees. Removal of such administrative officers with the title of vice president or dean shall be made by the President and, in such event, the President shall inform the Board of Trustees of such removal at the next regular meeting of the Board. The President, as chief policy officer, shall have final authority, subject to the revisions and orders of the Board of Trustees, to establish policy concerning educational policy and planning, student affairs, the instructional program, courses and curricula, personnel, admissions, graduation requirements, scholarships and honors, calendar requirements, business, planning, research, and finance; provided, however, that the President shall delegate to the faculty, as appropriately organized, subject to the orders of the President, the authority to establish policy concerning the approval and supervision of the instructional program, including courses and curricula, academic admission standards, graduation requirements, and scholarships and honors. The President shall consult with the faculty, as appropriately organized, in the establishment of policy concerning educational policy and planning, including general admissions policy, calendar, academic personnel, student affairs, and any other matter he or she shall deem appropriate. In addition, the President shall consult with the student body, as appropriately organized, in the area of student affairs.

**Section 5.05 The Vice President(s).** The University may have one or more Vice Presidents. The Vice President(s) may be given by resolution of the Board of Trustees general executive powers, subject to the control of the President, concerning one or more or all segments of the operations of the University. The Vice President(s) shall exercise such further

powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. At the request of the President, or in his or her absence or disability, the Executive Vice President and Provost shall exercise the powers and duties of the President.

**Section 5.06 The Secretary, Associate Secretary and Assistant Secretaries.**

It shall be the duty of the Secretary (a) to keep an original or duplicate record of the proceedings of the Board of Trustees, and a copy of the Charter and of the Bylaws; (b) to give such notices as may be required by law or these Bylaws; (c) to be custodian of the corporate records and of the seal of the University and see that the seal is affixed to such documents as may be necessary or advisable; and (d) to exercise all powers and duties incident to the office of Secretary; and such further powers and duties as from time to time may be prescribed in these Bylaws or by the Board of Trustees or the President. The Associate Secretary and the assistant secretaries shall assist the Secretary in the performance of his duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Secretary. At the direction of the Secretary or in his or her absence or disability, the Associate Secretary shall exercise the powers and duties of the Secretary.

**Section 5.07 The Treasurer and Assistant Treasurers.** It shall be the duty of the Treasurer (a) to keep the University's contracts, insurance policies, leases, deeds and other business records; (b) to see that the University's lists, books, reports, statements, tax returns, certificates and other documents and records required by law are properly prepared, kept and filed; (c) to be the principal officer in charge of tax and financial matters, budgeting and accounting of the University; (d) to have charge and custody of and be responsible for the University's funds, securities and investments; (e) to receive and give receipts for checks, notes, obligations, funds and securities of the University, and deposit monies and other valuable effects in the name and to

the credit of the University, in such depositories as shall be designated by the Board of Trustees; (f) to cause the funds of the University to be disbursed by payment in cash or by checks or drafts upon the authorized depositories of the University, and to cause to be taken and preserved proper vouchers for such disbursements; (g) to render to the President and the Board of Trustees whenever they may require it an account of all his transactions as Treasurer, and reports as to the financial position and operations of the University; (h) to keep appropriate, complete and accurate books and records of account of all the University's business and transactions; and (i) to exercise all powers and duties incident to the office of Treasurer; and such further duties from time to time as may be prescribed in these Bylaws or by the Board of Trustees or the President. The assistant treasurers shall assist the Treasurer in the performance of his or her duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board of Trustees, the President or the Treasurer. At the direction of the Treasurer or in his absence or disability, an assistant treasurer shall exercise the powers and duties of the Treasurer.

**Section 5.08 Vacancies.** Any vacancy in any office or position by reason of death, resignation, removal, disqualification, disability or other cause shall be filled in the manner provided in this Article V for regular election or appointment to such office.

**Section 5.09 Delegation of Duties.** The Board of Trustees may in its discretion delegate for the time being the powers and duties, or any of them, of any officer to any other person whom it may select. Upon authorization by the Board of Trustees, an officer may delegate performance of specific duties to employees and agents of the University.

(a) Notwithstanding the foregoing, the following matters shall require the approval of the Board of Trustees:

(i) Basic University Organization and Policy

- (1) Amendments to the Charter, Bylaws and Standing Orders;
  - (2) All reports of standing or special committees of the University's Board of Trustees;
  - (3) All major modifications of educational policy;
  - (4) Authorization to grant degrees to graduates;
  - (5) The University's Strategic Plan; and
  - (6) University intellectual property policy.
- (ii) Fiscal Matters
- (1) Establishment of, or changes in existing, major University fiscal policies;
  - (2) State appropriation requests and annual operating budgets;
  - (3) Acceptance of gifts, bequests, grants, fellowships, scholarships, loan funds that are not in accord with established policy;
  - (4) Establishment of, or changes in, tuition, room and board rates and mandatory student fees;
  - (5) Authorization to borrow money; authorization of persons to sign checks, contracts, legal documents, and other obligations, and to endorse, sell, or assign securities; and
  - (6) Selection of a firm to make annual audit of University accounts.
- (iii) Capital Projects
- (1) Establishment of, or changes in the University's five-year Capital Plan;

(2) Establishment of, or changes in existing policies, on matters such as honorific naming of buildings and roads and preservation of campus landmarks;

(3) Purchase of land and other real estate with a purchase price of \$1 million or more;

(4) Sale of land or other real estate, with the exception of the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale with proceeds benefitting the University;

(5) Honorific names for individual buildings and roads;

(6) Any new construction or renovation project for which the total project cost is \$10 million or more, including

(A) Total project cost; provided however, that the Officers of the University shall have the discretion to expend up to an additional 10 percent of the approved total project cost, as necessary; and

(B) Awarding of contracts for construction;

(7) Projects under \$10 million in cost that are bond-financed;

(8) Other capital expenditures of \$10 million or more.

(iv) Personnel Matters.

(1) The selection, evaluation, compensation and removal of the President of the University, in accordance with policies and procedures adopted by the Board of Trustees from time to time. This responsibility

includes a commitment to grant the President broad delegated authority, to support the President in his/her exercise of such authority, to judge the performance of the President, and if necessary, to remove the President. In the selection of a President, the Board shall consult with representatives of the faculty and the student body.

(2) The establishment of and any changes to the University's executive compensation philosophy.

(3) The establishment of and any changes to the employment terms and conditions of the President of the University.

(4) The appointment and removal of the Vice President and General Counsel and the process by which Vice Presidents (other than the Vice President and General Counsel) and Deans are appointed, and any material amendments or modifications to such process.

(v) Subsidiaries

(1) Appointment of the Board of Directors of each direct subsidiary of the University as provided in such subsidiary's articles of incorporation;

(2) Amendments to the articles of incorporation of each direct subsidiary of the University; and

(3) Exercise of rights reserved to the University in the articles of incorporation, bylaws or other governing documents of any direct or indirect subsidiary of the University.

(vi) Miscellaneous

(1) Selection of the recipients of Distinguished Alumni Awards, honorary degrees and the Penn State Medal; and

(2) Selection of specific dates for regular meetings of the Board of Trustees.

(b) The delegation of authority set forth in this Section 5.09 requires that the Board of Trustees rely on the judgment and decisions of those who operate under its authority. However, this reliance of the Board of Trustees must be based upon its continuing awareness of the operations of the University. Therefore, the Board of Trustees shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designated by the President. The Board of Trustees has a continuing obligation to require information or answers on any University matter with which it is concerned. In addition to such matters as the President of the University may determine, or as requested by the Chair of the Board of Trustees, the following matters shall be presented to the Board of Trustees for information:

(i) Basic University Organization and Policy

(1) New curricula and major changes in existing curricula;

(2) Major policy matters affecting student welfare and activities;

and

(3) Major policy matters affecting research.

(ii) Fiscal Matters

(1) Financial statements, and gifts, bequests, grants, fellowship, scholarships, loan funds that are in accord with established policy; and

(2) The University's annual reports filed under the Clery Act and the Pennsylvania Right to Know Act.

**(iii) Personnel Matters**

**(1) Policies.** New policies or changes in existing policies governing appointments, promotions in academic rank, leaves of absence, resignations, retirements, academic freedom and tenure, hours and conditions of employment, and fringe benefits; and

**(2) Executive Compensation.** Information regarding

**(A)** the evaluation and compensation of University executives (other than the President of the University), in accordance with policies and procedures recommended by the subcommittee on compensation from time to time.

**(B)** the establishment of and any changes to executive compensation and benefit programs and policies.

**(3)** Information regarding the appointment and removal of Vice Presidents and Deans.

**(iv) Capital Projects**

**(1)** New construction or renovations projects with a total project cost equal to or greater than \$5 million but less than \$10 million;

**(2)** Generic naming of individual buildings and roads and honorific naming of University facilities other than individual buildings and roads;

**(3)** Purchase of real estate with a purchase price of less than \$1 million;

(4) Reports on the sale of land and other real estate with a sale price of less than \$3 million gifted to the University for the express purpose of sale;

(5) Capital budget request submitted to the Commonwealth of Pennsylvania;

(6) An annual capital plan informational update; and

(7) Reports on the progress of new construction or renovation projects with a total project cost of \$10 million or more.

(c) Board of Trustees Delegation of Authority to Certain University Administrative Officers.

(i) The President, Vice President, Secretary, Treasurer, Assistant Treasurer, Senior Vice President for Finance and Business, and Corporate Controller of the University, or any one of such officers be and they are hereby fully authorized and empowered on behalf of the University to execute and acknowledge all deeds, agreements and contracts, and to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness or other securities now or hereafter standing in the name of or owned by this University, and to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(ii) The Treasurer, or in the absence of the Treasurer, the Senior Vice President for Finance and Business, may delegate in writing to such employees of the University as they may deem appropriate, the authority to execute and

acknowledge on behalf of the University standardized agreements and contracts for which those employees have administrative responsibility.

(iii) The Chief Investment Officer, or in such person's absence, the Managing Director, Operations of the Office of Investment Management, is hereby fully authorized and empowered on behalf of the University to transfer and endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes or other securities now or hereafter standing in the name of or owned by the University, and to make, execute, acknowledge, and deliver, under the corporate seal of the University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(iv) The Associate Vice President for Finance and Business and Controller, or, in his or her absence, the Associate Controller, be and is hereby fully authorized and empowered on behalf of the University to execute and acknowledge all agreements and contracts related to the affairs of the College of Medicine.

(v) The Associate Secretary and Assistant Secretary of this University, or any one of such officers, be and they are hereby fully authorized and empowered on behalf of this University to make, execute, acknowledge, and deliver, under the corporate seal of this University, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

(d) Subject to the provisions of Section 5.09(a)(v), the affairs of any direct or indirect subsidiary of the University shall be governed by the Board of Directors of such subsidiary

in accordance with the articles of incorporation, bylaws or other governing documents of such subsidiary.

## ARTICLE VI

### MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS

**Section 6.01 Execution of Notes, Checks, Contracts and Other Instruments.** All notes, bonds, drafts, acceptances, checks, endorsements (other than for deposit), guarantees and all evidences of indebtedness of the University whatsoever, and all deeds, mortgages, contracts and other instruments requiring execution by the University, may be signed by the Chair, the President, any Vice President or the Treasurer, and authority to sign any of the foregoing, which may be general or confined to specific instances, may be conferred by the Board of Trustees upon any other person or persons. Any person having authority to sign on behalf of the University may delegate, from time to time, by instrument in writing, all or any part of such authority to any other person or persons if authorized to do so by the Board of Trustees, which authority may be general or confined to specific instances. Facsimile signatures on checks may be used if authorized by the Board of Trustees.

**Section 6.02 Voting Securities Owned by the University.** Securities owned by the University and having voting power in any other University shall be voted by the President or any Vice President, unless the Board of Trustees confers authority to vote with respect thereto, which may be general or confined to specific investments, upon some other person. Any person authorized to vote such securities shall have the power to appoint proxies, with general power of substitution.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 7.01 Offices.** The principal business office of the University shall be located at 201 Old Main, University Park, Pennsylvania 16802. The University may also have offices at such other places within or without the Commonwealth of Pennsylvania as the business of the University may require.

**Section 7.02 Corporate Seal.** The Board of Trustees shall prescribe the form of a suitable corporate seal, which shall contain the full name of the University and the year and state of its creation.

**Section 7.03 Fiscal Year.** The fiscal year of the University shall end on June 30 or on such other day as shall be fixed by the Board of Trustees.

**Section 7.04 Private Inurement.** No part of the net earnings of the University shall inure to the benefit of, or be distributable to, its Trustees, officers or other private persons, except that the University shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Bylaws and the University's Charter.

## ARTICLE VIII

### CONFLICTS OF INTEREST

**Section 8.01 Definitions.** For purposes of Sections 8.01 – 8.11 hereof, the following terms shall have the meanings set forth below.

(a) **Conflict of Interest.** A “conflict of interest” exists when a reasonable observer, having knowledge of all of the relevant facts and circumstances, would conclude that a Trustee has an actual or apparent conflict of interest in a matter related to the University. In

addition to financial conflicts of interest, a conflict of interest includes a situation in which a Trustee, family member or related entity has an interest that may lead the Trustee to act in a way that is incompatible with or a breach of the Trustee's fiduciary duty to the institution or use such Trustee's role to achieve personal gain or benefit or gain or benefit to family, friends or associates.

**(b) Family Member.** A "family member" means a Trustee's spouse or dependent child.

**(c) Financial Conflict of Interest.** A "financial conflict of interest" exists when a Trustee, a family member or related entity has an actual or potential financial interest in a matter (i) that is pending before the Board for discussion or vote or (ii) in which the Trustee or a family member is personally involved. A financial conflict of interest does not include a student or employment relationship of a family member.

**(d) Related Entity.** A "related entity" means a corporation, partnership, association or other entity where the Trustee or family member serves as an officer, director, partner or employee; expects to receive \$5,000 or more in compensation for services in a calendar year; holds any equity in a non-publicly traded entity; or holds an interest of 5% or more in a publicly traded entity.

**(e) Known.** "Known" means that the Trustee has actual knowledge of the conflict of interest.

**(f) Board.** "Board" includes any standing or ad hoc committee of the Board.

**(g) Disclose or Disclosure.** "Disclose" or "disclosure" means to provide a brief summary of the transaction, agreement or business arrangement and the Trustee's financial or other interest.

(h) For purposes of this Article VIII, the term “University” includes all direct and indirect subsidiaries thereof.

**Section 8.02 Disclosure.** Each Trustee must disclose in writing to the Office of the Board of Trustees and to the Chair of the Board all situations that involve actual or apparent conflicts of interest if and as the conflict of interest becomes known to such Trustee.

**Section 8.03 Annual Disclosure.** In addition to other annual disclosures required by law or policy, each Trustee must disclose annually and in writing to the Secretary of the Board all conflicts of interest that are known to such Trustee. The annual disclosures of known conflicts of interest will be publicly available upon request.

**Section 8.04 Recusal.** If a matter in which a Trustee has a known conflict of interest comes before the Board for discussion or decision, the interested Trustee shall leave the Board meeting while the matter is discussed and voted upon. The Trustee’s interest and recusal shall be noted in the minutes, which shall be publicly available.

**Section 8.05 Contracts or Transactions with the University.** (a) A contract or transaction between the University and a Trustee, family member or an entity in which a Trustee or family member has a beneficial interest of ten percent (10%) or more and the contract or transaction is valued at \$10,000 or more must be approved by the Board of Trustees in accordance with this Section. The University official responsible for the matter must first conclude that it is in the best interests of the University to consider entering into such a contract or transaction. In circumstances where the Trustee, family member or related entity is purchasing goods or services from the University, as opposed to selling such goods or services, the matter is presumptively in the University’s interests if the price is fair and reasonable and the contract or transaction does not foreclose a similar transaction with another individual or entity. In other circumstances where the

University is purchasing goods or services, the officer must first explore alternatives that do not involve an interest of the Trustee, family member or entity in which the Trustee or family member owns a beneficial interest of ten percent (10%) or more. If, after exercising such due diligence, the official determines that it is in the best interests of the University to proceed, the matter must be submitted to the Board for approval. The written materials submitted to the Board shall include a description of the contracting process, including the use of open and public bidding if possible and practical, and the official's analysis of why it is in the best interests of the University to proceed with the agreement or relationship. The interested Trustee shall leave the meeting during the discussion and voting. The Board shall determine by a majority vote of the disinterested Trustees whether the transaction or arrangement is in the University's best interests, the price and value provided are fair and reasonable to the University and whether to approve the transaction or arrangement. Any such decision shall be recorded in the minutes, which shall be publicly available.

(b) Contracts or transactions of less than \$10,000 between the University and a Trustee, family member or an entity in which the Trustee or a family member has a beneficial interest of ten percent (10%) or more will be disclosed to the Board of Trustees annually in a written report which shall be available to the public. The report shall include a certification by the appropriate officers of the University that such contracts or transactions were made in the normal course of business and were fair to the University.

**Section 8.06 Annual Statements.** Each Trustee shall annually sign a statement that affirms that such Trustee (a) has received a copy of the Board's conflict of interest policy as expressed in this Article VIII, (b) has read and understands the policy, and (c) has agreed to comply with the policy.

**Section 8.07 Fiduciary Duty.** Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.

**Section 8.08 Misuse of Information.** No member of the Board of Trustees shall for personal gain or benefit or for the gain or benefit of others use any information not available to the public at large and obtained as a result of service to the University.

**Section 8.09 Gifts and Favors.** No member of the Board of Trustees shall solicit or accept for personal use or for the use of others any gift, loan, gratuity, reward, promise of future employment or any other thing of monetary value based on any understanding that the vote, official action or judgment of the member would be influenced thereby.

**Section 8.10 Pre-Existing Contract or Transaction.** A contract or transaction that would be required to be disclosed under this Article but which was entered into before the interested Trustee assumed office, or which became subject to this Article as a result of amendments to the Article, and which remains to be performed in whole or in part, shall be disclosed by the Trustee pursuant to Section 8.03 but is not subject to the voting and other requirements of this Article.

**Section 8.11 Family Members as Employees.** A record of all spouses or dependent children of Trustees who are employed by the University or an affiliated entity and where compensation exceeds \$10,000 per year shall be maintained in the Office of the Board of

Trustees and the names and positions but not the amount of compensation shall be posted on the University's public website.

**Section 8.12 Employment of Trustees.** No Trustee may be employed by the University in any capacity before the fifth (5th) anniversary of the date on which such person last served as a Trustee, except as approved by action of the Board of Trustees.

**Section 8.13 Disclosure of Potential Conflict of Interest by Employees of the University.** Employees of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. They shall not use their positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise between the interest of the University and that of the individual. Employees shall disclose to the administrative head of the college or other unit in which they are employed, or other appropriate superior officer, any potential conflict of interest which they are aware before a contract or transaction is consummated. This bylaw shall be published to the University community at least once annually.

**Section 8.14 Consultation.** Any Trustee or University official may consult with the Secretary of the Board or the University General Counsel concerning the interpretation or application of any of the provisions of Article VIII.

## **ARTICLE IX**

### **AMENDMENTS**

**Section 9.01 Amendments.** These Bylaws may be amended, altered or repealed, and new bylaws may be adopted, by the Board of Trustees at any regular or special

meeting. Except as specifically set forth in Section 4.01, no provision of these Bylaws shall vest any property or contract right in any person.

## BYLAWS AMENDMENT HISTORY

May 6, 2016	Amended and Restated Bylaws adopted
November 4, 2016	Section 3.03(f)(vi) amended
July 21, 2017	Section 5.09 amended
November 10, 2017	Sections 2.12, 4.01 and 4.02 amended
May 3, 2019	Sections 5.09 and 8.01 amended
November 15, 2019	Section 2.01(b) amended
May 8, 2020	Sections 3.03 and 5.09 amended
September 18, 2020	Sections 2.01(a), 2.09, 3.02, 3.03(d), 3.03(e), 3.03(f)(i), 3.03(f)(iii), 3.03(f)(vii), 3.03(g), 3.03(h), 3.03(k), 3.03(l), 3.05, 3.06(b), 5.09(b)(iii) and 5.09(c)(iii) amended
May 7, 2021	Section 5.01(b) amended

# Exhibit PSU #2

## Standing Orders

**Standing Orders of the Board of Trustees**

**As Amended as of September 18, 2020**

		<b>Page</b>
ORDER I.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI .....	1
ORDER II.	PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES .....	2
ORDER III.	PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES .....	3
ORDER IV.	PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE .....	5
ORDER V.	PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE.....	5
ORDER VI	PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES.....	6
ORDER VII.	RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES.....	7
ORDER VIII.	GOVERNANCE OF THE UNIVERSITY .....	11
ORDER IX.	TRUSTEES EMERITI.....	16
ORDER X.	PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS .....	17

## STANDING ORDERS OF THE BOARD OF TRUSTEES

### **ORDER I. PROCEDURES FOR THE ELECTION OF TRUSTEES BY ALUMNI (see also *the Charter*)**

- (1) Date of Election. Elections for alumni members of the Board of Trustees shall be held each year on the day preceding the annual Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees, and may be held either in connection with the Delegate Convention for the election of other members of the Board, or at such other hour of the same day, and such other place, as the Chair of the Board of Trustees may from time to time direct.
- (2) Nominations. The Secretary of the Board of Trustees, or such other officer as may be from time to time designated by the Chair of the Board of Trustees, shall send to each qualified elector, as established in the Charter, whose email address is known a notice stating the date at which the next election will be held and the names of alumni trustees whose terms will expire by law on the thirtieth day of June next following. Such notice shall be sent each year not less than ninety days preceding the date on which such election is to be held, and shall invite nominations for vacancies then to occur. All persons who are nominated by as many as 250 electors shall be announced as soon as practical after the tenth day of April each year in a circular sent to all electors, with a form of ballot.
- (3) Form of Ballot. Only the official nominating and voting ballots may be used to nominate and vote for candidates.
- (4) Position on Ballot. Immediately after the last day fixed for depositing ballots to nominate candidates for alumni trustee, the Chair of the Board of Trustees shall fix a day and hour for casting lots for the position of names upon the election ballots. The Secretary of the Board of Trustees shall give at least three days' notice of said date and hour to all candidates nominated. Any candidate may appear in person or by a representative duly authorized in writing. In the event that any candidate is not present in person or by duly authorized representative at the time of casting of lots, it shall be the duty of the Secretary to appoint some person to represent such absentee. After said lots are cast, the Secretary shall accordingly establish the order in which the names of said candidates are to appear on the election ballot.
- (5) Designation of Incumbents. Incumbents shall not be identified as such on election ballots, but biographical sketches shall identify incumbents with an asterisk.
- (6) Position in Booklet of Biographical Sketches. Candidates' names shall be in alphabetical order in any publication of biographical sketches.
- (7) Duplicate Ballots. A duplicate ballot may be issued to a voter only on a written or personal application to the Secretary of the Board of Trustees stating that the original ballot has been lost, mutilated, or destroyed.

- (8) Deadline for Receipt of Nominations. Ballots for the nomination of alumni trustees must be received at the office of the Secretary of the Board of Trustees before 5:00 p.m., February 25.
- (9) Candidate May Withdraw Name. Each candidate nominated shall be given the privilege of withdrawing his/her name.
- (10) Election Returns. All ballots for alumni trustees returned to the proper official in response to said circular and received by him/her on or before the day of election shall be safely kept by him/her, and by him/her delivered at the time and place of election to the two judges selected by the Chair of the Board of Trustees and shall by them be counted as cast at that time and place. Said judges shall make return to the Board of Trustees of the persons for whom ballots have been cast, either by letter or by electors in person, with the number of votes for each person; and the Board of Trustees shall thereupon determine and declare what persons have been elected to fill the vacancies aforesaid. A plurality of votes only shall be required to elect and, in case of an equality of votes between two or more candidates, the person or persons who shall hold said office or offices of trustee shall be designated by ballot of the Board of Trustees.
- (11) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.
- (12) Electronic Notices and Voting. In order to be good stewards of the limited financial resources of the University, electronic mail may be used to communicate any required notices or other correspondence under this Order I and an electronic balloting and voting process may be used so long as reasonable accommodations are made to permit any qualified elector without access to electronic mail to participate in the election.

**ORDER II. PROCEDURES FOR THE ELECTION OF BUSINESS AND INDUSTRY TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for Business and Industry Trustees shall be composed of five seated Trustees (three Trustees representing business and industry endeavors excepting those standing for reelection; and two trustees from among those elected by the alumni, elected by agricultural associations, or appointed by the Governor). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, two candidates for membership on the Board of Trustees representing business and industry endeavors. The names and qualifications of the candidates shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidates only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board as a representative of business and industry. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop business and industry candidates may continue through the end of the month of June following the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of trustees representing business and industry endeavors shall be held at the May meeting of the Board of Trustees.

**ORDER III. PROCEDURES FOR THE ELECTION OF TRUSTEES BY AGRICULTURAL DELEGATES** (*see also the Charter and the Bylaws*)

The Charter of the Board of Trustees of The Pennsylvania State University provides for the election of six trustees who represent the organized agricultural societies or associations in the Commonwealth ("Agricultural Organizations").

- (1) Date of Election. Election for two members of the Board of Trustees representing agricultural interests shall be held each year on the Thursday prior to the day for the annual Spring Commencement, under the direction of two judges annually appointed for that purpose by the Chair of the Board of Trustees.
- (2) Delegates. Agricultural Organizations are not entitled to send delegates to participate in the election of Trustees unless they have at least fifteen (15) members in good standing and have been organized and in existence at least twelve (12) months preceding the election, and have duly notified the Secretary of the Board of Trustees of this fact at least sixty days prior to the election. Each Agricultural Organization is invited to send up to three delegates to participate in the election; provided, however, that if an Agricultural Organization has more than fifteen (15) members in good standing in more than one county, such Agricultural Organization may send up to three delegates from each such county and provided, further that the maximum number of delegates that may be sent by any Agricultural Organization to participate in the election shall be nine (9). Each Delegate must be a member of the Agricultural Organization that he or she represents. Employees of The Pennsylvania State University are not permitted to serve as delegates. The secretary or another authorized officer of each Agricultural Organization shall provide proof to the Secretary of the Board of Trustees, in form and substance satisfactory to the Secretary of the Board of Trustees, of the authority and eligibility of each delegate sent by such Agricultural Organization to participate in the election. No proxies are permitted.

- (3) Candidates. Each Candidate must be an active member of an Agricultural Organization. Individual candidates are invited to notify the Secretary of the Board of Trustees by February 25 of each year. The names of the candidates (along with a biographical sketch and position statement for each candidate, the agenda for the meeting, and the governance provisions for the election) will be distributed to the secretaries or other authorized officers of each Agricultural Organization whose contact information is on file with the Secretary of the Board of Trustees in advance of the election in order to better inform Agricultural Organization delegates.
- (4) Nominations. Nominations will be required for all trustee candidates on the day of the election. Nominations of additional candidates not included in the election mailing are also permitted.
- (5) Registration. The names of the delegates representing each Agricultural Organization must be provided by the secretary or another authorized officer of such Agricultural Organization to the Secretary of the Board of Trustees, in a form approved by the Secretary of the Board of Trustees, at least 30 days prior to the election. An Agricultural Organization may amend its submission after that time but in no event shall changes be accepted if received by the Secretary of the Board of Trustees after 4:00 p.m. on the Monday prior to the election. Delegates must present a valid Pennsylvania driver's license or some other form of photo identification acceptable to the Secretary of the Board of Trustees in order to participate in the election, and may be registered as a delegate of only one Agricultural Organization and in only one county.
- (6) Eligibility and Voting. Only those delegates in attendance and duly registered are permitted to participate in the election and voting. The following provisions also apply:
  - (i) Each county is permitted a maximum of three votes for the candidates.
  - (ii) If a county is represented by more than three delegates, a caucus is required to determine the three from their number who will represent the county.
  - (iii) If fewer than three delegates represent a county, the county is permitted only as many votes as there are delegates.
  - (iv) Each voter must vote for two nominated candidates. Any ballot indicating a vote for a single candidate shall not be counted.
- (7) Announcement of Results. The names of the winning candidates in the election shall be given publicity in the public press. The names of all candidates and the number of votes received by each shall be made available for publication.

**ORDER IV. PROCEDURES FOR THE ELECTION OF THE STUDENT TRUSTEE (see also the Charter and the Bylaws)**

- (1) The Selection Group on Board Membership for the Student Trustee shall be composed of eleven members (the incumbent Student Trustee, the President of the University Park Undergraduate Association, the President of the Graduate and Professional Student Association, the President of the Council of Commonwealth Student Governments and the President of the World Campus Student Government Association (the "Core Committee") plus six at-large undergraduate, graduate or professional student members selected by the Core Committee. The Selection Group shall recommend, in accordance with guidelines established by the Selection Group and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the student body of the University.<sup>1</sup>
- (2) Three trustees to be appointed by the Chair of the Board of Trustees (including the incumbent Student Trustee) shall interview the preferred candidate (and, if necessary, any alternate candidates) and shall forward the recommended candidate's name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Selection Group unless issues with the recommended candidate's background check, student conduct issues, academic standing issues or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Selection Group shall treat as confidential the identities of all candidates.
- (4) The election of the Student Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER V. PROCEDURES FOR THE ELECTION OF THE ACADEMIC TRUSTEE (see also the Charter and the Bylaws)**

- (1) The University Faculty Senate shall recommend, in accordance with procedures and guidelines established by the Faculty Senate and approved by the Committee on Governance and Long Range Planning of the Board of Trustees from time to time, a preferred candidate for membership on the Board of Trustees representing the faculty of the University.<sup>2</sup>

---

<sup>1</sup> The Guidelines provide that the Selection Group would identify a preferred candidate and two ranked candidates.

<sup>2</sup> The Guidelines provide that the Faculty Senate would identify a preferred candidate and two ranked candidates.

- (2) Three trustees to be appointed by the Chair of the Board of Trustees shall interview the preferred candidate (and, if necessary, the alternate candidates) and shall forward the recommended candidate's name to the Committee on Governance and Long Range Planning of the Board of Trustees, which shall make a recommendation to the Board of Trustees.
- (3) The name and qualifications of the candidate recommended by the Committee on Governance and Long Range Planning shall be submitted for confirmation by the Board of Trustees (for approval or rejection of the recommended candidate only). It is expected that the Committee on Governance and Long Range Planning would recommend, and the Board of Trustees would approve, the candidate recommended by the Faculty Senate unless issues with the recommended candidate's background check or other issues arise or exist that in the opinion of the Board of Trustees would make the preferred candidate unsuitable for service on the Board of Trustees. The Faculty Senate shall treat as confidential the identities of all candidates.
- (4) The election of the Academic Trustee shall be held at the May meeting of the Board of Trustees.

**ORDER VI. PROCEDURES FOR THE ELECTION OF AT-LARGE TRUSTEES (see also *the Charter and the Bylaws*)**

The Selection Group on Board Membership for At-Large Trustees shall be composed of five seated Trustees (one Trustee elected by the alumni, one Trustee representing business and industry endeavors, one Trustee elected by agricultural associations, one Trustee appointed by the Governor, and one Trustee from among the group of the Student Trustee, the Academic Trustee, the Trustee serving ex officio by virtue of his or her past presidency of the Penn State Alumni Association and the At-Large Trustees, if any). The Selection Group, the membership of which shall be disclosed to the Board of Trustees, shall be appointed annually in July by the Chair of the Board of Trustees for the purpose of recommending, in accordance with guidelines established by the Board of Trustees from time to time, a candidate for at-large membership on the Board of Trustees. The name and qualifications of the candidate shall be submitted for confirmation by the Board of Trustees (for approval or rejection of recommended candidate only).

The Office of the Board of Trustees shall annually announce to the full Board the opportunity to nominate candidates for consideration by the Selection Group, and shall afford the full Board at least thirty days to submit such nominations in advance of the Selection Group's deliberations. In addition to nominations received from individual trustees, the Selection Group may cultivate additional candidates, including persons nominated in previous years for membership on the Board. The Selection Group and any trustee submitting a nomination shall treat as confidential the identity of nominees. The Selection Group's efforts to develop trustee candidates may continue through the end of the year of its appointment.

The Board of Trustees shall publicly report the number (but not the names) of candidates considered by the Selection Group.

The election of at-large trustees shall be held at the May meeting of the Board of Trustees.

**ORDER VII. RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES**

- (1) Meetings Open to the Public. A meeting of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be open to the public as required by applicable law.
- (2) Annual Public Notice of All Meetings. Public notice of the date, time, and place of all regularly scheduled public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees for the calendar year shall be published annually in all daily newspapers of general circulation published in Centre County, and in at least one daily newspaper of general circulation in Pennsylvania, as required by law. Such notice for public meetings at locations other than University Park shall be published in a daily newspaper of general circulation in the political subdivision in which such meetings are to be held. Notice of all regularly scheduled public meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (3) Public Notice of Individual Meetings. Public notice of the date, time, and place of each regular meeting shall be given and published in the daily newspapers of general circulation as indicated above, at least three days prior to the time of each regularly scheduled meeting, and at least twenty-four hours prior to the time of the meeting in the case of special or rescheduled meetings. This provision shall not apply in case of a meeting called to deal with an emergency involving a clear and present danger to life or property. Notice of all special meetings shall also be posted on the University's website at the same time as such notice is published in the newspaper.
- (4) Posting of Notices. Notice of all public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be posted at the offices of the Secretary of the Board of Trustees at University Park, Pennsylvania, as required by law.
- (5) News Media Notices. Notice of the date, time, and place of meetings shall be furnished on request to any newspaper publishing in the political subdivision in which the meeting will be held and to any radio and television station which regularly broadcasts into the political subdivision (Centre County in the case of meetings at University Park).

- (6) Notice to Others. Notice of meetings shall also be furnished to anyone providing a stamped, self-addressed envelope prior to the meeting.
- (7) Meeting Room. Except for telephonic meetings, public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be held in a room large enough to accommodate the members of the Board of Trustees, officers of the University, and invited guests. Space shall also be available for up to twenty-five visitors, including representatives of the news media, on a first-come, first-served basis. The room will be opened one-half hour prior to the starting time of the meeting.
- (8) Arrangements for News Media Area and Press Conferences. An area in the meeting room shall be designated by the University for use by the press and other news media, subject to such rules and regulations as the University may adopt. To further facilitate communications between the Board and the public, the Chair of the Board of Trustees and/or the President of the University shall hold press conferences as necessary following meetings of the Board of Trustees.
- (9) Visitors to the Meetings. Visitors to the meetings, including representatives of the news media, shall be present as observers, and not as participants. Any form of participation including speaking, the presentation of petitions, and the display of banners, posters, and other forms of signs is prohibited. This rule does not apply to guests invited by the Chair of the Board of Trustees or the President of the University.
  - (a) The Chair of the Board of Trustees or the President of the University shall be authorized to invite non-voting faculty representatives, non-voting student representatives or other constituent representatives to attend and participate in the meetings of standing committees, subcommittees and of special committees, except executive sessions. The representatives shall be selected by the Chair of the Board of Trustees in such manner as he/she deems appropriate.
  - (b) Public Comment
    - (i) The Board of Trustees welcomes the opportunity for expression of public views on issues before the Board. To accommodate such expression the Board shall reserve a portion of its regular meeting cycle for individuals who wish to address the Board.
    - (ii) All persons wishing to speak must preregister by completing a Request to Address form and submit it to the Office of the Secretary of the Board of Trustees no later than 9:00 a.m. on the Wednesday preceding the meeting. The Secretary of the Board of Trustees will review this request and notify the person making the request whether he/she may give public comment at such meeting. The Board will allow up to thirty minutes for public comment per meeting. An individual speaker will be

permitted up to three minutes for a presentation. This will be strictly adhered to with assistance of a timekeeper. Thus, a maximum of ten speakers will be scheduled for each Board meeting.

- (iii) When the number of requests to address the Board of Trustees at a given session exceeds the time available, requests will be approved based on the date the written request was received by the Secretary of the Board. In addition, preference will be given to subject matters that relate to the agenda for the relevant Board meeting and to avoid repetitiveness.
  - (iv) The exact time of the public comment period will be set by the Chair of the Board, after consideration of the number of speakers and other matters on the Board's agenda. All public comments will be recorded.
  - (v) The Board will not hear presentations that include, in whole or in part, the following topics: the employment status of any specific individual; statements concerning the private activities, lifestyles or beliefs of any specific individual employed by or associated with the University; or grievances relating to any individual student or employee. In addition, the Board will not entertain requests to participate in the public comment period by a party to any pending or threatened litigation or any administrative or other proceeding to which the University is a party, or by legal counsel for such party.
  - (vi) Speakers who comply with the Board's rules will have their remarks archived and made available on the Board's website, with such posting to be made as soon as practicable. Remarks by speakers who do not comply with the Board's rules will not be archived or made available on the Board's website. The decision on whether a speaker has or has not complied with the Board's rules will be made by the Chair of the Board, in consultation with the Secretary of the Board and the Chair of the Committee on Outreach, Development and Community Relations.
  - (vii) The Chair of the Board of Trustees shall have the authority to modify the provisions of this subsection (b) in his or her discretion to permit additional speakers, extend the public comment session and to make such other accommodations as may be necessary or advisable in his or her opinion to achieve the purposes of the public comment period.
- (10) Photographic and Recording Equipment. Visitors to the meeting, including representatives of the news media, shall be allowed to use battery-operated audio tape recorders, television cameras and photographic equipment subject to the following regulations:
- (a) A designated area in the meeting room shall be used by all visitors to the meeting using television cameras or photographic equipment.

- (b) Television cameras and related equipment shall be allowed entry into the meeting room for set up purposes during the one-half hour period prior to the starting time of the morning and afternoon meetings. Television cameras and related equipment shall not be allowed entry into the meeting room after the starting time of the meeting, except during the course of a meeting recess, in which event entry will be permitted.
  - (c) Television cameras and photographic equipment shall be required to use available light during the meeting. Artificial lighting and flashes shall not be used during the meeting.
  - (d) No voice-over broadcasting shall be permitted during the meeting.
- (11) Procedures for Committee Meetings and Board Meetings. In conducting the business of the Board of Trustees, its Standing Committees, and its Special Committees, the procedures for the meetings of the Standing Committees and the Special Committees shall provide for full discussion of both information and action items. Following discussion of action items, Standing Committees will vote to recommend an action to the Board of Trustees. Subcommittees and Special committees recommend action to Standing Committees, except as specifically authorized by the Board of Trustees. The Board of Trustees meeting will be devoted primarily to (a) taking formal action on committee and subcommittee recommendations as a block, with Board members having the opportunity to raise questions concerning any of the recommended action items and to call for a separate vote on a given item; (b) considering and acting upon matters which have not come to the Board through a Standing Committee; and (c) receiving the report of the President of the University. The vote of each member of the Board or of a committee on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of a roll call vote, recorded. From time to time, the Board of Trustees, executive committee, standing committees and subcommittees may hold conferences, which need not be open to the public, for the purposes of providing training and information to Trustees on matters directly related to their official responsibilities; provided, however, that no “deliberations” (as defined in the Pennsylvania Sunshine Law) of University business may occur at a conference.
- (12) Agenda for the Meetings. The agenda and supporting material for public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees shall be available to the public (both in hard copy at the meeting and online) at the time of the meetings. In addition to making available to the public at the time of the meeting the agenda and supporting material, the University will make available five days in advance of the meeting an agenda of items to be considered with a note that the agenda of items is subject to change without notice prior to the meeting.

- (13) Executive Sessions. The Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees may hold executive sessions as permitted by applicable law. Attendance at executive sessions shall be limited to voting members of the Board of Trustees, its Executive Committee, its Standing Committees, Subcommittees and its Special Committees, as the case may be, unless the presiding officer of the Board or of such Executive Committee, Standing Committee, Subcommittee or Special Committee otherwise directs.
- (14) Maintaining Order. The presiding officer at public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall have the authority to maintain order during the public meeting. Any person who, in the opinion of the presiding officer, prevents, disturbs, or interrupts a public meeting may be requested to leave the public meeting, and, upon failure to comply, may be subject to forcible removal and/or arrest for violation of applicable law.
- (15) Minutes of Public Meetings. The minutes of public meetings of the Board of Trustees, its Executive Committee, its Standing Committees, its Subcommittees and its Special Committees shall be available for inspection and copying during regular business hours at the office of the Secretary of the Board of Trustees. A copy of minutes of public meetings shall be available to a member of the public upon payment of the reasonable cost of reproduction.
- (16) Revisions in the Rules and Regulations for Public Meetings. The Board of Trustees will periodically review the Rules and Regulations for the Conduct of Public Meetings and make such revisions as experience indicates are appropriate and desirable.

## **ORDER VIII. GOVERNANCE OF THE UNIVERSITY**

- (1) Role of the Board of Trustees in University Governance
  - (a) Guiding Policies. In the exercise of its responsibilities, the Board of Trustees shall be guided by the following policies:
    - (i) Delegation of authority. As set forth in the Bylaws, the authority for day-to-day management and control of the University, and the establishment of policies and procedures for the educational program and other operations of the University, is delegated to the President of the University, and by him or her either by delegation to or consultation with the faculty and the student body in accordance with a general directive of the Board of Trustees.
    - (ii) Advisor to the President. It is the duty of the Board of Trustees to advise the President on any University matter.
  - (b) Responsibility to Inform the Citizens of Pennsylvania. The Board of Trustees shall inform the citizens of the Commonwealth of Pennsylvania of

the University's performance of its role in the education of the youth of Pennsylvania.

- (c) Responsibility for Development of Effective Relationships. The Board of Trustees shall assist the President in the development of effective relationships between the University and the various agencies of the Commonwealth of Pennsylvania and the United States of America which provide to the University assistance and direction.
- (d) Expectations of Membership. In exercising the responsibilities of trusteeship, the Board of Trustees is guided by the expectations of membership, each of which is equally important. It is expected that each Trustee will:
  - (i) Understand and support the University's mission, vision, and values;
  - (ii) Act in good faith at all times and in the best interests of the University, maintain independence from external stakeholders and act without regard to the manner in which such Trustee was appointed or elected to the Board of Trustees;
  - (iii) Make the University a top philanthropic priority to the very best of one's personal ability and fulfill on a timely basis all financial obligations and pledges of support to the University;
  - (iv) Prepare diligently, attend faithfully, and participate constructively in all Board of Trustees meetings and related activities by reading the agenda and supporting materials;
  - (v) Speak openly, freely and candidly within the Board, while being mindful that any public dissent from Board decisions must be done in the context of being trusted stewards of a public institution. Because a University is a free marketplace of competing ideas and opinions, its governance mandates open communication as well as principled, civil and respectful debate. At the same time, trustees must always protect and act in the best interest of the University, being cognizant that the tone and substance of their words reflect on the University that they are dedicated to serve and have consequences on its overall wellbeing.
  - (vi) Make decisions and instruct the administration collectively as the governing body of the University; it being recognized and understood that unless specifically authorized by the Board or the Chair, no individual trustee has the authority to direct administrators with respect to the performance of their duties for the University or to otherwise act on behalf of the University or the Board;

- (vii) Participate regularly in events that are integral parts of the life of the University community;
- (viii) Disclose promptly and fully any potential or actual conflicts of interest in accordance with the Board's conflict of interest policies, and personally maintain exemplary ethical standards;
- (ix) Refrain from requests of the President or staff for special consideration or personal prerogatives, including admissions, employment, and contracts for business;
- (x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose "confidential information" includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;
- (xi) Advocate the University's interests, but speak for the Board or the University only when authorized to do so by the Board or the Chair; it being recognized and understood that it is important for the Board of Trustees to convey a consistent message and that the Chair of the Board of Trustees or his or her designee serves as the spokesperson for the Board;
- (xii) Respect University policies relating to the acquisition of information and communication; it being recognized and understood that all such information should be used only for purpose consistent with such Trustee's duties and responsibilities to the University; and
- (xiii) Extend goodwill to one another and to all members of the University community.

Regular attendance at meetings by members of the Board is expected. If a member of the Board is unable to attend at least four of the six scheduled meetings each year, such Board member should discuss with the Chair of the Board of Trustees the question of his or her ability to continue attendance appropriate to a Trustee.

For violation of the Board's expectations of membership as set forth in Standing Order VIII(1)(d), the chair of the Board, in consultation with the Board's vice-chair, shall have the discretion to take any or all of the following actions:

1. Remove a trustee from any Board leadership position, including the positions of chair or vice-chair of any committee or subcommittee;

2. Remove a trustee from any committee, subcommittee or other Board assignment;
3. Pursue the adoption of a full Board resolution, or publicly issue a letter from the chair, censuring the offending trustee;
4. Privately issue a letter of censure with or without notice to the Board; in the case of a private letter of censure with notice to the Board, the letter would be confidential, and Board members would be requested to maintain the confidentiality of the communication; and/or
5. Discuss the breach with the offending trustee and without notice to the Board.

Before taking any of the above-described actions (1) – (3), the chair of the Board shall also consult with the chair and vice-chair of the Committee on Governance and Long-Range Planning and, in the case of an action described in (2) above, with the chair of any affected Committee. In the event that the chair or vice chair of the Board, the chair or vice chair of the Committee on Governance and Long-Range Planning or the chair of any affected Committee is the subject of the action to be taken, such individual would be recused from participating in any such consultation.

Additionally, before taking any of the above-described actions, the chair and vice-chair of the Board shall communicate with the offending trustee to specify the nature of the perceived offense, to clarify the expectations of Board leadership, and to provide an opportunity for the trustee to explain his/her actions and otherwise respond to the alleged violation. In deciding whether to impose a sanction for violation the expectations of membership, the Board chair shall take into account the position of the trustee charged with the violation, and shall also consider whether the violation is a first-time, or repeated, offense, the public or private nature of the offense and the severity of the injury or potential injury to the Board or the university arising from the violation.

The imposition of any sanctions hereunder for violation of the Board's expectations of membership shall not inhibit the capacity of the Board to remove a trustee pursuant to §2.03 of the Bylaws for any misconduct that constitutes a breach of a trustee's fiduciary duties.

- (e) Final Responsibility of the Board. The Board of Trustees is the final repository of all legal responsibility and authority to govern the University, under the laws of Pennsylvania. It can delegate but it cannot abandon this

responsibility and authority. The Board has the responsibility and duty to direct all organizations and persons participating in governing the University, whether such participation be in the establishment of policies, rules, and regulations, or in the administration of such policies, rules, and regulations. In order to perform this responsibility and duty, and consistent with the Charter, the Board of Trustees hereby directs that governing of the University henceforth be conducted in accordance with the following general plan of organization.

(2) Internal Governance

- (a) What Internal Governance Is Concerned With. This plan of organization concerns only the internal governance of the University. It is not concerned with the operation of the Board of Trustees, with the functions of the officers of the corporation, or with the establishment of financial policy and fiscal and budgetary controls, which matters are the responsibility of the Board of Trustees, the President, and the Treasurer in accordance with established policy.
- (b) Who Performed By. The internal governance of the University shall be performed by the President and his or her administration, by the faculty, and by the student body in accordance with the delegations of authority and advisory roles hereinafter set forth.

(3) Faculty

- (a) Responsibilities. The faculty, as appropriately organized, pursuant to delegation from the President, and subject to the revisions and orders of the President, shall establish policy concerning the approval and supervision of the instructional programs including courses and curricula, academic admissions standards, graduation requirements, and scholarships and honors.
- (b) Consultation by the President. The faculty shall be consulted by the President concerning student affairs, educational policy and planning, academic personnel, and any other matter upon the request of the President.
- (c) Communication with the Board. Official faculty communication to the Board of Trustees shall be made through the President and through faculty participation on the standing committees.
- (d) Regular Meetings. In furtherance of the objective of appropriate communication among the faculty, the administration and the Board of Trustees, a meeting will be held at least once per semester, attended by the President, the Provost and the Vice President for Administration, the Chair, Chair-Elect and Secretary of the Faculty Senate and the Chair and Vice Chair of the Board of Trustees. Any of such individuals may initiate agenda items for any such meeting.

- (4) Student Body
  - (a) Consultation by the President. The student body shall be consulted by the President concerning the establishment of policy for student affairs.
  - (b) Communication with the Board. Official student communication to the Board of Trustees shall be made through the President and through student participation on the standing committees.
  - (c) Participation in the Deliberations of the Faculty. Students may also participate in an appropriate manner in the deliberations of the faculty subject to the revisions and orders of the President.

#### **ORDER IX. TRUSTEES EMERITI**

- (1) Granting the Status of Trustee Emeritus to Former Members of the Board. The status of Trustee Emeritus shall be reserved for any living former member of the Board of Trustees who has served as a board member for six years or more with distinction. Trustee shall be eligible for consideration to receive such status immediately upon retirement from active service on the Board of Trustees. The Committee on Governance and Long-Range Planning shall review the service of a Trustee upon such Trustee's retirement and shall make a recommendation to the Board of Trustees. Criteria to be considered by the Committee shall include offices held, attendance record, participation in the activities of the Board, length of service, or other significant contributions to the governance of the University. The Committee may also take into account the Trustee's fulfillment of the Board's expectations of membership as set forth in these Standing Orders. Each former Chair of the Board of Trustees will be entitled to automatic trustee emeritus status upon retirement or resignation.
- (2) The election of Trustees Emeriti will be held at the September meeting of the Board of Trustees.
- (3) The status of Trustee Emeritus shall be applicable for a term of six years. At the end of such six year period, individuals who have been granted Trustee Emeritus status shall retain the title and may be invited to continue to participate in University activities and events at the discretion of the Chair of the Board of Trustees. All other privileges associated with the status of Trustee Emeritus shall expire.
- (4) Individuals with the status of Trustee Emeritus shall be invited to attend public meetings of the Board of Trustees and Standing Committees thereof and may participate at the discretion of the presiding officer of such meeting. Trustees Emeriti shall not have the right to attend executive sessions of the Board of Trustees or any Standing Committees thereof or to attend any portion of any meeting at which attorney-client privileged discussions are held unless the presiding officer of such session determines, after consultation with counsel, that such attendance is appropriate and advisable. Trustees Emeriti shall receive or be given access to documents and other materials that are made public, and may receive or have access

to the University's confidential, proprietary or attorney-client privileged materials at the discretion of the presiding officer of the meeting at which such materials are to be discussed.

- (5) Trustees Emeriti may be appointed by the Chair of the Board of Trustees, at the Chair's discretion, to serve as non-voting members of certain Standing Committees or ad hoc committees.
- (6) At the discretion of the Chair of the Board of Trustees, Trustees Emeriti shall be invited to participate in University events and activities, to serve as an advisor or mentor, to consult on University matters and/or to serve the University in such other capacities as the Chair may determine are advisable and appropriate.
- (7) The University shall reimburse Trustees Emeriti for reasonable expenses associated with service as Trustees Emeriti in accordance with policies applicable to the Board of Trustees from time to time.

#### **ORDER X. PROCESS REGARDING THE APPOINTMENT OF VICE PRESIDENTS AND DEANS**

The following process will be followed in connection with the search for, and appointment of, Vice Presidents and Deans.

- (1) Members of the Board of Trustees will be notified in writing by the President or his or her designee when a vacancy occurs. This notification shall include:
  - a. Position description/advertisement.
  - b. Roster of search committee members.
  - c. Information about any search firm engaged to assist in the search.
  - d. A description of the search process, the projected timeline and a tentative interview schedule.
- (2) When a successful finalist has been chosen, the Executive Committee of the Board of Trustees will be notified and sent the application materials of the candidate, a summary of the interview feedback and any other relevant materials, as determined by the President or the Executive Vice President and Provost.
- (3) The notice to the Executive Committee members will specify a date by which the members of the Executive Committee shall have an opportunity to express any concerns to the President. If there are no concerns, the University may proceed with the hiring and announcement of the candidate and shall introduce the hire at the next meeting of the Board of Trustees. If any Executive Committee expresses a concern with respect to a candidate, a conference call will be held at which Executive Committee members may express their concerns and discuss any issues with the President.

- (4) The process set forth in this Standing Order X shall not be applicable to the Vice President and General Counsel. The appointment and removal of the Vice President and General Counsel shall remain subject to approval by the Board of Trustees as set forth in the Bylaws.

# OOR Exhibit 16

**From:** [Edris, Angela](#)  
**To:** [Grosse, Natalie V](#)  
**Cc:** [Kuren, Marija](#); [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org); [Mroz, Kelly Ann](#)  
**Subject:** AP 2023-1520, Massey v. Pennsylvania Department of Agriculture; Request to Participate  
**Date:** Monday, July 24, 2023 11:00:00 PM  
**Attachments:** [image003.png](#)

---

Attorney Grosse, the Request to Participate filed on behalf of the Pennsylvania State University is granted and the submission filed by the University will be incorporated into the appeal record.

To the extent that the University requires additional time to file any additional information in support of its position, please advise. In the next day or two, you will receive information explaining how to access the OOR's appeal portal where any future correspondence or submissions concerning this matter can be filed.

Mr. Massey and Attorney Kuren, to the extent you wish to have any time to file a response to the University's submission, please let me know.

Thank you for your time and attention in this regard.

Sincerely,



**Angela Edris**  
Attorney  
Pennsylvania Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
[\(717\) 346-9903](tel:7173469903) | [Fax \(717\) 425-5343](tel:7174255343)  
<https://openrecords.pa.gov>  
[@OpenRecordsPA](#)

---

**From:** Grosse, Natalie V <nvg5267@psu.edu>  
**Sent:** Monday, July 24, 2023 3:28 PM  
**To:** Edris, Angela <aedris@pa.gov>  
**Cc:** Kuren, Marija <mkuren@pa.gov>; wmassey@spotlightpa.org; Mroz, Kelly Ann <kxs171@psu.edu>  
**Subject:** [External] Dkt. AP 2023-1520, Massey v. Pennsylvania Department of Agriculture; Request to Participate

**ATTENTION:** *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Dear Appeals Officer Edris:

On behalf of The Pennsylvania State University, please find the attached Request to Participate

in the above referenced appeal as an interested party. The filing includes the University's Position Statement, should the Request to Participate be granted. I have entered my appearance on behalf of the University via the online form and uploaded a copy of that request through that system as well. The parties are copied on this email in compliance with service requirements.

Should you have any questions regarding this filing or require additional information, please do not hesitate to contact me.

Sincerely,  
Natalie Voris Grosse

[Natalie Voris Grosse](#) | Associate General Counsel

The Pennsylvania State University

Office of the General Counsel

227 West Beaver Avenue, Suite 507 | State College, PA 16801

Phone: 814-867-5332 | [nvg5267@psu.edu](mailto:nvg5267@psu.edu) | Fax: 814-863-8469

*IMPORTANT WARNING: This message and its attachments may contain information that is confidential, privileged, or otherwise protected from disclosure. Do not distribute, forward, or retransmit without the prior approval of the sender. If you are not the intended recipient, you are prohibited from disclosing, printing, distributing, or saving this message. If you have received this message in error, please delete all electronic copies of this message (including any and all attachments), destroy any hard copies you may have created, and notify me immediately by replying to this email. Thank you.*

# OOR Exhibit 17

**From:** [Kuren, Marija](#)  
**To:** [Edris, Angela](#); [Grosse, Natalie V](#)  
**Cc:** [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org); [Mroz, Kelly Ann](#)  
**Subject:** RE: AP 2023-1520, Massey v. Pennsylvania Department of Agriculture; Request to Participate  
**Date:** Tuesday, July 25, 2023 7:20:20 AM  
**Attachments:** [image001.png](#)

---

PDA does not wish to reply to the University's submission.

Thank you  
Marija

**Marija K. Kuren** | Assistant Counsel  
Pennsylvania Department of Agriculture  
Governor's Office of General Counsel  
2301 North Cameron Street | Harrisburg PA 17110  
Direct Line: 717.724.6991 | Office: 717.787.8744  
Fax: 717.787.1270  
[www.agriculture.pa.gov](http://www.agriculture.pa.gov)

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION.** Do not forward or distribute this e-mail to persons other than the listed recipients.

*The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.*

---

**From:** Edris, Angela <aedris@pa.gov>  
**Sent:** Monday, July 24, 2023 11:01 PM  
**To:** Grosse, Natalie V <nvg5267@psu.edu>  
**Cc:** Kuren, Marija <mkuren@pa.gov>; [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org); Mroz, Kelly Ann <kxs171@psu.edu>  
**Subject:** AP 2023-1520, Massey v. Pennsylvania Department of Agriculture; Request to Participate

Attorney Grosse, the Request to Participate filed on behalf of the Pennsylvania State University is granted and the submission filed by the University will be incorporated into the appeal record.

To the extent that the University requires additional time to file any additional information in support of its position, please advise. In the next day or two, you will receive information explaining how to access the OOR's appeal portal where any future correspondence or submissions concerning this matter can be filed.

Mr. Massey and Attorney Kuren, to the extent you wish to have any time to file a response to the University's submission, please let me know.

Thank you for your time and attention in this regard.

Sincerely,



**Angela Edris**  
Attorney  
Pennsylvania Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
[\(717\) 346-9903](tel:(717)346-9903) | [Fax \(717\) 425-5343](tel:(717)425-5343)  
<https://openrecords.pa.gov>  
[@OpenRecordsPA](#)

---

**From:** Grosse, Natalie V <[nvg5267@psu.edu](mailto:nvg5267@psu.edu)>  
**Sent:** Monday, July 24, 2023 3:28 PM  
**To:** Edris, Angela <[aedris@pa.gov](mailto:aedris@pa.gov)>  
**Cc:** Kuren, Marija <[mkuren@pa.gov](mailto:mkuren@pa.gov)>; [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org); Mroz, Kelly Ann <[kxs171@psu.edu](mailto:kxs171@psu.edu)>  
**Subject:** [External] Dkt. AP 2023-1520, Massey v. Pennsylvania Department of Agriculture; Request to Participate

***ATTENTION:*** *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Dear Appeals Officer Edris:

On behalf of The Pennsylvania State University, please find the attached Request to Participate in the above referenced appeal as an interested party. The filing includes the University's Position Statement, should the Request to Participate be granted. I have entered my appearance on behalf of the University via the online form and uploaded a copy of that request through that system as well. The parties are copied on this email in compliance with service requirements.

Should you have any questions regarding this filing or require additional information, please do not hesitate to contact me.

Sincerely,  
Natalie Voris Grosse

The Pennsylvania State University  
Office of the General Counsel  
227 West Beaver Avenue, Suite 507 | State College, PA 16801  
Phone: 814-867-5332 | [nvg5267@psu.edu](mailto:nvg5267@psu.edu) | Fax: 814-863-8469

*IMPORTANT WARNING: This message and its attachments may contain information that is confidential, privileged, or otherwise protected from disclosure. Do not distribute, forward, or retransmit without the prior approval of the sender. If you are not the intended recipient, you are prohibited from disclosing, printing, distributing, or saving this message. If you have received this message in error, please delete all electronic copies of this message (including any and all attachments), destroy any hard copies you may have created, and notify me immediately by replying to this email. Thank you.*

# OOR Exhibit 18

August 29, 2023

**Via E-File Portal Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue  
#331  
State College, PA 16801  
wmassey@spotlightpa.org

**Via E-File Only:**

Marija K Kuren, Esq.  
Susan West, AORO  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: Massey and Spotlight PA v. Pennsylvania Department of Agriculture; OOR Dkt.  
AP 2023-1520**

Dear Mr. Massey:

I am in need of some additional time to carefully review this matter. Would you be agreeable to extending the OOR's deadline to issue its Final Determination for an additional 10 business days until September 19, 2023? Please advise as soon as possible.

Thank you kindly for your consideration.

Sincerely,

*/s/ Angela Edris*

Angela Edris

cc via E-file: Natalie Grosse, Esq., (Counsel for the Direct Interest Participant)

August 30, 2023

**Via E-File Portal Only:**

Marija K Kuren, Esq.  
Susan West, AORO  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: Massey and Spotlight PA v. Pennsylvania Department of Agriculture; OOR Dkt. AP  
2023-1520**

To the Pennsylvania Office of Open Records:

I write in regards to the August 29, 2023 correspondence from Angela Edris of the Pennsylvania Office of Open Records regarding an extension of the deadline on this case to September 19, 2023.

This extension for a deadline of September 19, 2023 is agreeable with me.

Thank you.

Wyatt Massey  
Spotlight PA

*cc via E-file Portal: Natalie Grosse, Esq., (Counsel for the Direct Interest Participant)*

August 30, 2023

**Via E-File Portal Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue  
#331  
State College, PA 16801  
wmassey@spotlightpa.org

**Via E-File Only:**

Marija K Kuren, Esq.  
Susan West, AORO  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: Massey and Spotlight PA v. Pennsylvania Department of Agriculture; OOR Dkt. AP 2023-1520 - Extension Request Confirmation**

Dear Mr. Massey:

Thank you for your response and cooperation. Per your agreement, the OOR's deadline to issue a Final Determination in this matter is now extended to September 19, 2023.

The time and patience of both parties and the direct interest participant is sincerely appreciated.

Thank you.

Sincerely,

*/s/ Angela Edris*

Angela Edris

cc: Natalie Grosse, Esq. (Counsel for the Direct Interest Participant)

# OOR Exhibit 19

September 14, 2023

**Via E-File Portal Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue  
#331  
State College, PA 16801  
wmassey@spotlightpa.org

Natalie Grosse  
PennState  
227 West Beaver Avenue  
Suite 507  
State College, PA 16801  
nvg5267@psu.edu

**Via E-File Portal Only:**

Marija K Kuren, Esq.  
Susan West, AORO  
Agency Open Records Officer  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: Massey and Spotlight PA v. Pennsylvania Department of Agriculture; OOR Dkt. AP 2023-1520**

Dear Mr. Massey:

During the course of this appeal, the Department provided a 65-page document to you which it believes is responsive to your Request. Certain information in the document provided was redacted. The Department and PSU maintain that the redacted information is exempt under Section 708(b)(11) of the RTKL, which protects confidential proprietary information from disclosure.

Could you please advise whether you are challenging the redactions in that document as part of your appeal? If so, the OOR wishes to obtain additional information about the information redacted. In order to do that, I will need a little more time to obtain the information and complete my review of this matter.

Please advise whether you wish to challenge the redactions in the document provided by the Department, and if so, whether you would be agreeable to an extension of time until October 6, 2023 for the OOR to issue a Final Determination in this matter?

Thank you kindly for your time and attention in this regard.

Sincerely,

*/s/ Angela Edris*

Angela Edris

# OOR Exhibit 20

September 18, 2023

**Via E-File Portal Only:**

Marija K Kuren, Esq.  
Susan West, AORO  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

Natalie Voris Grosse  
Pennsylvania State University  
227 West Beaver Avenue Suite 507  
State College, PA 16801  
nvg5267@psu.edu

**RE: Massey and Spotlight PA v. Pennsylvania Department of Agriculture; OOR Dkt. AP 2023-1520**

To the Pennsylvania Office of Open Records:

I am writing in regards to the September 14, 2023 correspondence from Angela Edris of the Pennsylvania Office of Open Records regarding a 65-page document sent to me by the Department of Agriculture and redacted under Section 708(b)(11) of the RTKL.

Upon further review of the document, I am asking OOR to please review the redactions made under Section 708(b)(11) of the RTKL on the following pages: 28, 29, 30, 31, 39, 43, and 44.

Given the additional work required by this request, the extension of the deadline to October 6, 2023 is agreeable with me.

Thank you.

Wyatt Massey  
Spotlight PA

*cc via E-file Portal: Natalie Grosse, Esq., (Counsel for the Direct Interest Participant)*

# OOR Exhibit 21

September 18, 2023

**Via E-File Portal Only:**

Wyatt Massey  
Spotlight PA  
210 W. Hamilton Avenue  
#331  
State College, PA 16801  
wmassey@spotlightpa.org

Natalie Grosse, Esq.  
PennState  
227 West Beaver Avenue  
Suite 507  
State College, PA 16801  
nvg5267@psu.edu

**Via E-File Portal Only:**

Marija K Kuren, Esq.  
Susan West, AORO  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408  
ra-ag-rtk@pa.gov  
mkuren@pa.gov

**RE: Massey and Spotlight PA v. Pennsylvania Department of Agriculture; OOR Dkt. AP 2023-1520**

Dear Mr. Massey:

Thank you for your correspondence and cooperation. The OOR's deadline to issue its Final Determination is now extended to October 6, 2023.

Dear Attorney Kuren and Attorney Grosse,

The Department and PennState argue that the redactions made to the 65-page responsive document produced during this appeal conceal information that is exempt under Section 708(b)(11) of the RTKL. Specifically, it is argued that the redacted information is confidential proprietary information. Please provide evidence in support of your argument and explain how Section 708(b)(11) of the RTKL applies to the redactions. Any statements of fact should be provided in a sworn affidavit or attestation. Please file a response to this inquiry by **Tuesday, September 26, 2023**.

Should either party have any questions or concerns, please let me know.

Thank you for your time and attention in this regard.

Sincerely,

*/s/ Angela Edris*

Angela Edris

# OOR Exhibit 22

**From:** [Grosse, Natalie V](#)  
**To:** [Edris, Angela](#)  
**Cc:** [Kuren, Marija](#); [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org); [Mroz, Kelly Ann](#)  
**Subject:** [External] Dkt. AP 2023-1520, Massey v. Pennsylvania Department of Agriculture; Requested supplemental information  
**Date:** Monday, September 25, 2023 11:52:41 AM  
**Attachments:** [PSU Supplemental Information OOR Dkt 2023-1520.pdf](#)

---

**ATTENTION:** *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Dear Appeals Officer Edris:

On behalf of The Pennsylvania State University, please find the attached requested supplemental information regarding redactions that were applied to materials produced in the OOR Dkt. AP 2023-1520 matter. The filing includes a cover letter and a sworn affidavit by Sara F. Thorndike, the University's Senior Vice President for Finance & Business/Treasurer/Chief Financial Officer. The parties are copied on this email and the original affidavit will be mailed to you.

Should you have any questions regarding this filing or require additional information, please do not hesitate to contact me.

Sincerely,  
Natalie Voris Grosse

[Natalie Voris Grosse](#) | [Associate General Counsel](#)  
The Pennsylvania State University  
Office of the General Counsel  
227 West Beaver Avenue, Suite 507 | State College, PA 16801  
Phone: 814-867-5332 | [nvg5267@psu.edu](mailto:nvg5267@psu.edu) | Fax: 814-863-8469

*IMPORTANT WARNING: This message and its attachments may contain information that is confidential, privileged, or otherwise protected from disclosure. Do not distribute, forward, or retransmit without the prior approval of the sender. If you are not the intended recipient, you are prohibited from disclosing, printing, distributing, or saving this message. If you have received this message in error, please delete all electronic copies of this message (including any and all attachments), destroy any hard copies you may have created, and notify me immediately by replying to this email. Thank you.*



**PennState**

**Natalie Voris Grosse**  
Associate General Counsel  
Office of General Counsel  
The Pennsylvania State University  
227 West Beaver Avenue, Suite 507  
State College, PA 16801-4842

814-867-5332  
Fax: 814-863-8469  
nvg5267@psu.edu  
ogc.psu.edu

September 25, 2023

***Via Email and First-Class Mail to:*** [aedris@pa.gov](mailto:aedris@pa.gov)

Appeals Officer Angela Edris, Esquire  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
4000 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

**Re: Requested Supplemental Information from The Pennsylvania State University;  
Wyatt Massey v. Pennsylvania Department of Agriculture (“PDA”),  
Dkt No. AP 2023-1520**

Dear Appeals Officer Edris:

Pursuant to your September 18, 2023 correspondence asking The Pennsylvania State University (“the University” or “Penn State”) to provide evidence in support of our argument for redaction of certain information contained within the 65-page responsive document produced during this appeal, please find the attached affidavit by Sara F. Thorndike, Senior Vice President for Finance & Business/Treasurer/Chief Financial Officer at Penn State and the presenter of the produced material that contains redactions. While the Pennsylvania Department of Agriculture (PDA) only raised confidential proprietary information as the reason for the redactions in its submission to OOR, the University provided written objections containing both exceptions to PDA on July 17, 2023, and also noted to the OOR in our Position Statement dated July 24, 2023 that we believe the redactions fall under both the confidential proprietary exception and the exception for predecisional deliberations in section 708(b)(10)(i)(A) of the RTKL. Thus, while your request for justification for the confidential proprietary exception is fully addressed in the attached affidavit, Ms. Thorndike’s affidavit also provides the reasoning for requesting redaction based on the predecisional deliberations exception as it is defined in the law.

Thank you for allowing the University to provide information in support of its redactions.

Respectfully submitted,

Natalie Voris Grosse  
Associate General Counsel  
The Pennsylvania State University

Cc: ***Via Email to:***

Marija K. Kuren, [mkuren@pa.gov](mailto:mkuren@pa.gov)  
Wyatt Massey, Spotlight PA, [wmassey@spotlightpa.org](mailto:wmassey@spotlightpa.org)

# ATTACHMENT:

## AFFIDAVIT OF SARA F. THORNDIKE

**AFFIDAVIT OF SARA F. THORNDIKE**

I, Sara F. Thorndike, Ed.D. hereby declare as follows:

1. I am over the age of 18 and fully competent to make this affidavit. The facts stated herein are true and correct and based on my personal knowledge.

2. I am the Senior Vice President for Finance & Business / Treasurer / Chief Financial Officer at The Pennsylvania State University (“Penn State” or the “University”). I hold an Ed.D. in higher education from UNC Wilmington, an MBA from The Ohio State University, and a BS in accounting from Franklin University. I am a Certified Public Accountant licensed in Ohio and Pennsylvania and have served in higher education for 18 years. I have been employed by Penn State since 2021.

3. My business address is The Pennsylvania State University, 208 Old Main, University Park, Pennsylvania 16802.

4. Among other roles at the University, I am responsible for the strategic planning and management of the Finance & Business unit at Penn State. The mission of the Finance & Business unit is to support the Penn State community through stewardship of the University’s human, financial, physical, and environmental resources.

5. In my role, I oversee Penn State’s financial performance and operating budget, which is \$9.5 billion for the 2023-24 fiscal year.

6. In August of 2022, I presented a slide deck entitled “The Student Success Imperative: Cost” at the University’s Board of Trustee Retreat. The presentation provided a strategic review and analysis of the following topics (i) the alignment of the University’s budget with its priorities and values, (ii) the University’s ability to lead in a resource-constrained

environment, and (iii) the relationship between transforming the budgets of the University and transforming its culture.

7. The presentation was part of a two-day conference session with University leadership and Trustees to discuss some of the strategic goals and operational challenges impacting Penn State.

8. I understand that a hardcopy of this presentation was located in the possession of Pennsylvania's Secretary of Agriculture and that a redacted version has been provided to the Requester in this matter, Wyatt Massey from Spotlight PA, pursuant to the Right-to-Know Law ("RTKL") and case law interpreting it. I further understand that Mr. Massey and the Office of Open Records have requested additional support for the redactions made to certain pages.

9. I have reviewed the redactions and the underlying information.

10. The information that has been redacted on PDF pages 28, 29, 30, 31, and 39 is confidential proprietary information as defined in the RTKL. Namely,

a. The information is privileged or confidential because the slides provide confidential and proprietary financial information relating to specific non-core University assets being evaluated for strategic alternatives and possible re-prioritization, more specifically:

i. Page 28 of the PDF redacts a list of University non-core assets under evaluation by the University for business needs, along with certain expenses and services of the University being considered for strategic alternatives and possible re-prioritization.

ii. Page 29 of the PDF redacts information utilized in identifying and analyzing a particular asset, as well as confidential and proprietary

financial information of the University relating to a University non-core asset being evaluated for strategic alternatives and possible re-prioritization.

iii. Pages 30 and 31 of the PDF redacts confidential and proprietary financial information of the University relating to subsidies and expenses paid by the University to provide certain services being evaluated for business needs of the University.

iv. Page 39 of the PDF redacts a confidential and proprietary financial analysis of the University's building construction costs and benchmarking analysis of average construction costs,

b. The disclosure of the information would cause substantial harm to the University's competitive position because disclosure of the identity of the assets and/or the financial reasons to consider prioritization of the assets would (1) damage current operations of the assets, (2) harm employee morale and retention, (3) reduce the market value of any non-core assets, and (4) disadvantage the University if it elected to re-prioritize the assets by having its confidential, internal analysis publicly available, and

c. The University has taken steps to maintain the confidentiality of this information, namely (1) the Agenda for the Retreat, on the first page of the 65-page document produced to Requester, is marked "Confidential" to remind Trustees of the confidential nature of the information and their fiduciary responsibilities to maintain that confidentiality, (2) my presentation was made available for viewing by the Board of Trustees via Diligent, a secure communication portal with

restrictive access permissions, and (3) within the University, the information has been closely held to individuals who need to know. The issues related to the redacted content in my presentation materials are in various stages of discussion, with some being in the very early stages, and the University is still gathering information to determine the possible options. Having any of the redacted data in the public domain would put us at a competitive disadvantage and would breach the confidentiality that is necessary and expected at this stage in business operations.

11. The information that has been redacted on PDF pages 43 and 44 is confidential proprietary information as defined in the RTKL. Namely,
  - a. The information is privileged or confidential because it discloses a set of options University leaders are considering to address the University's fiscal challenges,
  - b. The disclosure of this information would cause substantial harm to the University's competitive position because disclosure of information would (1) create distrust and confusion as these are mere considerations, rather than items for decision, (2) damage employee morale and retention, and (3) disadvantage the University in the future if it decided to pursue any of the options under consideration, and
  - c. The University has taken steps to maintain the confidentiality of this information, namely (1) the Agenda for the Retreat, on the first page of the 65-page document produced to Requester, is marked "Confidential" to remind Trustees of the confidential nature of the information and their fiduciary responsibilities to maintain that confidentiality, (2) my presentation was made available for viewing

by the Board of Trustees via Diligent, a secure communication portal with restrictive access permissions, and (3) within the University, the information has been closely held to individuals who need to know. As noted above, the redacted content in my presentation materials is at various stages of discussion, with some being in the very early stages, and the University is still gathering information to determine the best way to proceed. Having the redacted data in the public domain at this time would put us at a competitive disadvantage and would breach the confidentiality that is necessary and expected at this stage in business operations.

12. The information that has been redacted on PDF pages 28, 29, 30, 31, 39, 43 and 44 is internal, predecisional information as defined in the RTKL. Namely,
  - a. These slides disclose University leadership's internal, predecisional data points relating to a contemplated course of action and the research used in the University's predecisional analysis. Namely, as described in more detail above, pages 28-31 and 39 detail non-core assets University leadership is considering for strategic alternatives and possible re-prioritization. Pages 43 and 44 posit a variety of possible strategic directions the University has considered that it could pursue to address the financial challenges it is facing,
  - b. The information is prior to a related decision. The information was preliminary, and no decisions were made or intended to be made at the Board Retreat relating to these possible re-prioritizations of business assets or courses of action, and
  - c. These strategic possibilities are internal to the University and confidential. The University took steps to keep the information internal to the University and maintain the confidentiality of this information, namely (1) the Agenda for the

Retreat, on the first page of the 65-page document produced to Requester, is marked "Confidential" to remind Trustees of the confidential nature of the information and their fiduciary responsibilities to maintain that confidentiality, (2) my presentation was made available for viewing by the Board of Trustees via Diligent, a secure communication portal with restrictive access permissions, and (3) within the University, the information was closely held to individuals who needed to know. Again, the redacted content in my presentation materials is at various states of discussion and the University is still gathering information to enable fully informed decisions. Having the redacted data in the public domain at this time would put us at a competitive disadvantage and would breach the confidentiality that is necessary and expected at this stage in business operations.

Further affiant sayeth not. I hereby certify and declare that the above information is true and correct and that the statements contained herein are made subject to the penalties of 18 Pa. C.S.A. § 4904.

Executed on this 25<sup>th</sup> day of September 2023, at University Park, Pennsylvania.

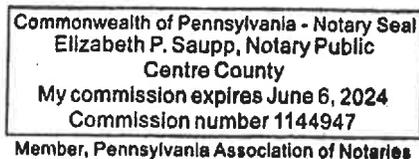


Sara F. Thorndike  
Senior Vice President for Finance & Business  
Treasurer  
Chief Financial Officer  
The Pennsylvania State University

Sworn and subscribed to before me  
this 25<sup>th</sup> day of September 2023.



Notary Public



# OOR Exhibit 23



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF :  
 :  
 WYATT MASSEY AND SPOTLIGHT PA, :  
 Requester :  
 :  
 v. : **Docket No: AP 2023-1520**  
 :  
 PENNSYLVANIA DEPARTMENT OF :  
 AGRICULTURE, :  
 Respondent :  
 :  
 and :  
 :  
 THE PENNSYLVANIA STATE :  
 UNIVERSITY, :  
 Direct Interest Participant :

### FACTUAL BACKGROUND

On June 29, 2023,<sup>1</sup> Wyatt Massey, a reporter for Spotlight PA (collectively the “Requester”) submitted a request (“Request”) to the Pennsylvania Department of Agriculture (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

**[Item One:]** An electronic screenshot of all folders and files hosted on Diligent, the file-sharing service Penn State uses, related to Russell Redding’s role on the Penn State Board of Trustees, including but not limited to his role as a member of

<sup>1</sup> According to the Requester, the Request was initially emailed to the Department on May 18, 2023. However, upon the Requester’s follow-up, the Department informed the Requester that it had no record of the Request having been filed. As such, the Department, upon receiving another copy of the Request, indicated on June 29, 2023 that it would process and expedite the Request for a response. Thus, for purposes of this appeal, the submission date of the Request to the Department is considered to be June 29, 2023 when the Department actually received and began to process the Request.

the Governance and Planning Committee, Legal and Compliance Committee, and the full board of trustees.

**[Item Two:]** An electronic copy of all materials hosted on Diligent related to the August 2022 Penn State Board of Trustees retreat.

On July 5, 2023, the Department denied the Request, asserting that it did not have any responsive records in its possession, custody or control.

On that same date, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>2</sup> Specifically, the Requester states that “controlling law on this issue makes clear that the records are public.” The Requester cites to three cases in support of his argument: (1) *Bagwell v. Pa. Dep’t of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013); (2) *Edinboro Univ. of Pa. v. Ford*, 18 A.3d 1278 (Pa. Commw. Ct. 2010); and (3) *Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 939 (Pa. Commw. Ct. 2014), *aff’d*, 124 A.3d 1214 (Pa. 2015). The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On July 18, 2023, the Department submitted a position statement reiterating that it does not have any records responsive to Item One of the Request. With regard to Item Two of the Request, the Department indicates that, after receiving this appeal, it conducted “further due diligence” and discovered a responsive document of which it was previously unaware. The responsive document, which consisted of 65 pages, was attached to the Department’s appeal submission. Certain pages of the 65-page record were redacted. The Department argues that the information redacted is exempt under Section 708(b)(11) of the RTKL, which protects confidential

---

<sup>2</sup> The Requester granted the OOR additional time to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

proprietary information from disclosure. 65 P.S. § 67.708(b)(11). In support of its position, the Department submitted the attestations of Shannon Harvey, Assistant Vice President and Secretary, Office of the Board of Trustees/Secretary of the Pennsylvania State University, and Susan West, the Department's Open Records Officer. Also attached to the Department's submission were "Amended and Restated Bylaws" and "Standing Orders of the Board of Trustees" for the Pennsylvania State University.

On July 24, 2023, the Pennsylvania State University ("University") submitted a Request to Participate in the appeal pursuant to 65 P.S. § 67.1101(c). On the same day, the OOR granted the Request to Participate. As part of its Request to Participate, the University submitted a position statement, arguing that any records residing on Diligent are not public records under the RTKL and are not within the possession, custody or control of the Department. As for any documents printed or downloaded from Diligent and in the possession of the Department's Secretary, the University acknowledges that those records would be considered "public" and in the Department's possession for purposes of the RTKL. Like the Department, the University maintains that the information redacted consists of confidential proprietary information under Section 708(b)(11) of the RTKL; the University also cites to Section 708(b)(10), relating to internal, predecisional deliberations, as a basis for the redactions made. 65 P.S. §§ 67.708(b)(10) and (11). In support of its position, the University provides a copy of the same Harvey attestation submitted by the Department, and copies of the University's bylaws and standing orders.

After securing an additional extension of time from the Requester in which to issue its decision, the OOR, on September 18, 2023, requested that the University and Department submit evidence in support of their position that the redacted information is confidential proprietary information. On September 25, 2023, the University filed a supplemental submission, which

included a sworn affidavit from its Senior Vice President for Finance and Business/Treasurer/Chief Financial Officer, Sara Thorndike. The Department did not submit any additional information in response to the OOR's inquiry.

### LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Department is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). This burden also applies to third parties arguing an exemption. *See Highmark, Inc. v. Voltz*, 163 A.3d 485, 490 (Pa. Commw. Ct. 2017) (“The party asserting an exemption bears the burden of proving the exemption applies”). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

#### **1. The appeal is moot as to the records produced.**

During the course of this appeal, the Department provided the Requester with a 65-page document which contained certain redacted information. Insofar as the Request sought the unredacted portions of that record, the appeal is dismissed as moot. *See Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.*, 49 A.3d 445 (Pa. Commw. Ct. 2012) (an appeal is moot if there is no actual case or controversy).

**2. While the Department has proven that the screenshots sought in Item One of the Request do not exist, the records sought in Item Two of the Request are in the constructive possession of the Department and therefore subject to access under the RTKL.**

The Department asserts that, except for the redacted document produced on appeal, the records sought by the Request do not exist in its possession, custody or control. By way of background, the Department explains that the Secretary of the Department, Russell Redding, became an *ex officio* member of the University's Board of Trustees in January of 2015 when he was appointed to serve as the Department's Secretary. The Department, indicates that "Secretary Redding was granted Diligent access on July 16, 2020."

With respect to Diligent, the Department explains that Diligent "is board management software used by the [University's] Board as a platform for sharing documents and other information with the Trustees." According to the Department, the University's Board "maintains all aspects of Diligent, including with respect to access, controls, posting of documents, deleting documents and other posting information." The Department contends that Secretary Redding "does not have the ability to post or delete anything in Diligent."

In response to a request for records, "an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]" 65 P.S. § 67.901. While the RTKL does not define the term "good faith effort," in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession.... When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors.... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of the Department's argument that it does not possess responsive records, Ms. West, the Department's Open Records Officer, attests,<sup>3</sup> in relevant part, as follows:

4. I conducted a thorough examination of files in the possession, custody and control of [the Department] for records responsive to this request. This search entailed coordinating with staff within [the Department's] Executive Office.

5. As a courtesy following receipt of [the Request], contact was made with the [University's] Board of Trustees' legal counsel to let them know [the Request] was received. Past [RTKL] requests received which were related to [University] Board of Trustee records resulted in the identification of confidential, third[-]party proprietary information. This required contact with [University] legal counsel based on section 67.707(b) and section 67.708(b)(11) of the [RTKL,] 65 P.S. §§ 67.101, *et seq.*

6. As a result of contacting [the University's] legal counsel regarding this [R]equest, this agency was informed that the Diligent platform is the property of [the University]. Trustees are able to view documents contained therein without the ability to print or download information hosted on the Diligent platform. Other than Secretary Russell Redding, we were informed that no other individuals within the [Department] have been given access to the Diligent platform.

\*\*\*\*\*

8. Regarding records related to the August 2022 [University] Board of Trustees retreat, when initially checking with the Executive Office, it was confirmed such records were not in [the Department's] possession.

---

<sup>3</sup> Under the RTKL, an attestation may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith, "the averments in [the attestations] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

9. Based upon the search of [the Department's] files and inquiries with relevant [Department] personnel prior issuing the letter of response, I made the determination that: (a) [the Department] does not have records related to this [R]equest in its possession, custody or control; (b) [the Department] does not own or maintain the Diligent database where the requested records reside; and (c) in conjunction with the appointment to the [University's] Board of Trustees, the Secretary of Agriculture, Russell Redding, does have access to the Diligent platform; however, such access is restricted to a read-only status which precludes documents being downloaded or otherwise in [the Department's] possession.

10. Following the receipt of the appeal by [the Requester] regarding [the Department's] response to [the Request], additional due diligence ensued related to the preparation of [the Department's] position statement in this matter.

11. The staff person within the Executive Office was again contacted regarding records. Additional information surfaced; not all duties were consistently handled by only one individual since the Diligent Platform became the data source for the [University's] Board of Trustees. This could be due to changes following a new administration or other reasons. Additional clarification with the staff person resulted in learning that one record which applies to this [R]equest is in [the Department's] possession, custody and control.

\*\*\*\*\*

15. Therefore, following additional due diligence on the part of [the Department] related to [the Request], and in response to the statements provided by this [R]equester in his initial filing before the OOR in this matter, [the Department] is providing one responsive record, with redactions, related to the August 2022 [University] Board of Trustee Retreat while maintaining all other requested records are not in the possession, custody or control of [the Department].

Both the Department and University submitted an attestation from Shannon Harvey, which states, in part, the following:

2. I am the Assistant Vice President and Secretary, Office of the Board of Trustees at [the University]. In this capacity, I serve as the elected Secretary of the University with responsibilities as outlined in Section 5.06 of the University Bylaws (Exhibit PSU #1). I am also responsible for the management and operation of the Office of the Board of Trustees including oversight of all activities, meetings, agenda preparation and filing of minutes, Trustee certifications and questionnaires in compliance with legal requirements and University policy to ensure the Board is as effective and efficient as possible in the conduct of its oversight responsibilities.

\*\*\*\*\*

4. For approximately three years, the University's Office of the Board of Trustees (the "Board Office") has utilized the services of Diligent as a platform for sharing documents and other information with the members of its Board of Trustees ("Trustees"). Diligent Boards is an online board portal tool that facilitates secure digital communication from the Board Office to Trustees. We utilize Diligent to securely share board meeting agendas, meeting materials, and other documents.
5. The Board Office staff, with the assistance of other University staff members as appropriate, maintains all aspects of the Diligent site, including with respect to access controls, posting of documents, deleting documents and posting other information.
6. Secretary Russell Redding became an ex officio member of the Board of Trustees in January of 2015 when he was appointed to serve as Secretary of [the Department.]
7. Secretary Redding was granted Diligent access on July 16, 2020.
8. The Board Office controls the Secretary's ability to print or download any document from the Diligent platform. The Secretary does not have the ability to post or delete anything in the Diligent platform.
9. Access is given to the Secretary of Agriculture individually, in their capacity as a Trustee. No one else in the [Department] is given access to Diligent by the University.
10. The Secretary, like all other members of the Board of Trustees is subject to the University's Bylaws and Board of Trustees' Standing Orders, attached herein as Exhibits PSU #1 and PSU #2, stating in relevant part:

"Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct in addition to any other state or federal requirements. Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount."

*Section 8.07 of the Bylaws (Fiduciary Duty) (See Exhibit PSU #1)*

"It is expected that each Trustee will ....

(x) Maintain the confidentiality of confidential information without exception; it being recognized and understood that for this purpose

‘confidential information’ includes nonpublic information concerning the University, including its finances, operations and personnel, as well as nonpublic information about internal Board discussions and dynamics;”

*Order VIII, Section 1(d)(x) (Expectations of Membership) (See Exhibit PSU #2)*

The Requester, in response, contends that the “controlling law on this issue makes clear that the records are public.” The Requester relies, in part, on *Bagwell v. Pa. Dep’t of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013), in support of his claim. In *Bagwell*, the Commonwealth Court held that certain records received by the Secretary of the Department of Education in his *ex officio* capacity as a board member of PSU Board constituted “records” that may be subject to public access. *Id. at 90*. The RTKL request at issue in *Bagwell* sought “copies of letters, emails, reports and memoranda received by Secretary of Education Ronald J. Tomalis....” *Id. at 83*. The Court determined that “the records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as supporter and influencer of education at state-related institutions. Because the records are received by a Commonwealth agency to enable it to perform its statutory governmental function, they qualify as ‘records’ under the RTKL.” *Id. at 92*.

Both the Department and the University attempt to distinguish the within matter from the facts set forth in *Bagwell*. Specifically, the Department appears to argue that the requested documents, unlike those in *Bagwell*, are not in the physical possession of the Secretary, and therefore not in the possession of the Department. Similarly, the University argues that the “documents were not received by the Secretary. To receive a document, it must come into one’s possession, that is, one must receive a modicum of control over the document.”<sup>4</sup>

---

<sup>4</sup> The definition of “record” under the RTKL does not require physical receipt; indeed, the document/information must merely be “created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. To the extent that access on Diligent does not constitute receipt, *Bagwell* makes

Contrary to the arguments raised, the documents hosted on Diligent are no different than the records at issue in *Bagwell*. Item Two of the Request seeks materials hosted on Diligent related to the August 2022 Board retreat. Notably, these documents were/are accessible to Secretary Redding for the sole purpose of allowing him to carry out his respective role as an *ex officio* Voting Member of the Board. Although the documents on Diligent are “read-only” and are unable to be printed or downloaded by the Secretary, such does not alter our conclusion. The documents, regardless of how they were provided, enable the Secretary to fulfill his *ex officio* duties and represent the Department on the University’s Board. Accordingly, *Bagwell* controls in this matter, and records responsive to Item Two of the Request that are hosted on Diligent are public information and accessible.<sup>5</sup>

The Department further maintains that it is not required to create a record that does not exist. Specifically, the Department argues that “[a]sking [the Department] to take electronic screen shots of the records in Diligent would require [the Department] to create record[s].”

Section 705 of the RTKL provides that when responding to a request, “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705; *see also Moore*, 992 A.2d at 909 (holding that an agency

---

clear that the records are retained on Diligent in connection with a Department Secretary’s duties. Thus, they remain records of the Department.

<sup>5</sup> Other than the exceptions cited to for the redactions made to the 65-page document produced during the pendency of this appeal, the Department did not raise any RTKL exemptions or other legal authority for denying access to records responsive to Item Two of the Request. The University argues “[t]o the extent that nonprinted documents on the Diligent platform are determined to be within the possession, custody, control of the [Department], the documents would be subject to exclusions and the exceptions provided in the RTKL under 65 P.S. § 67.708 (b), as well as any other relevant protections afforded through other legal authorities.” Notably, however, the University did not identify what RTKL exemptions or “other legal authorities” are applicable and did not submit any evidence in support of this argument. Although the University references its Bylaws, which state, in part, that “[i]t is expected that each Trustee will ... [m]aintain the confidentiality of confidential information ....,” such Bylaws do not have the force and effect of law.

cannot be made to create a record that does not exist). Here, Item One of the Request seeks an “electronic screenshot of all folders and files hosted on Diligent” relative to Secretary Redding’s role on the [University’s] Board and related committees. Ms. West’s attestation states that Secretary Redding “has no business reason to take electronic screenshots of all folders and files hosted on Diligent” and that as a result of the search performed, “no records were found related to screenshots of the Diligent platform.” West Att. at ¶¶ 7 and 14. Therefore, based on the evidence provided, the Department has met its burden of proof that it does not possess the screenshots responsive to Item One of the Request, and, pursuant to 65 P.S. § 67.705, the Department is not required to create a record, *i.e.*, a screen shot, in order to respond to the Request. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary....”); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry); *Moore*, 992 A.2d at 909.<sup>6</sup>

While the Department’s appeal submission only appears to address Section 705 in the context of the requested screenshots requested in Item One of the Request, to the extent that it is also arguing that it would need to create a record in order to provide the records requested in Item Two of the Request, we disagree. Unlike the records sought in Item Two of the Request, a “screenshot” of the folders and files requested would require the Department to, in essence, take

---

<sup>6</sup> *In Massey and Spotlight PA v. Dep’t of Educ.*, OOR Dkt. No. AP 2023-1492, 2023 PA O.O.R.D. LEXIS 1976, the OOR reached the same conclusion as has been reached in the instant matter with regard to the accessibility of records contained in the Diligent software. The primary difference in *Massey v. Dep’t of Educ.* was that the records sought related to the Secretary of Education and his role on the University’s Board of Trustees.

an electronic photograph so as to provide an exact duplicate of the computer screen showing the folders and files within the software. Depending on the number of files and folders, a “screenshot” could also potentially require manipulation of the information in order to provide what is requested. In order for the Department to provide a screenshot, the evidence substantiates that such a record would need to be created in order to respond to the Request. A request under the RTKL can only seek records that exist at the time it is filed; any record created during the Department’s effort to respond to the Request cannot be responsive to the Request. *See Rice v. East Rockill Twp.*, OOR Dkt. AP 2018-0346, 2018 PA O.O.R.D. LEXIS 541; *Grabuloff v. Borough of Middletown*, OOR Dkt. AP 2016-0608, 2016 PA O.O.R.D. LEXIS 716.

Conversely, providing an electronic copy of the responsive records that are stored on Diligent does not require the Department to create a record. Diligent, according to the evidence, is a file management and sharing software. Presumably, the documents that were uploaded and stored in Diligent for Board Trustees to access were created prior to their placement in the software for sharing purposes. The fact that the University would necessarily need to allow the Secretary to retrieve the responsive documents in Diligent or otherwise provide the documents/information in electronic form to the Department for provision to the Requester does not amount to the *creation of a new record* under Section 705 of the RTKL. Records transmitted to the Secretary due to his role on the Board are records of the Department under *Bagwell*, and thus, are subject to public access under the RTKL; the designation of those documents as “read-only” cannot circumvent that fact.<sup>7</sup>

---

<sup>7</sup> Agencies or other parties that possess public records cannot save or store records in software or databases as “read-only” and then argue the records are incapable of duplication; permitting that conduct would lead to an absurd result wherein the public would be unable to obtain public records. Further, it would encourage agencies in similar situations to use file sharing platforms and software to avoid releasing those records. *See, e.g., Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012) (finding that pulling information from a database does not constitute the creation of a record because “[t]o hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases”).

**3. The Department and the University did not prove that the redacted information in the record produced is confidential proprietary information.**

The Department and University contend that the redacted information in the record produced during the appeal is exempt from access because it constitutes confidential proprietary information under Section 708(b)(11) of the RTKL. Section 708(b)(11) of the RTKL exempts from disclosure “[a] record that constitutes or reveals a trade secret or confidential proprietary information.” 65 P.S. § 67.708(b)(11). Confidential proprietary information is defined in Section 102 of the RTKL as follows:

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

65 P.S. § 67.102.

An agency must establish that both elements of this definition are met in order for the exemption to apply. *See Office of the Governor v. Bari*, 20 A.3d 634 (Pa. Commw. Ct. 2011). In determining whether certain information is “confidential,” the OOR considers “the efforts the parties undertook to maintain their secrecy.” *Commonwealth v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Commw. Ct. 2014), *rev’d in part, Pa. Dep’t of Pub. Welfare v. Eiseman*, 125 A.3d 19 (Pa. 2015). “In determining whether disclosure of confidential information will cause ‘substantial harm to the competitive position’ of the person from whom the information was obtained, an entity needs to show: (1) actual competition in the relevant market; and, (2) a likelihood of substantial competitive injury if the information were released.” *Id.* Additionally, “[c]ompetitive harm analysis ‘is limited to harm flowing from the affirmative use of proprietary information by competitors. Competitive

harm should not be taken to mean simply any injury to competitive position.” *Dep’t of Corr. v. Maulsby*, 121 A.3d 585, 590 (Pa. Commw. Ct. 2015).

In support of the position that the redacted information constitutes confidential proprietary information, Ms. West attests that:

12. Records from a one-day attendance at the August 2022 ...Board of Trustees retreat were produced. The applicable record was marked “Confidential” and in conjunction with section 67.707(b), legal counsel at [University] was contacted and provided a copy of the confidential, third-party proprietary information for review.

13. The August 2022 retreat record, consisting of 65 pages, has been returned with recommended redactions to pages 1, 2, 28, 29, 30, 31, 39, 43, and 44. Therefore, [the Department] willingly produces this public record to the [R]equester with the assertion of the following exemption:

a) A record that constitutes or reveals a trade secret or confidential proprietary information is exempt from disclosure pursuant to section 67.708(b)(11) of the [RTKL].

In addition to the foregoing, Ms. Thorndike, the University’s Senior Vice President for Finance & Business/Treasurer/Chief Financial Officer attests as follows:

4. Among other roles at the University, I am responsible for the strategic planning and management of the Finance & Business unit at Penn State. The mission of the Finance & Business unit is to support the Penn State community through stewardship of the University’s human, financial, physical, and environmental resources.

5. In my role, I oversee [the University’s] financial performance and operating budget, which is \$9.5 billion for the 2023-24 fiscal year.

6. In August of 2022, I presented a slide deck entitled “The Student Success Imperative: Cost” at the University’s Board of Trustee Retreat. The presentation provided a strategic review and analysis of the following topics (i) the alignment of the University’s budget with its priorities and values, (ii) the University’s ability to lead in a resource-constrained environment, and (iii) the relationship between transforming the budgets of the University and transforming its culture.

7. The presentation was part of a two-day conference session with University leadership and Trustees to discuss some of the strategic goals and operational challenges impacting Penn State.

8. I understand that a hardcopy of this presentation was located in the possession of Pennsylvania's Secretary of Agriculture and that a redacted version has been provided to the Requester in this matter...pursuant to the Right-to-Know Law ("RTKL") and case law interpreting it. I further understand that [the Requester] and the Office of Open Records have requested additional support for the redactions made to certain pages.

9. I have reviewed the redactions and the underlying information.

10. The information that has been redacted on PDF pages 28, 29, 30, 31, and 39 is confidential proprietary information as defined in the RTKL. Namely,

a. The information is privileged or confidential because the slides provide confidential and proprietary financial information relating to specific non-core University assets being evaluated for strategic alternatives and possible re-prioritization, more specifically:

i. Page 28 of the PDF redacts a list of University non-core assets under evaluation by the University for business needs, along with certain expenses and services of the University being considered for strategic alternatives and possible re-prioritization.

ii. Page 29 of the PDF redacts information utilized in identifying and analyzing a particular asset, as well as confidential and proprietary financial information of the University relating to a University non-core asset being evaluated for strategic alternatives and possible re-prioritization.

iii. Pages 30 and 31 of the PDF redacts confidential and proprietary financial information of the University relating to subsidies and expenses paid by the University to provide certain services being evaluated for business needs of the University.

iv. Page 39 of the PDF redacts a confidential and proprietary financial analysis of the University's building construction costs and benchmarking analysis of average construction costs,

b. The disclosure of the information would cause substantial harm to the University's competitive position because disclosure of the identity of the assets and/or the financial reasons to consider prioritization of the assets would (1) damage current operations of the assets, (2) harm employee morale and retention, (3) reduce the

market value of any non-core assets, and (4) disadvantage the University if it elected to re-prioritize the assets by having its confidential, internal analysis publicly available, and

c. The University has taken steps to maintain the confidentiality of this information, namely (1) the Agenda for the Retreat, on the first page of the 65-page document produced to Requester, is marked “Confidential” to remind Trustees of the confidential nature of the information and their fiduciary responsibilities to maintain that confidentiality, (2) my presentation was made available for viewing by the Board of Trustees via Diligent, a secure communication portal with restrictive access permissions, and (3) within the University, the information has been closely held to individuals who need to know. The issues related to the redacted content in my presentation materials are in various stages of discussion, with some being in the very early stages, and the University is still gathering information to determine the possible options. Having any of the redacted data in the public domain would put us at a competitive disadvantage and would breach the confidentiality that is necessary and expected at this stage in business operations.

11. The information that has been redacted on PDF pages 43 and 44 is confidential proprietary information as defined in the RTKL. Namely,

a. The information is privileged or confidential because it discloses a set of options University leaders are considering to address the University’s fiscal challenges,

b. The disclosure of this information would cause substantial harm to the University’s competitive position because disclosure of information would (1) create distrust and confusion as these are mere considerations, rather than items for decision, (2) damage employee morale and retention, and (3) disadvantage the University in the future if it decided to pursue any of the options under consideration, and

c. The University has taken steps to maintain the confidentiality of this information, namely (1) the Agenda for the Retreat, on the first page of the 65-page document produced to Requester, is marked “Confidential” to remind Trustees of the confidential nature of the information and their fiduciary responsibilities to maintain that confidentiality, (2) my presentation was made available for viewing by the Board of Trustees via Diligent, a secure communication portal with restrictive access permissions, and (3) within the University, the information has been closely held to individuals

who need to know. As noted above, the redacted content in my presentation materials is at various stages of discussion, with some being in the very early stages, and the University is still gathering information to determine the best way to proceed. Having the redacted data in the public domain at this time would put us at a competitive disadvantage and would breach the confidentiality that is necessary and expected at this stage in business operations.

A review of the redacted slide deck presentation itself shows that the redactions are contained on pages with various titles, including “Strategic Questions,” “Leading in a resource-constrained environment,” and “Aligning the Budget with our priorities and values.”

The evidence submitted by the University establishes that the redacted information at issue is “confidential” in that the University took actions to ensure that redacted information in the slide deck presentation was maintained in secrecy. The evidence details that the record containing the information was identified as “confidential,” that access to the redacted information was limited and that it was closely held by individuals within the University on a need-to-know basis. Furthermore, we note that according to the Board of Trustee’s Standing Orders, Trustees are expected to “maintain the confidentiality of confidential information.” Thus, the efforts undertaken by the University show that it made various attempts to maintain the confidentiality of the redacted information and as such, it has met the “confidential” element required as part of the test for confidential proprietary information under Section 708(b)(11) of the RTKL.

Conversely, however, we are unable to conclude that the second element of the “confidential proprietary” test under Section 708(b)(11) has been proven. The second element of the test requires that the University and Department demonstrate, by a preponderance of the evidence, that the disclosure of the redacted information would cause substantial harm to the competitive position of the University. The University’s evidence provides a very generalized description of the information at issue and the harm that may result from disclosure of that

information. With regard to certain statements in the evidence, it is unclear as to what exactly the University is referring. For example, while the University indicates it does not wish to disclose the “non-core assets” at issue, additional description of the types of assets referred to would be helpful to understanding the University’s position and why the redacted content of the slide deck should be considered confidential proprietary. In addition, none of the evidence provided discusses the actual competitive nature of the relevant market from which we could better understand the effects of disclosure and the harm alleged. Lastly, the evidence provided does not demonstrate how the redacted information, should it be released by the University, could be used by its competitors to result in the harm alleged. As noted above, competitive harm does not mean any injury to competitive position; rather the harm must flow from a competitor’s affirmative use of the information at issue. *Maulsby, supra*. While the evidence generally shows that the University could suffer injury from the release of the redacted information should it be disclosed, such is not enough to meet the requirements of Section 708(b)(11). Absent further specifics and more detailed facts, the broad statements in the affidavit provided cannot carry even this low burden.

“Consistent with the RTKL’s goal of promoting government transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed.” *Bagwell*, 114 A.3d at 1122. As such, we are constrained to find that the Department and University failed to meet their burden and that the redactions are improper as they are unsupported by the evidence.

**4. Section 708(b)(10)(i)(A) of the RTKL does not apply.**

The University also argues that Section 708(b)(10) of the RTKL, which relates to internal, predecisional deliberations, serves as a basis for the redactions made to the slide deck. *See* 65 P.S.

§ 67.708(b)(10)(i)(A). Section 708(b)(10)(i)(A) of the RTKL exempts from public disclosure a record that reflects:

[t]he internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, ... or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). In order for this exemption to apply, three elements must be satisfied: 1) “[t]he records must ... be ‘internal’ to a governmental agency”; 2) the deliberations reflected must be predecisional, *i.e.*, before a decision on an action; and 3) the contents must be deliberative in character, *i.e.*, pertaining to proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011). Factual material contained in otherwise deliberative documents is required to be disclosed if it is severable from its context. *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014).

In support of is position that the redacted information on PDF page nos. 28, 29, 30, 31, 39, 43 and 44 of the slide deck presentation is exempt as reflecting internal predecisional deliberations,

Ms. Thorndike attests that:

a. These slides disclose University leadership’s internal, predecisional data points relating to a contemplated course of action and the research used in the University’s predecisional analysis. Namely, as described in more detail above, pages 28-31 and 39 detail non-core assets University leadership is considering for strategic alternatives and possible re-prioritization. Pages 43 and 44 posit a variety of possible strategic directions the University has considered that it could pursue to address the financial challenges it is facing.

b. The information is prior to a related decision. The information was preliminary, and no decisions were made or intended to be made at the Board Retreat relating to these possible re-prioritizations of business assets or courses of action, and

c. These strategic possibilities are internal to the University and confidential. The University took steps to keep the information internal to the University and maintain the confidentiality of this information, namely (1) the Agenda for the

Retreat, on the first page of the 65-page document produced to Requester, is marked “Confidential” to remind Trustees of the confidential nature of the information and their fiduciary responsibilities to maintain that confidentiality, (2) my presentation was made available for viewing by the Board of Trustees via Diligent, a secure communication portal with restrictive access permissions, and

(3) within the University, the information was closely held to individuals who needed to know. Again, the redacted content in my presentation materials is at various states of discussion and the University is still gathering information to enable fully informed decisions. Having the redacted data in the public domain at this time would put us at a competitive disadvantage and would breach the confidentiality that is necessary and expected at this stage in business operations.

Thorndike Affidavit at ¶12.

Records satisfy the “internal” element of Section 708(b)(10)(i)(A) when they are maintained internal to one agency or among governmental agencies. *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 658 (Pa. Commw. Ct. 2016). The evidence provided by the University asserts that the information redacted reflects internal deliberations of the University’s Board of Trustees. However, the University nor its Board are considered an “agency” as that term is defined in Section 102 of the RTKL. *Bagwell*, 76 A.3d 81, 88; 65 P.S. § 67.102. In addition, the Department has presented no evidence to show how the document could fall under this particular exemption. Thus, the redacted information at issue is not “internal” to an agency or among governmental agencies, and as such we find that the Section 708(b)(10)(i)(A) of the RTKL cannot apply to the redactions in the slide deck. 65 P.S. § 67.708(a).

## CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part and dismissed as moot in part**, and the Department is required to provide all records responsive to Item Two of the Request within thirty days. In addition, the Department is also required to provide the Requester with an unredacted copy of the 65-page document produced during the pendency of this appeal. This Final Determination is binding on all parties. Within thirty days of the mailing date of this

Final Determination, any party may appeal or petition for review to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>8</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: October 6, 2023**

*/s/ Angela Edris*

---

APPEALS OFFICER  
ANGELA EDRIS, ESQ.

Sent via the OOR Portal to: Marija Kuren, Esq.;  
Susan West, AORO;  
Natalie Voris Grosse, Esq.

---

<sup>8</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).