



Minutes
Edison State College
District Board of Trustees
Collier Campus – Building M, Room 201
January 24, 2012
4:00 p.m.

Agenda Item #1

The District Board of Trustees of Edison State College met in regular session in Collier County, Florida, on January 24, 2012 at 4:00 p.m. with the meeting called to order by Ann Berlam, Chair.

Present: Ann Berlam, Chair
Marjorie Starnes-Bilotti, Vice Chair
Brian Chapman, Jr.
Dr. Randall Parrish, Jr.
Julia Perry
Pamella Seay
Christopher Vernon
Sankey E. "Eddie" Webb, III
J. Dudley Goodlette, J.D., Interim District President
Frances Brennan, Recorder
June Hollingshead, Recorder

Others: John Hicks, Academic Search, Inc.
Angela Provart, Pauly Group
Cathy Beveridge, Fowler White Boggs
Joe Coleman, Fowler White Boggs
David Potter, Fowler White Boggs

Pledge to Flag

Introduction of Guests and Public Comment

LEE CAMPUS

1. Steve Chase

CHARLOTTE CAMPUS – None

HENDRY/GLADES CAMPUS – None

COLLIER CAMPUS

1. Professor Don Ransford

MOTION by Eddie Webb, seconded by Pamela Seay, to amend the agenda to change Agenda Item #6 to information only, to delete Agenda Item #7, and to add Agenda Items #7(a) and #7(b). Approved unanimously.

Information Reports:

1. *Collier Campus President's Report* – Dr. Robert R. Jones
2. *SACS Report* – Dr. Erin Harrel

Information and Discussion: (None Requested)

Vote to Take Action On:

Agenda Item #1. Approval of Minutes (Presenter: Mrs. Berlam)

- 1) Special Meeting December 16, 2011 (Page 1)
- 2) Special Meeting January 14, 2012 (Page 32)
- 3) Workshop January 14, 2012 (Page 41)

MOTION by Marjorie Starnes-Bilotti, seconded by Brian Chapman, to approve the minutes of the Special Meetings December 16, 2011 and January 14, 2012, and the Workshop January 14, 2012, as presented. Approved unanimously.

Agenda Item #2. Presidential Search Firm Selection (Presenter: Mrs. Fairfax/Board Liaison: Mrs. Starnes-Bilotti) (Page 43)

Mrs. Starnes-Bilotti reported that R. William Funk and Associates withdrew from consideration as a Presidential search firm candidate. Pam Fairfax read the letter of withdrawal.

Angela Provart, President, Pauly Group, was the first presenter. She shared a handout, "Proposed Project Calendar – Two Options" (see *Attachment #1*), and an overview of her firm. Following questions by the Board she gave a final summary.

John Hicks, Senior Consultant, Academic Search, Inc. was the second presenter. He shared a handout, "Edison State College Presidential Search Timeline" (see *Attachment #2*), and an overview of his firm. Following questions by the Board he gave a final summary.

MOTION by Eddie Webb, seconded by Marjorie Starnes-Bilotti, to select Academic Search, Inc. to assist in the Presidential search, and approve authorization for the administration to negotiate a contract not to exceed \$100,000 from Board reserves. Approved unanimously.

Agenda Item #3. Report and Recommendation from Law Firm of Fowler White Boggs Regarding Employment of Dr. Kenneth P. Walker (Presenter: Cathy Beveridge) (Page 44)

Mr. Lupe introduced Cathy Beveridge, Joe Coleman, and David Potter from the law firm of Fowler White Boggs, and gave a summary of actions which would follow a Board decision to terminate Dr. Walker for cause.

Cathy Beveridge reviewed the firm's January 21, 2012 letter and recommendations in a PowerPoint presentation (*see Attachment #3*). She noted that in a pre-disciplinary conference with Ann Berlam and Dr. Pat Land on January 23, 2012, Dr. Walker was provided the opportunity to give a factual response to this letter, but declined.

MOTION by Pamella Seay, seconded by Chris Vernon, to terminate Dr. Kenneth P. Walker for cause based on the report as recommended from Fowler White Boggs, effective immediately. Approved unanimously.

Agenda Item #4. Approval to Accept the Completed Construction of the Weiss Health Sciences Hall, Building "N" on the Collier Campus (Presenter: Mr. Nice/Board Liaison: Mr. Chapman) (Page 45)

MOTION by Brian Chapman, seconded by Julia Perry, to accept the completed construction of the Weiss Health Sciences Hall, Building "N" on the Collier Campus, as presented. Approved unanimously.

Agenda Item #5. Approval to Accept the Completed Construction of the Student Services Building "M" on the Collier Campus (Presenter: Mr. Nice/Board Liaison: Mr. Chapman) (Page 48)

MOTION by Brian Chapman, seconded by Chris Vernon, to accept the completed construction of the Student Services Building, Building "M" on the Collier Campus, as presented. Approved unanimously.

Agenda Item #6. **FOR INFORMATION ONLY.** Approval to Relocate the College Server Room and Remodel and Renovate Building "G" on the Lee Campus to Provide for Disaster Recovery Capabilities (Presenter: Mr. Nice/ Board Liaison: Mr. Chapman) (Page 51)

Mr. Nice presented an overview of his #1 infrastructure priority: disaster recovery capabilities for the College IT system, and will keep the Board apprised of this item and when funding may become available to proceed on this project.

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Agenda Item #7. Approval for Certification of Compliance of Edison State College Financing Corporation (Presenter: Mrs. Doeble/Board Liaison: Mr. Webb) (Page 52)

Agenda Item #7(a). Approval of the Collective Negotiations Agreement (Presenter: Mrs. Fairfax/Board Liaison: Mrs. Starnes-Bilotti) (Page 54a)

MOTION by Marjorie Starnes-Bilotti, seconded by Randall Parrish, to approve the Collective Negotiations Agreement between the Edison State College District Board of Trustees, Public Employer, and the Edison College Faculty Federation Union as stipulated below, with a funding source of Board Reserves and position Contingency. Approved unanimously.

- Faculty employed for the 2011-12 academic year, shall receive a 3% recurring increase on current base salary effective August 16, 2011. Supplemental and overload pay as defined in Appendix B, Section E and G, shall receive a 3% recurring increase on current base effective August 16, 2011.
- Faculty employed for the 2011-12 academic year shall also receive a 1% non-recurring increase on current base salary for work performed during the 2012 Spring Semester effective January 1, 2012 and terminating on May 8, 2012. This 1% non-recurring increase will be calculated after the 3% to base salary is applied.

Agenda Item #7(b). Approval of Adjunct Faculty Rate Increase (Presenter: Mrs. Fairfax/Board Liaison: Mrs. Starnes-Bilotti) (Page 54g)

MOTION by Marjorie Starnes-Bilotti, seconded by Chris Vernon, to approve the adjunct faculty rate increase of 2%, with a funding source of existing operations budget. Approved unanimously.

Consent Agenda:

Agenda Item #8. Approval of Financial Services Consent Agenda – Budget Amendments (Presenter: Mrs. Doeble/Board Liaison: Mr. Webb) (Page 55)

MOTION by Eddie Webb, seconded by Julia Perry, to approve the Financial Services Consent Agenda – Budget Amendments, as presented. Approved unanimously.

Agenda Item #9. Approval of Personnel Actions (Presenter: Mrs. Fairfax/Board Liaison: Mrs. Starnes-Bilotti) (Page 58)

MOTION by Marjorie Starnes-Bilotti, seconded by Brian Chapman, to approve the Personnel Consent Agenda actions, as presented. Approved unanimously.

Information Only:

Agenda Item #10. Edison State College Monthly Financial Report (Presenter: Mrs. Doeble/Board Liaison: Mr. Webb) (Page 59)

Mrs. Doeble presented the Edison State College Monthly Financial Report for information only.

Agenda Item #11. Edison State College Collegiate High Schools Monthly Financial Report (Presenter: Mrs. Doeble/Board Liaison: Mr. Webb) (Page 64)

Mrs. Doeble presented the Edison State College Collegiate High Schools Monthly Financial Report for information only.

Written Reports:

Agenda Item #12. Monthly Report on Edison Collegiate High School – Charlotte (Page 68)

A written report was presented for information only.

Agenda Item #13. Monthly Report on Edison Collegiate High School – Lee (Page 71)

A written report was presented for information only.

New Business:

Ms. Seay recommended that the College obtain iPads for all Board members. President Goodlette said that other options would be brought to the February 28, 2012 Board meeting.

Professional Development:

Media Relations Report (Presenter: Teresa Morgenstern, Coordinator, Marketing & College Relations – Collier Campus and District Spokesperson) (Page 73)

Ms. Morgenstern gave an overview of media relations, including guidelines for good media relations, the need to be concise and consistent in answering media inquiries, the need to limit remarks and personal views in personnel matters, and her role as College spokesperson. The Board Chair will serve as a primary contact with the media.

President's Comments:

President Goodlette would like to begin the Board meetings at 2:00 p.m. instead of 4:00 p.m.

Board Members' Comments:

Mrs. Berlam appointed Sankey E. "Eddie" Webb to the vacancy on the Edison State College Financing Corporation.

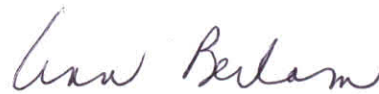
Adjournment

MOTION by Chris Vernon, seconded by Julia Perry, to adjourn the meeting. Approved unanimously. The meeting was adjourned at 7:00 p.m.



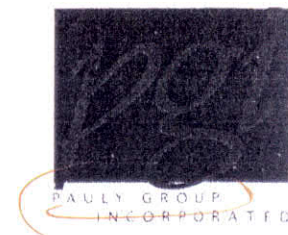
J. Dudley Goodlette, J.D.,
Interim District President
Trustees District Board of Trustees

2/28/12
Date



Ann Berlam, Chair
District Board of

Feb. 28, 2012
Date



**Edison State College
President**

Proposed Project Calendar
Two Options

Week of January 23	Signed Contract Received in PGI Office – Thursday, January 26th **Begin Development of Advertising Materials (Ads, Website and Profile) Finalize Project Calendar
Week of Jan 30	Continue Development of Advertising Materials Meetings with Constituency Groups Initial Committee Meeting with Search Consultant -- <i>Date to Be Determined</i> Review Process, Application Evaluation Process, and Interview Questions, as well as determine future meeting and interview dates
Week of Feb 6	**Finalize Advertising Materials Electronic Mailing List Developed (about 6,500 Recipients) Prepare Electronic Mailings Post Profile with Pauly Group associated organizations **Post Profile on College Website Post Profile on Pauly Group Website Packets to Consultants— Friday, February 10th
Week of Feb 13	**Text Chronicle & Publications (Electronic Only)— Monday, February 13th Chronicle Ad (Online) Appears—Tuesday, February 14th Electronic Mailings Go Out— Tuesday, February 14th Recruiting Calls Begin— Tuesday, February 14th
Week of Feb 20	Recruiting Calls Continue Committee Reviews Applicant Pool
Week of Feb 27	Recruiting Calls Continue Committee Reviews Applicant Pool
Week of March 5	Recruiting Calls Continue Committee Reviews Applicant Pool

Week of March 12	<p><i>March 5th through March 11th -- Spring Break</i> Meeting with Angela to Review Applicant Pool—<i>Date to Be Determined</i> Recruiting Calls Continue</p>
Week of March 19	<p>Recruiting Follow-Up Calls Committee Reviews Applicant Pool</p>

Process of recruiting ends and selecting candidates, referencing and interviewing begins. There are two options below.

Not knowing the culture of the college and the expectations for constituency group involvement, a decision can be easily made once this information is learned. Either of these may also be altered to adjust for any Board or college schedules that were unknown at the time of drafting this calendar.

Begin Option 1 – Finishes the search before Commencement, but uses the weeks of Final Exams and Commencement to Conduct On-Campus Interviews, therefore ensuring Faculty and Staff will still be on campus and not away for Summer Break or College Schedule.

Week of March 26	Monday, March 26th —Soft Close Date for Applicants Committee Reviews Applicant Pool **Committee Identifies 10-15 Semifinalists, Finalize Interview Questions (Date to Be Determined— <u>Late in the Week</u>)
Week of April 2	Initial Referencing Begins Sunday, April 8th – Easter Sunday
Week of April 9	Preliminary Reference Reports to Committee **Interviews with Semifinalists (Dates to Be Determined— <u>Late in the Week</u>) **Committee Identifies Final Candidates Final Referencing Begins
Week of April 16	Final Referencing Continues April 21st through April 24th -- AACC Convention Orlando
Week of April 23	**On-Campus Interviews (Dates to Be Determined) **Gather Feedback from Campus Communities Final Reference Report to Decision Makers April 24th through May 2nd – Final Exams
Week of April 30	**On-Campus Interviews (Dates to Be Determined) **Gather Feedback from Campus Communities May 4th -- Commencement
Week of May 7	**Final Decision, Negotiation, and Hire
Fall, 2012	Selected Candidate Begins Post

**** Denotes tasks to be completed by Search Committee or other College Office**

Begin Option 2 –Finishes after Commencement and depending on Faculty schedules may require Faculty to come to Campus after the Semester is completed.

Week of March 26	Monday, March 26th —Soft Close Date for Applicants Committee Reviews Applicant Pool
Week of April 2	**Committee Identifies 10-15 Semifinalists, Finalize Interview Questions (Date to Be Determined) Initial Referencing Begins
Week of April 9	Initial Referencing Continues
Week of April 16	Initial Referencing Continues
	April 21st through April 24th -- AACC Convention Orlando
Week of April 23	Initial Referencing Continues
	April 24th through May 2nd – Final Exams
Week of April 30	Preliminary Reference Reports to Committee **Interviews with Semifinalists (Dates to Be Determined) **Committee Identifies Final Candidates
	May 4th -- Commencement
Week of May 7	Final Referencing Begins
Week of May 14	**On-Campus Interviews (Dates to Be Determined) **Gather Feedback from Campus Communities
Week of May 28	Final Reference Report to Decision Makers **Final Decision, Negotiation, and Hire

**** Denotes tasks to be completed by Search Committee or other College Office**

D-R-A-F-T**EDISON STATE COLLEGE
PRESIDENTIAL SEARCH
TIMELINE**

January 24, 2012

January 26, 2012

Edison State College awards the contract to Academic Search with John Hicks designated as the Senior Consultant.

January 26 – February 6: *Organize the Search Process*

John Hicks and the Academic Search team work side-by-side with Edison State College to set specific goals and develop operating guidelines. Those organizational components include:

1. Assist in structuring the overall process.
 2. Counsel on the charge to the Search Committee.
 3. Develop time line and establish search policies.
 4. Develop web-based communication tools.
 5. Draft correspondence as needed for all phases of the search.
 6. Prepare to maintain search records, including candidate credentials.
 7. Make arrangements for extended on-campus visit to meet with key constituent groups.
-

February 6-15: *Analyze Institutional Needs***February 6-8**

John Hicks interviews college constituencies and learns the culture and position requirements, then assists in developing the criteria for attributes of leadership and a description of the opportunities and challenges the next President of Edison State College should be prepared to take advantage of and/or resolve. Steps in the analysis of institutional needs include:

1. Complete intensive on-site interviews with Trustees, faculty, staff, students, administrative leaders, alumni and community leaders individually or in groups as appropriate.
2. Review publications and reports provided by the College.
3. Meet with the institutional relations staff to begin development of position description including a comprehensive web site and/or institutional profile featuring in-depth information about the position, the College, the governance structure, and the community.

February 8

The Search Committee meets with John Hicks to hear his report on findings from the campus visit, review search process and procedures, and provide input regarding desired leadership attributes needed in the next President as well as an assessment of opportunities and challenges the President will face.

February 13

John Hicks distributes to the Search Committee the draft position description materials and ad for their review. The position profile will include a description of specific leadership characteristics, attributes and experiences being sought, and describe the opportunities and challenges awaiting the next President.

February 15

Search Committee members forward their comments to John Hicks so the final version of recruitment documents can be developed.

February 20

The Search Committee meets with John Hicks to review all plans for the search as well as the final version of the ad, position profile, advertising strategy, and campus and community outreach associated with the search process.

February 20 – April 13: *Candidate Recruitment***February 20**

The Edison State College Presidential search is launched.

February 20 – April 13

John Hicks, assisted by the Academic Search support team, works to recruit a strong and inclusive candidate pool. Academic Search activates its extensive networks to identify a broad and diverse group of candidates with the desired attributes and experience. Those action steps include:

1. Implement national advertising strategy.
2. Provide national nominations source list.
3. Follow up with nominated candidates.
4. Directly recruit additional highly qualified candidates.

5. Assist in meeting or exceeding affirmative action/equal opportunity expectations.
-

April 16 – May 25: *Candidate Review, Interviews, Evaluation, Vetting*

Based on input from the Search Committee, John Hicks and the Academic Search network will evaluate and thoroughly vet the pool to identify those candidates with the record of accomplishment and leadership capacity needed to bring Edison State College to the next level.

April 16

John Hicks meets with the Search Committee to discuss candidates and plans for initial interviews.

April 23-24

The Search Committee conducts initial interviews.

April 30-May 4

The Search Committee hosts a series of on-campus interviews with two or three selected final candidates. Subsequently, the Search Committee solicits input from individuals who have met with finalists during their on-campus visits.

May 7

The Search Committee and John Hicks meet to develop and convey recommendations to the Board of Trustees.

After May 7 (When Ready): *Edison State College Board of Trustees appoints President and the new Presidency is launched*

Upon receipt of the Search Committee's recommendations regarding candidates, John Hicks will work with the Board to ensure that thorough due diligence and background investigation have been completed and he will assist in negotiations with candidates. The Board, being confident and comfortable with the search process and enthusiastic regarding the appointment of the next Edison State College President, shall meet and approve said appointment.

Following the appointment of the next Edison State College President, John Hicks will work with the Board to ensure a smooth and productive launch of the Presidency.



Carl Joseph Coleman
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January 21, 2012

BY E-MAIL DELIVERY

Chairwoman Ann E. Berlam
Edison State College
Board of Trustees
8099 College Parkway
Fort Myers, Florida 33919

Re: Termination of President Kenneth P. Walker's Employment

Dear Chairwoman and Board Members:

Please accept this letter regarding the termination of Kenneth P. Walker, Ph.D. from his position of President at Edison State College (the "College"). In summary, and as discussed in greater detail below, we have come to the following opinions in this matter. First, we are of the opinion that there is a very strong argument that Dr. Walker's contract with the College is void. This opinion is based on the fact that from 2006 through 2010, prior to their adoption and execution, Dr. Walker's contracts were discussed at private meetings conducted by the College's Board of Trustees (the "Board"). Second, even if Dr. Walker's current contract (which consists of a contract, an addendum and two amendments) is valid, we are of the opinion that cause exists for his termination.

As a general matter, Dr. Walker as the President of the College is responsible for, among other things, the leadership, supervision and management of the College. There is strong evidence that Dr. Walker has failed in each of these areas such that cause exists to terminate his employment with the College. As discussed below, this conclusion is based on the following:

1. Dr. Walker failed to disclose to the Board that the College's outside counsel advised the College in 2007 that Board members should be provided with detailed cost information about Dr. Walker's total compensation in order for those Board members to fulfill their fiduciary duties to the College.
2. Dr. Walker failed to disclose to the Board that the College's outside counsel advised the College in 2007 that Dr. Walker's contract should be discussed only at public meetings held in compliance with Florida's Sunshine Law.

FOWLER WHITE BOGGS P.A.

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3. On November 10, 2011, the Reaffirmation Committee for the Southern Association of Colleges and Schools Commission on Colleges ("SACS") made 14 recommendations of non-compliance with standards by the College, including an integrity violation.
4. On September 14, 2011, the Commissioner of Education for the Florida Department of Education sent a letter to Dr. Walker and the College about the "serious administrative issues at Edison State College" including the course substitution issues and the nursing accreditation issues.
5. In November, 2011, the Auditor General issued a Report in which it found, among other things, that the College did not document the reasonableness of the President's compensation and that the College did not have adequate procedures to ensure that substitutions of classes to meet graduation requirements are consistent with Board policies.
6. The SACS' recommendations, the Commissioner of Education's letter and the Auditor General's Report were based, in part, on improper course substitutions that occurred at the College. The SACS' recommendations were also based, in part, on the fact that the College failed to disclose these improper course substitutions in its Compliance Certification Report.
7. The SACS' recommendations were also based, in part, on the fact that the College's Bachelor of Science in Nursing ("BSN") program was not accredited and that the College misrepresented the status of the BSN's program accreditation.
8. Dr. Walker exhibited poor judgment and attempted to interfere improperly with Henderson Franklin's investigation into alleged discrimination at the College.
9. Dr. Walker exhibited poor judgment and attempted to interfere improperly with AACRAO's Report regarding the course substitution issues.
10. Dr. Walker had prepared a Memorandum dated June 15, 2011 which was contrary to the succession plan that was approved by the Board in April 2011 and that was contrary to the best interests of the College.

As explained in greater detail below, these events, when taken together, demonstrate a failure by Dr. Walker with respect to the leadership, supervision and management of the College and, in our opinion, constitute cause for his termination (assuming that Dr. Walker's contract with the College is valid.)

FACTUAL BACKGROUND

Dr. Walker is currently employed pursuant to a contract, as explained in greater detail below, that may be terminated for "cause." Pursuant to District Board of Trustees Policy 6Hx6:1.02 and pursuant to the Classification Description of the District President position, Dr. Walker, as the President of the College, is responsible for the leadership, supervision and management of the College. Copies of these documents are attached hereto as **Exhibits 1 & 2**. In addition, pursuant to the Classification Description of the District President position, Dr. Walker is responsible for administering the College with efficiency, effectiveness and accountability, and insuring the effective administration of financial matters. Further, Dr. Walker is evaluated by the Board on, among other things, whether he provides effective leadership in accordance with the highest standards of ethical and moral behavior and whether he keeps the Board informed by reports at board meetings from various college personnel and student leaders. A copy of Dr. Walker's evaluation form is attached hereto as **Exhibit 3**.

I. Dr. Walker's Failure to Disclose to the Board Henderson Franklin's Advice Regarding the Information that Should Be Provided to the Board About Dr. Walker's Contract, Addendum and Amendments and the Sunshine Law Requirements Regarding Same.

During his tenure as President, Dr. Walker typically entered into an annual employment contract with the College that provided for a four-year term. For at least several years prior to 2006, Dr. Walker and the College routinely executed, on an annual basis, both a one-page form contract – which was a form approved by the State and used for administrative personnel – and a separate written addendum to that form contract. The form contract provided only the most basic terms of Dr. Walker's employment such as the President's base salary and the term of employment (e.g., July 1, 2005 through June 30, 2009). The addendum, and later the amendments, provided for all of Dr. Walker's other benefits and perquisites including, insurance, a vehicle allowance, a housing allowance, a college development allowance, paid vacation leave, and retirement benefits.

In 2006, the Board approved Dr. Walker's form contract for the four-year term of July 1, 2006 through June 30, 2010 and an addendum to that form contract dated June 27, 2006. This addendum was subsequently amended apparently to correct a scrivener's error and bears the date July 10, 2006. The July 10, 2006 addendum will be referred to as the "Addendum." In 2007, rather than enter into the form contract and a new addendum – as he had in past years – Dr. Walker entered into a form contract for the four-year term of July 1, 2007 through June 30, 2011 and a document captioned "Amendment 1 to Contract Addendum." Amendment 1 provides, among other things, that the Addendum shall apply to whatever form contract is then in effect between Dr. Walker and the College (as opposed to only the form contract for the four-year term of July 1, 2006 through June 30, 2010). In other words, rather than enter into a new addendum on an annual basis, as Dr. Walker and the College had in the past, the addendum dated July 10, 2006 would continue in effect in future years and for future contracts.

Between 2008 and 2010, Dr. Walker continued to enter into the form contract on an annual basis (such that he always had a four-year employment contract in place), but did not

present a new addendum to the Board each year for approval. In 2010, in addition to a new four-year contract with a term of July 1, 2010 through June 30, 2014, Dr. Walker also presented a document captioned "Amendment 2 to Contract Addendum" to the Board, both of which were approved on April 27, 2010. Amendment 2 provides, among other things, that Amendment 2, along with the Addendum and Amendment 1, are to be effective through June 30, 2014. A copy of the July 1, 2010 through June 30, 2014 contract, the Addendum, Amendment 1 and Amendment 2 are attached hereto as **Exhibit 4**.

Dr. Walker negotiated the terms of his annual contracts and any relevant addenda and amendments with the Chairperson of the Board of Trustees. Through 2010, once Dr. Walker's contract was finalized with the Chairperson, Dr. Walker would present his contract to the Board of Trustees at an executive session or workshop which normally consisted of all Board Members. Mary Lee Mann confirmed that this was the process in place during her second tenure on the Board from 2005 to 2011.¹ Ms. Mann confirmed that these executive sessions were not open to the public and took place out of the "Sunshine." Dr. Walker would not provide to the Board the dollar values for each contract item in his compensation package and, instead, would generally provide only the amount of base compensation which was substantially less than the total value of his compensation and benefits package. Alan Francis confirmed that this was the procedure for Dr. Walker's contract until Mr. Francis retired in 2007. Pamela Fairfax and Gina Doeble confirmed that this procedure was followed after Mr. Francis retired in 2007.

From 1992 to 2007, Mr. Francis worked with Dr. Walker on the financial provisions of Dr. Walker's contract with the College (including any addendum or amendment to that contract). Mr. Francis held various positions during that period of time – Director of Finance, Vice President of Technical Services and Vice President of Administrative Services – and indicated that his role, in part, was to put together the figures for each provision in Dr. Walker's contract so that these figures could be booked and reserved for in the College's budget for the year. Mr. Francis indicated that in 2005 he also became involved in working on the wording of Dr. Walker's contract and that he was responsible for having the contract reviewed by the College's legal counsel to confirm that everything was "legal."

In approximately May, 2007, Mr. Francis forwarded a draft of Amendment 1 to the law firm of Henderson Franklin for review. Mr. Francis also provided additional documentation to Henderson Franklin at that time including, (1) Dr. Walker's contract for the term of July 1, 2006 to June 30, 2010 and the Addendum (both of which were stamped "Confidential"); (2) a document labeled "2006-2007 Employment Contract Analysis" that contained a line-by-line analysis of the dollar values for each contract item in Dr. Walker's compensation package; (3) an analysis of Dr. Walker's retirement package; and (4) a comparison of total compensation and presidential leave for Florida Community Colleges. The 2006-2007 Employment Contract Analysis, which was dated as of July 1, 2006, indicated that Dr. Walker's total annual compensation package (including both taxable and non-taxable items) was \$604,620.08, of which \$225,772.08 was listed as base salary. A copy of the material provided by Mr. Francis to Henderson Franklin is attached hereto as **Exhibit 5**. Documentation regarding Dr. Walker's

¹ Attached as an addendum to this letter is a list of the individuals interviewed with respect to this matter.

contracts indicates that the total annual compensation package for 2005-2006 was \$451,986.63, of which \$225,772.08 was base salary. A copy of this documentation is attached hereto as **Exhibit 6.**²

At that time, in addition to asking Henderson Franklin to review the substantive provisions in the draft of Amendment 1, Mr. Francis also stated that he asked Henderson Franklin to opine on what information needed to be provided to the Board of Trustees regarding the value of Dr. Walker's total compensation. Mr. Francis stated that he was concerned that Dr. Walker was not open with the Board about what the various elements of his contract "cost" and wanted to determine from Henderson Franklin whether that was acceptable. In addition, Mr. Francis indicated that Dr. Walker was about to receive a "significant increase" in total compensation from the prior year and that in Mr. Francis' opinion that increase was "not obvious."

Henderson Franklin reviewed the draft Amendment 1 and prepared a Memorandum dated May 21, 2007 addressed to Mr. Francis, a copy of which is attached hereto as **Exhibit 7**. In addition to addressing the substantive provisions in the draft Amendment 1, Henderson Franklin also addressed two additional topics: (1) "Information to be Provided to Board Members"; and (2) "Application of Government in the Sunshine Law to Executive Sessions." With respect to the first topic, Henderson Franklin stated, in relevant part as follows:

In order to allow the board of trustees to fulfill their fiduciary duties, we suggest expanding the information provided to the trustees [sic] the detailed cost analysis of the various items of the President's overall benefits package you provided us

. . . In order for the board of trustees to make a fully-informed decision on the compensation and benefits provided to the President, cost information on the value of the benefits provided to the President (as well as the base compensation) should be provided to the board of trustees. The materials we have reviewed do not indicate what exactly has been historically provided to the board of trustees, but we believe it appropriate and advisable for the board to receive the costing information contained in the materials we have been recently provided in order for them to fulfill their fiduciary duties as board members.

With respect to the second topic, Henderson Franklin stated that Florida's "Government in the Sunshine Law" (Florida Statutes 286.011) applies to the College. In particular, Henderson Franklin noted that although there are certain exceptions to the requirements of the Sunshine Law, deliberations on employment contract matters are not one of the permissible exceptions. Thus, Henderson Franklin advised that meetings by the College Board of Trustees or an executive committee tasked with this issue should comply with the Sunshine Law requirements. Henderson Franklin went on to state:

² This documentation lists Dr. Walker's total annual compensation package for 2006-2007 to be \$605,120.10, slightly greater than the information provided by Mr. Francis to Henderson Franklin in May 2007.

Members of the board of trustees should also be mindful that the Sunshine Law requirements apply not just to deliberations of the full board at board meetings, but to any discussion or communication between two (2) or more board members, whether directly or indirectly (through, for example, a non-board member intermediary). Consequently, the board of trustees should take care that any discussions regarding the President's contract amendment, including any discussions pertaining to any on-going negotiations, only occur at properly-noticed board meetings.

Henderson Franklin provided the memorandum to Mr. Francis on or about May 21, 2007. On May 23, 2007, Mr. Francis indicated to Henderson Franklin in an e-mail that he had shared the firm's comments regarding the President's contract with Dr. Walker. Mr. Francis also indicated that he was currently on vacation until June 4, 2007 and requested that Henderson Franklin work directly with Dr. Walker to finalize the necessary revisions to Amendment 1. A copy of this e-mail is attached hereto as **Exhibit 8**.

When Mr. Francis returned from vacation in early June, Dr. Walker told Mr. Francis that the College was going in a "different direction" and that Mr. Francis could retire or be terminated. Mr. Francis' annual contract had just been renewed on April 24, 2007 with a salary of \$135,850.08. Mr. Francis chose to retire effective July 1, 2007 pursuant to a separation agreement signed by himself and by Dr. Walker on June 8, 2007 and subsequently signed by the Chairperson of the Board of Trustees on June 26, 2007.

In the meantime, Henderson Franklin prepared a second memorandum dated July 2, 2007 which continued to address certain substantive issues in Amendment 1. A copy of this memorandum is attached hereto as **Exhibit 9**. On July 11, 2007, after attempting to send this memorandum to Mr. Francis, Henderson Franklin e-mailed a copy of the July 2, 2007 memorandum directly to Dr. Walker. On that same date, Dr. Walker responded to this e-mail and requested that Henderson Franklin provide him with copies of all e-mails or correspondence between Henderson Franklin and Mr. Francis related to this contract and Amendment 1. Dr. Walker also requested a meeting with Henderson Franklin on August 3, 2007 to discuss Amendment 1. Dr. Walker stated that he wanted "everything to be done in strict compliance with the law and state regulations[.]" A copy of these e-mails is attached hereto as **Exhibit 10**. Henderson Franklin provided copies of the e-mails and correspondence to Dr. Walker and met with him on August 3, 2007 as requested. On August 7, 2007, Henderson Franklin sent a revised draft of Amendment 1 to Dr. Walker and a copy of the May 21, 2007 Memorandum which contained the discussion of the "Information to be Provided to Board Members" and "Application of Government in the Sunshine Law to Executive Sessions." A copy of this e-mail is attached hereto as **Exhibit 11**.

We have found no evidence that, following receipt of the May 21, 2007 Memorandum, Dr. Walker ever informed the Board of Trustees of the recommendations Henderson Franklin made to the College. Neither Christopher Vernon, Esq., a current Board Member, nor Ms. Mann, a former Board Member, was aware of any such recommendation. In addition, contrary to Henderson Franklin's advice, until he was specifically requested to do so in 2011, we have

found no evidence that Dr. Walker provided the Board with the detailed cost information and analysis for his contracts with the College. Again, both Mr. Vernon and Ms. Mann confirmed that they were never provided with this detailed cost information and analysis by Dr. Walker or by anyone else during the relevant time periods. Between 2007 and 2011, the value of Dr. Walker's total compensation increased from \$605,120.10 in 2007 to \$838,438.95 in 2011 (with Dr. Walker's base salary increasing from \$235,933.70 to \$322,400.00).³

In addition, Dr. Walker continued to allow his contracts to be discussed with the Board of Trustees at executive sessions outside of the "Sunshine." Further, we have found no evidence to suggest that Dr. Walker ever provided copies of the May 21, 2007 Memorandum or the July 2, 2007 Memorandum to the Board. Mr. Vernon indicated that he had never seen the memos. Ms. Mann indicated that she was not aware of any outside counsel for the college providing advice regarding the Sunshine Law as it related to executive sessions. Ms. Fairfax and Mark Lupe, Esq. indicated that copies of these memoranda were found in Dr. Walker's desk when his belongings were being inventoried and packed after he was placed on paid administrative leave in November, 2011. The copy of the May 21, 2007 Memorandum found in Dr. Walker's desk appears to be an original copy of the Memorandum as it is on original Henderson Franklin letterhead.

Ms. Fairfax indicated that these Memoranda were not in Dr. Walker's personnel file. We reviewed Dr. Walker's personnel file and did not find a copy of the May 21, 2007 Memorandum or the July 2, 2007 Memorandum in that file. We did, however, find a copy of a letter from the previous year (2006) from Henderson Franklin indicating that it had reviewed the most recent addendum to Dr. Walker's employment agreement and confirmed that it was in compliance with governing law. It appears from a memorandum dated January 8, 2007 that Mr. Francis made sure that the 2006 Henderson Franklin letter was placed in Dr. Walker's personnel file. We have found no evidence that Dr. Walker similarly made sure that the May 21, 2007 and July 2, 2007 Memoranda were placed in his personnel file either before or after Mr. Francis retired.

We are very troubled by the fact that Dr. Walker did not share with the Board the advice of Henderson Franklin in 2007 regarding the information that should be provided to the Board regarding Dr. Walker's compensation to allow the Board to fulfill its fiduciary responsibilities to the College and regarding the process by which Dr. Walker's contracts with the College should be considered and adopted in order to comply with the Sunshine Law requirements. At a minimum, Dr. Walker's conduct demonstrates a failure to administer the College with accountability; a failure to ensure the administration of financial matters at the College; a failure to provide effective leadership with the highest standards of ethical and moral behavior; and a failure to keep the Board informed regarding critical matters related to compliance with Florida law.

³ Pam Fairfax indicated that in 2009, Dr. Walker received both an increase in his base compensation from the Board and a 4% increase that faculty received that year despite the fact that the Addendum provides that Dr. Walker will receive either a Board approved increase or the percentage of increase for faculty.

II. The SACS Report, the Commissioner of Education's Letter and the Auditor General's Report.

A. The Recommendations of the SACS Report of the Reaffirmation Committee.

On November 10, 2011, the Reaffirmation Committee for the Southern Association of Colleges and Schools Commission on Colleges ("SACS") made 14 recommendations of non-compliance with standards by the College. The Reaffirmation Committee's Report is attached hereto as **Exhibit 12**. The most serious of these recommendations is what is commonly referred to as an integrity violation. The Reaffirmation Committee recommended that the College provide evidence that it has safeguards in place to ensure the integrity of its academic programs and all operations. More specifically, the On-Site Reaffirmation Committee noted that it "was very disturbed about the lack of integrity displayed by Edison State College" and found "a lack of integrity in two areas: (1) knowingly submitting inaccurate information in its compliance certification in March 2011 and; (2) the integrity of the College's academic programs." These findings related to inappropriate course substitutions for core courses in multiple majors. The On-Site Committee determined that the College knew about these course substitutions prior to submission of its compliance certification in March 2011 and, yet, failed to mention these issues in the documents provided to SACS in March 2011. In addition, the On-Site Committee noted that "there are hundreds of graduates of these programs with inappropriate course substitutions for required core courses that bring into concern the integrity of those degrees and the academic programs." The On-Site Committee further found "little evidence" that the College had safeguards in place "to ensure that this type of egregious violation of good educational practices does not occur in the future." Also contributing to the integrity violation was information provided to the On-Site Committee about inaccurate recruitment material for the B.S. in Nursing program (commonly referred to as the "BSN Program").

The Reaffirmation Committee also recommended that the College demonstrate that all degree programs embody a coherent course of study as appropriate to the designated field. In this regard, the On-Site Committee again referred to the issue of course substitutions and stated that those substitutions "bring into question whether students are receiving a 'coherent course of study.'" The On-Site Committee found evidence of inappropriate course substitutions. It noted that approval of inappropriate course substitutions appeared to have been an on-going practice for several years and that it appeared to have continued until as recently as May 2011. The Reaffirmation Committee noted that the College had contracted with the American Association of Collegiate Registrars and Admissions Officer ("AACRAO") to conduct an audit during the summer of 2011 and that the audit confirmed that there were inappropriate substitutions and recommended a series of corrective actions for the College to take. The On-Site Committee expressed several specific concerns: "(1) while there are new practices that have been put into place, there is concern as to whether there will be consistent implementation and enforcement; (2) although the institution claims to have made efforts to correct the questionable courses for students, interviews with students indicated that they had not been contacted nor had the institution been pro-active in making restitution; and (3) that appropriate measures are being taken to ensure program relevance and integrity."

The Reaffirmation Committee also expressed concern about the organizational structure at the College. The On-Site Committee noted that it was “very challenging to understand the current [organizational] structure and what it was at various times over the last four years. The roles and responsibilities of the individuals identified on the organizational chart were difficult to understand when comparing district positions to campus positions. In addition, the multiple staff changes made the organization charts difficult to follow.” The On-Site Committee also stated that the reporting structure for staff was not clear in some cases and that the role and duties of the campus presidents were unclear. The On-Site Committee also noted that the fact that some individuals held multiple titles, some district titles and some campus titles, further complicated the organizational structure. The Committee also determined that over the last four years several departments had “bounced” around the organizational structure. In sum, the Reaffirmation Committee concluded as follows: “The complex organizational chart and the lack of reporting line stability for some units (in addition to lack of consistent leadership) inhibit clear communication and appear to negatively impact the day to day operations of the institution at large.

During our interviews, various people shared with us their views about where the fault lay for the SACS recommendations and, more generally, for the College’s submissions to SACS, including the Compliance Certification Report in March 2011 and the Focused Report in September 2011. For example, several people indicated that Noreen Thomas, as Executive Vice President, had been in charge of the SACS process before October 2010 and that Dr. Thomas had not ensured that adequate progress was made on the Certification Compliance Report prior to her departure which caused the College to have to complete that Report in a very compressed time frame. This view was shared with us by Bobbie Buczyna and Pam Mangene and alluded to by Edith Pendleton, Ph.D.

Some of the individuals that we interviewed also stated that Dr. Walker was not visibly involved in the SACS process on a day-to-day basis and that James Browder was monitoring the SACS process on a daily basis until his departure in April, 2011. Stephen Atkins, Ph.D., Ms. Mangene and Erin Harrel, Ph.D. indicated that this was the case. Dr. Pendleton’s description of the process was consistent with their observation. Dr. Atkins also expressed the opinion that, if Dr. Walker had been properly supervising the SACS process, then he would have made sure that work on the Certification Compliance Report began two years earlier than what it did.

We are not in a position to make complete factual findings regarding any failures that may have occurred in the SACS process. Based on the facts that we have considered, we do believe, however, that there were failures in the process established for the College’s filings with SACS such as the Compliance Certification Report and the Focused Report. For example, the people that we interviewed who were involved in work on the Compliance Certification Report unanimously reported that they worked night and day from at least January through March 15, 2011 when that Report was submitted. Several individuals, including Ms. Mangene and Dr. Atkins, stated that this process should normally be undertaken over a course of years rather than months.

Ultimately, however, the recommendations made by the SACS Reaffirmation Committee speak for themselves and whether they were caused by the substance of what was occurring at the College or by the process which the College engaged in with respect to its submissions to SACS or by some combination of both of these things is not material for our purposes. The fact is that under Dr. Walker's leadership as President of the College, SACS made 14 recommendations on non-compliance with standards including the most serious possible recommendation – an integrity violation. These recommendations place both the integrity of the College and the accreditation status of the College in jeopardy.

In our opinion, the SACS recommendations in and of themselves demonstrate a failure of leadership, management and supervision by Dr. Walker. In addition, we also considered the fact that Dr. Walker, along with Dr. Atkins, signed the Compliance Certification Report attesting to the fact that the College “has conducted an honest assessment of compliance and has provided complete and accurate disclosure of timely information regarding compliance with Core Requirements, Comprehensive Standards, and Federal Requirements of the Commission on Colleges.” A copy of this signature page is attached hereto as **Exhibit 13**. SACS based its recommendation regarding an integrity violation, in part, on the fact that the College had knowingly submitted inaccurate information in its compliance certification in March 2011 by not disclosing the course substitution issues. Although Dr. Walker shares responsibility for this with Dr. Atkins and probably others, the fact remains that Dr. Walker certified to SACS that the College had conducted an honest assessment of compliance and provided complete and accurate disclosure and SACS determined that this was not true and that, in fact, the College knowingly submitted inaccurate information. This similarly supports our opinion that Dr. Walker did not adequately lead, manage and supervise the College with respect to the SACS process.

B. The September 14, 2011 Letter from the Florida Department of Education.

On September 14, 2011, Gerard Robinson, the Commissioner of Education for the Florida Department of Education sent a letter to Dr. Walker and the College about the “serious administrative issues at Edison State College.” A copy of this letter is attached hereto as **Exhibit 14**. Commissioner Robinson specifically addressed the course substitutions issue and the NLN accreditation issue, stating as follows:

As you are aware, I am very concerned with inappropriate lower-division course substitutions, as verified in an independent audit by the American Association of College Registrars and Admissions Officers (AACRAO). Neither Edison State College, its students nor receiving institutions are well-served by the delivery of technical degree curriculum that has been compromised by allowing the substitution of coursework that does not cover expected student learning outcomes. Additionally, the failure of the College to apply for National League of Nursing (NLN) accreditation for the Bachelor of Science in Nursing (BSN) degree in a timely manner, while leading students to believe they would be graduating from a NLN approved program, is unacceptable and poorly represents the institutional integrity expected of colleges within The Florida College System.

Commissioner Robinson requested additional documentation regarding these issues and stated that he expected to be kept fully apprised of the College's efforts to resolve these issues "in a manner that restores confidence in the institution's programs and administrative functions."

We are of the opinion that this letter from the Commissioner of Education further highlights Dr. Walker's failure of leadership, management and supervision.

C. Auditor General's November 2011 Report.

In November, 2011, the Auditor General for the State of Florida issued its report on the operational audit that it conducted of the College. A copy of the Report is attached hereto as **Exhibit 15**. The Auditor General's Report made several findings against the College. For example, the Report found that the College did not document the reasonableness of the President's compensation. The Auditor General's Report indicated that for the 2010-2011 fiscal year, the President's compensation totaled \$837,085. The Report stated that Dr. Walker's compensation was significantly higher than that paid to presidents of similarly sized or larger Florida colleges, and was the highest of any public college president in the State of Florida. The Report also noted that Dr. Walker's compensation was higher than the compensation of the 11 Florida public university presidents. In addition, the Auditor General's Report stated that Dr. Walker's \$48,360 retention bonus was reimbursed to the College by the Edison State College Financing Corporation, a College direct-support organization. The Auditor General's Report noted that it was not apparent from College records how the payment of the President's retention bonus was consistent with the stated purpose of the Financing Corporation and recommended that the College should reimburse the Financing Corporation for the retention bonus, which it subsequently did.

The Auditor General's Report also found that the College did not have adequate procedures to ensure that substitutions of classes to meet graduation requirements are consistent with Board policies. More specifically, the Auditor General's Report stated that it had reviewed 10 College approved course substitution forms, totaling 60 course substitutions and found that the 10 forms selected had not been signed by the appropriate Dean. In addition, the Report stated, among other things, that on 8 of the forms with course substitutions ranging from 3 to 10 courses each, the substituted courses did not meet the content and competencies of the program requirements in which the student was enrolled. The Report gave the example of a student who was granted approval to substitute Drawing for Principles of Banking and another student who was granted approval to substitute Introduction to Digital Photography for Principles of Banking. The Report noted that excessive or inappropriate course substitutions may fundamentally alter the content of the program requirements for the student's chosen field of study such that required core competencies of the program may not be met.

We are of the opinion that this Report from the Auditor General further demonstrates Dr. Walker's failure of leadership, management and supervision.

III. The Course Substitution Issue.

As explained above, issues related to course substitutions contributed to recommendations made in the SACS Report of the Reaffirmation Committee and the letter from the Commissioner of Education and findings in the Auditor General's Report. The College did not disclose the course substitutions issues to SACS in its Compliance Certification Report dated March 15, 2011, but did disclose the course substitutions issues to SACS in its Focused Report dated September 29, 2011. Again, both Dr. Walker and Dr. Atkins signed the Focused Report and attested to its accuracy and the completeness of its disclosures. A copy of the Focused Report is attached hereto as **Exhibit 16**. In the Focused Report, the College indicated that in December 2010 it discovered substantial irregularities in the established course substitution procedure in the AS degree in Accounting Technology, AS degree in Business Management, and the AS degree in Drafting and Design programs. On December 3, 2010, the College conducted an internal investigation to conduct interviews with key administrative and staff members, review substitutions and related reports, and reevaluate College procedures in the area. At that time, the College implemented a plan to assure ongoing compliance with internal and external standards, including a strengthened course substitution policy, and revised form. Five months later, after submitting its Compliance Certification Report, the College uncovered additional violations of its course substitution policy. On July 11, 2011, the College alerted SACS regarding the situation and Barry Goldstein, Ph.D., Vice President, SACS, advised the College to fully disclose in the Focused Report what had occurred.

We reviewed a letter from Dr. Atkins to Dr. Browder dated December 2, 2010 which discussed the course substitution issues and highlighted the very serious nature of these issues. A copy of this letter is attached hereto as **Exhibit 17**. In particular, Dr. Atkins stated that a review of the course substitutions showed "clear violations" of SACS and Florida Statutes as well as College policies and procedures for awarding degrees. Dr. Atkins also stated that these violations were "direct threats" to the College's accreditation status and had the potential to result in an integrity violation from SACS. Dr. Atkins stated that he gave this letter to Dr. Browder on December 2, 2010. Dr. Atkins also stated that he met with Dr. Browder around this same time and discussed the course substitution issues with him. Dr. Atkins indicated that in January, 2011, Dr. Browder told him he shared all of the course substitution information with Dr. Walker. Ms. Mann stated that Dr. Walker had told her that Dr. Browder had never received this letter and Dr. Walker indicated that he had not seen the letter. Ms. Fairfax indicated that Dr. Walker told her that Dr. Browder never got the December 2, 2010 letter and that he and Dr. Browder believed that the letter was created after the fact. However, Ms. Fairfax stated that she found Dr. Walker's claim odd because the very next day, Dr. Browder was present and aware of the investigation that the College conducted. This investigation was conducted by Dr. Atkins, Robert Beeson, Ph.D., Ms. Fairfax, and Ms. Mangene and consisted of approximately five interviews. These individuals kept detailed notes of these interviews and Dr. Atkins stated that those notes were shared with Dr. Browder. Ms. Fairfax stated that based on her knowledge of the relationship that Dr. Browder had with Dr. Walker, she found it hard to believe that Dr. Browder did not share the contents of the December 2, 2010 letter with Dr. Walker at the time that he received it. Similarly, Mr. Lupe. stated that he believed that Dr. Walker knew about the

course substitution issue in December 2010 and that he would be surprised if Dr. Browder did not share this letter with Dr. Walker.

We discussed the issue of course substitutions in detail with almost every person that we interviewed to get their views on this topic. During those discussions, these individuals including Ms. Fairfax, Ms. Buczyrna, Dr. Pendleton, Dr. Beeson, Dr. Atkins, Ms. Mangene, Mr. Vernon and Ms. Mann shared with us various things regarding the course substitutions issue. For example, several people described for us Dr. Pendleton's investigation into the issue after Dr. Atkins left the College and Dr. Pendleton's presentation to the Board in April 2011. Ms. Buczyrna shared with us her impressions of Dr. Walker's view on the course substitutions based on a conversation she had with him. Several people shared with us the disagreement that Dr. Atkins and Dr. Walker had on how to address the course substitution issue in the Focused Report and how to incorporate the AACRAO findings – discussed below – into the Focused Report. Several individuals also discussed with us Dr. Atkins' contacts with SACS regarding this issue and the disagreement between Dr. Atkins and Dr. Walker about how these contacts were handled.

Similar to the SACS issues, we are not in a position to address and resolve all of the myriad of issues that exist with respect to course substitutions at the College. This would be beyond the scope of what we were retained to do. For our purposes, what is relevant is the fact that this issue of course substitutions – according to the SACS Reaffirmation Committee's Report – had been occurring at least over a 3 to 4 year period and contributed to recommendations of non-compliance, including an integrity violation. We need not resolve exactly when Dr. Walker learned about these issues. In our view, the fact that these course substitutions occurred over an extended period of time that Dr. Walker was President of the College and the fact that these issues contributed to the recommendations of the SACS Reaffirmation Committee, in particular the integrity violation, demonstrate a failure by Dr. Walker in the leadership, management and supervision of the College.

IV. The Nursing Accreditation Issue.

SACS also noted the nursing accreditation issue in the Report of the Reaffirmation Committee. Similar to the Course Substitution issue, the College did not disclose this issue in its Compliance Certification Report in March 2011, but did address the issue in its Focused Report in September 2011.

In the Focused Report, the College indicated that on June 26, 2007, the College's Board of Trustees approved a motion for the College to apply for authorization to offer the BSN with a planned implementation by Fall 2009. In February of 2008, the College received approval from the Florida State Board of Education to offer the BSN degree and on February 5, 2009, SACS granted approval for the College to include the BSN program in the current scope of accreditation. In Fall 2009, the College enrolled its first BSN students.

The College also stated in the Focused Report that it had consistently indicated its intent to pursue national accreditation through the National League of Nursing Accreditation

Commission (“NLNAC”) by both applying for candidacy and completing the self-study process required by the NLNAC by 2011. The College also acknowledged that there were several communication errors regarding the candidacy status for the BSN program including a press release on June 22, 2010 that stated that the Nursing program was accredited by the NLNAC and a memorandum to students, faculty and administrators in November 2010 that incorrectly stated that the BSN program had achieved candidacy status through the NLNAC. In addition, a former Associate Dean had authorized the posting of the 2011-2012 Nursing Student Handbook online, and it was on the website for approximately two weeks before the College realized that it contained incorrect statements regarding the candidacy status of the BSN program.

The College then detailed in the Focused Report the steps that it had taken to ensure that all communications regarding the accreditation status were clear and correct. These included the following: In April of 2011, the newly appointed Associate Director informed students that the College had not yet achieved candidacy status nor would it meet the planned timeline for national accreditation by Spring 2011. On April 12, 2011, the College submitted a letter of intent to the NLNAC. On August 23, 2011, the College submitted the Candidacy Presentation to the NLNAC. Denise McNulty, Ph.D., the Associate Director of the RN to BSN Program, who had recently come to the College after having been an adjunct professor since 2004, indicated that the letter of intent and the candidacy presentation should have been submitted to the NLNAC in 2010.

Despite the fact that the College submitted its letter of intent to the NLNAC on April 12, 2011, the College failed to include the necessary candidacy fee of \$2,500.00 with that letter. The College subsequently generated a Purchase Order for this candidacy fee dated May 23, 2011 and a check to NLNAC dated June 7, 2011. The Purchase Order and Check are attached hereto as **Exhibits 18 & 19**. The check was signed by both Dr. Walker and Ms. Doeble. Ms. Doeble stated that Dr. Walker called her in April, 2011 and wanted her to check on the payment of the accreditation fee to the NLNAC for the BSN candidacy application. Dr. Walker indicated to her that the BSN program could not obtain accreditation if the College did not pay the fee. Ms. Doeble followed up on the payment and stated that it was processed in May, 2011 and paid in June, 2011.

In an e-mail dated August 12, 2011 from Dr. Walker to the Board of Trustees, Dr. Walker indicated that “[w]e have uncovered a problem in the Nursing program.” A copy of this e-mail is attached hereto as **Exhibit 20**. Dr. Walker stated that the former Associate Dean and the Dean of Professional and Technical Studies failed to submit the application for accreditation on time and that they misled students about accreditation. Dr. Walker indicated that they were working with the NLNAC to solve this issue in an urgent manner and that the Executive Director of the NLNAC was helping the College process the application on an expedited basis and that the application would be submitted that week. Dr. Walker also stated that the Florida Department of Education was providing good counsel to the College. Dr. Walker provided additional information regarding these issues to the Board of Directors in an e-mail dated August 13, 2011.

In a Memorandum dated October 28, 2011 from Dr. Walker to the Board of Trustees, Dr. Walker stated that he did not become aware of the nursing accreditation issue until August 12,

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2011 when he disclosed it to the Board in an e-mail. A copy of this Memorandum is attached hereto as **Exhibit 21**. Dr. Walker specifically stated that he was not aware of the issue on August 8, 2011 when Julie Alexander, the Associate Vice Chancellor for Learning Initiatives Division of Florida Colleges, sent an e-mail to Dr. Atkins stating that she would call him on August 11, 2011.

Although it is difficult to identify the exact date when Dr. Walker learned of the nursing accreditation issues, we believe there is ample evidence that Dr. Walker was told about the nursing accreditation issues on multiple occasions prior to August 12, 2011 and that Dr. Walker's October 28, 2011 Memorandum to the Board was not accurate.

For example, Ms. Fairfax indicated that she discussed the nursing accreditation issue with Dr. Walker when she drove him home from the airport in either June or July of 2011. Ms. Fairfax could not recall the precise date that this occurred, although she did comment that it was unusual for her to pick Dr. Walker up at the airport. Based on our interview with Mr. Lupe, it appears that this occurred on July 13, 2011 because Mr. Lupe recalls Ms. Fairfax picking Dr. Walker up at the airport when Dr. Walker returned from North Carolina on that date for a press conference the following day on the course substitution issue. According to Ms. Fairfax, when she expressed concern to Dr. Walker during that conversation that the BSN program was not accredited, he responded that it was not a concern because he made sure that the necessary check was sent for the application.

Mr. Lupe stated that he discussed the nursing accreditation issue with Dr. Walker on either Friday July 15 or Monday, July 18. Mr. Lupe remembers this in part because Ms. Fairfax had sent an e-mail to him about the nursing accreditation issue on July 12, 2011 and Mr. Lupe remembers discussing that e-mail with Dr. Walker shortly thereafter. A copy of the e-mail is attached hereto as **Exhibit 22**. Mr. Lupe stated that in his discussion with Dr. Walker he indicated to Dr. Walker that the BSN program was not accredited. Dr. Walker stated that this was not a problem because the program did not have to be accredited. Mr. Lupe stated that students could not get into graduate school without graduating from an accredited BSN program. Dr. Walker stated that most of the College's BSN students wanted to work in hospitals, not go to graduate school, so this was not a problem.

Patricia Land, Ph.D. stated that she told Dr. Walker about the nursing accreditation issue in a conference call on July 8, 2011. The call occurred while Dr. Walker was on vacation in North Carolina and when Dr. Land had assumed responsibility for the College in Dr. Walker's absence. Dr. Land had recently learned of the nursing accreditation issue and convened several people to discuss and investigate the problem. At that meeting, Dr. Land indicated that they called Dr. Walker and told him about the issue. In that call, Dr. Walker was told that the College apparently had not made any progress at all in the accreditation process for the BSN program; the students were aware of the situation; and that there were documents that existed that misrepresented the College's accreditation status. Dr. Land said that it was her impression that this was the first time that Dr. Walker heard of this and stated that Dr. Walker was shocked and discouraged and offered his support.

Based on these statements and based on the statements and documentation regarding the check dated June 7, 2011 for the BSN program's accreditation application, we believe that Dr. Walker was informed about the nursing accreditation issues on several occasions prior to August 12, 2011 when he admittedly first informed the Board regarding these issues. It is not necessary for us to resolve the issue of whether Dr. Walker intentionally misled the Board and failed to inform them of this issue in a timely manner. Based on the facts we have learned, Dr. Walker either failed to inform the Board about the nursing accreditation issue when he learned of it or he failed to comprehend what several individuals have reported telling him about the nursing accreditation issue prior to August 12, 2011. Either of these things is troubling and demonstrates a failure of leadership, management and supervision of the College. In addition, these facts demonstrate a failure by Dr. Walker to keep the Board adequately informed of critical matters related to the administration of the College and critical matters that could adversely affect students.

V. The Henderson Franklin Investigation Into Allegations of Discriminatory Hiring Practices.

On March 30, 2011, the College retained the law firm of Henderson Franklin to conduct an independent investigation into complaints of discriminatory hiring practices at Edison State College. Specifically, there had been allegations that the College had engaged in racially discriminatory hiring practices in connection with the search and selection process for the Director of Student Financial Aid, the Dean for the School of Nursing and Health Professions and the Dean of the Hendry Glades Campus. On August 22, 2011, Henderson Franklin issued a report of its investigation (the "Report"). A copy of the Report is attached hereto as **Exhibit 23**. In this Report, Henderson Franklin concluded, among other things, that there are "disputed statements and documents, which if proven and accepted, could support a reasonable cause belief that race was a motivating factor in the delayed offer to Dr. Lilly [one of the candidates for the Dean for the School of Nursing and Health Professions]." In addition, Henderson Franklin concluded that there are "incidents collectively and, if proven, [which] could support a reasonable cause belief that [the College] retaliated against" both Dr. Beeson and Dr. Atkins "for complaints of racially discriminatory hiring practices at [the College]." Vicki Sproat and John Potanovic conducted the investigation for Henderson Franklin. Robert Shearman, Esq., of Henderson Franklin, acted as the liaison between Attorneys Sproat and Potanovic and the College.

According to Mr. Shearman, during the course of Henderson Franklin's investigation – and before it issued its Report – Dr. Walker became involved in monitoring the investigation and in attempting to direct the course of the investigation. In particular, as the investigation progressed, Dr. Walker began having frequent contact with Mr. Shearman to find out the status of the investigation and whether Henderson Franklin would be making any negative finding against the College. During these discussions, Dr. Walker expressed concern that Henderson Franklin was investigating allegations of retaliation against Dr. Atkins and Dr. Beeson. According to Mr. Shearman, Dr. Walker told him that Henderson Franklin had been hired to investigate alleged discrimination in hiring and not retaliation and that Henderson Franklin should not address the allegations of retaliation in its report. Mr. Lupe indicated that he also was

concerned that Henderson Franklin decided to investigate the alleged retaliation on its own without authorization from the College. Mr. Lupe stated that he would have preferred to conduct the retaliation investigation in-house because at that point in time he was concerned about the cost of Henderson Franklin's investigation and the firm's unwillingness to place any cap on their fee for those services.

Prior to issuing its Report, Henderson Franklin informed Dr. Walker, among other things, that it believed that there was evidence that race was a motivating factor in the delayed offer to Dr. Lilly for the position of Dean for the School of Nursing and Health Professions and that there was evidence that the College retaliated against Dr. Atkins and Dr. Beeson for complaints of racially discriminatory hiring practices at the College. Dr. Walker expressed to Mr. Shearman that he was extremely concerned at the use of the word "evidence." Mr. Lupe confirmed that Dr. Walker was very concerned with the use of the word "evidence." In addition, Mr. Shearman indicated that Dr. Walker told him that he was very uncomfortable with where the investigation was heading and that he did not like the idea of any adverse finding against the College. Dr. Walker also told Mr. Shearman that he did not see how Henderson Franklin could represent the College and find discrimination. Finally, Mr. Shearman understood Dr. Walker to convey to him that if Henderson Franklin was going to make any adverse finding against the College in its Report (i.e., any finding that the College engaged in discrimination in any respect) that he would have no choice but to fire Henderson Franklin. Mr. Shearman stated that he told Dr. Walker that he accepted that, but asked Dr. Walker to think about how it would look if he terminated the law firm just before the release of its Report. Mr. Shearman told Dr. Walker that it would look like he (Dr. Walker) did not like the findings that Henderson Franklin was about to make.

Mr. Shearman indicated that Mr. Lupe was present when Dr. Walker made the statements discussed above. Mr. Lupe stated that he never heard Dr. Walker threaten to fire Henderson Franklin. Mr. Lupe recalls that at one point he discussed with Dr. Walker (outside of the presence of Mr. Shearman and anyone else) the fact that, if Dr. Walker was not happy with the work that Henderson Franklin was doing, then Dr. Walker had the right and the ability to fire the law firm. However, Mr. Lupe did not believe that this was the best course of action because, among other things, it would delay the completion of the investigation. In addition, Mr. Lupe indicated that on one occasion Dr. Walker indicated that he was going to ask the law firm of Allen, Norton & Blue meet with Henderson Franklin and "lecture" them on ethics and how the law firm could not make adverse findings against the College because Henderson Franklin was the College's lawyer. Mr. Lupe indicated that he was upset at Dr. Walker's suggestion of getting Allen, Norton & Blue involved in this manner and told Dr. Walker that it would be very inappropriate to do that. To Mr. Lupe's knowledge, Dr. Walker never did have Allen, Norton & Blue contact Henderson Franklin about this issue.

According to Mr. Shearman, the day after Dr. Walker made the statement about firing Henderson Franklin, Dr. Walker, Mr. Shearman and Mr. Lupe met in Mr. Shearman's office. At that time, according to Mr. Shearman, Dr. Walker indicated that he was not firing Henderson Franklin. Instead, Dr. Walker and Henderson Franklin agreed to change the language (but not the results and the findings of the investigation) in the Report to remove the word "evidence" and to use phrases such as "disputed statements and documents, which if proven and accepted."

According to Mr. Shearman, this discussion – about what language to use in the Report – occurred between Mr. Shearman and Dr. Walker over a period of time that began before Dr. Walker stated he would terminate Henderson Franklin. Mr. Shearman indicated that the investigators, Ms. Sproat and Mr. Potanovic, were angry about changing the language. Mr. Lupe remembers a meeting with Mr. Shearman and Dr. Walker at Mr. Shearman’s office on August 17, 2011. Although Mr. Lupe does not recall any discussion of firing Henderson Franklin, he otherwise confirms that an agreement was reached between Dr. Walker and Henderson Franklin at that meeting regarding the language to use in the Report.

In addition to Mr. Shearman’s statement to us about Dr. Walker’s conduct with respect to the Henderson Franklin investigation and Report, several other individuals indicated that they also heard about Dr. Walker’s conduct in this regard. For example, Ms. Buczyna, Dr. Atkins, Dr. Beeson and Ms. Mangene each recounted an incident when Ms. Doeble allegedly made statements to them and to others indicating that she had witnessed Dr. Walker threatening Henderson Franklin if the firm did not change the findings and the language in its report. The gist of Dr. Walker’s alleged threat was that he would withhold future work from the law firm if it did not change its report. In our interview with Ms. Doeble, she denied that she made any such statements. Ms. Doeble indicated that she was present at a meeting before Henderson Franklin’s report was released when Mr. Lupe and Dr. Walker were discussing the fact that it looked like Henderson Franklin was going to find that there was some evidence of discrimination with respect to the hiring of Dr. Lilly and that Dr. Walker questioned Mr. Lupe about the meaning of the word “evidence.” Ms. Doeble stated that she shared this conversation with Dr. Atkins. Mr. Shearman indicated that since Henderson Franklin submitted its Report on August 22, 2011, the College has not retained Henderson Franklin to do any additional work for the College.

Although we are not in a position to resolve with certainty whether Dr. Walker threatened to fire Henderson Franklin or withhold work from the law firm based on its findings in its investigation into discriminatory hiring practices, we are very disturbed by Mr. Shearman’s allegations and found him to be credible. We also, however, found Mr. Lupe to be credible and believe that he did not hear what he believed to be a threat. Regardless of what precisely happened, we believe that it was inappropriate and demonstrated poor judgment for Dr. Walker to insert himself into Henderson Franklin’s investigation in the manner that he did. The College retained Henderson Franklin to conduct an independent investigation into allegations of discriminatory hiring practices. The President of the College should not attempt in any way to influence the findings or the results of that investigation or to interfere with that investigation. Indeed, the President of the College should not do anything to even create the appearance that he is attempting to influence the findings or results. Based on our investigation, we believe that at a minimum, Dr. Walker engaged in conduct that created the appearance that he was attempting to influence the findings and the results of Henderson Franklin’s investigation such that the law firm would reach a conclusion that no unlawful conduct occurred. Based on our investigation, we also believe, that although Henderson Franklin agreed to change language in the report at Dr. Walker’s request, Dr. Walker was not ultimately successful in convincing the law firm to change the results or any of the findings in its report.

Dr. Walker's conduct with respect to the Henderson Franklin investigation and report demonstrates a failure by Dr. Walker to provide effective leadership with the highest standards of ethical and moral behavior.

VI. The AACRAO Report.

As part of its efforts to address the course substitution issues, the College engaged AACRAO Consulting to conduct a comprehensive review of the College's assessment and awarding of credit process. The review, which took place August 4-8, 2011, included an evaluation of all processes related to the awarding of credit, suggestions for the resolution of incorrectly awarded credits and best practice recommendations for realigning the credit awarding practice at Edison. Michele Sandlin, an AACRAO Senior Consultant, performed the work for AACRAO, which included an onsite visit and meetings with a number of Edison employees.

On August 8, 2011, AACRAO issued its preliminary findings to the College which included the following statement: "There is a culture of fear prevalent in the staff interviewed, particularly those in the Registrar's Office, who stated a lack of trust and fear of job loss." A copy of these preliminary findings is attached hereto as **Exhibit 24**.

Around the time that AACRAO issued its preliminary findings, Dr. Walker met with Michele Sandlin to conduct an exit interview with her. Dr. Atkins spoke with Dr. Walker the next morning after the exit interview and Dr. Walker indicated that he had discussed with Ms. Sandlin the possibility of having Ms. Sandlin work at the College as a consultant in the Registrar's office for a few months to help address the problems and issues that she had identified. After the exit interview, Dr. Atkins received a voicemail message from Ms. Sandlin in which she referenced the discussion about AACRAO possibly providing interim Registrar services and in which she stated that Dr. Walker had asked her not to use the word "fear" in her report and that she had agreed to do that and, instead, refer to a lack of communication. At least twice during that message, Ms. Sandlin referred to the fact that she wanted to be "open and honest" in her communications with the College and indicated that was why she was leaving Dr. Atkins the message.

Dr. Walker also sent an e-mail to Ms. Sandlin dated August 10, 2011 in which he stated as follows: "I am pleased to learn that AACRAO can provide interim Registrar services. We will discuss the possibility of this and make a decision sometime after we review your report and our situation." A copy of this e-mail is attached hereto as **Exhibit 25**.

AACRAO issued its final report on August 22, 2011. A copy of AACRAO's final report is attached hereto as **Exhibit 26**. The final report did not contain the word "fear" or refer to a "culture of fear." The College has not retained AACRAO to provide any additional services for the College.

We attempted to interview Michele Sandlin as part of our investigation. We left voicemail messages for her on both her cell phone and on the voicemail for AACRAO's office. Bob Bontrager, Ph.D., the Senior Director of AACRAO, returned our calls to Ms. Sandlin and

stated that AACRAO was not inclined to discuss what happened in the process of preparing its report and that the report speaks for itself. Dr. Bontrager denied that there was any type of quid pro quo in which Dr. Walker would hire AACRAO to do consulting work in exchange for casting the College in a favorable light in its report. Dr. Bontrager acknowledged that he had heard this suggestion from a reporter, but stated that he did not hear anything like this from Ms. Sandlin.

Although not as egregious as his conduct with respect to Henderson Franklin, we believe that Dr. Walker's conduct with respect to the AACRAO Report also demonstrates a failure by Dr. Walker to provide effective leadership with the highest standards of ethical and moral behavior. Especially when considered in the context of Dr. Walker's conduct with respect to Henderson Franklin, Dr. Walker's actions with respect to AACRAO showed poor judgment and created the appearance that the President was attempting to improperly influence and interfere with AACRAO's investigation and conclusions with respect to the course substitution issues.

VII. The June 15, 2011 Memo.

At a Board of Trustees Meeting on April 26, 2011, Dr. Walker presented a succession plan that included, among other things, a reduction in pay of \$178,952.12. The Board voted to approve Dr. Walker's proposal. A copy of the April 26, 2011 Board Minutes are attached hereto as **Exhibit 27**. Ms. Doeble stated that after the Board meeting, she told Dr. Walker that she needed some type of documentation about his reduction so that she could book the appropriate reserve. In a Memorandum dated June 15, 2011 from Dr. Walker to Ms. Doeble – which appears on the letterhead of the law firm of Allen, Norton & Blue – Dr. Walker purported to request that the College make certain adjustments to his compensation as reflected in his contract and contract addendum. A copy of this memorandum is attached hereto as **Exhibit 28**. Dr. Walker indicated that these changes were to be made effective July 1, 2011 and did not require additional action by the Board of Trustees. Most of these changes were the same changes that the Board of Trustees had approved at its April 26, 2011 Board Meeting with one important exception. In the June 15, 2011 Memorandum, Dr. Walker wrote that an "involuntary termination of the Contract for Employment or any addendum would result in the restoration and payment of any wage reduction effectuated by this memorandum." The Board of Trustees had not approved this at its April 26, 2011 Board Meeting or at any other time. A review of Allen, Norton & Blue's invoices reveal that Dr. Walker had the College's attorneys review and revise this June 15, 2011 Memorandum before he caused it to be forwarded to the Board of Trustees in early July, 2011. A copy of these invoices is attached hereto as **Exhibit 29**.

When Mr. Vernon saw the June 15, 2011 Memo in early July, he believed that the memorandum was not valid and did not alter Dr. Walker's compensation arrangement. Similarly, Mr. Lupe thought that the Memo was illusory in that it purported to reduce Dr. Walker's compensation without amending his contract. Mr. Vernon also was troubled that the memo appeared on Allen, Norton & Blue's letterhead and believed that the memo was contrary to the best interests of the College. Mr. Vernon followed up on the origin of the memo and questioned Allen, Norton & Blue about that work. In addition, at the time, state auditors were conducting an audit at the College and, as part of their audit, wanted to see Dr. Walker's

contract. According to Ms. Doeble, the auditors reviewed the June 15, 2011 Memo and indicated in their exit interview with the College that they were not going to include any discussion of the Memo in their audit results because they did not know what to do with the Memo. Instead, the auditors indicated that they would rely on the April 26, 2011 Board Meeting minutes and that the “legality” of the June 15, 2011 was for the College’s counsel to decide.

On September 6, 2011, Dr. Walker sent an e-mail to Mr. Vernon in which he indicated that the Board of Trustees had already approved his reduction in compensation at the April 26, 2011 Board Meeting and that his June 15, 2011 Memorandum was not necessary. A copy of this e-mail is attached hereto as **Exhibit 30**. On October 25, 2011, Dr. Walker e-mailed Ms. Doeble and told her that he had been advised this his “voluntary memo authorizing reduction of [his] compensation is not adequate to legally alter [his] contract.” A copy of this e-mail is attached hereto as **Exhibit 31**. He asked Ms. Doeble to replace the June 15, 2011 Memorandum with a copy of the minutes of the April 26, 2011 Board Meeting which set forth the terms and conditions of his voluntary reduction in compensation as part of his succession plan. At the April 26, 2011 Board Meeting, Dr. Walker did not mention – and the Board did not approve – the provision contained in the June 15, 2011 Memorandum that any involuntary termination of Dr. Walker’s contract or any addendum would result in the restoration and payment of the wage reduction.

We believe that Dr. Walker demonstrated poor judgment in the manner in which he handled the June 15, 2011 Memorandum. In particular, we believe that it was contrary to the best interests of the College for Dr. Walker to purport to reduce his salary pursuant to a memorandum without taking action to amend his contract with the College. In addition, in light of the fact that the Board had approved Dr. Walker’s proposed salary reduction at an April 2011 Board meeting without any provision for this reduction to be reinstated under any condition, we believe that it was not appropriate for Dr. Walker to then seek to include in his June 15, 2011 Memo such a provision for reinstatement of the reduction. Further, we believe it was inappropriate for Dr. Walker to have Allen, Norton & Blue – the College’s counsel – perform work on this June 15, 2011 Memo which attempted to benefit Dr. Walker at the College’s expense. We believe that this demonstrates a failure by Dr. Walker to provide effective leadership with the highest standards of ethical and moral behavior.

LEGAL ANALYSIS

As explained above, Dr. Walker’s contract consists of a one-page form contract dated April 27, 2010 (the “Contract”), an Addendum dated July 10, 2006 (the “Addendum”), an Amendment 1 dated November 27, 2007 (with an effective date of July 1, 2007) (“Amendment 1”) and an Amendment 2 dated April 27, 2010 (“Amendment 2”). Section 4 of the Contract states that the “Board may suspend or dismiss the Administrator for cause pursuant to law and rules of the State Board of Education.” The standard of “cause” is not defined in the Contract, the Addendum, Amendment 1 or Amendment 2.

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I. There Is Strong Evidence That the Contract, Addendum, and Amendments 1 and 2 Are Void.

As Henderson Franklin discussed in its Memorandum dated May 21, 2007, Florida's "Government in the Sunshine Law" provides for certain notice and disclosure requirements with respect to meetings of public boards or commissions of any state agency or authority. Fla. Stat. § 286.011. The College's Board of Trustees is subject to the Sunshine Law requirements. There are limited exceptions to the application of the Sunshine Law, but deliberations on employment contract matters is not one of the permissible exceptions. Thus, meetings by the Board of Trustees or an executive committee tasked with this issue should comply with the Sunshine law requirements. Action taken in violation of the Sunshine Law is void *ab initio*. *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974). Sunshine Law violations "can be cured by independent, final action completely in the Sunshine." *Bruckner v. City of Dania Beach*, 823 So.2d 167, 171 (Fla. 4th DCA 2002). Such action must not be merely perfunctory or ceremonial in nature. *Tolar v. School Bd. of Liberty County*, 398 So.2d 427, 429 (Fla. 1981).

It is our understanding that Dr. Walker's Contract, Addendum and Amendments 1 and 2 were discussed and considered by the Board of Trustees at workshops that were not publicly noticed. For example, with respect to Dr. Walker's contracts, Mr. Francis described how prior to retirement, he and Dr. Walker would meet with the Board of Trustees at a workshop (sometimes referred to as an executive session) and Dr. Walker would make a presentation to the Board about the terms of his contract. The Board would then comment and, on occasion, ask Dr. Walker questions. Immediately following the workshop – which was not conducted as a public meeting – the Board would convene its Board meeting – which was conducted as a public meeting. Dr. Walker's contract would be on the Board's agenda at the Board meeting, usually along with a number of other contracts up for renewal or approval. According to Mr. Francis, Dr. Walker's contract would then be approved at the public Board meeting without any substantive presentation or discussion. Mr. Francis' description of this process would encompass the time period when the President's Addendum was adopted. We have listened to the audio portion of the June 27, 2006 Board meeting when the Board approved the Addendum. There is no substantive presentation or discussion regarding the Addendum at the June 27, 2006 Board meeting. There is a reference, however, at the June 27, 2006 Board meeting of having discussed the Addendum in an executive session.

Ms. Fairfax and Ms. Doeble confirmed that this process continued from 2007 through 2010. In addition, Ms. Mann confirmed that these executive sessions occurred during her second tenure on the Board which began in 2005. Ms. Mann indicated that it was her understanding that it was permissible under the Sunshine Law to discuss personnel matters in executive session. We have listened to the audio clip of the April 27, 2010 Board meeting when the Board approved Dr. Walker's Contract and Amendment 2. There is no substantive presentation or discussion regarding the Contract or Amendment 2 at the Board meeting. We also have reviewed agendas and minutes from workshops (to the extent that they exist) and the Board meetings for the contract documents in question.

Based on these facts, we believe that there is a strong argument that Dr. Walker's Contract, Addendum and Amendments 1 and 2 are void. We were not able to fully determine exactly what was presented at private workshops as opposed to what was presented at public Board meetings. Based on what Mr. Francis told us, it appears that there was a qualitative difference between the presentation and the discussion of Dr. Walker's contract at the private workshop when compared to the public Board meeting. If it can be shown that the Board took independent action on Dr. Walker's Contract, Addendum, and Amendments 1 and 2 that was not merely perfunctory or ceremonious, it is possible that such action would cure any potential violations of the Sunshine Law. Based on the audio clips we have heard, however, it appears that the presentation and discussion of Dr. Walker's contract at public Board meetings – to the extent there was any presentation or discussion – was merely perfunctory and ceremonious.

We have found no evidence that any member of the Board of Trustees had any intent to violate the Sunshine Law. In addition, we note that the Board of Trustees did not have the benefit of Henderson Franklin's advice on that issue as contained in the firm's May 21, 2007 Memorandum. Instead, as explained above, Dr. Walker received that Memorandum in 2007 and we have found no evidence that he ever shared the Memorandum or the contents of Henderson Franklin's advice regarding the Sunshine Law with the Board.

II. There Is Cause for Dr. Walker's Termination.

Even if Dr. Walker's Contract, Addendum and Amendments 1 and 2 are valid and enforceable, we are of the opinion that cause exists for his termination. As explained above, Dr. Walker's contract documents do not define "cause." Absent an express definition of cause in an employment contract, the substantial breach of an express or implied provision therein constitutes sufficient cause to justify discharge. *Haiman v. Gundersheimer*, 177 So. 199, 201 (Fla. 1937); *Jackson County Sch. Bd. v. Golden*, 1992 WL 880775, at *5 (Fla. DOAH Case 91-4625); see also *Punkar v. King Plastic Corp.*, 290 So. 2d 505, 507 (Fla. 2d DCA 1972). Moreover, when "cause" is not defined by contract or other applicable rule, the employer has "discretion in setting standards which subject an employee to discipline." *Lee County Sch. Bd. v. Bergstresser*, 2009 WL 3083893, at *7 (Fla. DOAH 09-2414) (citing *Dietz v. Lee County Sch. Bd.*, 647 So. 2d 217, 218 (Fla. 2d DCA 1994) (Blue, J. concurring)). The standards set by the employer "must rationally and logically relate to an employee's conduct in the performance of the employee's job duties, which is concerned with inefficiency, delinquency, poor leadership, lack of role modeling, or misconduct." *Id.* (citing *State ex rel. Hathaway v. Smith*, 35 So. 2d 650, 652 (Fla. 1948)).

As the President of the College, the Contract requires Dr. Walker to perform many express and implied duties, and to uphold standards of conduct set forth by the Board and other governing bodies. Section 2 of the Contract requires Dr. Walker to fulfill those duties and responsibilities outlined in the job description established by Edison State College. Section 6 states that "[t]his contract shall include and be subject to all applicable laws enacted by the Legislature and all applicable administrative rules adopted or promulgated by the State Board of Education, the State Board of Community Colleges, the Board of Trustees of this college and each state or local government agency having jurisdiction to take action affecting the operations

of this College.” The Code of Ethics and District Board of Trustees Policy Manual are among the authorities relevant to the Board’s consideration of Dr. Walker’s performance.

As explained above, pursuant to District Board of Trustees Policy 6Hx6:1.02 and pursuant to the Classification Description of the District President position, Dr. Walker, as the President of the College, is responsible for the leadership, supervision and management of the College. In addition, pursuant to the Classification Description of the District President position, Dr. Walker is responsible for administering the College with efficiency, effectiveness and accountability, and insuring the effective administration of financial matters. Further, Dr. Walker is evaluated by the Board on, among other things, whether he provides effective leadership in accordance with the highest standards of ethical and moral behavior and whether he keeps the Board informed by reports at board meetings from various college personnel and student leaders.

There is cause for dismissal of the President if the Board finds there to have been neglect or a breach of the duties and responsibilities outlined in the Contract, or any of the standards incorporated therein. Further, the Board may exercise its discretion in determining whether there is evidence of inefficiency, delinquency, poor leadership, lack of role modeling, or other misconduct which amounts to cause for discharge.

We believe that cause exists for Dr. Walker’s termination based on a failure of leadership, management and supervision by Dr. Walker. Dr. Walker’s failure to disclose the May 21, 2007 Memorandum to the Board is extremely troubling. Based on our investigation, we have found only two individuals at the College who had knowledge that in 2007 Henderson Franklin advised the College that the Board should be provided with detailed cost information on the value of the benefits provided to the President for the Board members to fulfill their fiduciary duties to the College and that the Board’s discussions regarding the President’s contract should take place in compliance with the Sunshine Law. Those two individuals were Mr. Francis and Dr. Walker. Shortly after learning of Henderson Franklin’s advice, Mr. Francis was essentially forced to retire. As a result, Dr. Walker was the only person left at the College in 2007 who knew of Henderson Franklin’s advice. We have found no evidence that Dr. Walker ever disclosed that advice to the Board. In our opinion, this is a failure of leadership. This is a failure to ensure the administration of financial matters at the College. This is a failure to provide effective leadership with the highest standards of ethical and moral behavior. This is a failure to keep the Board informed regarding critical matters related to compliance with Florida law.

The recommendations of the SACS Report of the Reaffirmation Committee, the September 14, 2011 letter from the Florida Department of Education, the Auditor General’s November 2011 Report and the course substitution issues also demonstrate Dr. Walker’s failure of leadership, management and supervision. The On-Site Reaffirmation Committee for SACS recommended, among other things, a finding of a lack of integrity at the College. The Committee found that the College knowingly submitted inaccurate information in its compliance certification in March 2011. Dr. Walker signed the Certification Compliance certifying its accuracy. The SACS recommendations have placed both the integrity of the College and its

accreditation status in jeopardy. Although others may share in the responsibility for this, Dr. Walker – as the President – bears ultimate responsibility.

Dr. Walker's failure to inform the Board about the nursing accreditation issue when he learned of it demonstrates a failure of leadership, management and supervision of the College. It also demonstrates a failure by Dr. Walker to keep the Board adequately informed of critical matters related to the administration of the College and critical matters that could adversely affect students.

Dr. Walker's conduct with respect to the Henderson Franklin investigation and report demonstrates a failure by Dr. Walker to provide effective leadership with the highest standards of ethical and moral behavior. Dr. Walker's conduct created, at a minimum, the appearance that he was attempting to improperly influence and interfere with the findings and the results of the independent investigation into allegations of discrimination that the College engaged Henderson Franklin to perform. Similarly, Dr. Walker's conduct with respect to the AACRAO Report also shows a failure to provide effective leadership with the highest standards of ethical and moral behavior. Dr. Walker showed poor judgment with respect to his handling of the AACRAO Report and created the appearance that he was attempting to improperly influence and interfere with AACRAO's investigation and conclusions with respect to the course substitution issues. Finally, Dr. Walker's conduct with respect to the June 15, 2011 Memorandum demonstrates a failure by Dr. Walker to provide effective leadership with the highest standards of ethical and moral behavior.

For these reasons, we believe that there is cause for the termination of Dr. Walker's employment with the College. The conduct discussed above shows a pattern by Dr. Walker of failing to properly lead, supervise and manage the College. A common theme in the conduct described above is that with respect to certain issues – whether it is the advice that Henderson Franklin provided in 2007 that Dr. Walker never disclosed to the Board or the June 15, 2011 Memorandum in which Dr. Walker attempted to alter to his benefit the salary reduction that the Board had approved – Dr. Walker placed his personal, self interest above what was in the best interest of the College. Those actions represent a failure of leadership, supervision and management and is cause for the termination of his employment.

Sincerely,

FOWLER WHITE BOGGS P.A.



Carl Joseph Coleman
Cathy J. Beveridge
David C. Potter

Attachments

FOWLER WHITE BOGGS P.A.

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Addendum

Individuals Interviewed

1. Dr. Stephen Atkins, Former Vice President of Academic Affairs. Interviewed on January 11, 2012.
2. Dr. Robert Beeson, Former Lee Campus Vice President for Instruction and the District Dean of Arts and Sciences. Interviewed on January 11, 2012.
3. Dr. Bob Bontrager, Senior Director, AACRAO Consulting and SEM Initiatives. Telephone conversation on January 4, 2012.
4. Bobbie Buczyna, Retired Faculty member. Worked on SACS from February 2011 until she resigned on October 6, 2011. Interviewed on January 6, 2012.
5. Gina Doeble, Vice President, Administrative Services. Interviewed on January 6, 2012.
6. Pamela Fairfax, Vice President, Human Resources. Interviewed on January 5, 2012.
7. Robert Forman, Esq., Associate, Henderson Franklin. Interviewed on January 12, 2012.
8. Dr. Erin Harrel, Interim Vice President, Academic Affairs and Dean, School of Education and Charter Schools. Interviewed on January 9, 2012.
9. Mary Lee Mann, Former Member and Former Chairperson, District Board of Trustees. Interviewed on January 18, 2012.
10. Alan Francis, Retired from Edison State College. Formerly the Director of Finance; Vice President of Technical Services; Vice President of Administrative Services. Interviewed on January 5, 2012.
11. Dr. Patricia Land, President, Charlotte Campus. Interviewed on January 11, 2012.
12. Mark Lupe, Esq., Vice President, Legal Affairs and General Counsel. Interviewed on January 17 and 18, 2012.
13. Pamela Mangene, Professor, Arts & Sciences. Former Manager of Academic Services. Interviewed on January 13, 2012.
14. Dr. Denise McNulty, Associate Director, RN to BSN. Interviewed on January 9, 2012.
15. Dr. Edith Pendleton, Vice President for Strategic Initiatives. Interviewed on January 10, 2011.
16. Robert Sherman, Esq., Stockholder, Henderson Franklin. Interviewed on December 29, 2011.

17. Christopher Vernon, Esq., Vernon Healy. Member, Board of Trustees. Interviewed on January 16, 2012.
18. Guy Whitesman, Esq., Stockholder, Henderson Franklin. Interviewed on January 12, 2012.
19. Kristen Zimmerman, Dean, Program Development & Baccalaureate Initiatives. Interviewed on January 17, 2012.