

1 **MINUTES OF THE 88th VSU BOARD OF REGENTS MEETING**

2 4/F CHED Chairperson's Conference Room

3 CHED Central Office

4 C.P. Garcia Avenue, Diliman, Quezon City

5 14 January 2019

6 **Present:**

7 **Hon. J. Prospero E. De Vera III**

8 Chairperson, Commission of Higher Education

..... Chairperson

9 **Hon. Edgardo E. Tulin**

10 President, Visayas State University

..... Vice Chairperson

11 **Regent Paulo Everardo S. Javier**

12 Chairperson, Committee on Higher & Technical Education

13 House of Representatives of the Philippines

14 *Represented by: Mr. Jude A. Acidre*

..... Member

15 **Regent Meylene C. Rosales**

16 OIC-Regional Director

17 NEDA Regional Office VIII

..... Member

18 **Regent Milo Delos Reyes**

19 Regional Executive Director

20 Department of Agriculture Regional Office VIII

..... Member

21 **Regent Denny J. Catindoy**

22 President, VSU Federated Faculty Association

..... Member

23 **Regent John Allan A. Gules**

24 President, VSU Federated Supreme Student Council

..... Member

25 **Regent Joel R. Caminade**

26 Private Sector Representative

..... Member

27 **Regent Roy Bernard C. Fiel**

28 Private Sector Representative

..... Member

29 **Not Present:**

30 **Regent Francis Joseph G. Escudero**

31 Chairperson, Committee on Education, Arts & Culture

32 SENATE of the Philippines

33 **Regent Deogracias E. Pernitez**

34 President, VSU Federated Alumni Association

35 **Others Present:**

36 **Sec. Daniel M. Tudtud, Jr.**

37 Board Secretary V

..... Board Secretary

38 **Ms. Vivian V. Balbarino**

39 Administrative Officer III

40 Office of the Board Secretary

..... Administrative
Officer

1 **I. ROLL CALL**

2 CHED Commissioner and Chairperson of the VSU Board of Regents, Dr. J.
3 Prospero E. De Vera III, informed the President that he is still attending a CHED *en banc*
4 meeting and requested the VSU President, Dr. Edgardo E. Tulin to preside over the
5 meeting until such time the CHED en banc meeting is adjourned.

6 Dr. Edgardo E. Tulin, VSU President and Vice-Chairperson of the VSU Board of
7 Regents requested the Board Secretary to call the Roll of Members present for the 88th
8 VSU Board of Regents' Meeting (Special).

9 The Board Secretary then called the roll of members present for the 88th BOR
10 Meeting as follows: Regent Edgardo E. Tulin; Regent Meylene C. Rosales; Regent Milo
11 Delos Reyes; Regent Jude A. Acidre; Regent Denny J. Catindoy; Regent John Allan A.
12 Gulles; Regent Roy Bernard C. Fiel; and Regent Joel R. Caminade.

13 After the roll call, the Board Secretary informed the Hon. Chair that nine (9)
14 members of the VSU BOR were present for the 88th BOR meeting and that there was a
15 quorum of members present.

16 The Board Secretary informed the Hon. Chairperson that two (2) Regents were
17 not present: Regent Deogracias E. Pernitez and there is still no representative from the
18 Senate Committee on Education, Arts, and Culture headed by Sen. Francis Joseph "Chiz"
19 G. Escudero.

20 **II. CALL TO ORDER**

21 The Presiding Chairperson of the VSU Board of Regents, Pres. Edgardo E. Tulin,
22 declared a quorum and called the meeting to order at 3:20 PM.

23 **III. APPROVAL OF THE AGENDA**

24 The Presiding Chairperson requested the Board to go over the very limited
25 Agenda composed of only four (4) items and inquired if there were any other items for
26 inclusion in this Special meeting.

27 The Board Secretary requested for inclusion one more item: Request of Some
28 VSU Faculty for Authority to Travel Abroad.

29 No other item was raised.

1 Regent Roy Bernard C. Fiel moved for the approval of the Agenda for the 88th
2 BOR Meeting, as presented.

3 Regent Joel R. Caminade seconded the motion.

4 The Board passed

5 **BOR RESOLUTION NO. 7, s. 2019**

6 **A Resolution Approving the Proposed Agenda for the 88th Board of Regents**
7 **Meeting, as modified, to wit:**

8 **88th BOR Meeting**
9 **CALENDAR OF BUSINESS**

10 **A. PRELIMINARIES**

- 11 1. Call to Order
12 2. Roll Call and Determination of Quorum
13 3. Approval of the Provisional Agenda (88th BOR Meeting)

14 **B. NEW BUSINESS**

- 15 1. Blacklisting Complaint Filed by Baybay Printshop against Electrocomputer Data
16 Systems
17 2. Letter of Intent of Pres. Edgardo E. Tulin for Renewal of Term
18 3. Creation of Formal Evaluation Committee for the Reappointment of Dr. Edgardo
19 E. Tulin for a 2nd Term, commencing on 30 October 2019 to 29 October 2023
20 4. Proposed Budget for the Formal Evaluation Committee for the VSU Presidency
21 5. Request of Some VSU Faculty for Authority to Travel Abroad

22 **IV. NEW BUSINESS**

23 **A. Blacklisting Complaint Filed by Baybay Printshop against Electrocomputer Data**
24 **Systems**

25 The Hon. Presiding Chair, Pres. Edgardo E. Tulin, narrated that during the 4th
26 Quarter BOR Meeting dated 7 December 2018, the Board discussed the complaint of
27 Baybay Printshop against Electrocomputer Data Systems (EDS) for
28 “misrepresentation and providing false information” on some of the items included in
29 the bidding of **BAC1-GOODS-18-24**.

30 The Hon. Chairperson of the VSU Board of Regents, Commissioner J.
31 Prospero E. De Vera III, requested the University Legal Counsel to submit a

1 “Position Paper” stating the issues that need to be resolved, and some other points for
2 discussion.

3 The University Legal Counsel came up with a “Position Paper of the BAC”
4 that is now presented for discussion. The Paper points out four (4) issues:

- 5 1. *whether or not* VSU BAC-1 erred in its Resolution No. 69, s. 2018
6 recommending to the HoPE the Dismissal of the Blacklisting Complaint filed by
7 Baybay Printshop against EDS and Issuance of a Stern Warning to EDS;
- 8 2. *whether or not* VSU BAC-1 erred in dismissing the Motion for Reconsideration
9 filed by Baybay Printshop;
- 10 3. *whether or not* VSU BAC-1 should act on the “urgent *ex parte* motion” for
11 disqualification filed by Baybay Printshop; and
- 12 4. *whether or not* the VSU Board of Regents should act on the Letter submitted by
13 Baybay Printshop.

14 The Presiding Chair further narrated that the BOR did not pass any Resolution
15 approving any action – accept the BAC1 Resolution, reject the BAC-1 Resolution, or
16 modify the BAC1 Resolution – relative to the Complaint.

17 The Board Secretary commented that Chairperson De Vera wanted a written
18 legal opinion from the University Counsel in the hope that the CHED Legal Office
19 could make a review. The “*legal opinion of the University Counsel*” was submitted in
20 the afternoon of 17 December 2018 but it was already impossible to call for a Special
21 BOR Meeting because it was already the last week of regular work before the
22 Christmas break. It is only now that the VSU Board of Regents has been reconvened.

23 The Presiding Chair, President Tulin, informed the Board that when the BAC-
24 1 Resolution was submitted for decision during the 7 December 2018 BOR Meeting,
25 the BOR had 15 days to make that decision. It was for this reason that the Board
26 Secretary wrote Baybay Printship informing that the BOR could not meet and that it
27 will need additional time to go over the documents before making a decision.

1 Regent Meylene C. Rosales commented that according to former Regent
2 Bonifacio G. Uy, the Board passed a Resolution sustaining the Recommendation of
3 the BAC-1 (BAC-1 Resolution No. 69, s. 2018).

4 The Board Secretary explained that this was the suggestion at that time to pass
5 a BOR Resolution supporting BAC-1 Resolution No. 69, s. 2018. However, the Hon.
6 Chairperson requested the University Legal Counsel to come up with a written Legal
7 Opinion for consideration of the whole Governing Board and so that he could also
8 refer the matter to the CHED Legal Office for review. The Hon. Chairperson was
9 aware of the 15-day prescription period.

10 Regent Rosales indicated that she wanted to clarify this because she was not
11 sure if the decision that the Board will make in this meeting is to amend or counter
12 the past Resolution.

13 The Presiding Chair clarified that the first issue that should be tackled is
14 whether the BOR will sustain the recommendation of the BAC-1 to dismiss the
15 blacklisting complaint filed by Baybay Printshop against EDS or not.

16 The Board Secretary indicated that before the Board can make a decision on
17 this matter, the Board should be made aware of the facts attendant to this. Primarily,
18 the BAC-1 contends that *“it did not use the specifications submitted by the bidders in*
19 *its post-qualification of the Bids that were submitted, because it only used the Brand*
20 *Names to determine whether the bid meets the requirements for a particular item.”*

21 The Board Secretary mentioned that this is the first time that the Board has
22 been forced to face a “procurement-related complaint” acting as the HoPE. Usually,
23 the Governing Board assigned the review of procurement processes to the BOR
24 Finance Committee such that when it is discussed at the BOR level, it will simply
25 sustain the recommendations of the BOR Finance Committee (*Arias doctrine*). Thus,
26 whenever the HoPE is faced with a procurement complaint, it is very difficult to
27 immediately make a decision without knowing the relevant facts because it is not
28 present when the bidding happens as it is not a member of the BAC. Thus, the

1 BOR members have to be provided with enough information for them to be able to
2 understand the case at hand.

3 The Presiding Chair informed the Board that he had already requested the
4 BAC to request GPPB for a training on RA 9184 for the HoPE.

5 Regent Milo Delos Reyes commented that he assumed that for SUCs, the
6 HoPE was the University President.

7 The Presiding Chair informed Regent Delos Reyes that it is the Governing
8 Board that is the HoPE in SUCs by virtue of the CEB Resolution that was adopted by
9 the SUCs.

10 Regent Rosales informed the Board that based on the documents handed out,
11 the Bids in question have not been provided. This is critical because the complaint
12 really centers on the Bids.

13 Regent Fiel indicated that he had several observations regarding the
14 procedures provided under the rules, as follows:

15 *First*, there was a complaint for blacklisting filed by Baybay Printshop;

16 *Second*, the BAC-1 crafted a Resolution (*BAC1 Resolution No. 69, s. 2018*) re:

17 Blacklisting Complaint;

18 *Third*, the BAC-1 provided the Complainant a copy of BAC Resolution No. 69 even
19 before it was presented to the HoPE;

20 *Fourth*, the Complainant filed a Motion for Reconsideration *vis-à-vis* BAC-1
21 Resolution No. 69, s. 2018;

22 *Fifth*, the BAC-1 made a Reply to the MR indicating that such an action is
23 “premature”;

24 *Sixth*, the Complainant filed a Urgent *ex parte* Motion for Disqualification; and

25 *Seventh*, the Complainant again sent another Letter addressed to the Board dated 6
26 December 2018 which further amended the prayer.

27 In sum, Regent Fiel indicated that in view of the so many pleadings, the
28 Governing Board should, first and foremost, disregard the original complaint as this
29 no longer has any bearing on the issues at hand.

1 The Presiding Chair requested Regent Fiel to explain this proposition.

2 Regent Fiel informed the Board that the Complainant has already abandoned
3 the original complaint because he has submitted an amended complaint. Further, the
4 Motion for Reconsideration to the BAC-1 Resolution No. 69 should also no longer be
5 considered, at this point in time, because it is prematurely submitted, thus, it is not in
6 accordance with the Rules. It must be remembered that the HoPE has to make a
7 decision first before a Motion for Reconsideration is filed to seek a consideration of
8 the BAC-1 Resolution. There is no provision in the Rules that grants the Complainant
9 this remedy. So, on that note, the MR should no longer be considered.

10 Regent Fiel continued that the Letter Complaint dated 6 December 2018
11 stipulated, in the first paragraph, to wit: *"it is the sentiment of the undersigned*
12 *complainant not to pursue blacklisting in order to allow the respondent a chance to*
13 *do his business elsewhere far from the agency he has violated and to reform himself*
14 *after service of penalty."* In effect, Complainant has effectively amended his Prayer
15 for Blacklisting **BUT** this is contingent on a condition, to wit: *"the above mentioned*
16 *commitment to waive the right to pursue blacklisting and to object to any motion,*
17 *order, or judgment to confine penalty of Respondent **ONLY to Suspension** is also*
18 *hereby declared by Complainant on the expressed condition that the Penalty that*
19 *shall be imposed on the Respondent would consist of four (4) years of Suspension*
20 *within said Agency representing the four (4) offenses committed on the same project,*
21 *in conformity of the provisions of the Uniform Guidelines for Blacklisting of*
22 *Manufacturers, Suppliers, Distributors, Contractors and Consultants."*

23 Regent Fiel inquired whether the Governing Board agrees that the
24 Complainant is now **waiving** his Prayer for Blacklisting if the HoPE will impose a
25 penalty of four (4) years of Suspension on EDS, **as penalty**.

26 On the other hand, the following documents **MUST** be included as part of the
27 Records of this Case: Notice of Bidding, *so that the Board will have a point of*
28 *comparison*; the Bill of Quantities *submitted by the bidders*, meaning the
29 *Complainant and the Respondent*; and other pertinent documents relevant to the

1 whole bidding process because what are being attached by the Complainant are
2 “print-outs from Lazada sourced in the internet.” These are not records of the case.
3 These are not the proper annexes that the Board must consider as “evidences” by the
4 Board. So, at this point in time, if the Governing Board has to really make a decision
5 whether or not to suspend or blacklist the Respondent-EDS, all records of the bidding
6 process **MUST BE ON HAND.**

7 The Presiding Chair indicated that more documents have to be submitted to
8 the Board before any decision can be made.

9 Regent Fiel indicated that proper communication should be sent to the Bids
10 and Awards Committee to that effect. There is a need to compare these documents to
11 the allegations both in the Amended Complaint and the Answer as well as a
12 comparison of the Annexes.

13 Regent Fiel informed the Board that based on his readings of the available
14 documents, he made the following assumptions:

- 15 1. *that*, at this point in time, there is no loss, damage or injury to the Government;
- 16 2. *that*, there is no damage or injury to the Complainant;
- 17 3. *that*, the Complainant may be guilty of Forum Shopping; and
- 18 4. *that*, there is a need to restate the nature of the Case brought before the Governing
19 Board since the Complainant has manifested his waiver to pursue blacklisting as
20 contained in his Letter Complaint dated 6 December 2018 which stipulated, to
21 wit: *“it is the sentiment of the undersigned complainant not to pursue*
22 *blacklisting in order to allow the respondent a chance to do his business*
23 *elsewhere far from the agency he has violated and to reform himself after*
24 *service of penalty.”* In effect, Complainant has effectively amended his Prayer for
25 Blacklisting.

26 However, this is contingent on a condition, to wit: “the above mentioned
27 commitment to waive the right to pursue blacklisting and to object to any motion,
28 order, or judgment to confine penalty of Respondent **ONLY to Suspension** is
29 also hereby declared by Complainant on the expressed condition that: ***the Penalty***

1 that shall be imposed on the Respondent would consist of four (4) years of
2 Suspension within said Agency representing the four (4) offenses committed on
3 the same project, in conformity of the provisions of the Uniform Guidelines for
4 Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and
5 Consultants.”

6 Regent Fiel continued that the fact that Complainant is threatening to file an
7 Ombudsman Case against the BAC-1 members is also unfair to the Governing Board.
8 Quite clearly, he is trying to influence the decision of the Governing Board as the
9 Board may no longer have the “cold neutrality” to decide on the matter considering
10 what is at stake: the jobs of the members of the BAC-1. That threat is like a “Sword of
11 Damocles” hanging over the heads of the members of the Governing Board.

12 The Presiding Chair informed the Board that the members of the BAC-1
13 already felt threatened by the constant “harassment” by the Complainant. This has led
14 to the submission of a Letter of Resignation signed by all the members of BAC-1.
15 They also indicated that they do not want to be renewed (*as members of any BAC*).
16 However, I have not yet accepted their resignation and so, they are still working.

17 Regent Fiel commented that if this is indeed the present situation, there is
18 another assumption that he would like to add to the four assumptions he made earlier:
19 **5. that**, the ACTION of the HoPE **now** may have a bearing on where the members
20 of the BAC-1 will go.

21 Whatever decision the Board will make, will weigh heavily on the Final Decision of
22 the members of the BAC-1.

23 The Presiding Chair informed the Board that the Chair and Vice Chair of the
24 BAC-1 are retireable and they are afraid that if an Ombudsman Case is filed against
25 them, they could lose all retirement benefits.

26 Regent Fiel inquired why the BAC indeed, specifies a Brand for this bidding.
27 This gives undue advantage to a specific brand, once it is specified.

28 The Presiding chair commented that bidding rules prohibits naming a specific
29 brand for purposes of bidding. The BAC is aware of this prohibition.

1 Regent Fiel suggested that after the Board discusses all these things, the Board
2 should issue a Resolution prescribing this limitation to the bidding process and giving
3 this to the BAC so that they will know that what they are doing is prohibited by law.

4 The Board Secretary informed the Board that according to Atty. Guinocor (*a*
5 *member of BAC-1*), the TWG makes sure that all brand names are removed before
6 posting in the PhilGEPS.

7 Regent Fiel indicated that **even tailor fitting is prohibited by law**. He then
8 cited as an example, the purchase of an air-conditioner. The main purpose of such a
9 purchase is to cool a room. This it would not be necessary at all, to place specific
10 identifiers like Nano Gold and Nano Blue in the item before bidding it as this
11 tantamount to what is known as **Tailor Fitting**.

12 The Presiding Chair commented that given the many new products emerging
13 from the market, a number of these products have incorporated “new technologies”.
14 Thus, specific brands contain something “new” that older brands/models may not
15 possess. What is important, however, is that the characteristics/specifications of an
16 item should also be present in other brands, as well.

17 Regent Fiel pointed out that “this specification” should deliver some relevant
18 advantage to the Procuring Entity.” If that particular factor or element it just
19 specified for the sake of stating it and there is no particular relevance on how it will
20 be used, there is no need to specify that.

21 Regent Jude Acidre suggested that the Board should first wait for the other
22 documents before making any decision. The moment the Board goes into the
23 specifics, the Board might end up pre-judging the direction of the appeal.

24 Regent Fiel agreed with the assessment of Regent Acidre. He pointed out that
25 all of the documents and/or statements that will be requested from the BAC should be
26 “subscribed” so that any document or statement that is found to be inconsistent, will
27 subject the maker liable under the law. Further, there could be additional
28 “administrative sanctions” that may be imposed.

1 The Presiding Chair indicated that the 2017 ORA-OHRA of the Civil Service
2 Commission provides for administrative sanctions for offenses committed in the Civil
3 Service.

4 Regent Fiel then pointed out that according to the Rules embodied in the IRR
5 of RA 9184, for an Appeal to be accepted, a fee has to be paid. Did the BAC collect a
6 fee from the Complainant before he lodged an appeal?

7 The Presiding Chair commented that the BAC did not collect a fee.

8 Regent Acidre inquired why then was the appeal entertained by the BAC?

9 Regent Fiel indicated that this is probably discretionary to the BAC.

10 The Presiding Chair mentioned that as discussed in the last BOR Meeting in
11 December 2018, the BAC erred when it gave an advance copy of the unsigned BAC-
12 1 Resolution No. 69, s. 2018 to the Complainant, as this breached protocol per BOR
13 Approved Freedom of Information Manual of the University.

14 Regent Fiel clarified that he is pointing this out because the 2nd paragraph of
15 5.1 (page 270 of Annex D) of the BAC Position Paper it states, to wit: "at the Option
16 of the Procuring Entity, a reasonable fee **may be required** for initiating the
17 **SUSPENSION and BLACKLISTING** proceedings." Given this, can the HoPE still
18 require the Complainant to pay a **reasonable fee**.

19 Regent Fiel indicated that the imposition of this fee has to be taken up
20 seriously because this Complaint has unduly burdened the members of the Governing
21 Board because in his case, he had to leave his work in Ormoc City and travel all the
22 way to Manila just to attend to this Complaint. Further, the Complainant is also
23 harassing the members of the BAC-1.

24 Regent Fiel suggested that the Governing Board must impose a fixed fee prior
25 to accepting any complaint for suspension and/or blacklisting. Further, if the
26 complaint is found to be unsubstantiated, the fee should be forfeited because the
27 complainant has just wasted the time of the HoPE.

28 The Board Secretary commented that at this present case, it might no longer
29 be possible to levy a fee because the complaint has already been lodged with the

1 Governing Board. Maybe next time, if ever there are future complaints, we levy that
2 fee.

3 The Presiding Chair indicated that we have to first check whether the IRR of
4 RA 9184 prescribes the amount that can be levied.

5 Regent Acidre commented that given that the HoPE has that Option, did the
6 BAC come up with a written Resolution on how this Option is to be exercised before
7 the HoPE comes up with its own Resolution?

8 The Presiding Chair replied that the BAC has not made any formal Resolution
9 as to how this Option is to be exercised.

10 Regent Fiel commented that in this particular case, the BAC was generous
11 enough to work on the complaint by meeting several times and discussing all these
12 for FREE. However, the work did not stop there and it has been passed-on to the
13 HoPE which is the Governing Board. Because of this, a lot of people are now
14 involved and **imposing a FEE** is necessary.

15 The Presiding Chair inquired whether the HoPE can still exercise this part of
16 the Guideline.

17 Regent Fiel indicated that he is not sure if the HoPE can still impose this
18 retroactively and it will be best that this is clarified first.

19 Regent Fiel then informed the Board that according to Regent Acidre, there is
20 still no categorical statement made by the BAC that it is not imposing a fee. However,
21 the main lesson learned here is that the next time something like this happens, the
22 Procuring entity will impose a Fee.

23 Regent Acidre reiterated that the HoPE is not just reviewing the decision (*of*
24 *the BAC*) itself, but also the procedure how this decision was carried out. Now,
25 realizing that the BAC has explicitly exercised its option (*by not collecting a fee*), the
26 HoPE can probably say that the "initiation of the complaint itself is defective." This
27 defect has made it very burdensome not only on the part of the BAC but more
28 importantly, now on the Board of Regents acting as HoPE.

29 Regent Fiel inquired "**WHO**" is the Procuring Entity being referred to here.

1 The Presiding Chair indicated that the Procuring Entity is really the University
2 represented by the HoPE.

3 Regent Acidre queried whether this role has already been delegated to the
4 BAC.

5 The Board Secretary explained that the work of the BAC is simply to
6 undertake the bidding process. This is the first time that the BAC has met a
7 complaint. Likewise, this is also the first time that the Governing Board, acting as
8 HoPE, has met a situation like this.

9 Regent Acidre clarified that the HoPE, in reviewing the procedures
10 undertaken, can either dismiss this complaint or remand this to the BAC again.

11 Regent Rosales opined that it would be a mortal sin if the Board will come up
12 with a haphazard decision because many will surely be affected. This is a very serious
13 matter with equally serious implications.

14 The Board Secretary commented that the Board has to first decide whether the
15 elements for blacklisting are present in the case. The levy of any fee may not be
16 material, yet. It is possible that the elements for blacklisting may not exist.

17 Regent Fiel explained that in the regular Courts of Justice, there is really a
18 **filing fee** that a complainant has to pay before the case is even entertained. In its
19 absence, the case is dismissed. There are two (2) issues here:

- 20 1. will the HoPE come up with a Guideline on Filing Fees; and
21 2. at this point in time, can the HoPE still require the complainant to pay a Filing
22 Fee?

23 The Board Secretary commented that maybe the GPPB will be able to answer
24 this query on how much is the Filing Fee attendant to a complaint.

25 Regent Delos Reyes informed the Board that there is a Matrix indicating how
26 much will be the filing fee, expressed as a percentage for every P1 million in the
27 amount bided. Further, based on experience, the making of "false statements" can be
28 a valid ground for blacklisting. But, it will be the BAC that will determine **if there is**
29 **a false statement**.

1 Regent Fiel walked the Board through BAC-1 Resolution No. 69, s. 2018 and
2 pointed that the BAC says **it is true** that EDS is submitted false information.
3 However, the “**intent to influence the outcome of the bidding**” is not fully
4 established. This is the reason why BAC Resolution 69 was for **the Dismissal of the**
5 **Blacklisting Complaint**. The intent to influence is very critical in determining
6 whether indeed or not to blacklist EDS. There is no evidence on hand that would
7 support the conclusion that there is an “*intent to influence the outcome of the*
8 *bidding*”.

9 Regent Fiel narrated that in the Courts of Law, generally, Conclusions of Fact
10 (meaning the right or authority and power to arrive at conclusions of fact) is given to
11 the Hearing or Lower Courts. The Affiliate Courts usually refrain from amending
12 “*findings of facts*” of the lower Courts that hear the cases. The reason behind this is
13 that the Lower Court hearing the case has the opportunity to see the demeanor of the
14 witness, see how they react, how they speak, their mannerisms. In the same vein, the
15 BAC also had the opportunity to witness these things when they face the bidders. The
16 HoPE did not have this opportunity. Thus, **Conclusions on these types of issues is**
17 **really best left to the discretion of the BAC.**

18 Regent Fiel then led the Board to Item 5.3 of the Rules (Annex D), 3rd
19 Paragraph which stipulates, to wit: “*if no request for hearing is made (as in this case),*
20 *the BAC shall make a determination of the case based on the complaint, answer,*
21 *documentary evidence submitted.*” It is not the HoPE that will determine the case.

22 Regent Fiel continued “*if the BAC is convinced that the contractor is at fault*
23 (meaning that the BAC already has that authority and power to determine), *it shall*
24 *issue a Resolution recommending to the Head of Agency the suspension of the*
25 *contractor from participating in any bidding process of the Agency and the forfeiture*
26 *of his bid security.*” Thus, it is very clear that the BAC has that authority and power
27 to determine whether the Contractor was at fault or not.

28 Regent Fiel then pointed out to the Board that the Recommendations
29 (indicated in the BAC Resolution) is still in accordance with the Rules as far as Item

1 5.3 is concerned. **BUT**, the (*final*) decision is still left to the HoPE in accordance with
2 Item 5.4 which stipulates, to wit: "*The Head of Procuring Entity (HoPE) shall, within*
3 *fifteen (15) days from receipt of the resolution and the records of the BAC*
4 *proceedings (in this case, the records of the BAC proceedings are incomplete)*
5 *determine whether reasonable cause exists for the suspension of the contractor and*
6 *the forfeiture of the contractor's bid security.*"

7 Regent Fiel indicate that the Hope cannot "*renew and replay the sequence of*
8 *events leading to the complaint.*" It is only the BAC that had this opportunity.

9 The Board Secretary commented that before anybody could react, the BAC
10 furnished a copy of the unsigned BAC Resolution to Baybay Printshop even before
11 the HoPE received a copy of such a Resolution.

12 Regent Fiel pointed out that per letter of Baybay Printshop, it says that "*it was*
13 *the BAC Secretariat that e-mailed the Resolution.*"

14 The Board Secretary commented that during the University Administrative
15 Council (UADCO) meeting, the BAC Chair explained that the BAC Secretariat sent
16 the email to Baybay Printshop upon his instruction. He explained that he felt "*very*
17 *pressured.*"

18 Regent Acidre suggested that there is a need to have a written explanation
19 from the BAC Chair on the circumstances attendant to the premature release of the
20 said BAC Resolution. For purposes of keeping records, there has to be a written
21 explanation so that in the future, it will provide a Guide relative to the procedures
22 followed in this case.

23 Regent Acidre suggested that all important documents attendant to the bidding
24 in this case should be gathered including the Minutes of the Proceedings.

25 The Presiding Chair commented that during the Opening of Bids, both parties
26 are invited to send a representative as witness. In this instance, both parties sent their
27 representatives.

1 Regent Rosales commented that while both bidders were invited and indeed
2 sent their representatives, “is it in the law (RA 9184) that one or both of these
3 representatives can secure a copy of the bids of the other party?”

4 Regent Delos Reyes commented that during the Opening of Bids, the BAC
5 will evaluate the bids. Nobody other than the BAC is supposed to see the bids that
6 had been submitted. The offer of the bidder can only be seen by the BAC. No other
7 person is supposed to see the offer.

8 Regent Acidre pointed out that the BAC has to be made to explain to the
9 HoPE how the complainant was able to get very specific information (*details*) of the
10 bid of the other bidder.

11 The Presiding Chair commented that “there is a procedure that the bidding
12 parties can also see how the others bided, but not to physically get hold of a copy (*of*
13 *the bids*).

14 Regent Acidre commented that in Congress, bid details are flashed on screen
15 but, it is practically impossible for anybody to memorize all the bid details by simply
16 looking at it.

17 Regent Fiel commented that “*something is really wrong with the BAC.*”

18 Regent Rosales requested that the Board go back to the item on Bid Opening
19 considering that there was a question aired pertaining, “*how Baybay Printshop was*
20 *able to get hold of a copy of the bids of the other party.*” In Section 29 – Bid Opening,
21 it says, to wit: “*The bidders or their duly authorized representatives **may** attend the*
22 *Opening of Bids. The BAC **shall ensure the integrity, security, and confidentiality***
23 *of all Bids submitted. The Abstract of Bids **as read** and the Minutes of the Bid*
24 *Opening shall be made available to the PUBLIC upon written request and the*
25 *payment of a specified fee to recover cost of materials.*

26 Regent Rosales pointed out that only the Abstract of Bids can be released **and**
27 **not** the Bids itself. The BAC mentioned Bill of quantities which includes all the
28 details of the bids. As Regent Acidre mentioned, the Bill of quantities shows the
29 specifics.

1 Regent Delos Reyes commented that usually, a Court of Law issues a
2 subpoena to the BAC to secure a copy of the bidding documents. These documents
3 are not given to just anybody and handed in only when there is a case pending in the
4 said court.

5 Regent Rosales inquired whether EDS was advised that it had the right to
6 request for a hearing.

7 The Board Secretary commented that based on available documents, it can be
8 assumed that EDS knew it had the opportunity to request for a hearing, but did not
9 request one.

10 Regent Rosales rephrased her query, to wit: *“had EDS been advised in*
11 *writing, that it had the right to request for a hearing?”* There is no document
12 presented showing that the BAC wrote EDS informing it about their right to a
13 hearing. Regent Rosales then reads Annex B which is a letter from the BAC to Mr.
14 Eddie Uy, owner proprietor of EDS, to wit: *“This is a supplement to the*
15 *communication dated 28 October 2018 informing you of a complaint raised against*
16 *your firm... Please be informed that the BAC received an amended complaint*
17 *(regarding the change of name of respondent) if you intend to submit a written answer*
18 *to the said complaint, please do so within five (5) calendar days.”* Given this
19 statement, it is apparent that the BAC complied with the requirement to inform
20 respondent that it had five (5) calendar days to answer. There is no mention
21 whatsoever, that the BAC advised EDS that it had the right to a hearing. On this
22 account, the BAC is found to be wanting in the performance of its duties.

23 The Presiding Chair commented that maybe this is just an option.

24 Regent Rosales clarified that in the 2016 IRR of RA 9184, the BAC has the
25 obligation to notify the contractor in writing. So far, the Board discussion seems to be
26 going in a circle. Despite this, a is really very apparent is that there some procedural
27 flaws at the level of the BAC.

28 Regent Delos Reyes commented that had the BAC just followed the
29 procedures, there would not have been any problem.

1 Regent Delos Reyes indicated that would have wanted the BAC to redo the
2 whole bidding process, but this may not be possible at this point in time. As it is now,
3 it is quite apparent that the BAC has failed to resent a coherent procedure of what it
4 did.

5 Regent Rosales clarified that the Board has to be very sure that before
6 deciding on the case, the procedures set in the 2016 IRR of RA 9184 have been
7 judiciously followed. Haphazardly deciding either in favor of **or** against Baybay
8 Printshop, it is possible that the whole Board can be sued including the BAC by either
9 party.

10 Regent Delos Reyes requested the Board to re-read BAC-1 Resolution No. 69,
11 s. 2018 and mentioned some of his observations, to wit:

- 12 1. the BAC did not follow the bidding procedures;
- 13 2. in its No. 2 recommendation, the BAC indicated that: *“as part of its Post-*
14 *Qualification procedures, the BAC does not rely on the indicated Technical*
15 *Specifications of the bidder’s offer since this is not required from the bidder*
16 *because what is required is the **Brand name and/or Model.**”* This is erroneous
17 since what is required are the specifications and not the brand names.

18 Regent Fiel commented that this is an evidence against the BAC as this may
19 be construed as an admission of guilt.

20 Regent Delos Reyes expressed his doubts on whether the Board can make a
21 decision given that the BAC did not follow the procedures related to blacklisting.

22 Regent Fiel inquired whether the HoPE is really required to render a decision
23 within 15 days.

24 Regent Delos Reyes replied in the affirmative.

25 Regent Fiel suggested that maybe the HoPE can remand this to the BAC or
26 require the BAC to submit additional information. At this point in time, the Board
27 acting as the HoPE cannot come to a Prayer and judicious conclusions, at this point in
28 time, because of insufficiency of evidence submitted by the BAC. So, if there is a 15-
29 day prescriptive period, it should be the BAC that should be made answerable, not the

1 Board. In this way, the Board acting as the HoPE, will not be covered by the 15-day
2 prescriptive period.

3 The Presiding Chair commented that the 15-day prescription period has
4 already lapsed.

5 The Board Secretary explained that he called this Special BOR Meeting on
6 account of the promise that he made to Baybay Printshop last 21 December 2018.
7 This, notwithstanding, it should be pointed out that the Recommendation No. 3 of the
8 BAC Resolution No. 69, s. 2018, is also not supported by RA 9184. Based on
9 Appendix 17 (*Suspension and Blacklisting*) does not provide for a lesser penalty.
10 Even suspension is just transitory leading to blacklisting.

11 The Presiding Chair requested that the Board help the University's BACs.

12 Regent Rosales indicated that she was supporting the suggestions of Regents
13 Fiel and Acidre to remand this to the BAC before the Board acts on this.

14 Regent Acidre inquired whether the Administration is planning to reconstitute
15 the BACs given that the members have already expressed their desire to be no longer
16 reappointed for another year. If a new BAC is appointed, this new BAC can review
17 the procedure followed and the actions taken by the old BAC. Only then can the
18 Board determine whether proper procedures had been followed and be in a position to
19 have the leverage to make the necessary corrective actions, if necessary.

20 Regent Rosales indicated that she fully supported the suggestion of Regent
21 Acidre.

22 The Board Secretary reminded the Board that if the BACs are reconstituted,
23 there are no takers for the position of Chairman and Vice-Chairman of the BACs.

24 The Presiding Chair also mentioned that aside from the present BAC
25 members, nobody else in the University has undergone any training on RA 9184.
26 Thus, it will be very difficult to convince people to be members of the BACs because
27 of this. Further, the Chairs will have to come from the 3rd level positions (*Vice-*
28 *President level*) but the two (2) remaining Vice Presidents have had no training at all.

1 Regent Acidre clarified that if the present BACs will be made to continue, it
2 will be expected that they will refuse to rule against themselves. They will try to
3 protect themselves.

4 The Presiding Chair clarified that what the Board will be asking are just
5 documents related to the case. These documents will hopefully help the Board fully
6 appreciate the case and come up with a good decision in the end.

7 Regent Fiel suggested that the BAC immediately forward any and all records
8 attendant to the case on hand.

9 The Board Secretary commented that if this will be the situation and the BAC
10 will provide whatever records are on hand, there are a few concerns here as follows:

- 11 1. how will the Board act on the materials? Individually? Or as a Board?;
- 12 2. the Board Secretary is not a lawyer;
- 13 3. what will the Board Secretary do in the event that documents will be provided?

14 Just reproduce the documents?;

- 15 4. how will the Board Secretary know what documents are lacking considering that
16 he is not trained in RA 9184?

17 The Presiding Chair suggested that the BAC Chair help the Board in the
18 presentation of documents. In this way, the Board will no longer speculate.

19 The Board Secretary suggested that this meeting be done in Leyte so that in
20 the event additional documents are needed, it can be gathered quickly. This should be
21 done before bringing this matter up with the BOR Chair.

22 The Presiding Chair indicated that having it in Campus will be a good thing so
23 that when there are questions for the BAC, it can be answered immediately.

24 Regent Fiel indicated that the Board has many questions pertaining to
25 procedures followed like why the BAC provided the Baybay Printshop a copy of the
26 BAC Resolution No. 69, s. 2018 even before it provided the Board a copy of that
27 Resolution.

28 Regent Meylene indicated that she would also like to know why the BAC did
29 not write the respondent EDS that it had the right to a hearing.

1 Regent Fiel pointed out that the third element attendant to the blacklisting
2 complaint pointed out by Baybay Printshop was: *“the submission (of false*
3 *information) was made in order to influence the outcome of the bidding.”* He clarified
4 that this third element is really the meat of the matter, and, insofar as the BAC is
5 concerned, *“there was no intent.”*

6 The Presiding Chair indicated that *“although the BAC found that there was*
7 *indeed a submission of false information by EDS, it was allegedly done in good*
8 *faith.”*

9 Regent Fiel suggested the Board go over each of the four (4) instances
10 mentioned by Baybay Printshop as “reasons” for the blacklisting complaint.

11 1. No. 15 - Airconditioner

12 The technical specifications set by the BAC indicates that such an item
13 should have 8,600 kj/hr of cooling power. EDS, on the other hand, offered an item
14 with technical specifications of 9,200kj/hr of cooling power.

15 If we look at the specification in a general way, the offer of EDS is
16 advantageous to the government because it has a higher cooling capacity which
17 probably because of a more efficient cooling system.

18 On that score, it is clear that EDS did not have an intent to influence the
19 outcome because not all of the specifications were copied. There was a difference.
20 In its answer, EDS indicated that the item mentioned in the Bid Document
21 pertains to LG LA 100RC while Baybay Printshop mentioned that the item
22 mentioned pertains to LG LA 100TC. These are two different products.

23 2. Item No. 29 - Stand Fan

24 There is no attachment of evidence either from EDS or Baybay Printshop
25 regarding the technical specifications of the stand fan. Further, EDS did not
26 provide specifications on the Camel Stand Fan that it offered.

27 It is quite interesting that Baybay Printshop alleges that the technical
28 specifications of the fan pertained to Panasonic F-MX405 while EDS indicated

1 that such a stand fan pertains to Panasonic 405LB-SB. Again, these are two
2 different items. So, who is telling the truth?

3 Regent Acidre commented that the Law says that the Procuring Entity cannot
4 mention brands.

5 Regent Delos Reyes commented that while the Procuring Entity cannot ever
6 mention any brand, the Bidder can mention the brand it is offering. It is the
7 responsibility of the BAC to determine if the brand offered is in consonance with the
8 specifications set by the BAC.

9 Regent Fiel commented that if the Complainant says that the bidding specifies
10 a Brand, then his complaint is defective on that score because specifying a brand (*by*
11 *the BAC*) **is prohibited**. If Complainant says that the bidding requires this specific
12 brand, then his allegations are against the law (*RA 9184*), against the bidding rules.

13 The Presiding chair informed the Board that per information that he gathered,
14 the Respondent offered a brand, but fact was, (*that*) the specifications (*were*) copied
15 (*to the bidding documents*) which was erroneous.

16 Regent Fiel restated his opinion by saying that the complaint is citing an
17 illegal provision of law and, on that score, should be dismissed because it is a
18 violation of the law. The complaint is predicated on the **alleged specification of the**
19 **brand required by the BAC** or the Procuring Entity for that matter.

20 The Board Secretary commented that in the BAC Resolution No. 69, s. 2018,
21 the BAC stated in its No. 2 Recommendation, to wit: "*As part of the post-*
22 *qualification procedures, the BAC does not rely on the indicated technical*
23 *specifications of the bidders' offer since this is not required. What is required is only*
24 *the Brand name and/or model.*"

25 The Presiding Chair commented that maybe, the rules for Post-qualification
26 are different.

27 Regent Delos Reyes commented that in the Post-qualification, there is no
28 mention of brand names which is also true for the bidding itself. There should be no
29 mention of brand in any of the bidding procedures.

1 The Presiding Chair commented that one of the members of the BAC is the
2 University Lawyer and it is a wonder why (*this has happened*).

3 Regent Fiel pointed out that “there is no need to predicate (*the*) complaint on a
4 Brand required (*by the BAC or Procuring Entity*). This makes the Complaint
5 erroneous.

6 Regent Delos Reyes then explained the Procedure followed in the Bidding
7 Process, as follows:

- 8 1. during the preparation of the Purchase Request (*PR*), the requesting party puts in
9 all the technical specifications;
- 10 2. the technical specs of the end-user will be endorsed to the BAC;
- 11 3. the BAC will request the Technical Working Group (*TWG*) to come up with the
12 final technical specifications for bidding;
- 13 4. the BAC reviews the technical specifications as endorsed by the TWG and
14 approves the final technical specifications for posting in the PhilGEPS; and
- 15 5. the BAC requests the BAC Secretariat to post the final technical specifications in
16 the PhilGEPS.

17 Regent Delos Reyes pointed out that what is bided out contains the technical
18 specifications but not the brand. So, the documents that are missing include the PRs
19 as well as the documents published in the PhilGEPS.

20 Regent Acidre inquired whether it will be possible to create a Special BOR
21 Committee that will receive all these documents and then possibly study these and
22 make recommendations so that the Governing Board does not have to go over all the
23 documents and finally be able to make a decision on this matter in the next regular
24 quarterly meeting.

25 Regent Fiel indicated that he is amenable to the suggestion of Regent Acidre
26 that a Special BOR Committee be created to secure any and all documents including
27 the framing of possible Recommendations for consideration of the Board.

28 The Presiding Chair suggested that the BOR Finance Committee be
29 constituted as the Special BOR Committee to receive, take hold and study the

1 documents related to the case, GOODS-18-28. The Board Secretary will coordinate
2 the activities of the Committee.

3 The Board Secretary informed the Board that the members of the new Special
4 BOR Committee (aka *BOR Finance Committee*) include the following: *Regent*
5 Meylene C. Rosales, *Chairperson*; *Regent* Milo Delos Reyes, *Co-Chairperson*;
6 *Regent* Denny P. Catindoy, *Member*; and *Regent* John Allan A. Gulles, *Member*.

7 Regent Delos Reyes indicated that he would need the following documents to
8 be gathered: (1) Purchase Requests; (2) PhilGEPS posting of items (for bidding); and
9 (3) the Annual Procurement Plan (APP).

10 Regent Rosales requested for the following documents: (1) all the bids
11 submitted by both Baybay Printshop and EDS; and (2) the Minutes of the Meetings
12 of the BAC on this bidding.

13 Regent Fiel indicated that he was very positive that with the creation of this
14 Committee, many of the facts will be made known and determine the authenticity of
15 the data claimed here in the (BAC) Resolution and the amended complaint. He also
16 indicated that contrary to the assertion of Complainant, the BAC did not indicate any
17 brand in its PhilGEPS posting of the items for bidding.

18 On a last note, Regent Fiel commented that on the issue raised by the
19 Complainant, *re: Mockery of the sanctity of the bidding process*, the Complainant is
20 himself **Guilty** of making a Mockery of the Processes of the HoPE by filing so many
21 motions *without even waiting* for the legal process as required by the Rules.

22 The Presiding Chair mentioned that the Complainant is also guilty of
23 harassment because of the so many threats made against the members of the BAC.
24 The BAC felt so pressured that they gave an advance copy of the BAC Resolution
25 without any signature and clearance.

26 Regent Delos Reyes mentioned that the Office of the Ombudsman will not
27 initiate any kind of action if the documentation is not complete. He cited that in one
28 case, the complainant went to the Fiscal's Office in order to be able to secure BAC
29 documents. If the BAC really knows what it is doing, it should not come to this, a

1 Case. During the Pre-Bid conference, all parties interested to bid discuss the items
2 that will be bided. In the end, there will be an agreement of sorts that will be binding
3 on all parties. If this had been conducted, this (*case*) would not have happened.

4 Regent Fiel suggested that the University should study the possibility of
5 disqualifying this entity in the future biddings of the University.

6 The Presiding Chair indicated that he was amenable to this suggestion on the
7 ground that the Complainant threatened the BAC and the HoPE. As it is, the
8 Complainant wants to monopolize the whole thing.

9 Regent Rosales indicated that if left unchecked, there is a potential that
10 healthy competition will be compromised.

11 Regent Fiel requested the Board Secretary to make a recap of all the things
12 that have been agreed upon attendant to the case.

13 The Board Secretary mentioned the following will be secured:

- 14 1. Bid Documents: *PRs*, *PhilGEPS postings*, and *APP*;
- 15 2. Minutes of Proceedings and Meetings;
- 16 3. Explanation why BAC provided advance copy of BAC Resolution No. 69, s. 2018
17 to Complainant without authority;
- 18 4. Possible explanation how Complainant was able to get the bid documents of EDS
19 or at least see the Bids submitted by EDS;
- 20 5. Secure a copy of the written Request of the Complainant for a copy of the
21 Abstract of Bids;
- 22 6. Determine whether the BAC actually specified a particular brand name and/or
23 model for the items being bided out; and
- 24 7. Make recommendations for the consideration of the Board.

25 Regent Fiel pointed out that careful inspection of the documents will uncover
26 whether or not the bidding specifies or states a Brand name and/or Model because
27 that is what is stated in the complaint. Specifically, the complaint says: "*the bidding*
28 *requires this brand, HAIER, LG, PANASONIC etc...*"

1 Regent Fiel indicated that if this is not proven in the documents, on this score
2 alone, the HoPE can dismiss the Complaint on the ground that placing a Brand name
3 and/or Model is illegal.

4 The Board Secretary commented that probably the Complainant just deduced
5 the brand and/or model by comparing the technical specifications of the BAC with
6 those found in the Web.

7 Regent Fiel commented that this is beside the point, at this point in time
8 because the Complainant is bound by his complaint which says that: **“there was a**
9 **brand specified.”**

10 The Presiding Chair indicated that he would also want to find out whether a
11 Filing Fee (*for the Blacklisting Complaint*) was collected. Further, it should be
12 established whether the Respondent EDS was informed in writing of its right to
13 request for a hearing.

14 Regent Fiel raised the possibility of possibly imposing sanctions on the
15 Complainant for forum Shopping.

16 Regent Catindoy suggested that the BAC be requested to review the
17 provisions of RA 9184 so that it will be able to make good decisions on the bidding
18 procedures. It will also forestall their possible resignations as members of the BAC.

19 Regent Fiel commented that the Board acting as HoPE realizes the importance
20 of the suggestion of Regent Catindoy. In the light of possible violations by the BAC
21 in the bidding procedures, it will not be wise to accept their resignations, at this point
22 in time. Accepting their resignations will definitely preclude and preempt any
23 sanction or action by the Board against the BAC.

24 The Presiding Chair informed the Board that their resignations have not yet
25 been accepted and all the members of the BACs are still on hold-over capacity as
26 provided for in RA 9184.

27 Regent Catindoy inquired whether the 15-day reglementary period is already
28 in force.

1 Regent Fiel indicated that the 15-day reglementary period to make a decision
2 has not yet been in effect because of the insufficient documentation.

3 Regent Fiel reminded the President that the Board, acting as HoPE, had been
4 requesting for a training on RA 9184 but until now, no training has yet been
5 scheduled.

6 President Tulin informed the Board that he was told that the Procurement
7 Training for the HoPE will only be for a day or two at the most.

8 The Board Secretary informed the Board that indeed, there was a proposal for
9 a one-day Procurement Training for the HoPE. However, the training that the HoPE
10 should undergo will be the full Procurement Training which will cover all aspects of
11 the Law.

12 The President indicated he will look into this.

13 After the very long discussion, the Board unanimously passed

14 **Special BOR RESOLUTION NO. 2, s. 2019**

15 **A Resolution Delegating to the BOR Finance Committee the Authority to**
16 **Review the Documentation pertinent to BAC Resolution No. 69, s. 2018 dated 24**
17 **November 2018.**

18 **B. Letter of Intent of Pres. Edgardo E. Tulin for Renewal of Term**

19 The Presiding Chair, President Edgardo E. Tulin, informed the Board that
20 2019 marks the fourth (4th) Year of his incumbency as President of the University and
21 that his term will officially end this coming 29 October 2019.

22 President Tulin informed the Board that he is now presenting his intention to
23 seek a Second and Final Term for the period 30 October 2019 until 20 October 2023.
24 This early, he has made his intention known so that all necessary procedures and
25 processes can be neatly laid out and implemented.

26 Regent Fiel commented that the President has undergone a very steep learning
27 curve considering that his forte is more on Research. Thus, Management is almost
28 alien when one considers his past educational qualifications, trainings attended, as
29 well as experiences.

1 Regent Fiel then asked the President the question: *What was the most valuable*
2 *lesson that he learned as President of the University?*

3 President Tulin informed the Board that his past education and training was
4 more of a researcher and academician. As President, he indicated that undertaking
5 managerial work is very tough because we are dealing with people, processes and
6 procedures. Procedures and process can also be tough when people do not cooperate
7 or when people do not function well.

8 Regent Fiel reiterated that as a businessman and entrepreneur, he would like
9 to learn some valuable insights on the lessons that the President had learned in almost
10 four (4) years as President of a State University.

11 President Tulin added that sometimes, it is good to be kind and considerate
12 but there are also times that you have to be strict to impose discipline. It is really
13 tough to dealing with the things that really matter.

14 Regent Fiel informed the Board that because the Board will be creating a
15 "Screening Committee" which will be tasked with evaluating the performance of the
16 President in the past three (3) or so years, the Regents may no longer have the
17 opportunity to "engage the President" in a free-flowing exchange like this. This may
18 be the only chance the Regent will have.

19 The Board Secretary informed the Board that the "Evaluation Committee" that
20 will be created will be tasked to look at the various aspects of the President's
21 performance for the past three (3) years. Usually, it takes around 3 months to
22 complete the Evaluation, based on past experience.

23 After the Evaluation, the Chairperson of the Committee presents its Report to
24 the Governing Board, usually in a Special BOR Meeting. The Board will now be in a
25 position to "interview the President" before making a Final Decision whether or not
26 to Re-Appoint the President for a Second and Last Term of Office (*another four*
27 *years*).

28 The Board Secretary informed the Board that the Terms of Office of the
29 Private Sector Regents will expire on 24 October 2019.

1 The Presiding Chair indicated that the Letter of Intent of President Edgardo E.
2 Tulin for the renewal of his appointment as University President is now accepted by
3 the Board of Regents.

4 C. Creation of Formal Evaluation Committee for the Reappointment of Dr. Edgardo E.
5 Tulin for a 2nd Term, commencing on 30 October 2019 to 29 October 2023

6 The Presiding Chair indicated that this part will have to wait until Chairperson
7 De Vera will join the meeting.

8 In the meantime, Regent Fiel inquired why there is a need for an Evaluation
9 Committee when the Governing Board, on its own, can make the evaluation itself.

10 The Board Secretary informed the Board that Section 11 of CHED
11 Memorandum Circular No. 16, s. 2009 on Reappointment, states, to wit: "*No*
12 *incumbent President shall be reappointed without undergoing an evaluation of*
13 *his/her performance by an Evaluation Committee constituted by the Governing*
14 *Board.*" This is a special Evaluation Committee for the re-appointment of an
15 incumbent SUC President.

16 Regent Fiel, however, pointed out that based on Section 28 of CHED
17 Memorandum Order No. 3, s. 2001 dated 17 January 2001, it further provides, to wit:
18 "*In case the incumbent President is eligible and qualified per standards set by the GB*
19 *in accordance with RA 7722 for re-appointment, no search may be conducted at the*
20 *discretion of the GB.*" It is quite clear in this CHED Memorandum Order No. 3, that
21 the GB can opt not to conduct an evaluation. However, the Board should be guided
22 by standards also approved by the Governing Board. At this point in time, the GB has
23 "*not yet set those standards.*"

24 The Board Secretary promised the members of the Board that the standards
25 used in the most recent Evaluation Instruments used will be presented in the next
26 BOR Meeting.

27 The Presiding Chair inquired whether the CHED itself has its own standards
28 for evaluation.

1 The Board Secretary indicated that initially, CHED Commissioner Nona S.
2 Ricafort, then the Chairperson of VSU Board of Regents, provided a draft evaluation
3 guideline to the Board Secretary for improvement. It was during the incumbency of
4 Dr. Nenalyn P. Defensor, the VSU BOR Chairperson at that time, when the said
5 Guidelines were used to evaluate the performance of then Pres. Jose L. Bacusmo in
6 2011.

7 Regent Fiel commented that what the Board Secretary is saying is that there
8 are already standards approved by a previous GB while it really is incumbent on the
9 present GB to come up with its own “standards.”

10 The Board Secretary indicated that he will present the “*old evaluation*
11 *instrument*” to the present members of the GB in the next meeting so that it can make
12 an objective evaluation of the instrument including the other processes that were
13 followed the last time an Evaluation was conducted.

14 The Presiding Chair inquired whether the CHED had really implemented this
15 Evaluation scheme in the past.

16 The Board Secretary informed the Board that before the time of Dr. Patricia
17 B. Licuanan, immediate past Chairperson of the CHED, SUC Presidents could be
18 directly re-appointed by the Governing Board. This was the case of UEP President
19 Pedro Destura who was reappointed one (1) full year ahead of his term expiry. This
20 also happened in a few others in Region 8. However, this was until 2009 when the
21 CHED *en banc*, realized that there is really a need to evaluate. This was during the
22 incumbency of Dr. Licuanan as CHED Chair.

23 At this point, the Hon. CHED Chair joined the BOR Meeting. The outgoing
24 Presiding chair informed the Hon. Chair that the GB was already discussing Item C –
25 “*Creation of Formal Evaluation Committee for the Reappointment of Dr. Edgardo E.*
26 *Tulin for a 2nd Term, commencing on 30 October 2019 to 29 October 2023.*”

27 The Hon. Chair informed the Board that he just left the CHED *en banc*
28 meeting which is still discussing the issues related to the “Legal Education Board,”
29 “re-issuance of a CHED Memorandum on this matter,” and other matters.

1 Regent Fiel inquired that a little while ago, the Board was discussing the issue
2 whether it (*BOR*) will prescribe or has (*set*) standards for the evaluation of the
3 President in the event the President applies for renewal (*of his term*).

4 Chairperson De Vera informed the Board that when a President seeks a
5 second term, there is a procedure presented in CHED Memorandum Order No. 16, s.
6 2009 that requires the GB to create an Evaluation Committee. The Chair of this
7 Committee is designated by the CHED Chairperson. Other members include a private
8 sector representative, a representative from PASUC, the CHED Representative
9 (*Regional Director*), and an Academic Sector Representative (*representing the*
10 *Faculty, Students, and Alumni*).

11 The CMO provides the Guidelines and has some generic evaluation
12 instrument which is used by all Evaluation Committees. However, it does not stop the
13 Governing Board, in the exercise of its powers, to determine what will be evaluated.
14 This power is given to the Board of Regents, if that is the desire of the BOR.

15 The Hon. Chair explained that a special BOR meeting is including the
16 members of the Evaluation Committee in order to clarify all concerns regarding the
17 directions of the evaluation. This includes the parameters of what they will do. When
18 the evaluation starts, there is no longer any problem.

19 In some instances, the Evaluation Committee does a haphazard job and may
20 even go beyond what the Board mandates. When the Evaluation Report is submitted
21 to the GB, all sorts of problems are raised. It is for this reason that the GB defines
22 parameters of how the Evaluation will be conducted.

23 The Hon. Chair likewise pointed out an issue that he has with the existing
24 CMO No. 16, s. 2009. This pertains to the requirement of “double unanimous” ruling.
25 This means that the Evaluation Committee must unanimously endorse to the Board of
26 Regents and then the BOR, in turn, must also vote unanimously to reappoint the
27 President to a second term. The problem here is that the Board cannot delegate some
28 of its powers (*to the Evaluation Committee*) and the delegation (*of power*) exceeds the
29 power of the BOR itself. This puts the Board in a bind when, for example, the

1 Evaluation Committee is not unanimous in its assessment, the Board can no longer
2 act because of the “double unanimous” requirement. It should be remembered that the
3 Evaluation Committee is just a creation of the Board and so, whatever its ruling
4 should not prevent the Board from making its own independent decision on the
5 matter.

6 Chairperson De Vera indicated that he is not comfortable with the idea that
7 the power of the Board will be pre-empted by the Evaluation Committee. The
8 Governing Board has to exercise its lawful powers and should not be stifled by a
9 technicality. The Board has to make a decision whether or not that provision of
10 “double unanimity” will be followed. This is why the Special BOR Meeting is
11 important so that things like this can be threshed out before the Evaluation Committee
12 does its job.

13 The Hon. Chair informed the Board that the CHED *en banc* has organized a
14 Technical Working Group (TWG) to study and revise CMO No. 16. This has been a
15 problem across SUCs.

16 Regent Fiel suggested that the evaluation of the performance of the VSU
17 President should be done as soon as possible so that, heaven forbid, and a Search will
18 be necessary there will still be time to do the Search.

19 The Hon. Chair indicated that there is still enough time. What the Board can
20 do is to come up with the composition of the Evaluation Committee and then approve
21 the compositions when the persons expected to be part of the Evaluation Committee
22 have been identified. After this, a Special BOR Meeting will be called including the
23 members of the Evaluation Committee so that the Board can give its instructions on
24 how the Evaluation will proceed. Further the issue on “double unanimity” will have
25 to be decided by the Board before the Evaluation Committee starts to function.

26 After the discussion, the Board unanimously passed

27 **Special BOR RESOLUTION NO. 3, s. 2019**

28 **A Resolution Approving the Composition of the Special Committee for**
29 **the Evaluation of the Performance of the incumbent VSU President, Dr.**
30 **Edgardo E. Tulin, as follows:**

1	Chairperson	- to be nominated by the Hon. CHED Chairperson
2	PASUC Representative	- to be nominated by the PASUC National Office
3	CHED Representative	- in the person of the CHED Regional Director R-8
4	Private Sector Rep.	- private sector representative not connected with VSU
5	Academic Rep.	- to come from either Student, Faculty or Alumni
6	Secretariat	- BOR Secretary and one from the CHED Chair's Office

7 D. Proposed Budget for the Evaluation Committee for the VSU Presidency

8 The Board Secretary informed the Board that the Budget being presented is
9 only tentative because the actual members of the Committee are not yet known. What
10 is important, at this point in time is the idea that this evaluation will incur expenses,
11 both Personnel Services (*honorarium*) as well as other expenses. The final Budget
12 amount will really depend on where the Committee will meet, how often it will meet,
13 where the members will be coming from.

14 The Board Secretary narrated that in the past Evaluations, all the members of
15 the Evaluation Committee were "locals" meaning that they were all from Leyte and
16 so, the expenses were not that high.

17 Regent John Allan A. Gulles, the Student Regent, aired his concern that his
18 term will be expiring this coming 31 July 2019, and if the Evaluation is completed
19 after his term of office, how will the next Student Regent be able to grasp what has
20 been going-on insofar as the Evaluation is concerned.

21 The Board Secretary reiterated that in the next BOR meeting, he will bring the
22 evaluation materials previously used in 2011 so that the BOR members will
23 understand the process.

24 The Hon. Chair reiterated the importance of ensuring that the Governing
25 Board is clear about what it wants the Evaluation Committee to look into during the
26 performance evaluation. If the members do not plug-in their concerns, the Evaluation
27 Committee will just gloss over your concern and there is nothing that the Board can
28 do once the evaluation is over.

29 The Hon. Chair inquired from the Board Secretary when would be the
30 possible deadline for the submission of names for the members of the Special BOR
31 Committee?

1 The Board Secretary suggested that the names of the possible members of the
2 Committee should be submitted by the end of the month of January. This is to give
3 time for the nominees to indicate whether they accept the nomination or not.

4 Regent Fiel inquired whether a Regent can be nominated.

5 The Hon. Chair commented that the Committee should be independent of the
6 Board itself. The members of the Board will be the ones who will decide whether or
7 not to renew the appointment of the incumbent President after considering the
8 Evaluation Committee Report. It would be best to get somebody from the Region.

9 Regent Joel R. Caminade and Regent Roy Bernard C. Fiel jointly nominated
10 Mr. Oliver Cam (*also a PSR in the current Regional Development Council of R-8*) as
11 the Private Sector Representative to the Evaluation Committee.

12 Chairperson De Vera requested the Board Secretary to route a Referendum
13 once the names of all the members of the Committee are complete.

14 E. Request of Some VSU Faculty for Authority to Travel Abroad

15 President Tulin informed the Board that some University faculty have a
16 pending request for authority to travel abroad: six are going to Thailand and two are
17 going to Japan.

18 Chairperson De Vera inquired about the nature of the travel of these faculty
19 and whether they have complied with the IAS requirements.

20 The President informed the Board that these faculty will be presenting papers
21 in the international conferences they will be attending.

22 The Board Secretary indicated that all of the faculty have complied with the
23 requirements of the CHED-IAS.

24 Chairperson De Vera indicated that on account of the many University faculty
25 who will be travelling abroad for paper presentations, the President is instructed to
26 present to the Governing Board the University's Internationalization Plan (IP) in the
27 next Regular BOR meeting because VSU is the premier SUC in Region 8. The
28 University has to provide a plan/guide on the direction(s) of the University's
29 Internationalization thrust. Once this is in place, all future requests for foreign travels

1 will have to fall within the ambit of the University's Internationalization Framework.
2 This means that the University authorities will have to Certify that the said travel
3 request is within the directions indicated in the University's Internationalization
4 Framework. In this way, the University will have an indication whether it is "moving
5 forward" with its internationalization thrust.

6 President Tulin indicated that he will do his best to come up with the VSU
7 Internationalization Plan.

8 Chairperson De Vera indicated that he will also require the other Regions to
9 come up with their own Internationalization Plan/Framework.

10 F. Other Matters

11 1. Tertiary Education Subsidy (TES)

12 President Tulin requested clarification on the approved list of beneficiaries
13 for the TES because of the so many complaints from students why they were not
14 included considering that they are also in the qualified list for TES.

15 Chairperson De Vera suggested that the University gather the complaints
16 and submit it to the CHED Regional Office which will then forward it to the
17 CHED Chairperson's Office. It will be the CHED that will forward this complaint
18 to the DSWD because it is the DSWD that made "***the List.***" It had already been
19 pointed out that there had been students who had 4Ps Certification yet their names
20 were not included in the DSWD List for TES. This is beyond the power of the
21 CHED to act upon.

22 The Hon. Chair requested the President to organize the TES scholars so
23 that the University will be able to help them. These scholars may need Counseling
24 and Tutorials. A number of them have been out of the educational loop for some
25 time meaning that their educational preparation may not be up to par with the
26 other students. The Hon Chair also intimated that he would like to meet these TES
27 students when he gets to visit the University at a future date.

28 The Hon. Chair informed the Board that the CHED is embarking on a new
29 big project this year (2019) to "start documenting stories of success of students

1 from SGPPA and TES. The Central Office will be training the Regional Offices
2 “*how to undertake good documentation of the students we are helping.*” A group
3 headed by Ms. Cara David of GMA-7 will develop these into video
4 documentaries that can be posted in the websites of the SUCs and the CHED
5 Regional Offices. The CHED Regional Offices will also be taught how to make
6 good videos including what questions to ask so that it can be stitched together into
7 a documentary that can now be disseminated. The number of TES and SGPPA
8 beneficiaries in VSU is about 1,600 and this is a good number. In Region 8, the
9 Eastern Visayas State University has the most number of SGPPA and TES
10 beneficiaries because it also has the biggest student population, about 20,000
11 students.

12 President Tulin indicated that the affected students were asking when the
13 DSWD List will be updated.

14 The Hon. Chair commented that the DSWD has been promising for the
15 last two years that they will update the List. However, until now, it is not known
16 if they had already done the updating. RA 10931 does not give the UNIFAST
17 Board the discretion to create additional categories. So, to help solve this
18 problem, he inserted some special language in the 2019 GAA to “*give the*
19 *UNIFAST Board the power to create categories of scholars.*” Some of the
20 excluded sectors that could be provided with TES benefits include the Pamana
21 scholars (*IPs*), the children of rebel returnees, and other disadvantaged and
22 underprivileged sectors of society. The bottom line is: “*the DSWD List*” is not
23 perfect.

24 V. ADJOURNMENT

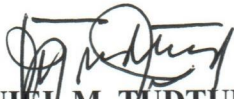
25 After all items were discussed, Chairperson J. Prospero E. De Vera III requested for a
26 motion to adjourn the 88th BOR Meeting.

27 President Edgardo E. Tulin moved for the adjournment of the 88th Board of Regents
28 meeting.

29 Regent Roy Bernard C. Fiel seconded the motion.

1 Chairperson J. Prospero E. De Vera III thanked everybody for their presence and
2 adjourned the 88th Board of Regents (BOR) Meeting of the Visayas State University at 6:10
3 P.M.

4 Certified True and Correct

5 
6 **DANIEL M. TUDTUD, JR.**
7 *Board Secretary*

8 Attested:

9 **J. PROSPERO E. DE VERA III, PhD.**
10 *Chairperson*



MATRIX OF ACTIONS
88th BOR Meeting
14 January 2019
CHED Chairperson's Conference Room
CHED Central Office
C.P. Garcia Avenue, UP Diliman, Dilman, Quezon City

Issue/Item Deliberated	Board Discussion	Assignment	Board Action	Action Taken
Proposed Agenda for the 88th Board of Regents' Meeting	<i>The President presented to the Board the proposed Agenda for the 88th BOR Meeting.</i>	NONE	The Governing Board Approved the Proposed Agenda, as presented and passed <u>BOR Resolution No. 7</u> – A Resolution Approving the Proposed Agenda for the 88th BOR Meeting, as presented.	
Blacklisting Complaint Filed by Baybay Printshop against Electrocomputer Data Systems	<i>The Board lengthily discussed the Blacklisting Complaint. However, it was clear that important documents that may have a bearing on the Case were not available.</i>	BOR Secretary	The Governing Board Passed Special BOR Resolution No. 2, s. 2019 - A Resolution Delegating to the BOR Finance Committee the Authority to Review the Documentation pertinent to BAC Resolution No. 69, s. 2018 dated 24 November 2018. The Board Secretary was instructed to provide the needed support services to the Finance Committee for purposes of securing the documents.	The BOR Finance Committee met last 31 January 2019 and 8 March 2019 for this purpose and came up with a Report. Complied



Issue/Item Deliberated	Board Discussion	Assignment	Board Action	VSU Action
Letter of Intent of Pres. Edgardo E. Tulin for Renewal of Term	<p><i>The President informed the Board that his Term of Office will be ending on 29 October 2019 and expressed his desire to be renewed for another term as provided for in the RA 9158.</i></p> <p><i>The Board was provided a briefing on the process involved attendant to the Evaluation Process.</i></p>	<p>BOR Secretary</p>	<p>The Governing Board passed <u>Special BOR Resolution No. 3, s. 2019</u> - A Resolution Approving the Composition of the Special Committee for the Evaluation of the Performance of the incumbent VSU President, Dr. Edgardo E. Tulin, as follows:</p> <p>Chairperson - to be nominated by the Hon. CHED Chairperson; PASUC Representative - to be nominated by the PASUC National Office; CHED Rep. - in the person of the CHED Regional Director R-8; Private Sector Rep. - private sector rep. not connected with VSU; and Academic Rep. - to come from either Student, Faculty or Alumni Sectors Secretariat - BOR Secretary and one from the CHED Chair's Office.</p> <p><i>The Hon. Chairperson indicated that he will designate the Chair within 2 weeks.</i></p> <p><i>The Board Secretary was directed to follow-up selection of the Academic Representative to the Evaluation Committee.</i></p>	<p>The CHED Chair recommended the designation of Dr. Jose V. Camacho, Jr., as Chairperson.</p> <p>The PASUC recommended Dr. Milabel Enriquez-Ho, President, WMSU, as PASUC Representative</p> <p>Dr. Beatriz C. Jadina, was chosen as the Representative of the VSU Academe.</p> <p><u>BOR Resolution No. 5, s. 2019</u> was passed through Referendum which formally created the Evaluation Committee for the VSU Presidency.</p>



Issue/Item Deliberated	Board Discussion	Assignment	Board Action	Action Taken
Proposed Budget for the Evaluation Committee for the VSU Presidency	<p><i>The Board Secretary informed the Board that the Budget presented is only tentative considering that the actual persons who will be assigned/designated to be members of the Evaluation Committee are not yet known.</i></p> <p><i>Once the membership is complete, a Final Budget will be presented for BOR Approval.</i></p>	BOR Secretary	<p>The Board started identifying the possible persons who will be appointed/designated to be members of the Evaluation Committee.</p> <p>The Board Secretary was requested to follow up the Academic representative and PASUC Representative.</p>	<p>The membership to the Evaluation Committee is complete.</p> <p>To this effect, <u>BOR Resolution No. 6, s. 2019 – Proposed Budget of the Evaluation Committee</u>, was passed through Referendum.</p>
Request of Some VSU Faculty for Authority to Travel Abroad	<p><i>The President informed the Board that a number of faculty would like to secure Authority to Travel Abroad to present papers in international conferences.</i></p> <p><i>The said faculty have secured the IAS Certification already following the CHED en banc Resolution on the routing of documents for Faculty Travelling Abroad.</i></p>	The University President	<p>The Hon. Chair instructed the President to prepare the University's Internationalization Plan for presentation in the next Regular BOR Meeting.</p> <p>The purpose of this Plan is to determine whether the proposed travel by faculty is related to within the Internationalization Framework of the University.</p>	<p>The President presented to the UADCO the proposed University Internationalization Plan which was approved by the UADCO.</p> <p>This is now presented to the Governing Board for final approval.</p>