AUBURN UNIVERSITY’S RESPONSE TO THE COMPLAINT FILED BY THE
JOINT ASSESSMENT COMMITTEE OF THE AUBURN UNIVERSITY SENATE

Auburn University hereby submits this response to the complaint filed by the
Joint Assessment Committee of the Auburn University Senate (hereinafter the
“Complainants”) on or about April 24, 2001.

I. INTRODUCTION

It is apparent from Complainants’ letter, and attachments thereto, that there is a
high level of disharmony within various constituencies at Auburn University. The
intensity of the situation is reflected in the no-confidence votes referenced in the
Complainants’ letter and the call by some for the en masse resignation of all current
Trustees.

The University regrets this turn of events and is taking steps to address it.
However, several principles are self-evident to anyone knowledgeable about the
University. First, the causes of the disharmony are complex – far more complex than
suggested by the Complainants – and include fundamental disagreements over matters of
both University policy and state politics. Second, a cure cannot be effected overnight,
particularly in the midst of a search for a new President. Third, the ouster of the entire
Board, which the Complainants and their allies strongly advocate, cannot be effected
under the constitution and laws of the State of Alabama. Fourth, Complainants’
complaint could be interpreted as an attempt to enlist SACS in their campaign to oust the
Board. As evidenced by their reference to the events that led to the appointment of a
Board of Regents for the University of Georgia, the Complainants apparently want to use
the disciplinary powers of SACS to pressure state officials into making radical changes to the structure under which Auburn University operates – changes that would require, among other things, an amendment to the Alabama constitution, and that would likely impact the structure under which other public colleges and universities within the State of Alabama operate as well.

The University is mindful of SACS’ admonition that the University’s response to a complaint should demonstrate that any problems are being responsibly addressed in such a manner that the concerns are unlikely to recur. Specific changes to the Board of Trustees’ Policy Manual and By-Laws pertaining to the operation of the standing committees and communications between trustees and the administrative staff will be presented for approval at the next Board meeting.

While acknowledging the need to respond to the concerns of the Complainants, it is respectfully submitted that these concerns do not constitute violations of the Criteria for Accreditation. Two of the ten “examples” they cite refer to events that occurred more than a decade ago and predate the two most recent accreditation reviews by SACS. Another example is an alleged violation of the Alabama sunshine statute rather than an alleged violation of the Criteria. The remaining examples are either factually incorrect or reflect nothing more than a policy disagreement between the Complainants and the Board. There is therefore no basis whatsoever for SACS to use its accreditation leverage to become embroiled in internal University policy disputes or statewide political controversies.
II. RESPONSE TO COMPLAINANTS’ SPECIFIC ALLEGATIONS

Example 1 (Criterion 6.1.2): Standards for admission, retention, and graduation. In February, 1988, the Board of Trustees approved new minimum standards for admission, retention, and graduation that were developed by a Board committee rather than those developed and approved earlier by the University Senate and subsequently approved by the President.

RESPONSE

As a threshold matter, it is worth noting that this portion of the complaint relates to events that occurred more than thirteen years ago under a different administration and a different Board of Trustees. In reviewing the complaint, the only relevant consideration should be whether there is evidence of a current failure to adhere to SACS’ Criteria for Accreditation. The events of thirteen years ago – under a different administration and a different Board of Trustees – simply have no bearing as to whether the University currently comports with the Criteria for Accreditation.

Moreover, since the events described in Example 1 above occurred, both the Auburn University main campus and the Auburn University Montgomery (“AUM”) campus have undertaken self-studies and have undergone SACS reviews for reaffirmation of accreditation. In neither instance were the “Academic Standards for Undergraduate Students” – the policy at issue – or the process by which the standards were adopted even raised as a potential problem. In fact, the 1993 Report of the Reaffirmation Committee recognizes the Board’s authority in adopting such policies, noting with approval that “[t]he Board of Trustees, which approves the policies, has also approved a long-range plan to direct undergraduate enrollment.”

1 Only two members of the current Board of Trustees were members of the Board in 1988.
The SACS *Criteria for Accreditation* specifically state that “the governing board is the legal body responsible for the institution and for policy making.” SACS Criterion 6.1.2. Criterion 6.1.2 further provides that “[g]eneral institutional policies should originate within the board or should be approved by the board upon recommendation of the administration.” *Id.* Criterion 4.2.1 clearly establishes the Board’s responsibility with respect to student admissions and the size and character of the student body:

General admission policies must be established by the governing board on recommendation of the administration. The board is responsible for deciding the size and character of the student body.

Consistent with these provisions, University records plainly reveal that on February 4, 1988, the Board exercised its proper authority and adopted new Academic Standards for Undergraduate Students. The minutes from the February 4, 1988 Board meeting reflect that the new policy was referred to the entire Board by the Board’s Planning & Priorities Committee, a committee specifically charged by the By-Laws of the Board of Trustees of Auburn University (hereinafter “By-Laws”) with “consider[ing] and provid[ing] recommendations to the Board for action policies related to the University’s overall academic program.” See By-Laws § 4.47. In short, the appropriate Board committee proposed a new admissions/retention policy to the entire Board, and the entire Board considered and adopted the new policy, all of which were perfectly consistent with the Board’s role as defined by the SACS *Criteria for Accreditation*.

Nevertheless, over thirteen years later, the Complainants contend that somehow

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2 A copy of the relevant portion of the February 4, 1988 Board minutes and a copy of the adopted “Academic Standards for Undergraduate Students” is attached hereto as Exhibit 1. A copy of the By-Laws is attached hereto as Exhibit 2.
the Board violated the SACS *Criteria for Accreditation*, because the Board approved “new minimum standards for admission, retention, and graduation that were developed by a Board committee rather than those developed and approved earlier by the University Senate and subsequently approved by the President.” Even assuming the accuracy of the Complainant’s recitation, this does not establish a violation of the SACS *Criteria for Accreditation*. Under the criteria, it is the role of the Board to make such policies. Indeed, it is difficult to imagine a policy-making role that is more squarely within the purview of the Board than that of the standards for admitting and retaining students.

Moreover, a careful review of the policy proposed by the Faculty Senate and the policy ultimately adopted by the Board demonstrates substantial similarity between the two approaches. Both approaches involved significant changes to the then existing policy. Further, the policy proposed by the Faculty Senate and the policy ultimately adopted by the Board utilize the same basic framework. While some members of the faculty complained that the Board did not share the final proposal with the faculty prior to the Board’s approval, the Board simply made modifications to the Faculty proposal (e.g., reducing the science requirement for admission from 3 years to 2 years, increasing the required GPA for transfer students from 2.30 to 2.50, retaining the existing thresholds for academic probation and suspension, etc.). Consistent with the SACS criteria, the Board could have fashioned its own policy out of whole cloth. Instead, the Board used the same framework as the faculty, making changes it deemed appropriate. Certainly this approach is equally consistent with the SACS *Criteria*.

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3 Attached as Exhibit 3 is a chart prepared by representatives of the Faculty Senate, which compares the then existing admissions/retention/graduation policy with the policy proposed by the Faculty Senate and the policy ultimately adopted by the Board.
Finally, in some of their supporting documents, the Complainants take issue with the fact that the admissions/retention/graduation policy was originally assigned to the Academic Affairs Committee of the Board and later reassigned to the Planning & Priorities Committee. The By-Laws provide that the role of the Academic Affairs Committee is to “consider and provide recommendations for Board action policies relating to the academic freedom, tenure and promotion of faculty, and faculty and staff personnel matters.” By-Laws § 4.42. Clearly, the consideration of a new admissions/retention/graduation policy more appropriately belongs to the Planning & Priorities Committee, a committee responsible for “the University’s overall academic program.” By-Laws § 4.47.

Example 2 (Criterion 6.1.2 and possibly 1.4): Rescinding of tenure offer made to Professor Charles Curran. During the academic year 1990-91, the board involved itself in an academic decision and collectively and individually belied the truth about it. It is widely perceived that pressure from the Roman Catholic Church via a bishop in Mobile induced the board to pressure then President Martin to rescind a tenure offer to Professor Father Curran who had published controversial views on homosexuality and abortion. If true, this would represent a failure of the board to protect the administration from religious pressure from an outside body and a case of severely compromised academic freedom at the university.

RESPONSE

Like Example 1, Example 2 relates to events that occurred over ten years ago under a different administration and a different Board of Trustees. Again, such events are simply irrelevant as to whether the University – now under the leadership of a different administration and a different Board of Trustees – is currently in compliance with SACS’ Criteria for Accreditation. Further, the Father Curran matter was

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4 Only two members of the current Board of Trustees were members of the Board in 1990.
specifically addressed in the 1993 SACS review of the University, and as discussed in greater detail below, the University subsequently adopted new policies and procedures relating to academic freedom and professional security. Finally, the Complainants cite no recent examples — *i.e.*, since the adoption of the new policies and procedures — in which the Board is alleged to have inappropriately inserted itself into faculty tenure decisions.

In light of the above, it is simply unnecessary, and perhaps even counterproductive, to once again rehash the facts of the Father Curran matter in the context of a SACS review. Suffice it to say that the University disputes the “perception” that the Board pressured then President Martin to deny tenure to Father Curran. Even the “Report on the Issue of Dr. Charles Curran” prepared by the University Senate’s ad hoc Investigating Committee reveals that both President Martin and the then serving Board members steadfastly denied that the Board pressured President Martin’s decision. *See* “Report on the Issue of Dr. Charles Curran” (a copy of which is attached as Document 10-A to the complaint) pp. 5-6. In fact, during its November 9, 1990 meeting, the then existing Board issued a statement denying “involvement in tenure decisions” and expressly affirming that “[t]hese decisions are independent presidential judgments.”

While the SACS Reaffirmation Committee in 1993 expressed some concern “about the integrity of the academic process and academic freedom at Auburn University based on the Curran case,” the University — including then President William V. Muse — once again denied that there was anything inappropriate about the handling of the Curran case.

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6 A copy of the November 9, 1990 statement is attached hereto as Exhibit 5.
matter. Nevertheless, in response to the Reaffirmation Committee’s report, the Board of Trustees revised the portion of the Faculty Handbook devoted to “Faculty Personnel Policies and Procedures” in September, 1993. This new policy reaffirms that the final decision with respect to tenure decisions rests with the President. See Exhibit 7, p.18.

In sum, the Complainants have failed to allege any tenure decision since the Father Curran matter over a decade ago – or since the adoption of the new “Faculty Personnel Policies and Procedures” in September, 1993 – in which the Board is even “perceived” to have been involved. And the Complainants’ “perceptions” of ten-year-old events – which stand refuted, which occurred under a prior administration and Board, and which have already been addressed during a previous SACS’ review – cannot form the basis for a conclusion that the University today is violating the Criteria for Accreditation.

Example 3 (Criterion 6.1.2): Lack of institutional control over athletics and cases where board action reflected decisions by an individual board member or committee rather than by the whole board. The transcript of a special meeting between faculty representatives from the Committee on Intercollegiate Affairs and past president William V. Muse (Document 8) on March 15, 2001, describes the extraordinary control over athletics exerted by board member Robert Lowder and the Athletics Committee of the board.

RESPONSE

This Example is supported only by a transcript of comments made by former President Muse on March 15, 2001, at a meeting involving faculty representatives from the Committee on Intercollegiate Affairs. While acknowledging that he was not

7 A copy of the November 8, 1993 letter from then President Muse to Dr. James T. Rogers, Executive Director of SACS, reasserting the University’s disagreement with the Reaffirmation Committee’s findings as to the Curran affair is attached hereto as Exhibit 6.

8 See Exhibit 7, attached hereto.
contending that the practice of the Athletic Committee constituted a violation of the principle of Institutional Control, former President Muse expressed “some concern” as to the following: whether powers delegated to the Board of Trustees were being exercised by an individual trustee or by a committee of the full Board; and whether the Athletic Committee functioned in a managerial rather than an oversight capacity. Since neither the Complainants nor former President Muse identified any specific decisions to support this Example, this response will focus on the University’s written policies and actual practice pertaining to Institutional Control over athletics.

(1) Written policy reflecting the role of the Board of Trustees, the Athletic Committee and the President.

On December 17, 1991, the Auburn University Board of Trustees strengthened the authority of the President in regard to institutional control of the athletic department by passing a Resolution on “Reaffirmation of President’s Authority and Responsibility for all Auburn University Programs.” This Resolution vests the President with complete and total administrative responsibility for the intercollegiate athletic programs, including selection of the Athletic Director and the Head Coaches. The Resolution rescinded the prior policy which had required Board approval of the selection of the Athletic Director and Head Coaches and rescinded the provision in the By-Laws of the Board of Trustees which had vested the Athletic Committee with the responsibility for making recommendations to the Board of Trustees with respect to employment of the Athletic Director and Head Coaches. Pursuant to the new policy, the President’s only obligation to the Board in these matters is to have prior consultation with them in the selection of a
Director of Athletics consistent with the policy pertaining to selection of any University Vice President.9

In the 1991-92 Self-Study Report prepared as one part of the SACS’ reaffirmation process, the Self-Study Committee recommended that the positions of Athletic Director and Head Football Coach be separated. The University accepted this Recommendation, and these positions have been separated since 1993. Also, consistent with another Suggestion contained in the SACS’ Reaffirmation Committee Report prepared in 1993, Trustee participation on search committees for Head Coaches has been significantly reduced from prior practice. For instance, the search committees appointed by former President Muse to hire a new football coach in 1993 and a new basketball coach in 1994 included only one Board member on each committee; and the search committee appointed by former President Muse to hire a new football coach in 1998 consisted of only one person, the Athletic Director of the University.

The specific role of the Athletic Committee is described in Section 4 of the By-Laws of the Board of Trustees:

**Athletic Committee.** The Athletic Committee may consider and provide recommendations to the Board for action policies relating to programs of intercollegiate athletics, including facilities, finances, staffing and scope of program.

The duties and responsibilities of the President of the University are also set forth in the Board’s By-Laws:

The President of the University shall be the Chief Executive Officer of the University and, subject to the control of the Board, shall manage, direct and be responsible for the conduct of all the affairs of the University except those which by law or these By-Laws are made the specific responsibility of other persons. The President shall have the power, in the name of the University, to make and

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9 Copies of the Resolution and related documents are attached as Exhibit 8.
execute, or authorize the making and execution of, all contracts and written instruments made in the ordinary course of the operations of the University except those which must be specifically approved and authorized by the Board. By-Laws § 2.1.

In summary, the Board of Trustees’ By-laws, as well as the Resolution adopted by the Board on “Reaffirmation of President’s Authority and Responsibility for all Auburn University Programs,” clearly establish that the President has the responsibility to manage and direct the Athletic Department, including the selection of the Athletic Director and the Head Coaches of the athletic teams; the Athletic Committee is charged with providing recommendations to the full Board for action policies relating to intercollegiate athletics, including facilities, finances, staffing and the scope of programs; and the full Board remains responsible and committed to the establishment and approval of policy pertaining to the University, including the Athletic Department.

(2) Actual practice pertaining to the operation of the Athletic Department.

David Housel has served as the Athletic Director of the University since April, 1994. He was selected for this position by former President Muse, and he reports directly to the President as a member of the President’s staff. He has day-to-day responsibility for the operation and management of the Athletic Department.

The Athletic Committee of the Board meets approximately two to three times a year. The meetings are typically called by either the President or the Athletic Director who prepare and circulate in advance a proposed agenda. A typical agenda includes reports on items such as facilities, financial status, fund raising efforts, ticket sales reports and drug testing programs.\[10\]

\[10\] A copy of a representative agenda for the Athletic Committee meetings is attached hereto as Exhibit 9.
Mr. Housel’s practice is to solicit input from the members of the Athletic Committee as well as other Board members with respect to major decisions impacting the Athletic Department. Upon accepting the position of Athletic Director in 1994, Mr. Housel concluded that the prior Athletic Director had functioned in too much of an autonomous manner, without seeking any input from the Board or other University stakeholders prior to making major decisions. Accordingly, Mr. Housel advised former President Muse that he intended to change this practice in an effort to achieve a consensus among the constituencies of the University with respect to major decisions. Former President Muse agreed to this approach with the condition that he and the Athletic Director retain final decision-making authority.\footnote{One notable example of the President retaining final decision making-authority pertaining to the Athletic Department was his decision to extend the contract of Coach Eagles, the former head basketball coach, despite the unanimous recommendation of the Athletic Committee that the contract not be extended.}

In late 1997, in connection with the National Collegiate Athletic Association (“NCAA”) Recertification Program, a peer-review team conducted an extensive review of the University athletic program. After conducting over eighty interviews (including former President Muse) and reviewing extensive documentation pertaining to the operation of the Athletic Department, the peer-review team reached the following findings:

1. That the University was in substantial conformity with the operating principle of the NCAA pertaining to Institutional Control based upon its determination that the President was responsible for the administration of all aspects of the Athletic Program, including approval of the budget and audit of all expenditures; and
(2) That the University was in substantial conformity with the operating principle of the NCAA pertaining to Institutional Governance as a result of its determination that the President had ultimate responsibility and final authority for the conduct of the intercollegiate athletic program.\[12\]

(3) Both the written policy and actual practice of the University pertaining to the Athletic Department conform with Criterion 6.1.2.

The relevant provisions of Criterion 6.1.2 are as follows: that board action must result from a decision of the whole, and no individual member or committee can take official action for the board unless authorized to do so; that the responsibilities of the governing board must include establishing broad institutional policies, securing financial resources to support adequately the institutional goals, and selecting the chief executive officer; and that there must be a clear distinction, in writing and in practice, between the policy-making functions of the governing board and the responsibility of the administration and faculty to administer and implement policy. The concerns expressed by former President Muse must be analyzed in the context of these requirements.

First, former President Muse indicated that he was uncomfortable with the practice of the Athletic Committee in not maintaining minutes of its meetings and in not making detailed reports to the full Board of Trustees pertaining to matters discussed by the Committee. Corrective action has now been taken by the Board with respect to this concern. The Board has directed each of the standing committees, including the Athletic Committee, to maintain minutes of their meetings. Additionally, the Board will consider a formal amendment to its By-Laws at its July, 2001 meeting to formalize this

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\[12\] A copy of the 1997 NCAA Peer-Review Team report is attached hereto as Exhibit 10.
requirement. The Board will also consider at its July meeting an additional amendment to the By-Laws that will require each chairperson of a standing committee to make a full report to the Board as to each agenda item discussed in the prior meeting of the committee and to provide a summary of any opinions expressed or suggestions made by any member of the committee to either the President or a member of his administrative staff as to any agenda item. Finally, the Board of Trustees has declared publicly that all meetings of standing committees of the Board will be open to the public and be preceded by reasonable public notice. These changes should eliminate the concern expressed by former President Muse with respect to the manner in which the Athletic Committee functions.

The remaining concern expressed by former President Muse in his taped comments pertained to whether the Athletic Committee on occasion crossed the line between functioning in a management rather than an oversight role. While acknowledging that he retained final decision-making authority with respect to matters involving the Athletic Department, former President Muse commented that he felt pressure to comply with the opinions expressed by the members of the Athletic Committee on various issues.

To the extent that this concern is based on the fact that the opinions were expressed by a committee of the Board rather than the full Board, such concerns should be alleviated by the Board action anticipated in July of this year that will require a full report to be made by the chairperson of each standing committee with respect to any opinions expressed or suggestions made by any members of the committee to either the President or a member of his administrative staff. However, to the extent that former
President Muse is suggesting that neither the Board nor an individual trustee should express opinions as to matters impacting the Athletic Department, such a position ignores the critical distinction between decision-making authority and the process of arriving at a consensus decision. Indeed, the actual practice of the Athletic Director for the preceding seven years has been to actively seek the input of the members of the Board, as well as other stakeholders in the University, with respect to significant decisions. The benefits of this practice are obvious, and it does not conflict with the Criteria for Accreditation.

Regardless of the input received from the members of the Board or other stakeholders, former President Muse retained final decision-making authority for the intercollegiate athletic programs, a fact that he acknowledged during his interview. Thus, this concern merely reflects the pressures felt by every chief executive officer who reports to a Board of Trustees, not a violation of Criterion 6.1.2.13

Finally, it is significant that one of the primary tasks of the NCAA peer-review team was to determine whether the University was in substantial conformity with the NCAA’s principles pertaining to Institutional Governance and Institutional Control. The peer-review team conducted an exhaustive investigation, including an interview of former President Muse. In determining that the University was in substantial conformance with these policies, the team included the following statement in its Report:

Members of the Steering Committee, including alumni interviewed, joined Athletic Program personnel in assuring the Peer-Review Team that the President is in charge. Their assurance is supported by the December 17, 1991, Resolution by the Board of Trustees strengthening the President’s authority; he now “consults with” the Board rather than recommending to them for their decision – a substantial difference to Board members accustomed to hands on authority.

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13 The Complainants specifically identify Trustee Lowder in connection with the charge of Board intrusion into the administration of the Athletic Department. However, during the administration of Governor Fob James (1995-97), Mr. Lowder did not serve on the Athletic Committee, had little influence on the Board and was actually barred from attending Board meetings during a portion of this time frame.
The Board, however, remains committed to the establishment and approval of policy, delegating the daily management of the Athletics Program to the President (who in turn sub-delegates appropriate authority to the Director of Athletics). This continuing oversight on policy matters, as distinct from management tasks, follows a model not only called for under this operating principle but also favored by most institutional chief executive officers. See Exhibit 10 at “Page No. 2.”

Example 4 (Criterion 6.1.2): Undermining of President’s Administrative Authority. Although difficult to document, it is commonly perceived that Mr. K. Stanley Drake, former Director of the Facilities Division, certain University administrators, certain coaches, and even students were encouraged to bypass the President and take concerns and/or requests directly to Board members, thus undermining the administrative authority of former President William V. Muse. It is this perceived problem that is largely responsible for a recent resolution adopted by the University Senate calling for an external assessment of the Board’s performance and Board’s agreement to comply with recommendations of that assessment prior to the initiation of the presidential search (Document 9).

RESPONSE

Example 4 specifically expresses a concern that communications between members of the Board of Trustees and members of former President Muse’s administrative staff had the effect of undermining the administrative authority of the former President. However, the overarching issue raised in this Example is that of Board activism and, more specifically, whether the Board is micro-managing the operation of the University.

(1) Historical Perspective.

The general subject of board activism, particularly with respect to public universities, has been the subject of intense debate. Some commentators have argued that the stewardship of public universities, such as Auburn University, requires an even more exquisite balancing of the interests of competing constituencies than does the stewardship
of independent colleges and universities, because a major stakeholder is the citizenry of a state who speak through their elected representatives. The only consensus among the commentators appears to be that there are no clearly defined boundaries and that the board of trustees remains the legal body responsible for the institution and for policy-making.

During the 1990’s, the various constituencies of Auburn University have engaged fully in this debate. Concerns expressed by faculty members were noted by the Reaffirmation Committee in its report in 1993, including a comment that the Committee had obtained information indicating that the Board was intrusive and involved in administrative processes of the University. Moreover, in 1997 the Reaffirmation Committee for AUM included a Recommendation that AUM provide evidence that there was a clear distinction, in writing and in practice, between the policy-making functions of the governing board and the responsibilities of the administration and faculty. Ultimately, while AUM’s accreditation was reaffirmed in January, 1998, the Commission on Colleges placed AUM on Notice for, among other grounds, failure to document compliance with Criterion 6.1.2.

In response to AUM being placed on Notice status, the University provided the following documentation to demonstrate compliance with Criterion 6.1.2:

(a) A letter from then President Muse dated September 15, 1998 addressing the Committee’s concern that the Board of Trustees intruded into the internal management of AUM. While noting that the Board was active in

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14 Two points are significant with respect to this observation. First, the Committee did not make either a Recommendation or Suggestion as to this issue. Second, the make-up of the Board of Trustees was substantially different from the composition of the current Board.
exercising its rights to oversee the operations at AUM, former President Muse concluded that the Board had not intruded into AUM’s internal management.

(b) Correspondence dated May 17, 1999, from the President Pro Tempore of the Board of Trustees responding to the Recommendation that the University provide evidence as to there being a clear distinction in practice between policy-making functions of the governing board and the responsibilities of the administration and faculty. President Pro Tempore Samford referred to the minutes of Board meetings to demonstrate that the Board of Trustees was not involved in the following matters: employment, promotion and evaluation of personnel; setting of salary levels, except in formal approval of the budget; determination of academic policy, student admissions and other academic standards (except in formal approval of catalogs). He also confirmed the Board’s role in campus physical facility matters was limited to approval of recommendations related to capital construction.

(c) Follow-up Reports to SACS which delineated the roles of the Board of Trustees and the administration with respect to the following matters: planning and budgeting; executive hiring decisions; faculty hiring decisions; promotion and tenure; review or approval of specific courses; construction projects; awarding of degrees; and equipment requests. The Follow-up Reports also included a summary of Board meetings from
August, 1999 through April, 2000 demonstrating Board action consistent with Criterion 6.1.2.

At the January, 2000 meeting of the Commission on Colleges, AUM was removed from Notice status.

Perhaps the best evidence that the Board of Trustees in actual practice adheres to the standards set forth in Criterion 6.1.2 consists of the Minutes of the meetings of the full Board. A review of the Minutes reflects that, almost without exception, the actions of the Board have consisted of voting to approve the recommendations specifically brought to it by former President Muse. The normal sequence of events involves a presentation by the President, discussion among the Board members, occasional requests for additional information from the administrative staff and then a vote by the full Board. This process is reflected in the attached summary of the Board Minutes during the period from January 1, 1998 through December, 2000. See Exhibit 11.

Ironically, the actions of the Board of Trustees during the 1990’s involving the issues of funding and long-range planning, which were the genesis of much of the current disharmony at the University, illustrate the Board’s understanding of its proper role and responsibility. In 1992, the Board authorized former President Muse to form the Twenty-First Century Commission to set long-term priorities. After seventeen meetings over five years, the Twenty-First Century Commission made a twelve-page report to the Board, establishing goals for instruction, research, outreach, student enrollment, and fiscal support, and made recommendations for achieving these goals.

By the time the Twenty-First Century Commission reported, Alabama Governor Fob James’ administration had made drastic cuts in higher education funding. At its
April 3, 1998 meeting, the Board established another commission – the Commission on the Role of Auburn University in the Twenty-First Century (hereinafter the “Role Commission”) – to build on the work of the Twenty-First Century Commission in order to guide the University through anticipated obstacles as a result of the reduced state funding. The Role Commission was specifically charged with establishing “long-term strategic direction as to organizational and academic structure, while recognizing the expected economic environment in which it is likely to operate in the future.”

The Role Commission consisted of five Board members (selected by vote of the Board) and five members of the faculty and administration (selected by former President Muse). In late 1998, the Role Commission presented its report to the Board which included the following key recommendations: increases in faculty salaries to the national average; designation of certain programs as “peaks of excellence” to receive enhanced funding; and restructuring several programs to realize greater efficiencies.

Former President Muse urged the Board to approve the report, because it would “enable Auburn University to make major strides towards becoming a stronger and more effective and highly regarded University in the twenty-first century.”15 The Board accepted the report at that meeting, and approved it with two modifications at its January 22, 1999 meeting. The modifications were: (i) the Board referred the recommended action on programs slated for termination and merger to President Muse, who then sought guidance from the University Senate’s standing Academic Program Review Committee to consider the recommendation; and (ii) the Board made recommended salary and tuition increases contingent upon actual funding.

15 See November 20, 1998 Board Minutes, attached hereto as Exhibit 12, at 2.
In summary, the perceptions of micro-management on the part of this Board and prior Boards have unfortunately persisted throughout the 1990’s. Much of this perception has been the product of tensions that have arisen between faculty groups, the administration, and the Board in connection with difficult policy decisions addressed by the Board concerning the future of the University. A detached review of the Board’s minutes demonstrates that this perception is invalid and that the Board of Trustees establishes the policy of the University, particularly in funding and planning, without usurping the responsibility of the administration to implement the policies established by the Board.

(2) Communications between Board Members and Administrative Staff.

Complainants specifically contend that communications involving Stanley Drake, the former Director of the University Facilities Division, and members of the Board’s Facilities Committee, as well as communications involving David Housel, the Athletic Director, and members of the Board’s Athletic Committee undermined former President Muse’s authority.

Interviews with members of the current Board of Trustees as well as senior administrative staff reflect, without exception, an alarming failure on the part of former President Muse to effectively communicate with the Board of Trustees. This failure to communicate adversely impacted the ability of the Board’s standing committees to properly function and necessitated direct communications between the standing committees and members of former President Muse’s administrative staff. Former President Muse was fully aware of and ratified this practice. Any concerns that he
expresses as to this issue today must be placed in the context of the events surrounding his departure. The Board of Trustees, in good conscience, could not agree to the financial demands made by former President Muse in connection with his anticipated resignation, as discussed more fully in response to Example 9 below.

However, regardless of the circumstances that may have led to the current complaint, the University recognizes the very real potential that even the perception of improper communications between Board members and President Muse’s administrative staff could undermine the President's authority. Accordingly, the Board of Trustees has under consideration for adoption at its July, 2001 meeting the following policy:

A proposed policy statement for the approval of the Board of Trustees with respect to communications involving individual Trustees and members of the University’s administrative staff. Said policy shall incorporate the following principles: that substantive discussions involving Board members and members of the administrative staff be conducted generally within the context of committee meetings; that any other discussions involving a member of the Board and members of the administrative staff pertaining to issues which fall within the business responsibility of said staff member be coordinated in advance with the President’s office so as to insure that the President has notification of the proposed meeting and the items to be discussed during the meeting, and an opportunity to attend the meeting should the President elect to do so.

Example 5 (Criterion 6.1.2): Grade forgiveness policy. During the academic year 1999-2000, the Board demanded that the university adopt a specific type of grade forgiveness policy for students with failing grades. The university Academic Standards Committee studied the matter twice and twice recommended against such a policy. The University Senate supported the recommendations of the Academic Standards Committee, favoring the “hardship” forgiveness policy that was already in place. Board member Lowell Barron was the originator and most vocal proponent of the board’s demand, threatening at one board meeting that if we (the administration/faculty) didn’t come back with a policy, the board would. At the same meeting, Mr. Barron rudely berated then President Muse for not producing the policy that the board was demanding. Eventually an ad hoc university committee was charged with designing a policy that would be acceptable to the board. The faculty perceives this as a case of inappropriate micro-managing of academics by the board.
RESPONSE

As discussed in greater detail above, the SACS *Criteria for Accreditation* specifically state that “the governing board is the legal body responsible for the institution and for policy making.” SACS Criterion 6.1.2. Criterion 6.1.2 further provides that “[g]eneral institutional policies should originate within the board or should be approved by the board upon recommendation of the administration.” *Id.* The adoption of an institution-wide grade forgiveness policy, which affects close to 20,000 students, certainly constitutes a “general institutional policy” within the purview of the Board. In fact, the Complainants do not even suggest that the adoption of a grade forgiveness policy was beyond the Board’s broad policy-making authority. Rather, the Complainants seem to take issue with the process whereby the new grade forgiveness policy was adopted. However, a review of University records clearly reveals that the Board initially considered the issue at the request of the Student Government Association (“SGA”), and after considerable study by the administration, the faculty, and the students, the Board ultimately adopted a policy jointly recommended by those groups.

It is worth noting that, prior to April, 2000, Auburn had no institution-wide policy of grade forgiveness. In October, 1997, the SGA prepared a report entitled “Academic Forgiveness for Repeated Courses,” which discussed the merits of a grade forgiveness policy, analyzed similar policies at other schools, and recommended a specific policy for the Board’s adoption. Interestingly, the SGA report provided information on similar policies adopted by no fewer than fifty other universities. Thus, the issue was brought to

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16 Even former President Muse has acknowledged in recent interviews with University representatives that adoption of grade or academic forgiveness policies is an appropriate policy-making function for the Board.

17 A copy of the SGA’s report is attached hereto as Exhibit 13.
the Board’s attention by Auburn students, who were concerned that the University had fallen behind other institutions on this issue, potentially putting Auburn at a competitive disadvantage.

During the September 4, 1998 Board of Trustees meeting, Board Member Lowell Barron, acting on behalf of the Academic Affairs Committee, presented, for discussion only, the issue of an “academic forgiveness policy.” Mr. Barron then recognized President Muse who provided an overview of the issue and noted that such a policy had been the subject of much discussion during the prior year by both the SGA and the University Senate. President Muse next recognized Dr. Paul Parks who discussed the specifics of the SGA proposal, compared the SGA proposal with three variations used at other institutions, and summarized the responses and opposition to the proposal from the faculty. Board Member Jimmy Samford proposed that Interim Provost Bill Walker, with the assistance of a committee composed of both faculty and students, study the issue further and report back to the Board with a recommendation.

Approximately a year-and-a-half later, the administration reported back to the Board at its February 7, 2000 meeting. Similar to the September 4, 1998 meeting, Board Member Charles Glover called upon President Muse to update the Board on the status of the development of the policy. President Muse informed the Board that the Center for Governmental Services had conducted a survey to assist the administration and the Board in its consideration of the matter. The survey resulted in the preparation of a 122-page report, which showed, among other things, that fifteen of Auburn’s sixteen “peer

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18 Copies of the relevant portions of the minutes from the Board’s meetings on September 4, 1998, February 7, 2000, and April 7, 2000 are attached hereto as Exhibits 14, 15, and 16, respectively.
institutions” had an academic forgiveness policy. Not surprisingly, the survey also revealed that the majority of students favored, and the majority of faculty opposed, such a policy.

The Complainants contend that, during the February 7, 2000 meeting, Board Member Barron “rudely berated” then President Muse. While it is strictly a matter of perception as to whether Mr. Barron “rudely berated” anyone, Mr. Barron – along with other members of the Board – did express displeasure that over a year had passed since the Board requested a recommendation from the administration. Mr. Barron, and other members of the Board, stated in unequivocal terms that they expected the administration to present a policy for the Board’s review at the next Board meeting.

The Complainants erroneously allege that the Board demanded that the administration develop and present to the Board “a specific type of grade forgiveness policy.” While Board Member Barron, out of frustration at the administration’s delay in developing a policy, stated that the Board would develop its own policy (if the administration failed to recommend one) and noted his approval of the Vanderbilt policy, the Board ultimately adopted a policy that was developed and approved by a committee comprised of administration, faculty, and students.

At the following Board meeting on April 7, 2000, President Muse presented the Board with a Grade Adjustment/Course Repeat Policy that had been developed by a committee comprised of administrators, faculty, and students. President Muse also

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19 A copy of the Center for Governmental Services report is attached hereto as Exhibit 17.
informed the Board that the policy had been approved by the faculty. The Board then approved the proposed policy without dissent.20

Thus, when presented with a legitimate request from Auburn students, the Board requested that the administration appoint a committee comprised of faculty and students to study the efficacy of a grade forgiveness policy. When the administration failed to make a recommendation to the Board after over a year had elapsed, several Board members – who were justifiably angry – again instructed the administration to develop a policy to present to the Board at its next meeting. The Board then adopted, without change, the grade forgiveness policy recommended to it by a committee consisting of administrators, faculty, and students. In this instance, the Board functioned exactly as a responsive Board should – as “an active policy-making body for the institution.” See SACS Criteria for Accreditation § 1.4.

Example 6 (Criterion 6.1.2) The nomination process for new trustees may be unduly subject to political pressures exerted by a sitting board member. Board members have been appointees of the governor of Alabama with confirmation by the state senate. The two most recent appointees, Golda McDaniel and Earlon McWhorter, and certain earlier appointees are widely perceived to be the picks of a wealthy board member, Robert Lowder, who was a major contributor to the election campaign of Governor Siegelman. Although not documentable on paper, this perception has been verified by reported conversations between former Student Government Association president Lindsey Boney and other students and a state senator. Many faculty and other university stakeholders see this situation as compromising the independence of action and diversity of thought among members on the board.

RESPONSE

Complainants allege that the two most recently appointed trustees “are widely perceived to be the picks of . . . board member Robert Lowder, who was a major

20 A copy of the Grade Adjustment/Course Repeat Policy is included in the portions of the minutes from the April 7, 2000 Board meeting attached hereto as Exhibit 16.
contributor to the election campaign of Governor Siegelman.” As a threshold matter, this issue has now become moot in light of Amendment 670 to the Alabama Constitution, which was adopted in November, 2000. That amendment transfers future authority to appoint trustees from the Governor (with the advice and consent of the state Senate) to an “appointing committee” whose appointment is subject to the advice and consent of the state Senate. The appointing committee is composed of five persons, only two of which may be sitting trustees.

Further, Mr. Lowder did not “pick” the two recently appointed members of the Board. The process under which these members were appointed involved not only the Governor but also a majority of the state Senate. The premise underlying Complainants’ allegation is that each of these elected officials compromised their independence by, in effect, allowing Mr. Lowder to select the new appointees to the Board. There is no factual support for any such assertion.

The gravamen of this allegation appears to be that politics should not play any role in Board appointments. Complainants fail to understand that the citizenry of Alabama are major stakeholders in the University and that their interests are protected by elected representatives. That the Complainants disagree with the judgment of the Governor and the state Senate is no basis for a finding that any of the SACS *Criteria for Accreditation* have been violated.

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21 A copy of Amendment 670 to the Alabama Constitution is attached hereto as Exhibit 18.
Example 7 (Criterion 1.4): Business relationships between board members may compromise the independence of the board and allow the board to be controlled by a minority or by a single member. The several business alliances between Robert Lowder and a majority of other board members has been reported many times in the media. Although Mr. Lowder and other board members have publicly claimed that these relationships in no way affect board policies or voting, the widespread perception is contrary to these claims.

RESPONSE

Criterion 1.4 provides that “[t]he board must not be controlled by a minority of board members or by organizations or interests separate from the board except as specified by the authorizing legislation.” The Complainants allege a violation of this Criterion as the result of the “widespread perception” that Mr. Lowder controls a majority of the Board based upon his business relationships with other members. Again, this allegation is predicated entirely upon Complainants’ “perception” as opposed to actual evidence of any noncompliance with Criterion 1.4.

Mr. Lowder’s business relationships with other Board members consists of the following: Trustees Miller and Raine are directors of Colonial BancGroup, the bank holding company for which Mr. Lowder is Chairman of the Board of Directors and Chief Executive Officer; Trustee Miller also provides some legal services on behalf of Colonial BancGroup; Trustee Spina serves as a member of an advisory board to the Colonial BancGroup; and Trustee Samford performed some lobbying work on behalf of Colonial BancGroup and rents office space in a building that is owned by a publicly-traded company in which Mr. Lowder owns stock. Mr. Lowder has never personally loaned money to any member of the Board of Trustees nor has he invested in any business operated by any member of the Board of Trustees. In short, Mr. Lowder does not enjoy a business relationship with a majority of the members of the Board of Trustees.
The Complainants’ lack of any actual evidence as to this Example is of particular concern. Fundamental fairness requires that allegations concerning the character of individuals must be based on evidence, not “perceptions.” The unsupported allegation that the members of the Board of Trustees would compromise their integrity and abandon their fiduciary obligations as trustees as the result of private business relationships is simply unworthy of further consideration.

Example 8 (Criterion 1.4) Past and recent contractual interests of some board members in the university compromise the trust that stakeholders need to have in the trustees. Board member Robert Lowder’s companies once held contracts for an alumni credit card and broadcast rights of Auburn Athletics. Recently board member Lowell Barron won a contract to install new windows in university dormitories. Although to our knowledge the majority of board members do not or have not held business contracts with the university, trust would be easier if all board members voluntarily avoided even the appearance of conflicts of interest between their business lives and their roles as trustees of the university.

RESPONSE

As a preliminary matter, it is worth noting that the Complainants affirmatively state that they are not contending that a majority of Board members have or have ever had business contracts with the University. Conceding, therefore, that there is no evidence of a violation of Criterion 1.4, the Complainants urge SACS to apply a more strict standard that would bar every Board member, rather than a majority of the Board members, from having a contractual, employment or financial interest in the institution.

Complainants’ concern as to an appearance of impropriety on the part of certain Board members rests on three allegations.

The first allegation raised pertains to Trustee Lowder’s involvement at one time in connection with the broadcast rights of Auburn Athletics. More than twenty years ago, in
1980, Mr. Lowder – who at that time was not a member of the Board – acquired the broadcast rights with respect to football and basketball games played by Auburn University. This was an arm’s-length transaction which he negotiated with then President Funderburk. This business relationship continued for approximately six years and terminated in 1986.

The second allegation pertains to a contract entered into by Colonial BancGroup – an entity for which Mr. Lowder serves as the Chairman of the Board of Directors and the Chief Executive Officer and is a major stockholder – and the Auburn Alumni Association. Under the terms of the contract, Colonial BancGroup agreed to provide through its subsidiary bank a credit card, which would hopefully financially benefit the Alumni Association. This credit card program was made available to Alumni Association members, Auburn University faculty and staff, undergraduate seniors, graduate students, and fans and supporters of Auburn University. Although the credit card itself was issued by Colonial BancGroup, the actual credit underlying the card was carried by Bank One.

Mr. Lowder sought and obtained an Advisory Opinion from the Alabama Ethics Commission pertaining to this transaction. The Commission issued a formal Opinion that this business arrangement did not violate the Alabama Ethics Law, specifically noting that the Board of Trustees of Auburn University would not govern the credit card program between the Alumni Association and the bank holding company.22

The remaining “appearance of impropriety” mentioned by Complainants pertains to Trustee Lowell Barron’s alleged involvement with a contract to install new windows in

22 A copy of the Advisory Opinion is attached hereto as Exhibit 19.
University dormitories. The contract in question involved the University and a company wholly owned by Senator Barron’s son, not Senator Barron.

The role of the Board of Trustees with respect to construction projects is to approve a project, the project budget and the project architect. It then becomes the administration’s responsibility to solicit bids for the project according to applicable state law. With respect to the contract in question, the administration solicited bids for a general contractor to be responsible for the project. The administration awarded the contract to the lowest bidder, and the general contractor then became responsible for subcontracting the project, including the installation of the windows. The company owned by Senator Barron’s son was the lowest bidder in connection with the subcontract work pertaining to the installation of new windows and was awarded the subcontract by the general contractor, not the University.

None of the foregoing events constitute an appearance of impropriety. More importantly, none of these events provide any support for even a perception that the University is not in compliance with Criterion 1.4.

Example 9 (Criterion 6.1.2) Dismissal of former President William V. Muse. The unceremonious dismissal of President Muse in February, 2001, and the installation of interim president William Walker appeared not to be the action of the board as a whole, even though the board’s vote on this action was unanimous. It later became public that not all board members had seen the resolution that led to this action before being asked to vote on it. The perception of many is that this action was an example of board decisions being orchestrated, if not directly controlled, by a minority of board members.

RESPONSE

Like several of the prior claims, Example 9 is not based in fact, but rather in alleged “appearances” and the Complainants’ “perceptions” of various events. The
Complainants ignore the considerable history underlying the February, 2001 decision to remove President Muse from his position, including most notably that President Muse had just accepted an offer to become Chancellor of East Carolina University. Moreover, the Complainants allege, without any support whatsoever, that a minority of board members “orchestrated” or “directly controlled” the decision of the Board to remove former President Muse.\(^{23}\)

As mentioned in the response to Example 4 above, for the past several years there has been an increasing level of dissatisfaction among the Board members as to President Muse’s performance. This dissatisfaction resulted from President Muse’s increasing failure to communicate effectively with the Board, particularly with respect to difficult decisions about the University’s future. Tension between the Board and President Muse grew upon reports that Dr. Muse was actively seeking employment with other universities, including interviews on several different campuses.

At the request of the other Board members, Jimmy Samford, the President Pro Tempore of the Board, initiated discussions with President Muse in late 2000 or early 2001 concerning a possible Separation Agreement. The two sides mutually negotiated over the terms of the agreement (including a provision that would have allowed President Muse to remain an employee of the University until his retirement benefits vested) until early February, 2001, when it was announced publicly that President Muse had accepted a position as Chancellor of East Carolina University. The decision by President Muse to accept the position with East Carolina obviously alleviated the need to continue further negotiations over a Separation Agreement.

\(^{23}\) Significantly, however, the Complainants fail to identify any specific members of the Board who allegedly orchestrated the decision, and they admit that the decision of the Board was unanimous.
However, the Board was then faced with the decision of whether to allow President Muse to retain his position as President until his anticipated departure for East Carolina in August, 2001 or to find another position for him in the interim. The University was at a critical point, facing potentially significant budget cuts as a result of Alabama’s proration process. On February 9, 2001, Alabama Governor Don Siegelman called a special meeting of the Board for February 12. Each of the Board members received notice of the meeting, and eight out of twelve voting members were able to attend. The Board recognized the many contributions by President Muse to the University. In light of the announced proration and resulting difficult budgetary and academic decisions to be made, the Board unanimously agreed to appoint Provost Bill Walker as Interim President and to retain President Muse as a special counsel to the Board.

In contrast to the Complainants’ assertions, there was nothing clandestine about the above events. The Board acted in unison beginning with the initial decision not to retain President Muse, the negotiations over the Separation Agreement, and the ultimate decision to replace President Muse after he accepted a position with East Carolina. But because this was a sensitive personnel matter, many of the facts set forth above were appropriately not made public. Clearly, the unexpected announcement regarding President Muse’s removal as President was disruptive within the University community, and understandably the announcement was met with criticism from those who admired

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24 Copies of the minutes from the February 12, 2001 Board meeting, including the February 9, 2001 letter from Governor Siegelman and the “waiver and acceptance of notice” forms signed by each member of the Board are attached hereto as Exhibit 20.
him. However, there was nothing untoward in the process employed by the Board in reaching its decision.

It is worth emphasizing that decisions as to the hiring and retention of the President of the University are uniquely and preeminently within the province of the Board. See *Criteria for Accreditation* § 6.1.2 (“The responsibilities of the governing board must include the following functions: . . . selecting the chief executive officer.”). Thus, Example 9 has nothing to do with the role of the Board vis-à-vis the administration, faculty, or other “stakeholders” but focuses solely on the process by which the unanimous decision was made. While reasonable persons might disagree over the wisdom of the decision, the Board acted well within its discretion for reasons consistent with the Board’s duty, under SACS Criterion 6.1.2, to assess the “effectiveness” of its chief executive officer.

**Example 10: Illegal meetings of the Board of Trustees.** In March, 2001, several major newspapers and The Alabama Press Association filed a lawsuit against the Board for the ongoing and long-standing practice of holding secret, illegal Board meetings in violation of State law. Depositions are to begin in May and the trial sometime thereafter.

**RESPONSE**

The Complainants are correct that a group of newspapers recently filed a lawsuit against the Board members, alleging that the Board has conducted meetings in violation of Alabama’s open meetings law. The Complainants do not explain how this lawsuit relates to the University’s compliance with SACS’ *Criteria for Accreditation*. In fact, unlike Examples 1 through 9, the Complaints fail to cite any specific criterion allegedly violated.
In any event, the University notes that Alabama’s open meetings law is not a model of clarity, and there is considerable debate as to the exact application of the law. In fact, the University itself has brought a separate lawsuit, asking the court to provide guidance as to the precise application of the law for purposes of future Board meetings. The University welcomes such guidance, and once the courts rule in either lawsuit, the Board will certainly conduct all future meetings consistent with the courts’ guidance.

Finally, it is worth noting that, for decades, the Board has adhered to a policy that no one, including the President and the general public, should be excluded from Board meetings, including committee meetings. Exceptions to this policy include meetings where certain personnel matters involving “good name and character” are discussed, exceptions that are recognized by the state open meetings law. And as discussed in the response to Example 3 above, the Board has recently publicly reiterated that all Board and committee meetings will be open to the public, with the exception of meetings devoted to personnel matters involving “good name and character,” and will be preceded by reasonable public notice.

III. RESPONSE CONCERNING GOVERNANCE ISSUES GENERALLY

Having addressed the Complainants’ specific examples of alleged nonconformity with the SACS Criteria for Accreditation, this response now turns to the fundamental issue underlying the complaint: institutional governance. In this regard, several points are worth noting. First, as discussed above, SACS has carefully scrutinized governance issues at Auburn during the last ten years, and the University has implemented several important changes during this period. Auburn has also submitted several reports
concerning governance to SACS, in particular the role of the Board, which the University incorporates in this response. Thus, as previously noted, the Complainants are largely rehashing issues SACS and the University have already addressed.

Second, as discussed more fully below, there is no clear consensus among experts in the field as to institutional governance generally and the proper role of governing boards specifically. This is particularly true in light of the widely recognized crisis confronting higher education (see discussion below) and the continuing debate over whether governing boards should be more active in helping their respective institutions negotiate this crisis. The debate over the role of the board is even more acute at public universities, where the board represents not only the students, faculty, and administration, but the citizens of the state as well. This lack of consensus as to the appropriate role of the board is reflected in SACS’ Criteria for Accreditation, which devote comparatively little space to governance issues and contain only the most basic guidance as to the board’s proper role.

In any event, the University believes that its Board has acted responsibly and consistent with the letter and spirit of SACS’ Criteria and that the Board has acted fully within the spirit of the call for more responsible and decisive leadership by public boards in the midst of the current crisis in public higher education.

25 Attached as Exhibits 21 and 22 are copies of the relevant portions of the “First Follow-up Report” and the “Second Follow-up Report” – each of which address governance – which were submitted to SACS as part of the recent reaffirmation of accreditation of AUM.
Current Debate over the Role of the Governing Board of a University

Since the early 1990s, there has been a growing consensus that universities are in an almost epochal crisis due to reduced public funding for public institutions; an erosion of public support for higher education because of increased costs, perceived lack of relevance of curricula, and various academic and athletic scandals; changing demographics; and revolutionary advances in science and technology.26 Concurrently, there has also been a raging debate about the role of the board of trustees versus the role of the administration in steering universities through the crisis, especially when – as has been the case at Auburn – the administration of an institution is perceived by its trustees as not acting forcefully enough. This debate was kicked off, in part, by a “call to action” by nearly three dozen Goldman Sachs partners who were trustees of more than 40 universities and colleges.27

Published in 1992, the call to action exhorted trustees to “become more effective leaders of their institutions” and, “working closely with administrators,” to “show the way and be leaders for change at their institutions.” The call to action encouraged universities to: recognize that they cannot afford to do all things well; focus on their “core competence”; avoid “‘excesses’ that raise tuition, often at the expense of instruction”; “resize”; “improve by substitution, not by adding new programs”; “merge or close departments and schools that are no longer priorities”; “‘outsource’ services to


27 Open letter to fellow trustees entitled Higher Education Must Change, Association of Governing Board Reports (hereinafter AGB Reports) 7-10 (May/June 1992). The genesis of this letter was a series of meetings in 1989 among some of the authors, followed by a meeting with Coopers & Lybrand partners.
reduce costs and often improve quality”; and “coordinate programs, use of facilities, and sharing of faculty with other institutions.”

At the time the “call to action” was published, most commentators agreed with the dual premises that a crisis existed and that change was required and even agreed with the substantive recommendations included in the call to action. Some expressed concern that the call to action threatened to inspire undue trustee meddling in the day-to-day affairs of universities and argued, for example, that the trend toward more board activism in the corporate world (spurred by increased litigation) was not transferable to the academic world. But even the critics recognized that boards should no longer be passive, rubber-stamping approvers of administrative decision-making.

In the years following the “call to action,” as some long-cherished academic programs have been eliminated and faculty have consequently become exercised, the

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28 See, e.g., Kathryn Mohrman, *The Urgency Expressed in the Statement Is No Excuse For Overstepping Our Bounds*, AGB Reports 11-12 (May/June 1992) (urging caution but agreeing that “[w]e can no longer come to board meetings a few times a year, listen to reports, talk with a few campus constituents, give a little bit of advice and then go home”); Roger Wilkins, *Continuous, Enlightened Questioning of Settled Thought and Complacency Are Essential to Good Stewardship*, AGB Reports 12-14 (May/June 1992) (taking umbrage at the “aggressive tone it takes toward decision making,” but agreeing that “trustees need to wake up and become more aggressive in carrying out their proper roles as trustees,” and further agreeing that after hiring a president boards should not “become passive observers of the administration of the institution”); Richard T. Ingram, *The End of Sanctuary*, AGB Reports 19-23 (May/June 1992) (“While board members must be respectful of the fact that they are but one, albeit crucial, part of institutional governance and remember that real change within an academic institution comes from building consensus, they cannot afford to be passive.”).

29 See, e.g., Barry Munitz, *The Answer Rests More Upon The Trustee-President Relationship Than Any Other Single Ingredient*, AGB Reports 17 (May/June 1992) (noting the “similar revolution brewing around the corporate board table” but eschewing its relevance to universities).
governance debate has become more strident. Journal articles, new books, and new studies on the subject of governance pit those who believe boards are already too meddlesome against those who advocate more active stewardship. The debate has become so acrimonious that some of the more recent articles are pressing various proposals for a détente.

Much of the commentary focuses on public universities. It is widely recognized that stewardship of public universities, such as Auburn, requires an even more exquisite balancing of the interests of competing constituencies than does the stewardship of independent colleges and universities (which was largely the subject of the “call to action”), because a major stakeholder is the citizenry of a state who speak through their


33 Richard P. Chait, Trustees & Professors: So Often At Odds, So Much Alike, Trusteeship, at 8-12 (Nov./Dec. 2000).
elected representatives. An 18-month study of public university boards completed in 1998 concluded:

Public higher education governing boards are at a crossroads. In one direction lie the interests and ambitions of their university or system; in the other the financial, strategic, and public-policy demands of their state. But in the increasingly contentious world of state politics and higher education, *no road map can tell these boards how to navigate the inherent conflicts, tensions, and ambiguities of this terrain or where institutional interests and the public interest converge.*

Where exactly do the “citizen boards” of public higher education fit into the process? What is their role? How should boards handle the often contradictory expectations of campus stakeholders, state officials, and the general population? *The answers to these questions are not at all clear.*

Recognizing these difficulties, the Association of Governing Boards of Universities and Colleges founded a Center for Public Higher Education Trusteeship and Governance in 2000 with a mission to “strengthen relationships between public colleges and universities and state governments by encouraging improvements in the functioning of public boards and citizen trustees.” When that Center was inaugurated, former Governor of Georgia, now United States Senator Zell Miller, as then chair of the advisory council of the Center, observed: “Too many educators . . . spend too much time defending the status quo rather than changing with the times,” and “[h]igher education is ripe for scrutiny, and it does need to prove that it can be focused, that it can prune out irrelevant and duplicative programs, and that it can make difficult decisions.”

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36 *Introducing AGB’s Ambitious New Governance Center*, Trusteeship, at 37 (Mar./Apr. 2000).
Thus, while the precise boundaries of a public board’s responsibility and authority remain unclear, what is clear is that without decisive action by public universities that is appropriately responsive to legitimate demands of the public and their representatives, public support and funding for higher education will continue to decrease to the detriment of all.\textsuperscript{37}

\textit{SACS Criteria Relating to Governance}

As evidenced by the \textit{Criteria for Accreditation}, SACS has appropriately remained neutral with respect to precisely where along the active-passive continuum a university board should function, notwithstanding the intense debate currently raging over the proper role of a board of trustees. The \textit{Criteria} prescribe very few specific rules regarding governance and assign very few of the numerous actions required of the “institution” to specific bodies or groups. With few exceptions, they leave the allocation of responsibility among the various constituencies to the discretion of each institution. Yet in the few requirements specifically imposed on the board, the \textit{Criteria} make it clear that the board “\textbf{is} the legal body responsible for the institution,” that it “\textbf{is} ultimately responsible for ensuring that the financial resources of the institution are used to provide a sound educational program,” and that it must be “an active policy-making body for the institution.” SACS \textit{Criteria for Accreditation} § 1.4.

Furthermore, in contrast to the Complainants’ campaign to oust all of the trustees en masse, the \textit{Criteria} require the bylaws of the board to “ensure appropriate continuity

\textsuperscript{37} Inaction also invites the kind of politicization of higher education that beset the University of Georgia more than a half-century ago.
in the board membership.” Id. Obviously, the ouster of all current trustees would violate this mandate.

**Governance at Auburn University**

Auburn University has not been immune from the crisis facing higher education. Public funding is clearly diminishing, public confidence is waning, and the science and technology revolution is especially challenging at Auburn because of its land-grant status and traditional emphasis on engineering, science, and technical programs.

Until around the late 1970’s, Auburn’s Board of Trustees was a relatively inactive body, which met only once per year. Since then, consistent with the trends noted above, the Board has taken a more active role in fulfilling its constitutional and fiduciary duties. The best example of this in recent years is the role the Board played with regard to the creation of the Role Commission.

As discussed in the response to Example 4 above, the late 1990s brought significant reductions in state funding for higher education, and many in the education field predicted similar reductions well into the future. In an effort to ensure Auburn University’s future viability, the Board prudently created the Role Commission to determine the University’s “long-term strategic direction as to organizational and academic structure, while recognizing the expected economic environment in which it is likely to operate in the future.”

Not surprisingly, this Board initiative was highly controversial. Among other difficult decisions – upon the recommendation of the Role Commission, President Muse, and the faculty – the Board agreed to merge or eliminate a number of academic programs. And in two instances, the Board elected – as was its right – to take actions counter to the...
recommendations of the President and faculty. While such decisions were unpopular
with some, in President Muse’s own words, the net result will “enable Auburn University
to make major strides towards becoming a stronger and more effective and highly
regarded University in the twenty-first century.”

Inevitably, those whose programs were cut, those whose programs were combined
with others, and those who might have preferred a different vision for the future from the
one embodied in the policy decisions the Board ultimately made were – and perhaps still
are – dissatisfied. Nevertheless, the Role Commission by and large illustrates how
effectively the Board, administration, faculty, and other constituencies worked together,
each performing its proper function on a matter of utmost importance to the well being of
the University, belying the central thrust of the Complainants’ arguments.

It also illustrates the fact that a fully engaged university board, acting totally
within the scope of its proper role and with input from all appropriate constituencies, will
sometimes make policy decisions that are controversial and provoke disharmony. Thus,
one of the themes of the Complainants’ complaint – that the existence of disharmony ipso
facto demonstrates that the governance process is defective and violative of the SACS
Criteria for Accreditation – is inaccurate. Indeed, it implies that the governance cannot
be good (and compliant with the Criteria) unless all university stakeholders agree all the
time with all decisions of all decision-makers.

It is worth noting that the Complainants make no mention of the Role
Commission. This initiative is significant because it inevitably produced “winners” and
“losers” and many areas of disagreement within and among the various “stakeholder”
groups. It thus provides a highly relevant background for evaluating the causes of what
the Complainants characterize as a “tense and polarized situation” and an “atmosphere of distrust between the board and other university stakeholders.”

Complainants contend that this state of affairs – whether real or perceived – is largely, if not wholly, attributable to “systemic, long-standing problems with the balance between the policy-making function of the governing board and the policy-implementation responsibility of the administration and faculty.” The University submits, however, that what in fact has produced the disharmony are a large number of policy disagreements relating to the vision established by the Board through the Role Commission process, the removal of President Muse, and issues of a similar substantive nature.

IV. CONCLUSION

As demonstrated above, each of the Complainants’ specific examples of alleged noncompliance with the SACS Criteria for Accreditation lacks merit. Moreover, the underlying claim that the Board of Trustees has persistently overstepped its bounds over the last decade is false, particularly when evaluated in the context of the highly relevant, but extremely controversial, decisions growing out of the Role Commission. As evidenced by these decisions, the Auburn Board has not shied away from the tough decisions that the changing times, fiscal responsibility, and public demands require. That these decisions, and the decision to remove President Muse, and even the adoption of a university-wide grade-forgiveness policy have provoked controversy is hardly surprising. But the controversy itself, as manifested in the no-confidence votes of various
constituencies and in the instant complaint, simply reflects substantive policy disagreements as to which the Board clearly has the final say.

Nevertheless, the University is taking steps to restore harmony. A new President will be employed as soon as possible. Affirmative action is anticipated by the Board to establish a new policy pertaining to communications involving individual trustees and members of the administrative staff. The new policy will also require that each of the Board’s standing committees, including the Athletic Committee, maintain minutes and provide a report to the full Board as to any matters discussed with the President or a member of his staff. The University is confident that these actions, coupled with an independent and impartial review of the issues identified in the Complaint, will serve to eliminate incorrect perceptions held by the Complainants and allow the University to return its focus to achieving its mission of academic excellence.