

APPENDIX A

**STATE OF WEST VIRGINIA SUPREME COURT
OF APPEALS**

Mengyang Li, Plaintiff Below, Petitioner

Vs.) **No. 20-0393** (Jefferson County 19-C-102)

Shepherd University President's Office, Defendant
Below, Respondent

MEMORANDUM DECISION

FILED June 23, 2021

**EDYTHE NASH GAISER, CLERK SUPREME
COURT OF APPEALS OF WEST VIRGINIA**

Self-represented petitioner Mengyang Li appeals the February 28, 2020, order of the Circuit Court of Jefferson County granting Respondent Shepherd University President's Office's ("University") motion to dismiss petitioner's amended complaint for a failure to state a claim under the West Virginia Human Rights Act. The University, by counsel Tracey B. Eberling, filed a response. Petitioner filed a reply.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision

affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Petitioner is a naturalized United States citizen, whose country of origin is China, and an associate professor in the University's department of chemistry. From 2014 to May of 2019, petitioner alleges that he experienced discrimination and harassment from his departmental colleagues and University officers. In 2016 and 2017, petitioner twice applied for a promotion to professor. According to the University's 2016-2017 faculty handbook, a faculty member may be considered for a promotion to professor if he or she meets eight minimum qualifications, one of which requires "[s]cholarly work accomplished during the term of [a]ssociate [p]rofessor rank as evidenced by refereed publications, funded refereed external grants, juried performances, or juried exhibitions."

With regard to petitioner's 2016 application, on May 3, 2017, the University found that petitioner did not meet the minimum qualifications for a promotion to professor, because he did not have any refereed publications as an associate professor, and denied the application. On October 30, 2017, petitioner filed a grievance with the West Virginia Public Employee Grievance Board ("WVPEGB") alleging that the University misinterpreted the minimum qualifications for promotion to professor ("first grievance"). Petitioner further alleged that the University discriminated against and harassed him during the promotion application process. By order entered on January 29, 2019, the WVPEGB dismissed

petitioner's first grievance as untimely filed.¹ Petitioner appealed the dismissal of his first grievance to the Kanawha County Circuit Court which affirmed the dismissal by order entered on January 24, 2020. Petitioner did not appeal the January 24, 2020, order to this Court.

With regard to petitioner's 2017 application for a promotion to professor, the University denied that application on April 23, 2018, again finding that petitioner did not have any refereed publications as an associate professor. The parties subsequently litigated the issue of whether petitioner timely grieved the April 23, 2018, denial of his 2017 application before the WVPEGB. By order entered on April 23, 2019, the WVPEGB found that petitioner timely grieved the denial of his 2017 application for promotion to professor ("second grievance") as a part of his first grievance of the denial of his 2016 application. The second grievance was given its own case number and remains pending before the WVPEGB.

On May 31, 2019, petitioner filed a civil action in the Jefferson County Circuit Court, alleging that he experienced discrimination and harassment from his departmental colleagues and University officers from 2014 to May of 2019.² In petitioner's complaint, he

¹ West Virginia Code § 6C-2-4(a)(1) requires a grievant to file a grievance "[w]ithin fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance[.]"

² The University is located in Jefferson County.

included 105 factual allegations setting forth the procedural history of his grievances and describing the testimony given at the various proceedings in his first grievance.³ Specifically, petitioner pointed to ten instances where he alleged that the University's witnesses testified falsely. Also, in petitioner's complaint, he stated his intention to "designate[]" the records from his grievances. As relief, petitioner requested the Jefferson County Circuit Court to (1) "[s]top the age, race[,] and national origin discrimination and retaliation and harassment [petitioner has] been experiencing for years"; (2) stop "the hostile work environment [petitioner has] been experiencing for years"; (3) impose discipline upon "the perpetrators of discrimination and harassment"; and (4) "[r]ight the wrong of denying [petitioner's] promotion."

On July 11, 2019, the University filed a motion to dismiss petitioner's complaint based upon his failure to exhaust his administrative remedies. By order entered on October 15, 2019, the Jefferson County Circuit Court granted, in part, and denied, in part, the motion to dismiss. In doing so, the Jefferson County Circuit Court relied upon this Court's decision in *Subramani v. West Virginia University Board of Governors*, No. 14-0924, 2015 WL 7628720 (W.Va. November 20, 2015) (memorandum decision); like petitioner, the grievant in *Subramani* filed grievances under the grievance procedure related to his

³ A public employee grievance consists of three levels. See W. Va. Code § 6C-2-4. Petitioner states that his second grievance has "not been heard in the Levels 1-3 hearings yet."

employer's failure to promote him to the rank of full professor. Id. at *2. Here, the Jefferson County Circuit Court found that this Court in Subramani affirmed a dismissal based upon a lack of jurisdiction "even in circumstances wherein . . . [p]etitioner did not pursue the circuit court appeal or withdrew the previously filed grievances."⁴ Here, at the time of the Jefferson County Circuit Court's October 15, 2019, order, the dismissal of petitioner's first grievance was pending before the Kanawha County Circuit Court, and petitioner's second grievance was pending before the WVPEGB. Accordingly, the Jefferson County Circuit Court dismissed the complaint due to a lack of subject matter jurisdiction. However, the Jefferson County Circuit Court gave petitioner sixty days to file an amended complaint setting forth claims pursuant to the West Virginia Human Rights Act, West Virginia Code §§ 5-11-1 through 5-11-20. See Syl. Pt. 9, *Weimer v. Sanders*, 232 W.Va. 367, 752 S.E.2d 398 (2013) (holding that exhaustion of administrative remedies is not required prior to filing discrimination claims pursuant to the Human Rights Act); Syl. Pt. 3, *Vest v. Bd. of Educ. of Cty. of Nicholas*, 193 W.Va. 222, 455 S.E.2d 781 (1995) (same).

On December 16, 2019, petitioner filed an amended complaint in the Jefferson County Circuit

⁴ This Court in *Subramani v. West Virginia University Board of Governors*, No. 14-0924, 2015 WL 7628720 (W. Va. November 20, 2015) (memorandum decision) found that West Virginia Code § 18B-2A-4(1) provides that the "[grievance] procedure established in ... [West Virginia §§ 6C-2-1 through 6C-2-8], ... is the exclusive mechanism for hearing by prospective employee grievances and appeals." Id. at *5.

Court, setting forth the original 105 factual allegations and adding fourteen more for a total of 119. However, as in his original complaint, petitioner (1) set forth the procedural history of his grievances and described the testimony given at the various proceedings of his first grievance; (2) pointed to the ten instances where he alleged that the University's witnesses testified falsely; and (3) stated his intention to "designate[]" the records from his grievances. Petitioner further repeated the claims for relief from the original complaint, including his request that the circuit court "[r]ight the wrong of denying of [his] promotion[.]"⁵ On January 2, 2020, the University filed a motion to dismiss the amended complaint for a failure to state a claim under the Human Rights Act. By order entered on February 28, 2020, the Jefferson County Circuit Court dismissed the amended complaint, finding that "[petitioner]'s disagreement with [the University]'s application of its promotional policy does not, without more, give rise to a claim under the [Human Rights] Act."⁶

⁵ Petitioner further asked that he be compensated for "the severe professional, financial[,] and emotional damages that [he] suffered from the continuous [a]ge, [r]ace[,] and [n]ational [o]rigin discriminations, harassments[,] and reprisal[.]"

⁶ The Jefferson County Circuit Court further found that, because petitioner stated that the relevant time period was from 2014 to May of 2019, the applicable statute of limitations, set forth in West Virginia Code § 55-2-12(b), barred petitioner's civil action "[t]o the extent that [petitioner] claims that discriminatory acts occurred more than two years before this suit was filed[.]" Due to our finding that the Jefferson County Circuit Court properly found that the amended complaint failed to state a claim under

Petitioner now appeals the Jefferson County Circuit Court's February 28, 2020, order dismissing the amended complaint. "Appellate review of a circuit court's order granting a motion to dismiss a complaint is de novo." Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick*, 194 W.Va. 770, 461 S.E.2d 516 (1995). A motion to dismiss may be granted when a complaint "makes only conclusory allegations without any material factual allegations in support thereof." *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 710, 398 S.E.2d 532, 536 (1990) (Emphasis in original). Furthermore,

"[i]f a plaintiff does not plead all of the essential elements of his or her legal claim, a [trial] court is required to dismiss the complaint pursuant to Rule 12(b)(6) [of the West Virginia Rules of Civil Procedure]." Louis J. Palmer, Jr. and Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure*, 406-07 (5th ed. 2017) (quotations and citation omitted).

Newton v. Morgantown Machine & Hydraulics of West Virginia, Inc., 242 W.Va. 650, 653, 838 S.E.2d 734, 737 (2019).

On appeal, petitioner argues that the Jefferson County Circuit Court erred in dismissing his amended complaint. The University counters that the dismissal was proper, arguing that, while petitioner stated in his amended complaint that he was asserting claims

the Human Rights Act, we do not address the propriety of its ruling based upon the statute of limitations.

under the Human Rights Act, he failed to do so. We agree with the University.

Based upon our review of the amended complaint, we find that the amended complaint is substantially similar to the original complaint which was dismissed for a lack of jurisdiction as containing claims that fell within the jurisdiction of the WVPEGB. Pursuant to West Virginia Code § 6C-2-2(i)(1), a grievance is defined as

a claim by any employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including: *(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; (ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer; (iii) Any specifically identified incident of harassment; (iv) Any specifically identified incident of favoritism; or (v) any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.*

(Emphasis added.). We concur with the circuit court's finding that, like the allegations in the original complaint, the amended complaint's allegations set forth the issue raised in petitioner's grievances-the University's alleged misapplication of its promotional policy-and that such allegations "do] not, without

more, give rise to a claim under the [Human Rights] Act."

To the extent that petitioner argues he may now raise claims based on his first grievance in a civil action now that the Kanawha County Circuit Court has affirmed that grievance's dismissal,⁷ which he failed to appeal to this Court, we disagree. The University in this case and West Virginia University, which was the higher education institution involved in Subramani, both have boards of governors established by West Virginia Code § 18B-2A-1 (b). West Virginia Code § 18B-2A4(1) provides that the "[grievance] procedure established in ... [West Virginia] §§ 6C-2-1 through 6C-2-8], ... *is the exclusive mechanism for hearing by prospective employee grievances and appeals.*" Subramani, 2015 WL 7628720, at *5 (Emphasis added.). If petitioner desired to revive claims based on the dismissal of his first grievance, he should have appealed the Kanawha County Circuit Court's January 24, 2020, order, but he failed to do so. Accordingly, we conclude that the Jefferson County Circuit Court did not err in granting the University's motion to dismiss.⁸

⁷ Petitioner concedes that the claims based on his second grievance "remain pending before the WVPEGB."

⁸ The University argues that, on appeal, petitioner makes claims of fraud, obstruction of justice, perjury, and violations of the United States and West Virginia Constitutions that were not included in the amended complaint. Petitioner counters that "it is important to bring those [alleged] facts to the attention of this Court." However, we do not address claims not presented to the circuit court. See *Watts v. Ballard*, 238 W.Va. 730, 735 n.7, 798 S.E.2d 856, 861 n.7 (2017) (stating that "[t]his

For the foregoing reasons, we affirm the circuit court's February 28, 2020, order granting the University's motion to dismiss the amended complaint.

Affirmed.

ISSUED: June 23, 2021

CONCURRED IN BY:

Chief Justice Evan H. Jenkins
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice John A. Hutchison
Justice William R. Wooton

Court will not pass on a nonjurisdictional question which has not been decided by the trial court in the first instance") (quoting Syl. Pt. 2, *Sands v. Sec. Trust Co.*, 143 W. Va. 522, 102 S.E.2d 733 (1958)).

APPENDIX B

**IN THE CIRCUIT COURT OF JEFFERSON
COUNTY, WEST VIRGINIA**

**MENGYANG LI v. SHEPHERD UNIVERSITY,
PRESIDENT'S OFFICE**

CC-19-2019-C-102

The following order- case- final was FILED on
2/28/2020 10:46:16 AM

Notice Date: 2/28/2020 10:46:16 AM

Laura Storm CLERK OF THE CIRCUIT Jefferson
119 N George Street CHARLES TOWN, WV 25414
(304) 728-3231 circuitclerk@jeffersoncountywv.org

/s/ Debra McLaughlin Circuit Court Judge
Ref. Code: 206XU68F

E-FILED 2/28/2020 10:46 AM CC-19-2019-C-102
Jefferson County Circuit Clerk Laura Storm

**In the Circuit Court of Jefferson County,
West Virginia**

MENGYANG LI, Plaintiff,

vs.)) Case No. CC-19-2019-C-102

**SHEPHERD UNIVERSITY, PRESIDENT'S
OFFICE, Defendant**

**Order Granting Shepherd University's
Motion to Dismiss**

On this came the Court in consideration of Shepherd University's Motion to Dismiss Pursuant to Rule 12(b)(6) and the Plaintiffs response in opposition thereto, along with the other pleading previously filed in this matter. Based on the following, the Court hereby GRANTS the Motion to Dismiss.

Dismissal is warranted as the Plaintiff's Amended Complaint as it fails to state a claim upon which relief can be granted [Emphasized **NOT true. See Petition Page 48.** Plaintiff] when viewing the facts in a light most favorable to the Plaintiff. The Plaintiffs claim is purportedly one filed for alleged violation of the West Virginia Human Rights Act, West Virginia Code 5-11-1, et seq. Mere citation of the Act, without setting forth a factual predicate for an alleged violation [Emphasized **NOT true. See Petition Pages 15-47.** Plaintiff] is not sufficient to survive dismissal. None of the facts cited support a claim that Shepherd University discriminated against the Plaintiff on the basis of age or race [Emphasized **NOT true. See Petition Pages 15-47.** Plaintiff]. The Plaintiffs disagreement with Shepherd's application of its promotional policy does not, without more, give rise to a claim under the Act.

To the extent that the Plaintiff claims that discriminatory acts occurred more than two years before this suit was filed [Emphasized **NOT true. See Petition Pages 15-47.** Plaintiff], such claims are barred by the applicable two-year statute. See W.Va.

Code §55-2-12(b) (1959). The facts alleged do not demonstrate a continuing course of action such as to save the claim from dismissal [Emphasized **NOT true. See Petition Pages 15-47.** Plaintiff]. See *Graham v. Beverage*, 21 W. Va. 466, . . . 566 S.E.2d 603 (2002).

Based on the forgoing, the Court finds it proper to dismiss the Complaint as to Defendant Shepherd University, with prejudice. The Clerk is directed to send an attested copy of this Order to all counsel of record and pro se litigants. Entered this 28 day of February , 2020.

Prepared by:

/s/ Tracey B. Eberling

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[Tracey B. Eberling is Defendant's Counsel. Plaintiff]

APPENDIX C

West Virginia Supreme Court Order about 1/10/2021
Reply Brief & Excerpt of 1/10/2021 Reply Brief

STATE OF WEST VIRGINIA

At Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on January 20, 2021, the following order was made and entered:

Mengyang Li,
Plaintiff Below, Petitioner

vs.) No. 20-0393

Shepherd University President's Office,
Defendant Below, Respondent

ORDER

On January 11, 2021, the petitioner, Mengyang Li, self-represented, presented a motion for leave to file a reply brief by electronic mail, together with the reply brief.

Upon consideration and review, the motion is hereby granted. The petitioner's reply brief is filed. The matter is mature for consideration by the Court pursuant to Rule 5(h) of the Rules of Appellate Procedure. The parties will be notified in writing of any decision in the case.

A True Copy

Attest: /s/ Edythe Nash Gaiser

Clerk of Court

SEAL OF WEST VIRGINIA SUPREME
COURT OF APPEALS

Excerpt of My 1/10/2021 Reply Brief:

**IN THE SUPREME COURT OF APPEALS,
STATE OF WEST VIRGINIA**

Mengyang Li, Plaintiff/Petitioner

vs.) **Docket No. 20-0393**

**Shepherd University President's Office,
Defendant/Respondent**

REPLY BRIEF OF PETITIONER MENGYANG LI

[The following begins at Page 9 of the
Reply Brief]

Respondent's Brief Page 16 Assertion "**Dr. Li did not assert a claim in his Amended Complaint under the West Virginia or the United States Constitution, fraud, obstruction of justice or perjury and as such, they are not properly before this Court on appeal as are facts occurring after the filing of the Amended Complaint**" is **NOT justified**. I have to the right and it is important to bring those facts to the attention of this Court. Those facts demonstrated continuous discriminations, harassments, retaliations and fraudulent conducts of Respondent/Defendant.

MORE FACTS OF FRAUD, DISCRIMINATION, HARASSMENT, RETALIATION, PERJURY AND FAVORITISM

A Fraud

When Dean Scott Beard (current Provost) was the academic leader in charge of Shepherd University newly established Martinsburg Center, Dean Scott Beard reported to the Faculty Senate that the Martinsburg Center operation achieved “black” (not losing money). After that reporting of achieving “black”, in April 2017, Dean Scott Beard was promoted to Acting Provost. More later in another Faculty Senate meeting, Senator Kathleen Reid told senators that the Martinsburg Center operation never actually reached “black”, **it reached “black” because of double-counting the number of students.** When I reported in a chemistry department meeting that the Martinsburg Center operation never actually reached “black”, department chair Dan DiLella commented **“We knew that it’s not black all the time! We knew the student numbers!”**

Driving Away Strong Candidates in Hiring, Harassment, Retaliation and Perjury

On 10/26/2020 I emailed Chair Jacquelyn Cole (who has had poor teaching evaluations by students for years and who published only one journal paper in her career prior to her promotion to Associate Professor in 2019), the Organic Chemist Search Committee, Dean Robert Warburton and Provost Scott Beard: **“In the 10/22/2020 meeting, I expressed concern of trying to choose weaker**

candidates over strong candidates for self-protection by current chemistry faculty members. This practice is illegal.” Then I was purposefully excluded from the 10/29/2020 meeting determining the phone interview list, by Chair Jacquelyn Cole using a trick. As reported in the PETIONER’S BRIEF, there is a history of excluding me (the only minority member of the department) from the hiring processes. Then, in the phone interview list, the Organic Chemist Search Committee chosen top candidate Nathaniel Brown was replaced with a candidate Caleb Brown who does not have a Ph.D. in Organic Chemistry. Fortunately, on 11/3/2020 I noticed replacement of the top candidate and corrected it. On Friday 11/13/2020 top candidate Nathaniel Brown (Ph.D. Organic Chemistry, Princeton University) was notified to give a job talk on Tuesday 11/17/2020 [against my 11/12/2020 complaint/warning in email to Chair Jacquelyn Cole, Dean Robert Warburton and Provost Scott Beard that it is not fair to give a candidate such a short notice even with the lecture topic not determined by Chair Jacquelyn Cole yet on Friday 11/13/2020 during notifying Dr. Nathaniel Brown]. On Friday 11/13/2020, 5:22 PM, right after being notified of the Tuesday 11/17/2020 job talk interview with the lecture topic yet to be determined by Chair Jacquelyn Cole in a couple days, the top candidate Dr. Nathaniel Brown withdrew his candidacy in email giving no reason other than “I don't feel that Shepherd University is the right fit for me at this time”. Twenty minutes later, Chair Jacquelyn Cole happily replied in her Friday 11/13/2020, 5:42 PM email “Dr. Brown, I would like to thank you so

much for the opportunity to meet you over the phone and wish you all of the success in your career! Best, Dr. Cole”.

Then on 11/17/2020, Chair Jacquelyn Cole insisted in multiple emails to give the next top candidate Haley Albright (Ph.D. Organic Chemistry, University of Michigan) only 10-15 minutes for her job talk lecture and only 10-15 minutes for her job talk research presentation on 11/19/2020. Even after my multiple emails to Chair Jacquelyn Cole, the Search Committee, Dean Warburton and Provost Beard arguing that for our hiring judgement it is very important to give candidates sufficient time to present their lecture and research, Chair Jacquelyn Cole still falsely claimed and insisted in her 11/17/2020 7:53 PM email: “I have served on four faculty search committees now and no candidate was ever asked to give longer than a 10-15 minute teaching demo. If other departments have done things differently, that is their prerogative.” Chair Jacquelyn Cole finally agreed to give the next top candidate Dr. Haley Albright 15-20 minutes for her job talk lecture and 15-20 minutes for her job talk research presentation on 11/19/2020, only after my multiple emails of arguments to Chair Jacquelyn Cole, the Search Committee, Dean Warburton and Provost Beard.

Chair Jacquelyn Cole wrote in her 11/13/2020 10:04 AM email to the Committee, Dean Warburton and Dean Warburton’s secretary who will give instructions to the candidates: “I disagree about allowing them to present prior research unless the project is to be continued at Shepherd...”. I replied “This requirement is NOT normal. ... To evaluate

their research prospect at Shepherd, we need to hear BOTH their previous research and their plan. To evaluate their plan, it is very important to hear their previous research/results.”

From the beginning of the Organic Chemist Search to the determination of the final interview list, Chair Jacquelyn Cole (who has had poor teaching evaluations by students for years and who published only one journal paper in her career prior to her promotion to Associate Professor in 2019) made repetitive and her typical aggressive efforts to choose weaker candidates without a Ph.D. in Organic Chemistry and candidates with weak research publication record over strong candidates with Ph.D. in Organic Chemistry and with strong reputable publication record, but she did not succeed in these efforts due to my strong opposition and the moderation by other Committee Members not in the Chemistry Department.

Chair Jacquelyn Cole made multiple at least dubious testimonies under oath in the 10/4/2018 grievance hearings (Appx. Pages 775-815) about her **conspiring** with white colleagues Dan DiLella and Kyle Hassler to remove safety goggles from my lab classes which twice caused loss of my teaching time and loss of my students learning time **right after I filed the grievance**, and about her repetitive multiple years harassing me to try to impose multiple-choice-only exam on me with the support by white colleges Robert Warburton, Jordan Mader and Dan DiLella, and about her taking pictures of my teaching writing without my permission or my knowledge and distributing them (still unapologetic at the hearing).

Dean Robert Warburton, Lecturer Kyle Hassler, Department Chair Dan DiLella, and Promotion & Tenure Committee Member Jordan Mader perjured themselves in their testimonies under oath (12/16/2019 AMENDED COMPLAINT Statement of Facts 42, 43, 49-70 give page and line #s in Exhibits N and S), and Current Chair Jacquelyn Cole made multiple at least dubious testimonies under oath (Appx. Pages 775-815), in the West Virginia Public Employees Grievance Board case Mengyang Li v. Shepherd University, Docket No. 2018-0654-SU hearings.

Violations of University Policies, Irregularities, Discrimination & Favoritism

President Mary Hendrix **neglected her duty** to make a decision on my 2nd promotion application shown in her May 2, 2018 letter (Board Policy 19 and Faculty Handbook stated "Promotion and tenure of faculty are the prerogatives of the President, who will base his or her decision primarily upon the guidelines and the recommendation(s) of the Provost...") (12/16/2019 AMENDED COMPLAINT Statement of Facts 112, Exhibit C Documents 17, 16, i.e. Appx. Pages 114-119).

On April 23, 2018 Acting Provost Scott Beard **made unauthorized decision** (violating the published binding Board Policy) denying my 2nd application for promotion (12/16/2019 AMENDED COMPLAINT Statement of Facts 113, Exhibit C Documents 14, 16, i.e. Appx. Pages 110-111, 114-118).

Robert Warburton and others were promoted to Deans or Acting Dean in 2017 totally not following the University Policy procedure published in the Faculty Handbook.

In Spring 2018 Acting Provost Scott Beard was seeking the Provost position but his candidacy was eliminated by the Provost Search Committee in the first round; the successful candidate accepted Shepherd University Provost position but changed his mind several days later, then Acting Provost Scott Beard was appointed as Provost.

Jacquelyn Cole **did not give a job talk** when she was hired as a Visiting Assistant Professor in 2012. In 2013 Jacquelyn Cole was hired as a tenure-track Assistant Professor **without through an open search process and again without giving a job talk.** Even with about 7 years of poor teaching evaluations from students and with years of the Nursing Department complaining about Nursing Chemistry teaching (her position was mainly created for teaching chemistry to nursing students) and with only one journal publication in her career, in 2019 Jacquelyn Cole was awarded tenure and promoted to Associate Professor, with the support from then Chair Dan DiLella, Dean Robert Warburton and newly promoted Promotion & Tenure Committee Member Jordan Mader. Both Jacquelyn Cole and Jordan Mader are alumna of Chair Dan DiLella. In 2018 Jordan Mader (white, under 40) was awarded tenure and promoted to Associate Professor and promoted to the Promotion & Tenure Committee. I (Asian, over 56 then in

2018) was not promoted to the Promotion & Tenure Committee. Jacquelyn Cole, Robert Warburton, Dan DiLella and Jordan Mader are all my major harassers and discriminators. In Fall 2019, Jacquelyn Cole, Robert Warburton and Dan DiLella further elected Jacquelyn Cole (white, under 40) to the new Department Chair. I (Asian, over 57 then in 2019) was not promoted to the Department Chair position. (Jordan Mader left Shepherd in 2019 to teach in another State. Dan DiLella retired in May 2020.)

On 10/31/2019 I emailed Provost Scott Beard and President Mary Hendrix:

“Is Provost Beard’s September 19, 2019 approval of ‘the election of Dr. Jacquelyn Cole as Chair of the Department of Chemistry’ final? **Has President Hendrix approved ‘Dr. Jacquelyn Cole as Chair of the Department of Chemistry’?**”

2019-2020 Faculty Handbook page 25 has criteria ‘The appointment of a Department Chair/School Director is subject to the approval of the College Dean, the Provost, AND the President’.

I have never received an answer to my question **“Did President Hendrix approve the appointment of Jacquelyn Cole as Chair of the Chemistry Department?”**

For Fall 2020 and Spring 2021, **new Chair Jacquelyn Cole only teaches one section of Nursing Chemistry plus one less demanding 4-**

credit-course (total two 4-credit-courses as full load), although her faculty position was created mainly for teaching Nursing Chemistry. I teach three 4-credit-courses as full load.

In Spring 2019, Shepherd University canceled the long tradition of employees' experience survey by the Chronical of Higher Education, in response to several years of declining employee satisfaction ratings; In Spring 2020, Shepherd University even canceled the internal on-line evaluation of academic administrators by faculty members.

Board of Governors Authorized Investigation of Discrimination Complaints

On 8/31/2020, Shepherd University Board of Governors Chair Eric Lewis and President Mary Hendrix sent to employees the attached Executive Summary of the Committee for the Investigation of Student Complaints which stated at the end: **"The response and handling of the prior complaints by top-level administrators is a matter of particular importance and will be a targeted area of response - by Dr. Hendrix and the Board of Governors. Any actions to be considered as to the conduct of University personnel will be undertaken pursuant to University policies, and State and Federal law, which require due process and privacy protection."** (Please see attachment.) **[My discriminators are more emboldened. I have been experiencing increasing discriminations/harassments from**

Spring 2021 to Present December 2021/January 2022. Examples in Petition Pages 12-13]

CONCLUSIONS OF THE RESPONDENT'S BRIEF ARE WRONG

Based on the ERRORS AND FACTS listed above, Conclusions of the RESPONDENT'S BRIEF are wrong.

WHEREFORE, I respectfully request the Honorable Supreme Court of Appeals, State of West Virginia to grant the **RELIEF** and to **OVERTURN** the Circuit Court of Jefferson County's 2/28/2020 Order Granting Shepherd University's Motion to Dismiss.

TIMELINESS OF THIS REPLY BRIEF

[deleted for brevity]

Dated January 10, 2021.

Respectfully
submitted,

SIGNED

Mengyang Li

Attachment:

Executive Summary of the Committee for the Investigation of Student Complaints [deleted for brevity]