



August 28, 2014

Dr. Kirsten Diederich, Chair
North Dakota State Board of Higher Education
10th Floor, State Capitol
600 East Boulevard Avenue, Department 215
Bismarck, ND 58505-0230

Dr. Larry Skogen, Interim Chancellor
North Dakota University System
600 East Boulevard Avenue #10
Bismarck, ND 58505

Dear Chair Diederich and Chancellor Skogen:

The Advisory Visit team recently completed its work and has provided its findings to the Higher Learning Commission. The purpose of the Advisory Visit, as former President Manning outlined in her July 29, 2013 letter, was to gather additional information about how the public colleges and universities and the Board work together to ensure compliance with the Commission's Criteria for Accreditation, particularly,

- Criterion Two, Core Component 2.C, requiring an autonomous governing board that makes decisions in the best interest of the institution and assures its integrity;
- Criterion Five, Core Component 5.B, requiring that governance and administrative structures promote effective leadership and support collaborative processes;
- Criterion Two, Core Component 2.A, requiring that an accredited institution operate with integrity and establish and follow fair and ethical policies; and
- Criterion Five, Core Component 5.D, requiring that an accredited institution systematically work to improve its performance by, as noted in the sub-components, learning from its operational and other experiences.

In addition, former President Manning also asked the team to gather information on Measure 3, the proposed amendment to the North Dakota Constitution that will change how governance of public colleges and universities takes place in North Dakota.

The Advisory Visit took place on April 28-29, 2014. The team subsequently compiled its findings, including those regarding the Criteria for Accreditation, in a final team report. That report is enclosed for your review and response. The team also prepared a separate report on Measure 3, the proposed Constitutional amendment addressing the governance of state colleges and universities, which I will provide under separate cover. As is customary with an Advisory Visit report, the team makes no recommendation in its report regarding Commission action.

At the time last summer when former President Manning outlined the scope of the Advisory Team's review there was considerable concern at the Commission about whether the North Dakota University System was in compliance with the requirements noted above. I am pleased to report that the Advisory Team has found the system and its accredited colleges to be in compliance with these requirements. I believe that you, the Board and the system office staff members are to be commended on the diligent work you have done in the months between July 2013, when the Advisory Visit was ordered, and April 2014 when the visit took place, to ensure that the system was functioning in compliance with good practices in governance and the requirements of the Commission. You are to be commended for that work and your commitment to staying the course for continuous improvement.

While we want you to appreciate the strength of the above findings, the Advisory Visit report does note several areas in which additional improvement is necessary to ensure that governance in North Dakota functions optimally as anticipated by the Commission's requirements. In addition, the Advisory Team has determined that Core Component 5.D, requiring that an accredited institution work systematically to improve its performance, is met, but with concerns. While the team credited the Board and the system staff with a genuine commitment to working on systematic improvement, the team concluded that the Board and the system office had not yet demonstrated mature and systematic approaches to planning, evaluation and training necessary to improve their own performance or the performance of the institutions the Board governs. While we fully respect the aspirational planning underway, we do need to continue to assure realization of those goals. An Advisory Team makes no formal recommendation; however, the team suggested in its report that further Commission monitoring should be scheduled to assure that the efforts of the Board and the staff continue and develop into the systematic approaches anticipated by the Commission's requirement. I agree with the team's advice.

The Commission's Board of Trustees will consider the Advisory Team report at its next meeting on October 30-31, 2014. I will be recommending to the Board of Trustees that it schedule Commission monitoring for the North Dakota State Board of Higher Education and the system office related to their ongoing efforts to improve their own performance and the performance of the public colleges and universities in North Dakota. Such monitoring is likely to require in six-twelve months the filing of a written report and the scheduling of a focused evaluation visit to review whether the Board and system office are working to refine and strengthen their work on systematic improvement.

The Commission's Board of Trustees, at its discretion, may determine alternatively that Notice or no monitoring is warranted. Notice is a public sanction that indicates an institution, while still in compliance with the Criteria for Accreditation, is nevertheless at risk of being out of compliance with one or more Criteria for Accreditation if that institution does not work hard to make necessary improvements.

You have the option of providing a response to the findings of the team and to this letter and recommendation. I will need to receive your response no later than September 15, 2014. The Board will consider the report, this recommendation, and your response at its meeting in October. The action of the Board will be communicated to you following that meeting. Please note it usually takes 10 days to two weeks for these letters to be transmitted and received.

If you have any questions, please contact Karen Solinski, Vice President for Legal and Governmental Affairs, who is coordinating the arrangements for this visit and for the October action.

Thank you for your cooperation in this review.

Sincerely,



Barbara Gellman Danley
President

Enclosure

cc: Dave Clark, Interim President, Bismarck State College
Ken Grosz, Campus Dean, Dakota College at Bottineau
D.C. Coston, President, Dickinson State University
Douglas D. Darling, President, Lake Region State College
Gary D. Hagen, President, Mayville State University
Steven Shirley, President, Minot State University
John Richman, President, North Dakota State College of Science
Dean L. Bresciani, President, North Dakota State University
Robert O. Kelley, President, University of North Dakota
Margaret Dahlberg, Interim President, Valley City State University
Raymond Nadolny, President, Williston State College
Karen L. Solinski, Vice President for Legal and Governmental Affairs, Higher Learning
Commission

**REPORT OF AN
ADVISORY VISIT FOR THE PRESIDENT AND THE BOARD OF TRUSTEES
OF THE HIGHER LEARNING COMMISSION**

TO

North Dakota University System, Bismarck, ND

**Bismarck State College
Dakota College at Bottineau
Dickinson State University
Lake Region State College
Mayville State University
Minot State University
North Dakota State College of Science
North Dakota State University
University of North Dakota
Valley City State University
Williston State College**

April 28-29, 2014

The Higher Learning Commission

A Commission of the North Central Association of Colleges and Schools

EVALUATION TEAM

Dr. Harry J. Berman, Immediate Past Executive Director, Illinois Board of Higher Education, Springfield, Illinois, 62701

Dr. Lynne E. Olson, Faculty Ombudsman, The Ohio State University, Columbus, Ohio 43210

Dr. David W. Wantz, Special Assistant to the President, University of Indianapolis, Indianapolis, IN 46227

Dr. John W. Marr, Jr., Dean of Academic Affairs – Eastern Campus, Cuyahoga Community College, Highland Hills, OH 44122, Team Chair

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I. CONTEXT AND NATURE OF VISIT

A. Purpose of Visit

This advisory evaluation visit to the North Dakota University System (NDUS) was conducted April 28-29, 2014 at the request of Higher Learning Commission (HLC) President, Dr. Sylvia Manning. In her July 29, 2013 letter to the North Dakota State Board of Higher Education (SBHE) Board Chair, Dr. Kirsten Diederich, and Interim Chancellor, Dr. Larry Skogen, Dr. Manning noted that the visit was prompted by a formal complaint received by the HLC as well as “numerous articles in the media describing a governance situation in North Dakota marked by turmoil and controversy.”

Key areas of concern addressed in the complaint, and echoed in regional media, include possible violations of state open meetings laws, changes in reporting lines and communication patterns that limited the access of college and university presidents to members of the Board, and the work/leadership style of former Chancellor, Dr. Hamid Shirvani, which gave rise to the ethics concerns and appeared to have resulted in widespread employee dissatisfaction and premature separations for several key employees.

The purpose of the visit was to learn how North Dakota’s eleven state-assisted colleges and universities and the state’s current eight-member, gubernatorial-appointed controlling board work together to ensure compliance with the HLC’s Criteria for Accreditation. Of specific interest is the System’s compliance with

- a. Criterion Two, Core Component 2.A, requiring that an accredited institution operate with integrity and establish and follow fair and ethical procedures;
- b. Criterion Two, Core Component 2.C, requiring an autonomous governing board that makes decisions in the best interest of the institution and ensures its integrity;
- c. Criterion Five, Core Component 5.B, requiring that an accredited institution’s governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission, and;
- d. Criterion Five, Core Component 5.D, requiring that an accredited institution work systematically to improve its performance by, as noted in the sub-components, learning from its operation and other experiences.

Additionally, the evaluation team was requested to learn more about a ballot measure (House Concurrent Resolution No. 3047), scheduled to go before voters in November of 2014. If approved by voters, this Resolution, commonly known as Measure 3, would change the state's constitution by abolishing the SBHE and replacing it with a three-member appointed Commission of Higher Education.

B. Accreditation Status

North Dakota's higher education system is comprised of eleven two-year, four-year, and graduate/research colleges and universities. Each NDUS institution is separately accredited by HLC. The SBHE serves as the sole governing board for each NDUS college or university and derives its legal authority from enabling language contained in the Constitution of North Dakota.

The eleven NDUS member institutions are listed below. Following the location of each college or university are the years of each institution's last and next reaffirmation of accreditation according to current HLC records.

- Bismarck State College, Bismarck, ND (Last: 2011-2012; Next: 2018-2019)
- Dakota College at Bottineau, Bottineau, ND (Last: 2009-2010; Next: 2019-2020)
- Dickinson State University, Dickinson, ND (Last: 2004-2005; Next: 2014-2015)
- Lake Region State College, Devils Lake, ND (Last: 2010-2011; Next: 2020-2021)
- Mayville State University, Mayville, ND (Last: 2005-2006; Next: 2015-2016)
- Minot State University, Minot, ND (Last: 2007-2008; Next: 2017-2018)
- North Dakota State College of Science, Wahpeton, ND (Last: 2008-2009; Next: 2015-2016)
- North Dakota State University, Fargo, ND (Last: 2005-2006; Next: 2015-2016)
- University of North Dakota, Grand Forks, ND (Last: 2013-2014; Next 2023-2024)
- Valley City State University, Valley City, ND (Last: 2011-2012; Next: 2021-2022)
- Williston State College, Williston, ND (Last: 2012-2013; Next: 2019-2020)

Although each institution is ultimately accountable to the same governing board, the accreditation histories, time frames, and processes to be found across NDUS institutions reflect a diverse system that is dealing with the full range of issues and challenges to be found in higher education. Additional information on the accreditation status of each NDUS college or university can be found in each institution's "Statement of Affiliation Status" report on file with the HLC.

C. Organizational Context

At more than 70,000 square miles, North Dakota is the nation's 19th largest state in terms of land mass. With a 2013 US Census estimated population of only 723,393 residents, however, North Dakota is the third least populated state in the US. The state's eleven colleges and universities are distributed roughly in an efficient grid pattern across the state with most institutions at significant distances from the state capital in Bismarck.

These and many other factors have influenced the structure and governance of higher education in North Dakota. As required by HLC practice, the present team endeavored to study and understand NDUS's challenges in light of its mission and prevailing conditions in the state of North Dakota.

The purpose of this visit was to address the functioning of a governing board that governs several institutions through a consolidated process, in this case a governing board with responsibility for the oversight of eleven campuses, each of which maintains its own HLC accreditation. Some of the Criteria for Accreditation (e.g., those pertaining to effectiveness of student learning) address the operations of an institution and do not apply to a governing board *per se*. However, Criterion Two; with its emphasis on integrity, ethics, and responsible conduct; and Criterion Five, with its emphasis on systematic improvement of performance, are highly relevant to the functioning of a governing board. The team's focus was on those Criteria for Accreditation that pertain to the functions of an institution's governing board.

D. Unique Aspects of Visit

The aforementioned constitutional authority, structure, and governance of higher education in North Dakota, coupled with the challenges that gave rise to this advisory visit, constituted an accreditation-related peer review that was unique in most aspects for most members of the team.

E. Interactions with Organizational Constituencies

The team's meetings with organizational constituencies took place in a number of meeting rooms in the state capitol building in Bismarck and in a meeting room at the team's hotel. Individuals and groups that met with the HLC team included:

- NDUS Interim Chancellor
- NDUS Senior Staff Members (7)
- NDUS College/University Presidents or Designated Representatives (11)
- ND State Board of Higher Education (10)
- Author of April 3, 2013 Complaint to HLC President Dr. Sylvia Manning
- ND Legislature Higher Education Funding Committee (5)

F. Principal Documents, Materials, and Web Pages Reviewed

Contents Reviewed on SharePoint Provided by NDUS

1. Correspondence with HLC – Issuing Complaint specific to HLC's Criteria 2.A., 2.C., 5.B., and 5.D.
 - Dr. Ellen Chaffee's Complaint 4-3-13
 - HLC Letter to Dr. Chaffee 5-13-13
2. Correspondence with HLC by SBHE/NDUS - Responses to Complaint specific to HLC's Criteria 2.A., 2.C., 5.B., and 5.D.
 - Chair Diederich Letter to Dr. Manning 3-26-14
 - NDUS 8-2-13
 - NDUS 6-13-13
 - HLC 5-12-13
 - HLC 7-29-13
3. NDUS Campuses Individual Statements of Affiliation and Organizational Status
4. Evidence of SBHE's/NDUS's Changes in Policies, Practices, and Continued Compliance with HLC's Criteria and Core Components: 2.A, 2.C., 5.B., and 5.D.

2.A. "The institution (i.e. system of institutions) operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows fair and ethical policies and processes for its governing board, administration, faculty, and staff."

- SBHE's Mission/Vision statements (approved 2000)
- SBHE Policy 100.5 Beliefs and Core Value
- Chair Diederich's Statement on Transparency and Trust
- Incoming ND SBHE president wants fresh start – Prairie Business, June 19, 2013

- Diederich: Higher ed needs to restore trust – Prairie Public, Aug. 7, 2014
- Collaboration key for success – Bismarck Tribune, February 12, 2014
- Chair Diederich's newsletter columns: Dedication to Mission, Transparency Will Be Our Focus
- Chair Diederich's Blog
- Q&A with Larry Skogen (regarding his vision for shared governance) - ND United, January 2014
- Letter to the Editor: Collaboration key for higher ed – Bismarck Tribune, Feb. 12, 2014
- Chancellor's video messages to faculty and staff
- Live tweeting during SBHE meetings
- Interim Chancellor's Blog
- Dr. Larry Skogen (acting chancellor) interview on Mike McFeely Show – KFGO, July 19, 2013

Open records

- Open Meetings Law
- Guidelines to Board and NDUS Staff from General Counsel Mr. Seaworth 2012
- Guidelines to Board and NDUS Staff from General Counsel Ms. Ness 2013
- Attorney General's Office Training for SBHE/NDUS – 6/3/13 & 7/10/13
- SBHE Social Invitation Example

2.C. "The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution (i.e., system of institutions) and to assure its integrity... (Its)... deliberations reflect priorities to preserve and enhance the institution (i.e. and the system of institutions)...(It)...reviews and considers the reasonable and relevant interests of the institution's (i.e., and the system of institutions') internal and external constituencies during its decision-making deliberations...(It)...preserves its independence from undue influence...(and it)...delegates day-to-day management to the institution (i.e., presidents and administration of the respective campuses)...and expects the faculty to oversee academic matters."

Governance and Organization of the State Board of Higher Education (SBHE), the North Dakota University System (NDUS), and NDUS's eleven Campuses

- SBHE Policy 310.1: Board President and Member Responsibilities

- SBHE Members and Terms
 - Board Retreat on Governance Conducted by Buzz Shaw, May 2012
 - SBHE Committees
 - 2012-13 Committees
 - 2014 Committees
 - Budget and Finance Committee
 - Academic and Student Affairs Committee
- SBHE Policy 330: Policy Introduction, Amendment, Passage, and Related Example(s)/ Documentation of Revision(s)
 - September 5, 2012 revision
 - November 21, 2013 revision
 - Current
- SBHE Policy 100.6: Authority and Responsibility of the State Board of Higher Education, and Related Example(s)/ Documentation of Revision(s)
 - September 26, 2012 revision
 - Current
 - SBHE Authority to Govern the NDUS
 - NDUS Organizational Chart
 - SBHE Agenda Structure 2011-2014
 - SBHE Format for New Materials
 - SBHE Training
 - SBHE Meeting Webcasts
- Policy 304.1: Chancellor of Higher Education Authority and Responsibilities, and Related Example(s)/ Documentation of Revision(s)
 - September 26, 2012 revision
 - Excerpt from September 25, 2013 SBHE Minutes
 - February 27, 2014 revision

Current

Chancellor and Executive Staff to the SBHE

Former Chancellor, Dr. Shirvani (Contract and Separation Agreement 2012-2013)

Current Interim Chancellor, Dr. Skogen

Skogen Acting Chancellor Contract June 2013

Skogen Interim Chancellor Contract November 2013

Skogen Annual Goals 2013-14

Skogen Vitae, Interim Chancellor

Chancellor's Senior Staff

Carlson Vitae, Chief Auditor

Cowen Vitae, Interim Vice Chancellor for Academic and Student Affairs

Donlin Vitae, Director of Communications and Media Relations,

Feldner Vitae, Vice Chancellor for IT and Institutional Research

Glatt Vitae, Vice Chancellor for Administrative Affairs

Sagsveen Vitae, Chief of Staff

Sprynczynatyk Vitae, Director of Strategic Planning

- Chancellor's Cabinet of Campus' Presidents and Their Role in Informing Board Governance 2011-13

Cabinet Meetings in Advance of SBHE Meetings

2013 Meeting Schedule

2014 Meeting Schedule

- NDUS's Campus Presidents: 2012 – Current
- Policy 305.1: College and University President Authority and Responsibilities, and Related Example(s)/ Documentation of Revision(s)

April 12, 2012 revision

September 26, 2012 revision

June 20, 2013 revision

Current

- Communication Protocol 2012-2013 (Change initiated by SBHE Chair Shaft)

Letter to Presidents

Letter to Campus Communities

5.B. "The institution's (i.e., system of institutions') governance and administrative structures promote effective leadership and support collaborative processes that enable the institution (i.e., system of institutions) to fulfill its (i.e., their) mission(s).

Structure of Collaboration in Decision-Making from Campuses through Councils, the Chancellor's Cabinet, Committees of the SBHE, and the SBHE, and Related Example(s)/ Documentation of Revision(s)

- SBHE Policy 302.4 Councils

SBHE/Chancellor/Council Collaboration

NDUS Councils

Academic Program Log (Academic Affairs Council, Cabinet, SBHE Actions)

- Campus Councils

Roles and Responsibilities Task Force

NDUS Advisory Groups/Task Forces

5.D. "The institution (i.e. system of institutions) works systematically to improve its performance."

- NDUS Strategic Plan

Connie Sprynczynatyk, Director of Strategic Planning

Extension of Current Strategic Plan

NDUS Strategic Plan

Succeed 2020 & 2020 and Beyond

- NDUS Reports

2012 Performance and Accountability Report

2013 Fall Enrollment Report

- Future of Higher Education
 - Distance Learning
 - Unmanned Aerial Systems
 - Realignment of Institutions
 - Upper Great Plains Transportation Institute
- *Pathways to Student Success*
 - Resolution
 - Pathways* Task Forces (4)

5. Potential Legislative Change in SBHE Membership and Governance of NDUS

- Measure 3 (Proposed legislation for ballot, ND, 11-4-14)
- HLC (1-5-14) to ND Legislative Council
- HLC (3-20-13) to ND Legislative Council
- NDUS (12-23-13) to HLC

Additional Documents Reviewed by Team

SBHE Meeting Minutes and Retreat Minutes from May 2013 through March 2014, incl.:

SBHE Retreat Minutes 2012

SBHE Meeting Minutes May 16, 2012

SBHE Meeting Minutes June 14, 2012

SBHE Meeting Minutes July 12, 2012

SBHE Meeting Minutes July 19, 2012

SBHE Meeting Minutes September 5, 2012

SBHE Meeting Minutes September 26, 2012

Draft SBHE Executive Committee Meeting Minutes October 29, 2012

SBHE Meeting Minutes November 15, 2012

SBHE Meeting Minutes January 7, 2013

SBHE Executive Committee Meeting Minutes January 17, 2013

SBHE Meeting Minutes January 17, 2013

SBHE Academic Committee Meeting Minutes January 17, 2013

SBHE Meeting Minutes March 7, 2013

SBHE Executive Committee Meeting Minutes March 7, 2013

SBHE Audit Committee Meeting Minutes March 7, 2013

SBHE Academic Committee Meeting Minutes March 7, 2013

SBHE Meeting Minutes March 14, 2013

SBHE Meeting Minutes March 21, 2013

SBHE Meeting Minutes April 26, 2013

SBHE Meeting Minutes May 9, 2013

SBHE Meeting Minutes May 23, 2013

SBHE Meeting Minutes June 2, 2013

SBHE Meeting Minutes June 3, 2013 (first and second documents)

SBHE Meeting Minutes June 20, 2013

SBHE Meeting Minutes July 31, 2013

Auditor Committee Minutes October 29, 2013

SBHE Meeting Minutes August 7, 2013

SBHE Meeting Minutes August 23, 2013

SBHE Meeting Minutes September 6, 2013

SBHE Meeting Minutes September 16, 2013

SBHE Meeting Minutes September 24, 2013

SBHE Meeting Minutes September 25, 2013

SBHE Meeting Minutes October 25, 2013

SBHE Meeting Minutes November 21, 2013

SBHE Meeting Minutes November 26, 2013

Roles and Responsibilities Task Force Minutes December 4, 2013

SBHE Meeting Minutes January 17, 2014

SBHE Meeting Minutes January 30, 2014

SBHE Meeting Minutes February 27, 2014

SBHE Meeting Minutes March 27, 2014

Position Description: Director of Academic Programs, Research, and Accreditation

Email exchanges between Lisa Feldner, Laura Glatt, and Brady Larson re: Accountability Measures requirements and Legislative Intent

Accountability Measures Report for 2012

2013 Accountability Measures for 2013 draft

2009-13 NDUS Strategic Plan

May 2011 Progress Report on 2009-13 NDUS Strategic Plan

May 2012 Progress Report on the 2009-13 Strategic Plan

II. AREAS OF FOCUS

A. Statement of Concerns Identified by the Commission President

The Commission identified the following Criteria, Core Components, and Sub-components as areas of concern:

Criterion Two. Integrity: Ethical and Responsible Conduct

The institution acts with integrity; its conduct is ethical and responsible.

Core Component 2.A.: The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows fair and ethical policies and processes for its governing board, administration, faculty, and staff.

Core Component 2.C.: The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.

Subcomponent 1: The governing board's deliberations reflect priorities to preserve and enhance the institution.

Subcomponent 2: The governing board reviews and considers reasonable and relevant interests of the institution's internal and external constituencies during decision-making deliberations.

Subcomponent 3: The governing board preserves its independence from undue influence on the part of donors, elected officials, ownership interests, or other external parties when such influence would not be in the best interest of the institution.

Subcomponent 4: The governing board delegates day-to-day management of the institution to the administration and expects the faculty to oversee academic matters.

Criterion Five. Resources, Planning, and Institutional Effectiveness

The institution's resources, structures, and processes are sufficient to fulfill its mission, improve the quality of its educational offerings, and respond to future challenges and opportunities. The institution plans for the future.

Core Component 5.B.: The institution's governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.

Subcomponent 1: The institution has and employs policies and procedures to engage its internal constituencies—including its governing board, administration, faculty, staff, and students—in the institution's governance.

Subcomponent 2: The governing board is knowledgeable about the institution; it provides oversight for the institution's financial and academic policies and practices and meets its legal and fiduciary responsibilities.

Subcomponent 3: The institution enables the involvement of its administration, faculty, staff, and students in setting academic requirements, policy, and processes through effective structures for contribution and collaborative effort.

Core Component 5.D.: The institution works systematically to improve its performance.

Subcomponent 1: The institution develops and documents evidence of performance in its operations.

Subcomponent 2: The institution learns from its operational experience and applies that learning to improve its institutional effectiveness, capabilities, and sustainability, overall and in its component parts.

B. Statements of Evidence

The advisory team visit was prompted by allegations made in April of 2013 of non-compliance with accreditation standards. Much has changed in the intervening months — a new board chair, a new system Interim Chancellor, and new staff. The advisory visit team’s position was that rather than focusing on potential *past* violations of HLC Criteria for Accreditation, the evaluation would be based on an assessment of *current* practices and the degree to which current practices comply with HLC accreditation standards.

Evidence that demonstrates appropriate compliance in each area of focus

B-1. Criterion Two, Core Component 2.A.

Criterion Two, Core Component 2.A. addresses the integrity by which a range of academic and business functions are carried out within a college, university, or higher education system. While the current advisory visit focuses attention on the activities and functions performed by the SBHE directly, and to a lesser degree, the NDUS office, Core Component 2.A. establishes the standard of conduct for the SBHE, the System office, and for each of the eleven separately accredited NDUS college and university campuses.

The types of functions addressed by this Core Component include financial, academic, personnel, and auxiliary functions. Additionally, this Core Component specifically requires that an institution’s governing board itself establish and follow “fair and ethical policies and processes.” Core Component 2.A. is implicated in the complaint that prompted the current advisory visit in several ways, including allegations that the campus presidents’ access to the SBHE had been cut off, that important policy decisions were increasingly being made by the Chancellor with little to no input from key NDUS staff and campus presidents, and perhaps most seriously, that the SBHE operated in violation of North Dakota’s open meetings law.

In addition to Core Component 2.A., the team also found it necessary to investigate the possibility that the SBHE might not be operating in a manner consistent with HLC’s Assumed Practice A9, that stipulates that it is the board’s responsibility to “engage and dismiss the chief executive officer” (campus presidents). Given the importance of integrity as the foundation for maintaining public trust and achieving system effectiveness, the team worked hard to understand the actions that fueled this aspect of the complaint and to document the changes designed to restore and strengthen internal and external perceptions of the SBHE’s integrity. Evidence that demonstrates appropriate compliance in each area of focus includes:

- The NDUS office provided documentation addressing Criterion Two, Core Component 2.A., which focuses on integrity, as well as fair and ethical practices. This documentation included a widely distributed statement by the new Board Chair on transparency and trust; blog entries from blogs maintained by the Board Chair and the Interim Chancellor; recordings and

transcripts of television, radio, and newspaper interviews; links to webcasts; and live tweets of board meetings. In putting forward this information and these social media practices, the NDUS staff was, in effect, arguing that frequent communication and transparency in relation to board and staff actions are indicative of an organization that operates with integrity. The advisory visit team concurs that extensive communication with stakeholders and transparency with respect to board and staff actions are hallmarks of operating with integrity.

- The new leadership (Board Chair and Interim Chancellor) was faced with the challenge of what to do about policy changes and practices put in place by the previous leadership team which, it was alleged, had been imposed without or with very limited consultation. Should they let those policies stand? Should the Board rescind them? Or should they take some other approach? Various policies and practices adopted under the previous leadership and that were alleged to have been imposed with minimal consultation covered a broad range of activities and ranged from a major student-related policy initiative known as *Pathways* to the practice of not allowing presidents to directly address the Board. The advisory visit team received very consistent communication from the system office staff, the presidents, and the Board members themselves about what was being done about the controversial policies and practices. These policies and practices are being systematically examined and considered for elimination, continuation, or modification. As one of the presidents noted, the system is not just reinstating what had been in place. Rather, through a consultative process, with extensive involvement of the presidents, the Board and the Interim Chancellor are reviewing these policies and taking a more systematic approach to policy-making.
- With respect to the two examples cited above, the *Pathways* plan is now being considered by a task force composed of presidents and Board members, with a report due in June, and presidents can once again directly address the Board. This measured, consultative approach to re-examining policies and practices implemented by the previous leadership can, in itself, be viewed as an example of operating with integrity.
- The team also investigated whether NDUS or the SBHE has met its legal requirements to file Accountability Measures in 2012 and 2013. In 2001 the Legislature expressed its expectations for annual performance measures as part of the biennial university system budget bill. These annual reports cover topics such as workforce training, research expenditures, retention and

graduation rates, affordability of tuition and fees, income and operating rations, and so forth. The information is usually presented in graphical form as bar graphs, line graphs and tables with accompanying descriptive texts and an executive summary.

In her letter of response to Dr. Sylvia Manning, Board Chair Dr. Kirsten Diederich (3/26/14, p. 3, #8) recited the legal requirements for reporting accountability measures. She noted that in prior years, “the Legislature had described through legislative intent...the data to be provided. Such legislative intent was not provided for the 2011-2013 and 2013-2015 biennia.” This means that the Board was not given a clear direction as to what it was the Legislature wished to have reported. Nonetheless, Chair Diederich goes on, the SBHE continued to generate an annual report that addressed the general direction of past statements of legislative intent. Chair Diederich writes that future reports would measure progress on SBHE goals in the strategic plan such as the *Pathways to Student Success* initiative. Thus Dr. Diederich explains to Dr. Manning the effort made by NDUS to anticipate the Legislature’s unspecified demands and to inform the HLC how it intended to augment the reporting.

The team inspected both the Accountability Measures Report for 2012 (pub. 12/12) and the draft of 2013 report. The final version has not been completed; it is in final review. There was a significant change in Information Technology/Institutional Research (IT/IR) staff early in 2014 and the NDUS staff is reviewing the data for accuracy in some of the measures. Upon inspection, the draft comports to the 2012 report allowing a reader to make comparison between the reports.

At the present time it appears that while there is a legal requirement to file an annual report, there currently is no specific content required of that report. The specific measures had been cited in budget bills for the 2001, 2003, 2005, 2007, and 2009 biennia, but since 2009 no budget bill has required a set of specific measures to be reported. In other words, the SBHE must write a report but there is no guidance on what that report must contain.

The team concludes the SBHE, through the NDUS office, has acted in good faith to comply with an ambiguous requirement to file an annual Accountability Measures Report. The content of the report is not specified so the Board, at its discretion, must decide what is germane. The Board created the 2012 report using the previously specified measures. The 2013 report is in the final

draft stages. As to that 2013 report, there is no date certain when the report must be filed, but the team was given to believe the final reviews are nearly completed. Given the ambiguity of the content requirements, the staff changes in the IT/IR office, and the desire to assure the accuracy of the data, the team concludes the SBHE is acting in good faith in its recent filing and preparation of the Annual Accountability Measures Reports.

- The April 2013 allegations that prompted the advisory team visit noted violations of the North Dakota Open Meetings Law. In the intervening period, the Attorney General has provided two board trainings on the Open Meetings Law. The Board Chair acknowledged that there had likely been violations of the Open Meetings Law, especially with respect to discussions of board business at informal, closed gatherings. The advisory team was provided an example of the current practice, in which certain gatherings are explicitly publicized as “social,” with the implication that, consistent with the Attorney Generals’ training, board matters would not be discussed.
- At a broader level, operating with integrity is facilitated by establishing a climate free from intimidation, in which members of a community can express their opinions without fear of reprisal and in which, most simply, people talk to each other. NDUS staff, the presidents, and Board members all attested to the change in climate created by the new leadership. One staff member said, “Previously, there had been a climate of intimidation, a fear of responding had been in place. I don’t see that now.” Another long-time staff member noted, “It’s a much different place. Board members are talking to each other.” She went on to note that processes have been established which respect deliberation: “We’re not rushing to push things through, we’re considering the impact of changes.” One president observed, “We’re more engaged now than ever” and other presidents concurred with that assessment. Another president said, “We’re 180 degrees from where we were.” Board members made repeated reference to the importance of shared governance and inclusion of varying perspectives, while noting that “at the end of the day the Board has to lead.” To the extent that a climate of collaboration facilitates operating with integrity, in the advisory visit team’s judgment, such a climate conducive of operating with integrity is currently present in relations among Board members, the system office staff, and the campus presidents.
- Finally, in its preparation for the site visit and related to standards of ethical conduct, the team learned that one of the assumed practices shared by all accredited institutions might not be met. Specifically, A 9: “The governing

board has the authority to approve the annual budget and to engage and dismiss the chief executive officer of the accredited institution.” Given the many changes in policies, there was a question about the authority of the board to “engage and dismiss” not only the chief executive officer (i.e., the Chancellor), but also the presidents of the institutions accredited by the Commission. Specifically, the question was whether the Board had ceded authority to engage and dismiss campus presidents to the Chancellor.

The team inspected SBHE policies regarding hiring and dismissal. In SBHE Policy 305.1, sub. 7(a & b) the language is clear “... (the presidents) are hired by the pleasure of the Board. Each president shall have a written contract ...” The policy further describes the terms of contracts, removal without cause, and a president’s “retreat rights,” that is, to return to a faculty post. In interviews, the Board members strongly endorsed their authority to hire and dismiss the presidents. The Presidents, likewise, confirmed that it is the Board that issues contracts and is the hiring and dismissal authority. A review of SBHE minutes indicates a Board discussion reaffirming the Board’s authority to hire the presidents (SBHE minutes 3/21/13).

The perception that the hiring and dismissal authority is otherwise likely is linked to the policy governing reporting lines of authority. Elsewhere the SBHE policies (305.2 & 3) state that the presidents report to and are responsible to the Chancellor for all matters concerning their institutions, that they are advisors on the Chancellor’s cabinet, and “have the authority to work with the Chancellor to develop, shape, and sustain the vision and mission” of their institutions. Section 305.8 describes the process whereby the Chancellor may initiate dismissal proceedings against a president and the process and rights inherent in that process. The final sentence in that section clearly states it is the Board that shall make a final decision regarding the president’s dismissal.

The presidents confirmed that they report to the Chancellor. Some answered a question that the Chancellor was also the hiring and dismissal authority. That perception of ultimate authority might be the result of an inartful question (To whom do you report?) rather than a more direct one: Who hires and dismisses the presidents? The concern raised to the team about hiring and dismissal authority, therefore, may likewise be explained by a misperceived question or answer about the Chancellor’s authority.

It is reasonable for the Board to delegate the authority to the Chancellor to supervise the presidents, even to recommend their dismissal. The evidence is clear, however, the State Board of Higher Education has the sole authority to hire and dismiss the presidents of the various institutions in the System. On review of the policies and interviews with the Board and Presidents, the team concludes NDUS fulfills the assumed practice concerning hiring and dismissal authority (A 9).

Team Determination Criterion Two, Core Component 2.A.:

- Core Component is met
- Core Component is met with concerns
- Core Component is not met

Summary Statement on Criterion Two, Core Component 2.A.:

The team's review of many NDUS and HLC documents, coupled with individual and group interviews with NDUS staff and SBHE Board members confirms that the system is currently functioning with a high degree of integrity. The Board's and NDUS staff's approach to making progress in this area is particularly noteworthy. The system has made good use of traditional and high-tech communication tools through which it has established a high degree of transparency between and among its various constituents.

NDUS is to be commended for its continued efforts to file its Accountability Measures reports even in the absence of statements of Legislative Intent that would have provided specific instructions as to what data to include or highlight. And rather than choose to simply discard all vestiges of policies and procedures enacted by former Chancellor Shirvani, the Board has chosen to systematically review these policies and procedures in an effort to hold onto those that are deemed to be good or even best practices versus those that are not.

Finally, the Board has faced its responsibility to operate within the state's open meeting law with appropriate training and changes in practice that will help the Board to operate within the law. More important, however, operating within the open meetings requirement will provide the foundation for avoiding the appearance of impropriety that is critical for establishing and maintaining the public's trust.

B-2. Criterion Two, Core Component 2.C.

Criterion Two, Core Component 2.C. speaks directly to the independence of the governing board and requires that the governing board be “sufficiently autonomous to make decisions in the best interest of the institution to assure its integrity.” The sub-components underscore areas in which autonomy can be exhibited: (1) that deliberations reflect priorities to preserve and enhance the institution; (2) that the governing board considers the interests of varied stakeholders during deliberations; (3) that the governing board preserves its independence from undue influence; and (4) that the governing board delegates institutional management to the administration and oversight of academic matters to the faculty.

In making a judgment about the board’s compliance with Criterion Two Core Component 2.C., it is essential to recognize that the North Dakota State Board of Higher Education is responsible not for the best interests of a single institution, but rather for the best interests of eleven campuses and, more broadly, for the best interests of the state’s citizens. Moreover, for public institutions that receive substantial funding from state legislatures, the concept of “autonomy” needs to be interpreted within the context of a legitimate expectation on the part of the legislature for accountability in the expenditure of public funds.

The authority and autonomy of the North Dakota SBHE is established in Article VIII of the state’s constitution:

A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the ... state educational institutions.

Thus, in contrast to other states, the North Dakota SBHE’s existence and authority is embedded in the constitution rather than in statute, and changes in the Board’s structure or authority require constitutional amendment. Evidence that demonstrates appropriate compliance in each area of focus includes:

- B-2 (1). Subcomponent 1 requires that the governing board’s deliberations reflect priorities to preserve and enhance “the institution.” Given the SBHE’s responsibilities for the North Dakota system as a whole, it is appropriate to consider compliance with Subcomponent 1 in relation to the Board’s commitment to preserving and enhancing the system as a whole. No evidence emerged during the visit that cast doubt on the Board’s commitment to preserving and enhancing the system. To the contrary, the team’s interview with the Board provided reassurance that the Board positions are filled with

dedicated volunteers, representing a diverse set of professional skills and geographic diversity, who may differ with each other on certain policies and directions, but who share a commitment to providing high quality education for the state's students.

- B-2 (2 and 4). Documentation provided by the NDUS staff addressing Criterion Two Core Component 2.C. included not only citation of the relevant article of the constitution, but also a series of policies specifying the roles and responsibilities of Board officers, Board members, Board committees, and campus presidents. This documentation speaks to the consideration of perspectives of varied constituencies during processes of deliberation and to the delegation of responsibility thereby supporting Criterion Two, Core Component 2.C. and sub-components 2 and 4.
- B-2 (2 and 4). As noted previously in this report, improvements in patterns of communication and deliberative processes over the past year, provide additional credible evidence that the expectations of subcomponents 2 and 4 are currently met.
- B-2 (3). It became apparent during the visit that the essence of the concern about compliance with Criterion Two Core Component 2.C. pertained to subcomponent 3 and whether actions of the *Legislature* toward the Board could be construed as “undue influence.” As mentioned, for public universities the duly elected representatives of the citizenry have the right and responsibility to influence via legislation the operation of public universities. Each day the Education Commission of the States publishes a listing of new legislative actions pertaining both to K-12 and to higher education. Hardly a day goes by without a listing of one or another policy pertaining to higher education being proposed or enacted by legislatures across the country.

Consequently, from an accreditation perspective, a distinction needs to be drawn between, on the one hand, the expected influence of legislatures on public higher education boards and their universities in the area of policy-making and, on the other hand, “undue influence” that might prevail in other areas.

It should not be surprising that legislators would have a perspective on whether the Board is exercising its authority effectively and ensuring that state funding is being used to maximum benefit. The perspectives of others, such as Board members or college presidents, might differ from those of the legislators. The legislators' perspectives could easily lead to interventions that

would not be preferred by the SBHE or by the campuses. However, it would be hard to characterize such differences in perspective and associated legislative policy initiatives as “undue influence.”

Nonetheless, the traditions of higher education in the United States and examples from around the country do point toward areas in which certain behaviors of legislators could be deemed as the exercise of “undue influence.” Examples can be found in the areas of admissions decisions, employment, and curriculum. A legislator who calls a public university college president and insists that a certain student be admitted, with an implicit threat to the university’s funding should admission be denied, can be deemed as exercising undue influence. Similarly, a legislator who overrides institutional hiring and dismissal policies and insists that a certain staff member be hired or fired, or else, has stepped beyond his or her proper role as representative of constituents. Finally, a legislator who usurps faculty prerogative to determine curriculum would analogously be exercising undue influence. In the present review, the visiting team found no evidence that the North Dakota Legislature has exercised undue influence on the SBHE. Accordingly, the team finds the SBHE to be in compliance with Core Component 2.C.

While the system of higher education governance in North Dakota may not be entirely unique, it is, in the experience of this review team, rare. The high profile and extremely interdependent nature of both the state Legislature and the SBHE demands a level of transparency and effectiveness of the highest order if both entities are to earn and maintain the levels of public trust needed to fulfill their missions.

The Higher Learning Commission does not accredit legislatures. However, with full respect for the authority and privileges of legislatures, the Commission does have the opportunity and responsibility to educate legislators about behaviors which compromise, or behaviors that might even *appear* to compromise, the functioning of publicly supported higher education institutions. Having such a conversation with North Dakota’s legislative leaders may be warranted in the present case and could prove to be beneficial to all concerned.

Team Determination on Criterion Two, Core Component 2.C.:

- Core Component is met
- Core Component is met with concerns
- Core Component is not met

Summary Statement on Criterion Two, Core Component 2.C.:

The question of what may or may not constitute undue influence by the North Dakota Legislature vis-à-vis the NDUS is an important one that has been considered and discussed by many over the system's history. And while the team appreciates that there may be many examples of actions taken or threats made by the Legislature that have challenged the autonomy of the SBHE, the team also recognizes that this tension is not unique to North Dakota.

During a meeting with several elected officials, the team asked how the Legislature assessed the performance of the Board and the NDUS staff. There was not a clear answer beyond, "They shouldn't do dumb things." This statement was made in reference to a number of high profile events and scandals that have reflected badly on several of the system's campuses, NDUS staff, the SBHE, and in the eyes of some observers, members of the Legislature as well. These legislators also expressed some frustration with the fact that the Board is indeed autonomous and that the only leverage held by the Legislature is financial. This exchange is important in that it reminded the team that while the focus of Criterion Two, Core Component 2.C. is the operational autonomy of the SBHE, North Dakota's Legislature has a clear interest in ensuring that the actions of the SBHE and the NDUS do not impede its ability to fulfill its role on behalf of the citizens of North Dakota.

Despite the sometimes tense relationship between these two bodies, the team found no evidence that the Legislature clearly attempts to exercise undue influence on the SBHE. In the absence of such evidence, the team would like to remind members of the SBHE and the North Dakota Legislature of the state's considerable assets with respect to its system of higher education—its faculty, staff, students, facilities, and growing financial resources—and to encourage each body to redouble their efforts to work together toward continuous improvement of the system.

B-3. Criterion Five, Core Component 5.B.

- B-3 (1 and 2). Criterion Five requires that accredited institutions have governance structures, including a governing board that promotes effective leadership. Given the population of the state of North Dakota and the number of state assisted universities, there is a single governing board for the eleven institutions; the SBHE. This basic structure has been in place for many years.
- B-3 (1 and 3). The SBHE is designated as the policy-setting and advocacy body and is composed of eight citizen members appointed from various

- regions of the state, one voting student member and two advisory (non-voting) members, one representing faculty and one representing staff. The SBHE hires a Chancellor who oversees the staff of the NDUS that supports the Board in meeting the state and institutional governance requirements established by the state Legislature and accrediting bodies, such as the HLC.
- B-3 (1, 2, and 3). B-3 (1, 2, and 3). A review of the SBHE organizational chart provided during the visit documents that there is a direct reporting line from the institutional presidents to the board and a direct reporting line from the Chancellor to the board, as well as a line that connects the Chancellor to the board through the presidents. This reflects the fact that in certain situations the SBHE governs the presidents directly, on the advice and recommendations of the chancellor, and in other situations has delegated certain responsibilities to the chancellor authorizing the chancellor to work directly with the presidents. In addition, the SBHE has reserved for itself certain decisions, such as granting tenure. In those situations the chancellor advises the SBHE and the SBHE acts on the request. On paper, the organization of the governing board sets the stage to support effective leadership and support collaborative processes among the major players with responsibilities in institutional governance. The nature of the responsibilities associated with each of these players is being reviewed by the recently created Roles and Responsibilities Task Force. Also listed on the organizational chart are several individuals who are essential for helping assure that the board meets its legal and fiduciary responsibilities. These would be the Chief Auditor, who reports directly to the board, and the Director of Legal Services/Compliance and Director of Strategic Planning, who report to the Chancellor.
 - B-3 (1, 2, and 3). A review of the approved minutes posted on the NDUS website document that the 2014 board meetings included institutional presidents and NDSU staff, unlike the minutes that accompanied the initial complaint. They further document that presidents are consulted as to where subsequent board meetings should be held, a practice that helps promote the Board's understanding of the various institutions and the communities they serve, which had been discontinued when questions were raised about whether the practice violated the open meetings law. Additionally, the minutes document healthy discussions about how the Board should operate. The Chair of the Board and the Interim Chancellor believe that the Board should set goals and that the staff should work with the institutions to meet the goals. This plan of action is evidenced in how the yet-to-be-implemented *Pathways*

to Student Success plan is being revisited and discussed across the system by faculty, staff, and students. Their recommendations will be shared with the Chancellor's Cabinet, which includes the Campus Presidents, and ultimately the SBHE. The workings of the Board and its members' relationships to each other, the public and the institutional presidents are also the subject of ongoing discussions by the Board's Roles and Responsibilities Task Force that includes several institutional presidents. Adding clarity to the various roles and responsibilities, including lines of communication, is a step towards mitigating instances such as those that led to the complaint.

- B-3 (3). The 2014 minutes also document first and second readings of proposed changes to policies; a practice that serves to assure that all interested parties have the opportunity to comment. The excessive use of the rule permitting the waiving of second readings had also been brought up in the complaint leading to the advisory visit. These minutes document second readings and final unanimous approval of important proposals to create several task-specific committees, such as the Academic and Student Affairs Committees, the Budget and Finance Committee, and the Audit Committee.
- B-3 (2). The minutes also confirmed that the Board was advised of Interim Chancellor Skogen's plan to work with the Association of Governing Boards to enhance the training of new board members and his temporary hiring of Ms. Spynczynatyk as Director of Strategic Planning. One factor believed to have contributed to the filing of the complaint was the addition of four new board members coupled with an inadequate on-boarding process. Discussions with the Board and NDUS staff made clear this is a recognized deficiency that is being addressed.

Team Determination on Criterion Five, Core Component 5.B.:

- Core Component is met
- Core Component is met with concerns
- Core Component is not met

Summary Statement on Criterion Five, Core Component 5.B.:

Taken together, the minutes document what team members heard in discussions with Interim Chancellor Skogen and this staff that they were creating a disciplined, systematic approach to giving interested parties opportunities for input and dialog, along with a return to having policies that impact the institutions come from the institutional level, rather than only from the top-down; a stark contrast to operations

under the former Chancellor. It would be helpful to see these operations codified in standard operating procedures that document how policies are implemented. Although there is a link on the NDUS website titled “NDUS procedures”, the documents in that link did not seem to represent standard operating procedures. Having written operating procedures is also a way to promote seamless transitions during leadership and staff changes.

NDUS meeting minutes also confirm what was learned from discussions with the institutional presidents that the Board has returned to an operational style that is inclusive and promotes collaboration between the Board and the individual institutions and among the institutions themselves. The experience and leadership style of the NDUS Interim Chancellor and staff, coupled with the Board’s current focus on the issues at hand, appear to be mitigating the circumstances leading to the complaint. It remains to be seen, however, if the positive momentum being created by the current team will be maintained when a new Chancellor is hired.

Evidence that demonstrates that further organizational attention and Commission follow-up are required relative to an area of focus

Criterion Five, Core Component D

The team began its work in this area of focus with two questions. First, is there a plan in place to ensure continued performance improvement? Next, is performance evaluated in a recursive manner that allows the institution to learn from its experience? It posed those questions first about the NDUS and second about the SBHE as a body. This narrative includes heavy quoting from board minutes as they are the basis of much of the team’s conclusions. Evidence that demonstrates that further organizational attention and Commission follow-up are required relative to this area of focus includes:

- The NDUS Plans and Extensions

B-4 (1 and 2). The team sought to establish the status of strategic planning at NDUS and encountered considerable confusion in its attempt to do so. The team found that NDUS had a 2009-2012 strategic plan that had been extended by Board action to June 30, 2013. Upon the Interim Chancellor’s observation that the extended strategic plan had lapsed, the Board extended it another year to June 30, 2014 (SBHE minutes 7/31/ 2013).

The process whereby the strategic plan was first extended in September 2012 is the source of much consternation as it appears to have violated open-meetings laws (SBHE minutes 9/26/12 re: private dinner) and suspended the usual process of first and second readings (SBHE minutes 9/5/12) in order to rush

through The Three-Tier Plan endorsed by the sitting Chancellor (Chaffee letter to Manning, April 3, 2013).

The strategic plan has gone by several names in the past several years. From 2009 to 2012 it was called simply the Strategic Plan. Under the former Chancellor, it was called *The Three-Tier Plan*. *The Three-Tier Plan* was augmented in September 2012 with something called *Pathways to Student Success*. Though their names are different, the goals of the former Strategic Plan and the *Pathways* plan are essentially the same: “Accessibility; Affordability; Economic development through quality education, research, training and service; and Flexibility and Responsiveness.” (<http://www.ndus.edu/board/strategic-plan/>, retrieved 5/5/14).

Quoted in minutes from the September 26, 2012 board meeting, the SBHE Chair says *Pathways* must be implemented quickly in order “... inform and engage legislators and the public in Higher Education’s vision for the future. The *Pathways to Student Success Plan* is intended to be the foundation for that vision.” In those same minutes there was a “... title change from *The Three-Tier Access Plan* to the *Pathways to Student Success Plan*.” The Board then passed a resolution “... to approve the NDUS *Pathways to Student Success Plan*, including implementation timelines, as the NDUS Strategic Plan (emphasis added by team)...”

Based on the evidence, the team concludes that *Pathways to Student Success* is essentially an addition to the NDUS strategic plan that was extended until June 2014. Having established the SBHE’s intentions regarding the strategic plan, the team then sought to understand the status of that strategic plan.

At this writing, the *Pathways* program is on hold pending further review. The former Chancellor who championed the plan and whose job it was to direct it, was bought out of his contract. In interviews, the campus presidents reported they were not allowed to participate fully in the creation of the *Pathways* program. They told the team they could not figure out just what problems were to be solved with *Pathways*, or what measures were going to be used, and were confused by contradictions in the project about mission and funding. The implementation problems were significant enough that SBHE Chair Diederich informed Dr. Manning the *Pathways* plan has been paused to obtain “... further input from the Chancellor and presidents to refine both the goals and means to achieve those goals (Letter, March 3, 2014).

Thus, the team established that *Pathways to Student Success* was to become the NDUS strategic plan. Because *Pathways* is undergoing significant review, it

is not operational at this time. The Interim Chancellor and his staff are making good faith efforts to address the concerns surrounding the *Pathways* plan and inviting constituent input into goals and objectives. Still, given the fact that the previous strategic plan had to be extended twice and that the implementation of the *Pathways* plan has been delayed, there is ample evidence to conclude that plan development and implementation are important areas of concern for NDUS. This statement does not mean there will not be a plan—even a good one—at some point. The team is simply concerned that the SBHE has not yet produced a replacement to the 2009-2012 plan.

- Measures of Effectiveness

B-4 (1 and 2). In a system of recursive evaluation, measures are used to gauge progress on stated goals. Where there are poor results, an effective process uses the information to make improvements. The team asked about measures of system effectiveness and was directed to the legally mandated Annual Accountability Measures. The team then tried to match the goals and objectives of the Strategic Plan with the legally mandated Annual Accountability Measures. It does not appear the Measures were ever intended to report directly on progress with regard to the Strategic Plan, but were different measures of effectiveness the Legislature wanted to see.

As described elsewhere, these Annual Accountability Measures cover topics such as workforce training, research expenditures, retention and graduation rates, affordability of tuition and fees, income and operating ratios, and so forth. The information is usually presented in graphical form as bar graphs, line graphs, and tables with accompanying descriptive texts and an executive summary. The Annual Accountability Measures may inform some of the strategic plan's goals, but do not report on the stated objectives in the 2009-2013 *Pathways to Student Success* plan.

The more direct measure of progress on the Strategic Plan effectiveness is detailed in another report found on the SBHE website. There, each objective is listed and the corresponding results are cited in an adjacent column indicating percentage changes from the previous year. In the next column are directional arrows to indicate how far the results were from the target (<http://www.ndus.edu/uploads/resources/3434/5-2012-strategic-plan-update.pdf>, retrieved 5/5/14).

Having found measures of progress on stated goals in the Strategic Plan, the team sought to understand how those results were used. The team inspected SBHE minutes for a period of 22 months following the publication of the May

2012 Strategic Plan Progress Update (5/12 through 3/14). Though the System office collected and reported on two measures of effectiveness—the Annual Accountability Measures and the Strategic Plan Progress—the team cannot find evidence the Board looked at or referred to them to influence improvements.

In that same review of SBHE minutes the team found an area where the Board did take action based on an evaluative report. The State Auditor undertook a review of fees collected at North Dakota State University and at University of North Dakota finding both schools inappropriately used fee money. The SBHE filed a mandated written plan with concrete measures to correct the inappropriate use of fees noted by the Auditor (SBHE minutes 9/5/2012).

Thus, the SBHE publishes two sets of data but it is unclear how they are used in the process of making changes or improvements. One data set is the mandated Annual Accountability Measure. Though legally mandated, it does not measure the goals and objectives of the Strategic Plan. The other report is the Strategic Plan Progress Update that goes objective-by-objective in citing results. In the 22 months after the publication of that report, the SBHE does not appear to have reviewed these reports or used them to inform changes. The only evidence of the SBHE responding to an evaluative report came after the State Auditor found two of its universities had inappropriately used fee money. In that case, the SBHE was legally bound to file such an improvement plan.

So, the team found a strategic plan that has been extended and re-extended pending further review, legally mandated Annual Accountability Measures that do not connect to the *Pathways* plan, and a progress report specifically listing results of the strategic plan that the Board never considered. Therefore, at the time of its visit, the SBHE could not candidly offer for inspection either an in-force strategic plan or evidence the Board used valid measures of system performance to influence change.

The team recognizes that with the *Pathways* program the SBHE was trying to make improvements in the entire system. However, the team was not able to uncover any evidence that the published measures were reviewed or cited to inform discussion.

Having made this observation, the team is aware the current System staff—in office only a short time—is attempting to make positive changes. None of the criticism of the *Pathways Plan* or the use of reported evaluations can be laid on the current staff. Indeed, the Interim Chancellor grasped the significance of the situation and moved swiftly to install new staff in order to put the problems aright.

First, *Pathways* is undergoing a full review and constituents (e.g. campus presidents as well as their faculty, staff, and students) are being consulted on what its goals and objectives should be. This is a crucial action that was missing in the previous attempt to launch the project. The Interim Chancellor hired an expert in strategic planning who has begun consulting with a wide array of constituents to create a plan for the system. As the *Pathways* project comes on line there will be new corresponding assessments reported in the Annual Accountability Measures. It might be more useful for the staff to update the Strategic Plan Annual Progress report instead. The format of that report is an objective-by-objective review of the strategic plan, whereas the Annual Accountability Measures do not comport to the *Pathways* goals.

The team concludes that NDUS does not now have a plan in place against which to evaluate performance. System-wide measures of effectiveness are collected and published but do not appear to be used by the Board to make decisions. The current administration has begun a significant effort to correct the situation. They have only just begun, however, and have not produced either an intact plan or accompanying measures. Thus the team could find no reliable process whereby the NDUS learns from its operational performance to make improvements.

- Board Performance and Evaluation

B-4 (1 and 2). The team also evaluated the governing board's role in systematically evaluating itself. Does the Board develop and document evidence of its own performance? Does the Board learn from its operational experience and apply that learning to improve its own effectiveness? The team reviewed minutes for a period of 23 months to help answer these questions. The team found deficiencies in several areas, detailed below. As cited above, there are also nascent efforts to remedy these deficiencies.

There are no clear expectations of SBHE members aside from the general duties of the Board outlined in the Constitution. Effective boards generally have expectations of members for such things as attendance, committee service, participation in events, etc. Some boards ask their members to complete annual self-evaluations to remind them of their expectations and duties. Still other boards have committee chairs lead an evaluation process of each member. There are no such expectations, no evaluations, and no process whereby members can learn to be better at discharging their fiduciary duties.

There is no systematic orientation of Board members. In SBHE minutes of September 5, 2012, the new member orientation consisted of various staff members telling new board appointees what their offices do. There was no other

evidence of attempts to orient new Board members to their duties and responsibilities (Review of SBHE minutes from 9/2012 to 3/2014). Current Board members reported a variety of cursory explanations and experiences when they were appointed to the SBHE, but no formal orientation to their duties and expectations.

There is no system of ongoing training for Board members. A significant component in the Chaffee complaint was the way the Board ignored North Dakota's open-meetings laws and suspended usual rules of order (Letter from Dr. Ellen Chaffee to Dr. Sylvia Manning 4/3/14). Given there is no comprehensive board orientation or training, it is not difficult to see how the Board could have violated open-meetings laws or allowed the usual consideration of first and second readings to be set aside in order to rush the *Pathways* proposal through. Perhaps the Board members were not aware of appropriate practices because they lacked a detailed orientation to their responsibilities.

There is also no system of evaluation for the Board. In its May 2012 Retreat, as it set goals for the future, "SBHE members agreed on these *medium level priorities*: SBHE self-evaluations, evaluations of president and Chancellor, and policy review" (emphasis added, SBHE Board Retreat minutes 5/15-16/12). In a review of 23 months of subsequent board meetings, the team found no evidence of the Board evaluating its own performance. One Board member ventured an argument to the team that if the North Dakota University System is doing well, then the Board must be doing well, and referred to the Annual Accountability Measures as evidence of success. The team does not accept this argument. As described elsewhere, these annual reports cover topics such as workforce training, research expenditures, retention and graduation rates, affordability of tuition and fees, income and operating rations, and so forth. While it is true the Annual Measures reflect on some aspects of the system, they do not contemplate the Board's own performance. Moreover, there is no evidence in the minutes that the Board ever looked at those Measures to determine how their System was doing.

There have been five Chancellors in the past seven years. The last Chancellor was so controversial the Legislature urged the SBHE to terminate his contract in order to remove him from office. There was also a considerable amount of central staff turnover. With such management and staff turnover, it is reasonable to expect any board to take stock of the situation and consider its own policies, processes, and performance in order to prevent such disarray in the future. Indeed, minutes record a member warned of the deleterious effects turnover has on an organization (Reichert in SBHE minutes 3/21/13). She raised the same concern again in May saying turnover could not be ignored. She was joined in

that sentiment by another member who observed such turnover may indicate less than ideal circumstances and lamented the loss of institutional memory. Another member admonished his colleagues about "...the controversy surrounding North Dakota higher education and expressed the opinion that the Board has acted as if there were no problems. He encouraged serious discussion of issues facing the Board" (Reichert, Hoffarth, and Hull in SBHE minutes 5/9/13). The Board did not conduct any such examination of the circumstances, policies, or its own performance that may have fostered the turnover despite its members' warnings.

As would be expected, the Board exercised due diligence in vetting the firm that would conduct the search for the next Chancellor and provided the consultant with a set of desirable qualities the Board and the presidents thought candidates ought to have (SBHE minutes 6/20/13). In interviews with the team, campus presidents observed the Chancellor's job to be an impossible one, with no clear goals to achieve and no systematic review of performance. While the following conclusion may be somewhat speculative on the team's part, it appears that the Board may view its success as being synonymous with the success of the Chancellor. If this is true, then many of the System's issues can be understood as problems with Chancellors who turned out to be a poor fit for the role as opposed to systemic weaknesses or failure in board leadership.

In addition to the team's concern regarding the Board's direct assessment of its own effectiveness and the effectiveness of the Chancellor, the minutes also record significant problems with evaluations of the campus presidents. Board policies require such evaluations be conducted, but they were mishandled. In the last few weeks of his term, the Board directed the embattled former Chancellor to perform reviews of the presidents. They did not go well. One president learned the results of his review in the newspaper. Board members "disclaimed the evaluations and the language used in them...describing the evaluations as not objective and lacking requisite dialogue" (SBHE minutes 6/20/13).

To its credit, the Board revisited the evaluations and directed the Interim Chancellor to complete the process. A month later the minutes reflect a negotiated settlement. "(The Chancellor) explained that he collaborated with presidents to complete the process, obtaining signed letters for accepted evaluations or writing new evaluations for presidents who disagreed with their prior evaluations" (SBHE minutes 7/31/13).

The problem is not solved, however. The presidents told the team they had no clear performance goals to pursue. Neither have the presidents been evaluated

against agreed upon goals (Interviews). So, while the Board resolved the 2013 evaluations, the balky system of evaluation remains.

There are problems between the SBHE and state Legislature that may relate to the Board's lack of self-awareness and insularity. Some members of the Board were quite vocal in lamenting the erosion of autonomy and authority of the SBHE. It is a Constitutional office and, they believe, should be granted wide berth in deciding matters in its purview. The members expressed deep frustration—offense, really—with what they consider meddling by legislators into higher education. That meddling comes in the form of reduced funding, mandatory accountability measures, and now even a referendum to altogether eliminate the SBHE from the North Dakota Constitution.

For their part, several legislators expressed to the team that the SBHE is a runaway board that is not responsible to anyone. “It is the fourth branch of government” and “the tail wagging the dog,” with presidents getting what they want without strong Board leadership. These legislators are frustrated by what they considered to be frequent embarrassing stories in the media. The only way to remove a Board member is by an impeachment conviction. Some of the legislators felt, therefore, the only influence that could be exerted on the SBHE's actions is by mandating Annual Accountability Measures and through the funding process. Though the team met with only a subset of the Legislature, it is a fact that a majority in both houses passed the requirement for the Annual Accountability Measures and all funding bills. Likewise, it required a majority in both houses to put forth a referendum on eliminating the SBHE from the Constitution. Indeed the Constitutional amendment to eliminate the SBHE is the strongest possible message that a majority of the North Dakota Legislature insists on a change in the way the SBHE operates.

The frustrations between the SBHE and legislators seem to connect to the Board's insularity. It is not unreasonable that legislators would scrutinize how the Board operates and insist on changes. As a Constitutional office, the Legislature, too, has duties and responsibilities. This statement does not in any way offer an opinion on the merits or correctness of the referendum effort, only that there is evident frustration with the way the SBHE has operated. And the Board is not unaware of these frustrations. Both the minutes and interviews demonstrated evidence that there are tensions between the SBHE and state Legislature.

The university system as a whole is effective and the legislators support it. The members who met with the team expressed strong and proud support for the colleges and universities. Students, they feel, are still getting a good education. It is the Board's own effectiveness that is in question.

- Indicators of Change

B-4 (1 and 2). When the State Auditor in the February 2013 compliance audit suggested the "...University System Office make improvements with the university system's strategic planning and measuring performance processes" Management responded, "We agree and will work to follow the recommendation."

The work began at its June 2, 2013 meeting when a consultant with expertise in university systems "led a Board discussion on topics such as fiduciary duties; conflicts of interest; conducting Board meetings; the roles and responsibilities of Board members, the chancellor, institutional presidents, and NDUS staff; protocol for working with the chancellor, presidents, and staff; proper lines of communication; and communication with third parties."

Upon her election, the current Board Chair observed that her main aspiration "...is to restore trust within the university system. She explained that this would involve more than the relationships between the Board and NDUS presidents, but also those between the Board and legislators, the Board and the greater community, and those among the Board members" (SBHE minutes 7/31/13). In furtherance of that aspiration, she outlined a set of goals for 2013-2014. Among them is the declaration that the Board will "... undertake a self-evaluation and governance education" (SBHE minutes 7/31/13). In the Board interview and referenced in minutes, the team learned that the Association of Governing Boards has been called on for consulting about governance.

Later that fall, the SBHE unanimously accepted the Interim Chancellor's own set of six goals. Enumerated therein are: to implement and execute a NDUS communications plan; ensure the implementation of the *Pathways to Student Success Plan* after input from the Task Forces and presidents; re-institute a strategic planning process that will result in a consensus developed, system-wide update to the current strategic plan; and develop a strategic plan for the university system (SBHE minutes 11/2013). The Chancellor, in answer to a direct question, said the systems office will assist the Board in orientation and education.

In response to the turmoil experienced in the NDUS and to address the HLC inquiry, a joint Roles and Responsibilities Task Force was created by Board action (SBHE minutes 8/23/13). That task force will examine the duties, authority, and relationships of the presidents, Chancellor, and North Dakota University System office. The stated goals include setting a governance model, roles and

responsibilities, defining the CEO position, and identifying and clarifying authority and accountability.

As to faulty evaluation practices, the Interim Chancellor, at the Board's direction, attempted to rectify the manner and results of the previous review of campus presidents (SBHE minutes 7/31/13). In that same meeting the Board chair observed "...presidential evaluation process involves the steps of establishing goals at the beginning of the year; submitting a self-analysis to the Chancellor; the Chancellor drafting an evaluation; and the possible reconciliation of any disagreements about the evaluation between the Chancellor and the presidents."

It appears, therefore, a positive effort is recently underway to improve the understanding and agreements as to each constituent's role in a system of shared governance and evaluation. It is not yet clear how the goal setting for evaluating the presidents is proceeding, but the team presumes those discussions will be tied to both the implementation of the *Pathways* plan and the Roles and Responsibilities Task Force.

Team Determination on Criterion Five, Core Component 5.D.:

- Core Component is met
- Core Component is met with concerns
- Core Component is not met

Summary Statement on Criterion Five, Core Component 5.D.:

Members of the team believe that the Interim Chancellor, his System staff, and the current board leadership are most sincere in trying to address the Board's governance issues related to goal setting, self-evaluation, and accountability for improvement. There is frank recognition of the problems and the SBHE has published goals to bring about change.

Additionally, there is evidence that goal setting and self-evaluation are becoming a higher priority for the SBHE. At the time of the visit, however, these efforts had only just begun and were far from being implemented. The system staff has been in office for less than six months and is working very hard to revise and implement a strategic plan. The SBHE Chair is not yet halfway through the year when the goal of self-evaluation and training is to be achieved. The team recognizes, however, that there is only so much change that can be implemented in such a short period of time.

Therefore, at the time of the visit, the team finds that the SBHE minimally meets Criterion 5, Core Component D to the extent that recent SBHE and NDUS actions indicate a genuine desire to improve the Board's and system's performance. The team recommends appropriate HLC follow up and monitoring to ensure that current fledgling efforts toward continuous board and system improvements quickly become standard operating procedure for the SBHE.

Final Summary: The nature of this advisory review does not require the team to make specific recommendations with respect to its findings. And while the team's finding that currently SBHE is minimally compliant with Criterion 5, Core Component D and the team's concern about the efficacy of Measure 3 (see related report under separate cover) are significant issues, they are, in the professional opinion of this review team, and depending on the results of the November referendum, imminently solvable.

The team extends its thanks to everyone who assisted in the planning and execution of the site visit and offers its best wishes to everyone who will be involved in designing and delivering a best-in-class system of higher education for the citizens of North Dakota.