September 2, 2014

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

Dear Chancellor Skogen:

I am writing to convey the remarks of the Higher Learning Commission (“the Commission”) Advisory Visit team regarding North Dakota House 2013 Concurrent Resolution 3047, which proposes to repeal Section Six of Article VIII of the North Dakota Constitution, thereby replacing the current board of higher education with a three-member commission of higher education to oversee and administer the provision of all public higher education in the State of North Dakota. The team raises significant questions about how the revised governance structure laid out in Resolution 3047, or Measure Three as it will be identified on the ballot in November, will meet the Commission’s requirements related to governance.

In the event that Measure Three is approved there will be significant responsibilities for your staff and the system institutions in the next several months related to the new governance arrangements, particularly with regard to accreditation. Accreditation does not automatically continue at a college or university that undergoes a change in its governance structure. Instead an institution anticipating a change in governance must seek approval from the Commission prior to implementing the new governance structure. The Commission’s Change of Control, Structure or Organization policy governs this process. An institution anticipating a change in governance must file with the Commission an application for change of control and structure that includes detailed plans explaining how faculty, administration, and the governing body will work together within the new governance structure to govern the institution following the requirements in the Commission’s Criteria for Accreditation. The application must also provide detailed plans for how institutional operations will take place under the new governance structure. The Commission will conduct a detailed due diligence review of the proposed change of control and structure that will include a Fact-Finding Visit to the public colleges and universities in the state. Commission staff members and peer reviewers will populate the team. The Commission will prepare a Fact-Finding Visit Report and Staff Summary Report that will explain what the Commission heard on the visit and that will analyze how the proposed transaction meets the requirements of the Commission, particularly the Commission’s Eligibility Requirements and Criteria for Accreditation.

At the end of the review, the Commission’s Board of Trustees will make the decision regarding whether or not to approve the continuation of accreditation after the new governance arrangements become effective. Approval is by no means guaranteed. Even if the Board approves the continuation of accreditation the Board may do so subject to a period of Commission monitoring or even sanction for one to two years of all eleven institutions until the institutions demonstrate the effectiveness of the new governance arrangements.
It is very important that you and the public institutions in the North Dakota University System understand the enormity of what is being proposed in this Constitutional amendment. There are very few details in the language in the amendment that provide any assurance that the Commission’s requirements about governance, which represent not just the Commission’s requirements but practices recognized across higher education in the United States as effective college governance practice, will be met. In addition, the proposed implementation date of July 1, 2015 provides little time to develop the details of an effective new governance process before the implementation date arrives. If the Change of Control and Structure application to the Commission is to be successful in achieving approval for the governance change these details will need to be fleshed out prior to the application deadline in early February, and individuals across the system will need to be prepared to discuss them with the Fact-Finding Team in spring of 2015. The team’s analysis of Measure Three provides a roadmap for identifying some of the many areas that will need to be addressed in the implementation plan.

My staff and I stand ready to assist you both in answering any questions you have about the Commission’s governance requirements or about the Commission’s Change of Control, Structure or Organization process.

Best wishes to you in the upcoming academic year.

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. Bresciai, 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
TEAM OBSERVATIONS ON MEASURE 3

The Higher Learning Commission Advisory Visit Team was requested to learn more about a ballot measure, House Concurrent Resolution No. 3047, scheduled to go before voters in November of 2014. The team’s consideration of this Resolution was particularly challenging due to the lack of detail regarding exactly how NDUS would operate under full implementation of the measure. While the team has not identified any provision of Measure 3 that, on its face, violates current HLC accreditation standards or assumed practices, the team is concerned that there are many details related to the implementation of the Measure that, if not handled properly, could place the system’s accreditation status at risk.

The complete text of the resolution is provided below. Due to the lack of details regarding implementation, and the speculative nature of the Resolution as an action that may or may not be approved by voters, much of the team’s analysis is offered as a series of questions for consideration by the HLC, NDUS, SBHE, and the North Dakota Legislature. The team’s analysis and questions regarding the measure are interspersed within the italicized text of the resolution.

HOUSE CONCURRENT RESOLUTION NO. 3047

A concurrent resolution to create and enact a new section to article VIII of the Constitution of North Dakota, relating to the creation of a commission of higher education; to repeal section 6 of article VIII of the Constitution of North Dakota, relating to the state board of higher education; and to provide an effective date.

STATEMENT OF INTENT

This measure would create a three-member commission of higher education beginning on July 1, 2015, to oversee and administer the provision of all public higher education this state.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THERIN:
That the following proposed new section to article VIII of the Constitution of North Dakota and the repeal of section 6 of article VIII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2014, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article VIII of the Constitution of North Dakota is created and enacted as follows:

1. A three-member commission of higher education is created for the purpose of overseeing and administering the provision of public higher education at sites that include Bismarck, Bottineau, Devils Lake, Dickinson, Fargo, Grand Forks, Mayville, Minot, Valley City, Wahpeton, and Williston.

If approved by voters, this Resolution, commonly known as Measure 3, would change the state’s constitution by repealing section 6 of article VIII of the Constitution thereby abolishing the current SBHE and replacing it with a three-member appointed body that would take the place of the current SBHE. To this point in the resolution, relevant accreditation-related questions and observations include:

- If Measure 3 is approved by voters, would this body serve as the governing board for each of the state’s current colleges and universities?

- If this body is to serve as the governing board for each of North Dakota’s state-assisted institutions, is it reasonable that such a small group can provide meaningful oversight for eleven institutions? Would such a structure fulfill both the letter and the spirit of HLC’s Assumed Practices A.8 and A.9?

- If this body is to serve as the governing board for each of North Dakota’s state-assisted institutions, are the terms “overseeing” and “administering” as noted in Section 1-1 of the resolution to be understood as the granting of full authority for this commission to fulfill its governance role as required by HLC Core Component 5.B., Subcomponent 2?

- In the absence of clarifying language, to whom does the commission report?

- Is the term “sites” as used in Section 1-1 synonymous with the name of each of the state-assisted institutions currently located in each of these communities? Does use of the word “sites” convey any intent on the part of the Legislature vis-à-vis the possible passage of Measure 3?
2. The governor shall appoint each member of the commission from a list of at least three nominees agreed to by a majority of the following:

a. The speaker of the house of representatives;
b. The president pro tempore of the senate;
c. The chief justice of the North Dakota supreme court;
d. The superintendent of public instruction; and
e. A representative of an educational interest group selected by three of the four aforementioned individuals.

3. The governor shall ensure that one member of the commission has leadership experience in a private sector business, industry, or service, and that one member, at the time of appointment, holds a professional position within the higher education sector. Each member of the commission must be confirmed by the senate.

4. The term of office for each commission member is four years, except that the initial terms must be staggered by lot so that no more than one member’s term expires each year. Each term begins on July first and members may be reappointed to three consecutive terms.

While these clauses within the resolution clarify the process by which commission members are to be appointed, they offer no practical understanding of how the critical processes of governance for North Dakota’s colleges and universities would be competently handled. As was expressed by more than one individual during the advisory visit, how might a three-member commission, even as full-time, paid professionals, be better at fulfilling its complex governance responsibilities than the current eight volunteer members? Additional questions related to this part of the resolution include:

• Given the intense, legislatively-driven process for appointment to the commission, including the requirement that commission members must be confirmed by the senate, how would this group’s autonomy in matters of institutional governance, as required by HLC Core Component 2.C., be maintained or even strengthened over current practice?

• How might the desire for reappointment to subsequent terms of service influence the work, judgment and autonomy of commission members?

• As noted in Section 1, 2-e of the resolution, what is an “educational interest group” and what might be the impact of such groups in this process?

• How does this selection process account for legitimate regional differences and needs between each of the state’s colleges and universities?

5. A member of the commission is subject to removal by impeachment in the same manner as that established for the removal of the governor.
6. a. The commission has full executive responsibility for the management and operation of the North Dakota university system, within constitutional and statutory requirements and limitations.

   b. The commission shall hire a president for each institution within the system and each president shall report to the commission.

7. The legislative assembly may provide for the appointment of an advisory board that includes a faculty and a student representative.

Team questions arising from these sections in the resolution include:

- How might the very public nature of removal from office by impeachment influence the work, judgment, and autonomy of commission members?

- If this body is to serve as the governing board for each of North Dakota’s state-assisted institutions, is the term “full executive responsibility” as noted in Section 6a of the resolution to be understood as the granting of full authority for this commission to fulfill its governance role as required by HLC Core Component 5.B., Subcomponent 2?

- Does this Resolution presume the ongoing existence of the NDUS office? How would the commission organize itself to carry out its work?

- What would be the role of the legislatively appointed advisory board as noted in Section 7 of the resolution? How would this board be constituted and used so as to provide meaningful advice on behalf of eleven institutions?

**SECTION 2. REPEAL.** Section 6 of article VIII of the Constitution of North Dakota is repealed.

**SECTION 3. EFFECTIVE DATE.** If approved by the electors, this measure becomes effective on July 1, 2015.

**TEAM SUMMARY ON HOUSE CONCURRENT RESOLUTION NO. 3047**

While the team understands that a Concurrent Resolution being offered for voter approval is not intended to serve as a detailed operational plan, the lack of detail around these and many other potential questions regarding the functioning of the proposed commission, in the opinion of the team, poses significant risks to the functioning of North Dakota’s system of higher education as a whole and to future reaffirmation of accreditation for its individual institutions.
In the absence of additional information, the team’s observations about Measure 3 fall into two primary areas of concern. First, “Can a paid, three-member commission completely and competently fulfill all required governance responsibilities for eleven state-supported colleges and universities distributed across the state of North Dakota and in so doing, also fulfill HLC Assumed Practices A.8 and A.9?”

The framework for the governance of North Dakota’s state-assisted colleges and universities as proposed by Measure 3 would appear to position the state as an outlier when compared to the governance practices of most large and complex organizations in the US, including boards representing business and industry, healthcare, nonprofit agencies, and public and higher education.

While the team has not identified any provision that, on its face, violates current HLC accreditation standards, it challenges the imagination to envision how the proposed commission structure will provide commission members the autonomy to lead NDUS institutions with the welfare of each institution’s students, faculty, staff, and the communities that each serve, as the foremost consideration in the judgments that they would be called upon to make. Thus, simply stated, the team’s second major concern with respect to Measure 3 is “Will a governing body, developed per the requirements of Measure 3, command or be given sufficient autonomy to meet the intention of HLC Core Component 5.B., Subcomponent 2?”