

North Dakota State Board of Higher Education
May 27, 2021, Meeting Minutes

The State Board of Higher Education met on Thursday, May 27, 2021, at 8:30 a.m. CT, Bismarck Capitol, Brynhild Haugland room, 600 East Boulevard Avenue, Bismarck, ND, 58505.

SBHE Members participating:

Mr. Nick Hacker, Chair	Dr. Casey Ryan, Vice Chair
Ms. Erica Solberg	Ms. Kathleen Neset
Dr. Jill Louters	Mr. Tim Mihalick
Ms. Danita Bye	Dr. John Warford
Ms. Retha Mattern, Staff Adviser	Dr. Elizabeth Legerski, Faculty Adviser

Chancellor present: Dr. Mark Hagerott

Institution Representatives Present:

Dr. Brian Van Horn, President, MaSU
Dr. Steve Shirley, President, MiSU
Dr. John Miller, President, WSC
Dr. Jerry Migler, Dean, DCB
Dr. Doug Darling, President, LRSC
Dr. John Richman, President, NDSCS
Dr. Margaret Fitzgerald, VP, NDSU
Dr. Doug Jensen, President, BSC
Dr. Debora Dragseth, VP, DSU
Mr. Andy Armacost, President, UND
Dr. Alan LaFave, President, VCSU

NDUS Senior Staff Participating:

Mr. Tammy Dolan, NDUS
Ms. Lisa Johnson, NDUS
Mr. Darin King, CTS
Ms. Kristie Hetzler, NDUS
Ms. Jane Grinde, NDUS
Ms. Brenda Zastoupil, NDUS
Mr. Jerry Rostad, NDUS
Ms. Terry Meyer, NDUS
Ms. Karol Riedman, NDUS
Mr. David Krebsbach, NDUS

Others Participating:

Mr. Eric Olson, AG Office
Incoming Board Member, Mr. Jeffrey Volk
Incoming Board Member, Ms. Gracie Lian

1. **Agenda**

Ryan moved, Warford seconded, to approve the agenda as presented.

Warford, Mihalick, Neset, Louters, Bye, Solberg, Ryan, and Hacker voted yes.

2. **SBHE Strategic Plan**

- a) 1st Reading, [Policy 100.4](#), Mission and Vision of the North Dakota University System
- b) 1st Reading, [Policy 100.5](#), Beliefs and Core Values of the State Board of Higher Education
- c) [Metrics](#)

Ryan moved, Bye seconded, to re-direct 1st reading of Policies 100.4 and 100.5, metrics, and goals, as discussed during the May 26th SBHE retreat, back to the SBHE Research and Governance Committee to continue reviewing, discussing, and collecting input.

Louters, Bye, Warford, Mihalick, Neseť, Solberg, Ryan, and Hacker voted yes.

Board Consent (3- 9)

- 3. [April 29, 2021](#), Meeting Minutes

SBHE Budget and Finance Committee

- 4. [Authorize DSU to proceed with fundraising for a new athletic complex](#) with an estimated Phase I cost of \$7,000,000 that includes \$913,000 previously authorized.
- 5. [DSU Tuition Model Factor Change Request](#).
- 6. [UND to sell 421 Princeton Street and two adjacent vacant lots](#) (419 Princeton Street and a negotiated portion of 425 Princeton Street) to total an estimated 28,800 sq. ft. and request the SBHE or a designee of the Board to approve the terms of the conveyance.

SBHE Audit Committee

- 7. [Purpose and Mission for Internal Audit](#)

SBHE Research and Governance Committee

- 8. [Chancellor's Performance Process/Timeline](#)
- 9. [New Board Member Orientation](#)

Mihalick moved, Solberg seconded, to approve the consent agenda, items 3 – 9.

Louters, Bye, Warford, Mihalick, Neseť, Solberg, Ryan, and Hacker voted yes.

10. 2021-2023 Biennial Budget Guidelines

Ms. Tammy Dolan presented the proposed [2021-23 Biennial Budget Guidelines](#). The Board discussed various components.

Ryan moved, Mihalick seconded, to approve the 2021-2023 Biennial Budget Guidelines, as presented.

Mihalick, Neseť, Solberg, Ryan, Louters, Bye, Warford, and Hacker voted yes.

Mr. Olson reviewed proposed amendments to the following policies (items 11, 12, and 13); he explained the amendments were made to comply with House Bill 1503 and the SBHE Academic and Student Affairs Committee did recommend approval.

- 11. **1st Reading, Policy 401.1, academic freedom**
- 12. **1st Reading, Policy 503.1, student free speech**
- 13. **1st Reading, Policy 503.3, Student Political Rights**

Louters moved, Warford seconded, to approve 1st reading of policies [401.1](#), [503.1](#), and [503.3](#), as presented.

Warford, Mihalick, Neset, Louters, Bye, Solberg, Ryan, and Hacker voted yes.

Mr. Olson reviewed proposed amendments to Policies 520 and 308.3:

14. **1st Reading, Policy 520, Title IX**

Louters moved, Warford seconded, to approve 1st reading of Policy 520, as presented.

Louters, Bye, Warford, Mihalick, Neset, Solberg, Ryan, and Hacker voted yes.

Mr. Olson reviewed proposed amendments to policies 520 and 308.3:

15. **1st Reading, Policy 308.3, Political Activities**

Ryan moved, Bye seconded, to approve 1st Reading, Policy [308.3](#), Political Activities, as presented.

Warford, Mihalick, Neset, Louters, Bye, Solberg, Ryan, and Hacker voted yes.

Ms. Brenda Zastoupil reviewed proposed amendments to policy 508:

16. **1st Reading, Policy 508, Student Grant, Scholarship, Loan Repayments**

Ryan moved, Louters seconded, to approve 1st Reading, Policy [508](#), Student Grant, Scholarship, Loan Repayments, as presented.

Mihalick, Neset, Solberg, Ryan, Louters, Bye, Warford, and Hacker voted yes.

17. **NDSCS Career Academy Lease Agreement ([recording 51:45 – 104:00](#))**

The original NDSCS proposal for a career academy to be located in Fargo, North Dakota, was tabled in November of 2016; Board members at that time requested NDSCS include an MOU that protects the SBHE and State of North Dakota from any liabilities, including financial liability. The MOU should include language that clearly states no state funds will be requested and/or used now or in the future for any portion of the project. In [June of 2017, the Board Chair allowed the project to be placed on the agenda as an information/update](#) to the Board. during that meeting a motion was made to re-consider allowing NDSCS to begin fund raising only, without utilizing any state and/or NDUS dollars. The June 2017 vote passed 5 to 3; NDSCS began fundraising and has since re-worked their proposal for a Fargo based career academy; a model that is functionally different than other ND career academies. The proposal before the Board today is only consideration of a lease and is based on the proposed new model which will be owned by the NDSCS Foundation and NDSCS will lease the new facility from their foundation. [NDSCS is seeking approval of the attached lease agreement](#), which is planned to take effect on the 1st day of August, 2022. The new proposal offers an alternative model from other ND career academies, but will also collaborate with K-12, the private sector, and university system.

Legal Counsel, Mr. Eric Olson statements:

- The intent of previous Board action (SBHE meeting June 2017) is unclear/inconclusive; he stated a colleague in the Attorney General's office agreed.
- He has reviewed the attached lease agreement, has offered President Richman amendments to assure certain protections are in place, those amendments are currently being reviewed by NDSCS Foundation, they have not been incorporated in the attached lease.
- Several years ago, NDSCS's original proposal, was presented as a capitol project, requiring certain levels of approval(s), including from the SBHE.

- The attached, current proposal no longer falls within the definition of a capital project (15-10.12.1 of Century code) (SBHE policies 901.1, 901.2, and 901.3) and no longer requires SBHE approval because the NDSCS Foundation would own.
- Most campus foundations are nominally independent (policy 340.2)
 - Inquiring with the state's risk management division for clarity of state liability/independence, etc...
- Liability is minimal in comparison to past failed campus projects involving their foundation(s).
 - The lease agreement between NDSCS and the NDSCS Foundation is considered a lower risk because the building it is considered a physical asset.
- Currently, the project is a twenty million dollar project with an option to become a thirty million dollar project, if funds become available. If additional funds are used, it may become a state project, but may or may not fall under the definition of a capital project.

The Board discussed and members expressed concerns as follows, but not limited to:

- Liability and legal protections for the SBHE, State of North Dakota, and tax payers.
- Legislation recently appropriated a generous amount of monies to support the current career academies; however, under NDSCS's proposal (operational structure), those monies may not be available to the proposed Fargo based academy. Board members question why divert from a long standing, functionally successful operating structure; and further, divert from what the state already supports.
- No oversight with projects involving campus foundation(s)
 - Past failed projects involving campus foundations resulting in costs to tax payers and causing strained relations between legislators, Board, and Chancellor's office.
 - Foundations being independent, need to be financially responsible and accountability.
- Action/process by NDSCS for project oversight/approvals/SBHE support
 - Circumventing ownership to the NDSCS Foundation since the original proposal (2016/2017).
 - Lack of communication to the SBHE, including a ground breaking ceremony scheduled in the next couple weeks.
- State funds have been utilized in the fund raising process, regardless of Board directive:
 - NDSCS employees being utilized
 - Advertising
 - Planning team/Consultants/Bids/Construction team
- Having only four Fargo school districts and their ability to support the operational needs of a career academy.
- The effects it will have on NDSCS (Wahpeton) faculty, staff, students and the community of Wahpeton.

Ms. Neset followed with clarification to some previous statements made by others:

- The June 27, 2017, SBHE meeting video is still available for viewing and it is clear what the SBHE approved and did not approve, it was conclusive.
- The June 27, 2017, meeting minutes, are a permanent record of what was approved, what is required, and what is prohibited:
 - The agenda item was approved to be on the agenda as a briefing, not action item. The vote to take it off the table from the November 16, 2016,

- SBHE meeting, passed 5 to 3 -- Ms. Neset noted, the split vote, made it clear the Board needed more time and information prior to taking action.
- As the Board Chair (during the June 2017 meeting), Ms. Neset made several requests to hold on action and stated the agenda item was only approved to be on the agenda as a briefing.
 - President Richman, along with other supporters of the workforce project presented information encouraging the Board to authorize NDSCS to begin fund raising from the private sector for the project.
 - Any further requests would require appropriate legislation and go before the SBHE for authorization.
 - The Board noted they do not endorse leasing, renting, building, or buying of additional buildings or property; and, prohibit any use of state funds now and in the future without proper authorizations.
- The SBHE does not approve the President's goals; per SBHE Policy, it is the role and responsibility of the Chancellor to approve their goals.

Ms. Neset reminded the board members of their fiduciary responsibility and re-iterated the Board does not and will not have any authority and/or oversight of the NDSCS Foundation or the Fargo based workforce academy if the NDSCS Foundation owns the facility.

She closed by stating that she fully supports the current NDUS workforce academies, appreciates the support/funding from legislators, and recognizes the successful operating structure through K-12 partnership(s). Ms. Neset stated she does not support and will vote against approving NDSCS's request and accept fiduciary responsibility without any oversight and/or authority regarding the lease, the new building, selected location.

President Richman addressed some of the Board questions and concerns, as follows:

- Since 1998, NDSCS has been renting and operating a facility in Fargo that provides educational and training opportunities for a variety of learners such as high school students, college students, adult learners, new Americans, as well as the incumbent workforce.
- President Richman stated NDSCS and the NDSCS Alumni Foundation have been operating together with a Lease Agreement since May 2011.
- The plan will expand and enhance our ability to attract, retain and grow businesses and develop opportunities for all types of learner's success in the workforce.
- The need for the new facility is to enhance and expand educational and training opportunities, NDSCS, in collaboration with various K-12 School Districts, business and industry, and public leaders have been fundraising and planning the development of a new facility that will allow for enhanced curriculum with relevant learning for successful outcomes.
- The following four school districts have approved funding to assist in the day-to-day operational expenses for 10 years: Northern Cass Public Schools, Central Cass Public Schools, West Fargo Public Schools and Fargo Public Schools.

- He acknowledged the NDSCS Foundation is currently reviewed Mr. Olson's proposed amendments.

Mihalick moved, Solberg seconded, to approve the Lease Agreement between NDSCS and NDSCS Alumni Foundation, based on Policy 909.

Mihalick, Louters, Warford, Solberg, and Hacker voted yes. Neset, Bye, and Ryan voted no.

Motion passes.

18. Executive Session (10:30)

Mihalick moved, Bye seconded, to enter into executive session to receive a Security/Penetration Test briefing from Vice Chancellor Darin R. King and to address other matters related to NDUS cybersecurity and other security plans. The executive session shall be limited to voting board members, nonvoting advisors, the chancellor, invited NDUSO and institution staff, and board counsel.

The legal authority for closing this portion of the meeting is N.D.C.C. 44-04-18.4(7) and 44-04-19.2(1).

Louters, Bye, Warford, Mihalick, Neset, Solberg, Ryan, and Hacker voted yes.

Executive session began at 10:34 a.m. CT.

SBHE Members participating:

Mr. Nick Hacker, Chair	Dr. Casey Ryan, Vice Chair
Ms. Erica Solberg	Ms. Kathleen Neset
Dr. Jill Louters	Mr. Tim Mihalick
Ms. Danita Bye	Dr. John Warford
Ms. Retha Mattern, Staff Adviser	Dr. Elizabeth Legerski, Faculty Adviser

Chancellor present: Dr. Mark Hagerott

NDUS Senior Staff Present:

Mr. Tammy Dolan, NDUS
 Ms. Lisa Johnson, NDUS
 Mr. Darin King, CTS
 Mr. Brad Miller, CTS
 Ms. Terry Meyer, NDUS
 Ms. Kristie Hetzler, NDUS
 Mr. Jerry Rostad, NDUS

Others Present:

Mr. Eric Olson, AG Office
 Incoming Board Member, Mr. Jeffrey Volk
 Incoming Board Member, Ms. Gracie Lian

Mihalick moved, Ryan seconded, to adjourn executive session at 11:20 a.m. CT.

Warford, Mihalick, Neset, Louters, Bye, Solberg, Ryan, and Hacker voted yes.

Break

19. **Reconvene Open Meeting** (11:40)

The SBHE Chair and members accepted the report relating to NDUS cybersecurity and other security plans as presented in executive session. Chair Hacker stated the Board received a brief given by Mr. King in October of 2020, relating to potential risks if there is not system-wide implementation of upgraded security software. The Board expressed concerns and directed all campuses to work with CTS to begin, continue, and/or complete the implementation of the software as soon as possible. They noted the original directive was given to the campuses in October of 2020 and all campuses should be at some level of the implementation. Mr. King is to report back if potential risks continue.

20. **Nominations of Chair and Vice Chair** – [Policy 310.2](#)

Louters moved, Bye seconded, to nominate Dr. Casey Ryan as Chair of the State Board of Higher Education, beginning July 1, 2021.

No further nominations were made for Chair.

Mihalick, Neset, Solberg, Ryan, Louters, Bye, Warford, and Hacker voted yes.

Mihalick moved, Solberg seconded, to nominate Dr. Jill Louters as Vice Chair of the State Board of Higher Education, beginning July 1, 2021.

No further nominations were made for Vice Chair.

Solberg, Ryan, Mihalick, Neset, Louters, Bye, Warford, and Hacker voted yes.

Ryan moved, Bye seconded, to nominate Ms. Terry Meyer to continue serving as the Secretary of the State Board of Higher Education.

No further nominations were made for Secretary.

Neset, Louters, Bye, Solberg, Ryan, Mihalick, Warford, and Hacker voted yes.

SBHE Committee Reports, items 21 – 24:

21. SBHE Audit Committee report provided by Ms. Kathleen Neset.

22. SBHE Research and Governance Committee report provided by Dr. Casey Ryan.

23. SBHE Budget and Finance Committee report provided by Mr. Tim Mihalick.

24. SBHE Academic and Student Affairs Committee report provided by Dr. Jill Louters.

25. [Legislative Update](#) was provided by Ms. Tammy Dolan and Mr. Olson reviewed outcomes of Senate Bill 2030.

26. **President Biden's Higher Education Initiative**

Chancellor Hagerott provided information regarding the initiative.

27. NDSA report given by Ms. Erica Solberg.

28. CCF report given by Dr. Elizabeth Legerski.

29. Staff Senate report given by Ms. Retha Mattern.

30. **Public Comment** – No public comment.

31. **Motion to Adjourn**

Ryan moved, Mihalick seconded, to adjourn the meeting at 12:45 p.m. CT.

Neset, Louters, Bye, Solberg, Ryan, Mihalick, Warford, and Hacker voted yes.

Meeting adjourned at 12:55 p.m. CT.

Approved September 29, 2021.