

North Dakota State Board of Higher Education
October 28, 2021, Meeting Minutes

The State Board of Higher Education met on Thursday, October 28, 2021, at 8:30 a.m. CT, via Team Live

Chair Ryan called the meeting to order at 8:30 a.m. CT.

SBHE Members participating:

Dr. Casey Ryan, Chair	Dr. Jill Louters, Vice Chair
Ms. Gracie Lian	Mr. Nick Hacker
Mr. Tim Mihalick	Mr. John Warford
Mr. Jeffry Volk	Ms. Danita Bye
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. Bernell Hirning, President, WSC
Dr. Jerry Migler, Dean, DCB
Mr. Corry Kenner, VP, LRSC
Dr. John Richman, President, NDSCS
Dr. Doug Jensen, President, BSC
Mr. Steve Easton, J.D., President, DSU
Dr. Andy Armacost, President, UND
Dr. Alan LaFave, President, VCSU
Dr. Dean Bresciani, President, NDSU

NDUS Senior Staff Participating:

Mr. David Krebsbach, NDUS
Ms. Jane Grinde, NDUS
Ms. Lisa Johnson, NDUS
Mr. Darin King, CTS
Ms. Terry Meyer, NDUS
Ms. Kristie Hetzler, NDUS
Mr. Jerry Rostad, NDUS

Others Participating:

Dr. Joshua Wynne, Dean of UND Medical School
Mr. Eric Olson, AG Office

1. **Agenda**

Hacker moved, Louters seconded, to approve the agenda with the amendment to remove item #12 - Policy 401.1 academic freedom; the policy was approved on previous agenda.

Hacker, Louters, Lian, Volk, Warford, Mihalick, Bye, and Ryan voted yes.

2. **Update on Valley City State University Steam Plant**

[Valley City State University Steam Plant update](#) provided by President LaFave and Mr. Wesley Wintch.

Board Consent (3- 7)

3. September 30, 2021, Meeting Minutes
4. August 12, 2021, Special Meeting Minutes

SBHE Academic and Student Affairs

5. [Tenure](#)
6. [2022-23 TrainND Business Plan](#)
7. [NDSU Request for New Center: Center for the Study of Digital Society](#)

Louters moved, Warford seconded, to approve the consent agenda, items 3-7.

Mihalick, Volk, Warford, Louters, Hacker, Bye, Lian, and Ryan voted yes.

8. **Executive Session**

Mihalick moved, Louters seconded, to enter Executive Session to (1) consider the appointment of, and contract terms for Interim President of North Dakota State College of Science; and (2) limit the executive session to voting board members, nonvoting advisors, the chancellor, invited NDUSO staff, and board counsel.

The legal authority for closing this portion of the meeting is North Dakota Century Code sections 15-10-17(1)(d) and 44-04-19.2.

Warford, Mihalick, Volk, Louters, Hacker, Bye, Lian, and Ryan voted yes.

Executive session began at 8:51 a.m. CT.

SBHE Members participating:

Mr. Nick Hacker, Chair

Ms. Erica Solberg

Dr. Jill Louters

Ms. Danita Bye

Dr. Elizabeth Legerski, Faculty Adviser

Dr. Casey Ryan, Vice Chair

Ms. Kathleen Neset

Mr. Tim Mihalick

Dr. John Warford

Chancellor present: Dr. Mark Hagerott

Others Present:

Ms. Terry Meyer, NDUS

Ms. Kristie Hetzler, NDUS

Mr. Jerry Rostad, NDUS

Mr. Eric Olson, AG Office

Bye moved, Warford seconded, moved to adjourn at 9:07 a.m. CT.

Lian, Volk, Warford, Mihalick, Bye, Hacker, Louters, and Ryan voted yes.

Reconvene Opening Meeting (9:15 a.m. CT.)

Mihalick moved, Louters seconded, to appoint Mr. Harvey Link as Interim President of North Dakota State College of Science, beginning December 6, 2021, and to authorize Chancellor Hagerott to negotiate contract terms.

Mihalick, Bye, Hacker, Lian, Volk, Warford, Louters, and Ryan voted yes.

9. **Federal Vaccine Mandate**

Mr. Eric Olson, Assistant Attorney General and Dr. Joshua Wynne, Dean of University of North Dakota Medical School, provided information regarding the federal mandate, including, but not limited to the federal rules and regulations related to COVID-19. The Board discussed the timeline to comply, the North Dakota Attorney General's interpretation and position, and if/how other states are addressing the mandate.

Board members noted they fully support the prerogative of the NDUS institutions to take all reasonable and appropriate steps to comply with federal rules and regulations related to COVID-19 in order to continue to mitigate the spread of the virus and ensure that NDUS institutions remain financially sound. The Board empowers and supports institution Presidents and the Chancellor to make such decisions and prepare such procedures as they deem necessary to carry this [Resolution](#) into effect, including to comply with federal guidance and regulations regarding COVID-19 vaccination requirements where not doing so would imperil the fiscal health of the institution(s) or the university system.

Presidents expressed several concerns, including, but not limited to the following:

- Negative funding impacts
- Various Interpretations of the language in the proposed resolution
- Level of flexibility allowed within the federal guidelines
- Definition of federal contracts, contractors, and/or employee(s)
- Decline in research due to reduced federal funding
- Masking compliance
- Impact on student enrollment
- Negative impacts on staff and faculty

Mihalick moved, Louters seconded, to approve the resolution, as presented.

The Board further discussed language in the resolution that gives individual institutions a broad range of authority to take any action(s) to comply with the federal mandate. Some Board members expressed concern(s) that the institutions could take opposing positions and/or actions that differ from one another and could create lack of consistency. They also discussed the level of oversight by the Chancellor, several components of the federal mandate that are not clear and/or have conflicting interpretations, and the guidance is extremely broad, causing uncertainties.

Bye moved, Hacker seconded, to table the motion to approve the resolution as presented and hold a special SBHE meeting within one or two weeks, to allow time for Presidents and Board members to review the resolution.

Further discussion regarding the urgency for a timeline that allows Presidents the flexibility to respond to the mandate deadline, changing components, and to communicate their campus plan(s).

Motion to table action on the proposed resolution and to schedule an additional SBHE meeting:

Hacker and Bye voted yes. Warford, Louters, Mihalick, Volk, Lian, and Ryan voted no; motion failed.

Motion to approve the resolution as presented:

Warford, Louters, Mihalick, Volk, Lian, and Ryan voted yes. Hacker and Bye voted no; motion passed.

10. UND Memorial Village P3 Lease Agreement

Mr. Jed Shivers presented the proposal for [UND's Memorial Village P3 Lease Agreement](#).

Mihalick moved, Hacker seconded, to approve the proposed lease agreement for UND Memorial Village P3; and further, require the financial terms & length of lease to be presented to the SBHE Budget and Finance Committee for consideration and/or approval.

Volk, Warford, Louters, Mihalick, Hacker, Bye, Lian, and Ryan voted yes.

11. Honorary Degree

Ms. Lisa Johnson presented a recommendation from NDSU for an Honorary Degree.

Volk moved, Warford seconded, to award on Honorary Degree in agriculture from North Dakota State University to Mr. Neal Fisher.

Warford, Louters, Mihalick, Volk, Hacker, Bye, Lian, and Ryan voted yes.

~~12. 1st Reading, [Policy 401.1](#) academic freedom removed from agenda~~

Ms. Lisa Johnson presented the following policy amendments and deletions for first reading, items 13, 14, and 15:

13. 1st Reading, Policy 412, Transfer of Credits

14. 1st Reading, Policy 411, Admission

Louters moved, Warford seconded, to approve first reading of policies [412](#) and [411](#).

Lian, Volk, Warford, Mihalick, Bye, Hacker, Louters, and Ryan voted yes.

15. Deleted policies (consolidated to streamline)

- a. Policy [402](#) Delegation of Admission Authority
- b. Policy [402.1](#) First Year Applicants-Certificate, Diploma, and Associate Degree Programs
- c. Policy [402.1.1](#) Standardized Test Scores
- d. Policy [402.2](#) First Year Applicants - Baccalaureate Programs
- e. Policy [402.3](#) Home Educated and Other Special Categories of Applicants
- f. Policy [402.4](#) Admission Policies - Transfer Applicants
- g. Policy [402.5](#) Admission Policies - Former Students
- h. Policy [402.6](#) Admission Policies - Graduate and First-Professional Degree Programs
- i. Policy [402.7](#) Admission Policies - Selected Undergraduate/Graduate Programs
- j. Policy [402.8](#) Admission Policies - Non-resident Students
- k. Policy [402.9](#) Admission Policies - New International Students
- l. Policy [402.10](#) Admission Policies - Students Enrolling Under Reciprocal Agreements

m. Policy [402.11](#) Tests of High School Equivalency

Louters moved, Warford seconded, to approve first reading of deleted policies, items 15 (a - m).

Mihalick, Bye, Hacker, Louters, Lian, Volk, Warford, and Ryan voted yes.

Mr. Eric Olson presented amendments to the following policies for first reading:

- 16. **1st Reading, Policy 503.1, Student Free Speech & Expression**
- 17. **1st Reading, Policy 520, Title IX Sexual Harassment**

Louters moved, Warford seconded, to approve first reading of policies [503.1](#) and [520](#).

Bye, Lian, Volk, Warford, Mihalick, Hacker, Louters, and Ryan voted yes.

Mr. Eric Olson presented amendments to the following policies for first reading:

- 18. **1st Reading, Policy 311, Public Records**

Board members expressed concerns of various components within the policy as presented. Member Volk requested attendance at the next Research and Governance meeting to participate in discussion, as he has several questions.

Bye moved, Warford seconded, to approve first reading of [policy 311](#), for the purpose of opening up discussion to the full Board, and further return policy 311 back to the Research and Governance Committee in November for additional discussion and consideration.

Lian, Volk, Warford, Mihalick, Hacker, Louters, and Ryan voted yes. Bye voted no. Motion passed.

- 19. **1st Reading, Policy 312, Public Meetings**

Board members indicated that they understand the intent of policy 312, but disagree to creating new policies. They stated the policy as presented is more procedural in nature and suggested a guidance document be created by legal in lieu of a new policy. They also indicated that open meeting laws are already clearly stated in statute and should be advised when and if that statute is amended through the guidance document.

Volk moved, Warford seconded, to approve first reading of policy [312](#), for the purpose of opening up discussion to the full Board, and further return policy 312 back to the Research and Governance Committee in November for additional discussion and consideration.

Lian, Volk, Warford, Bye, Mihalick, Hacker, and Ryan voted no. Louters voted yes. Motion failed.

Mr. David Krebsbach presented amendments to the following policies, first reading of policy 820 and second reading of policies 830.0 and 830.2:

- 20. **1st Reading, Policy 820, Waiver and Tuition Assistance**

Legal Counsel, Mr. Olson stated full disclosure that he is an assistant attorney in the Attorney General's office and policy 820 includes a benefit that would be available to him if they Board passes the proposed amendments. He explained that in previous years, the system office employed legal staff; however, legislation has removed them from the system office and placed them under the Attorney General's office. The Attorney

General's office assign legal representatives to the SBHE and system under the new structure, The draft policy would qualify legal representatives that work with institutions and their dependants for a tuition waiver to the NDUS institutions.

The Board discussed the number of employees the benefit would be available to and the potential financial impact of the institutions.

Mihalick moved, Bye seconded, to approve first reading, waive second reading and final adoption of Policy [820](#), with a retroactive date of August 1, 2021. Mihalick, Hacker, Bye, Lian, Louters, and Ryan voted yes. Volk and Warford voted no. Motion passed.

Ms. Lisa Johnson presented the following policy amendments for second read and final adoption, items 21 and 22:

21. **2nd Reading, Policy 830.1, Student Payment**

Louters moved, Warford seconded, to approve second reading and final adoption of policy [830.1](#).

Mihalick, Bye, Hacker, Louters, Lian, Volk, Warford, and Ryan voted yes.

22. **2nd Reading, Policy 830.2, Refunds**

Louters moved, Bye seconded, to approve second reading and final adoption of policy [830.2](#).

Mihalick, Bye, Hacker, Louters, Lian, Volk, Warford, and Ryan voted yes.

Board Report/Updates/Discussion

- 23. SBHE Audit Committee report provided by Mr. Nick Hacker.
- 24. SBHE Research and Governance Committee Report provided by Dr. Casey Ryan and Ms. Danita Bye.
- 25. SBHE Academic and Student Affairs Committee report provided by Dr. Jill Louters.
- 26. NDSU Presidential Search update provided by Dr. Jill Louters.
- 27. NDSCS Presidential Search update provided by Mr. Jeffry Volk.

Chancellor Report

- 28. ARPA update provided by Chancellor Hagerott.

Other Reports:

- 29. NDSA provided by Mr. Michael Linnell.
- 30. CCF provided by Dr. Elizabeth Legerski.
- 31. Staff Senate provided by Ms. Retha Mattern.
- 32. Public Comment – no public comment.

The meeting adjourned at 12:40 p.m. CT.

Approved 12-9-21.