

North Dakota State Board of Higher Education
December 10, 2024, Special Meeting Minutes

The State Board of Higher Education met on Tuesday, December 10, 2024, at 11:00 a.m. via Teams.

Chair Mihalick called the meeting to order at 11:00 a.m. CT.

Roll Call

SBHE Members

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| <input checked="" type="checkbox"/> Mr. Tim Mihalick, Chair | <input checked="" type="checkbox"/> Ms. Danita Bye, Vice Chair |
| <input checked="" type="checkbox"/> Mr. Kevin Black | <input checked="" type="checkbox"/> Dr. Casey Ryan |
| <input type="checkbox"/> Mr. Jeffrey Volk | <input checked="" type="checkbox"/> Mr. Curtis Biller |
| <input checked="" type="checkbox"/> Mr. Max Eriksrud | <input checked="" type="checkbox"/> Mr. DJ Campbell |
| <input checked="" type="checkbox"/> Mr. Michael Linnell, Staff Advisor | <input checked="" type="checkbox"/> Dr. Lisa Montplaisir, Faculty Advisor |

Institutions

DCB Dean Simone, **DSU** Acting President Orton, **LRSC** President Darling, Mr. Lloyd Halvorson
MaSU President Van Horn, **MiSU** President Shirley, **NDSCS** President Flanigan, **NDSU** Dr. David Bertolini, **UND** Dr. Eric Link, **VCSU** President LaFave, **WSC** President Hirning.

System Office/Guests

NDUS Chancellor Hagerott, VC Lisa Johnson, VC David Krebsbach, VC Jerry Rostad, Ms. Jane Grinde, Ms. Claire Gunwall, Mr. Chris Pieske, Ms. Dina Cashman, Dr. Billie Jo Lorus, Mr. Eric Jensen, Ms. Jamie Wilke, Ms. Caitlin Magilke, Ms. Bethany Kadrmaz **CTS** VC Tom Danford, Mr. Corey Quirk, **Assistant Attorney Generals** Ms. Meredith Larson

Call to Order

Ryan moved, Black seconded, to approve the agenda, as presented.
Approved by consensus.

1. Tenure Policies

[Summary of all Tenure Policy Edits](#)

a. Policy 305.1 [Institution President Authority and Responsibilities; Contract Terms](#)

- a. VC. Johnson shared that section 7 was added to Policy 305.1 to include language from N.D.C.C. that was passed in the last legislative session regarding the authority of presidents of institutions to adopt policies, procedures, and directives for the institution with input but no authoritative control from faculty and others through shared governance.
- b. Black moved, Bye seconded, to waive the second reading of Policy 305.1 and approve as presented.
Biller, Black, Bye, Campbell, Eriksrud, Ryan, and Mihalick voted yes. Motion passed 7-0.

- b. Policy 602 [Faculty Appointment Report](#)
 - a. VC. Johnson shared that language was added to Policy 602 to clarify that faculty are defined as one of three categories: probationary, tenure, or special. Furthermore, VC. Johnson clarified that probationary is defined as a faculty member who is working towards the award of tenure which generally takes about 6 years to achieve. Special appointments are reported as full-time or part-time special appointments.
 - i. Member Ryan suggested keeping the word faculty throughout the policy in order to clarify each appointment. Mr. Pieske stated that it would be appropriate to include the word faculty throughout the policy.
 - ii. Ryan moved, Bye seconded, to add the word faculty throughout the policy where appropriate, waive the second reading of Policy 602, and approve as amended.
Biller, Black, Bye, Campbell, Eriksrud, Ryan, and Mihalick voted yes. Motion passed 7-0.
- c. Policy 612 [Faculty Grievances](#)
 - a. VC. Johnson shared that Member Black submitted an edit to delete section 2, b from Policy 612 which states 'Whether the action constitutes a clear abuse of discretion.' Additionally, VC. Johnson shared that the NDUS Academic Affairs Council supported the deletion of this section in the policy.
 - b. Black moved, Ryan seconded, to waive the second reading of Policy 612 and approve as presented.
Biller, Black, Bye, Campbell, Eriksrud, Ryan, and Mihalick voted yes. Motion passed 7-0.
- d. Policy 605.1 [Academic Freedom and Tenure; Academic Appointments](#)
 - a. VC. Johnson shared that Policy 605.1 is being retitled to Academic Appointments.
 - b. Section 2, b adds language that defines faculty to be a class of employees who have appointments that are probationary, tenure, or special appointments excluding coaches and administrators in their capacities as coaches or administrators.
 - c. Language in section 2, c was transferred to section 5, a of Policy 605.3.
 - d. Section 3, d regarding multiple-year contracts has been removed from Policy 605.1 and has been moved to Policy 605.3 in sections 2, 3 and 6.
 - e. Clarifying language was added to item 4, f stating other criteria established by the institution.
 - f. Clarifying language was added to item 4, h related to N.D.C.C. Additional clarifying language was added to item 4, h, i. stating that institution procedures must include an annual evaluation of probationary, tenure, and special appointment faculty. Furthermore, language was added to item 4, h, ii. that institution procedures must include a post-tenure evaluation. The original policy language stated that the first post-tenure evaluation must occur within 3 years and subsequent evaluations must be completed every 5 years or more frequently.

- i. Member Black had recommended that subsequent evaluations should occur every 3 years. The NDUS Academic Affairs Council did not support that recommendation and suggested that subsequent evaluations should be completed every 5 years or more frequently if the institution chose to do so.
 - ii. Member Black stated after many conversations with legal counsel and faculty leadership, he is willing to pull back his suggested edit of subsequent post-tenure evaluations occurring every 3 years so long as the board continues to discuss language that can be added to the policy if there are cases where a faculty member has consecutive years of low performance or negative remarks in their annual reviews. Mr. Pieske shared that there is language within Policy 605.3 that includes reasons why a tenured faculty member could be disciplined or terminated. Dr. Montplaisir shared that within the Post Tenure Ad Hoc Draft Report, it does state that if there is a negative annual review by peers, administration, or an immediate supervisor it triggers a practice improvement plan in the following year and if there are 2 negative reviews within a 5-year period, it triggers a comprehensive post-tenure review prior to that 5-year window.
- g. Item 4, h, iii, added language that criteria should include teaching and the scholarship of teaching, as well as other scholarly or professional activities as defined by the institutions.
- h. Clarifying language was added to section 4, h, v that contract provisions shall be reviewed annually and may be revised by the institution when appropriate.
- i. VC. Johnson shared that the original language in item 6, b stated that tenured appointments are recognized as a "right of continuous employment" and Member Black suggested to change the language to read that tenured appointments are recognized as an "expectation for continuous employment". Furthermore, VC. Johnson shared that the Academic Affairs Council were in support of adopting the AAUP definition that states a tenured appointment is an indefinite appointment that can be terminated only for cause or under extraordinary circumstances such as financial exigency and or program discontinuation.
- j. Clarifying language was added to item 6, b, i. which states that the SBHE may award tenure under exceptional circumstances to any individual who has not met the eligibility of subdivision 5,a, provided that the individual held a tenured appointment at another institution. A tenure candidate under exceptional circumstances shall follow the review and recommendation made pursuant to the institutional policies and procedures.
- k. Clarifying language was added to section 7, a that special appointments can be part-time or full-time.
- l. Ryan moved, Biller seconded, to amend section 4, h, i to read subsequent post-tenure evaluations shall be completed every 5 years, and to waive the second reading of Policy 605.1.
Biller, Black, Bye, Campbell, Eriksrud, Ryan, and Mihalick voted yes. Motion passed 7-0.

- e. Policy 605.2 [Standing Committee on Faculty Rights](#)
 - a. VC. Johnson shared that Member Black made suggested edits to section 3 which states that proceedings before a standing committee on faculty rights shall be open to the public. The committee may close proceedings to the public when considering exempt or confidential records or upon receiving a reasonable request to close proceedings when discussing or reviewing sensitive employee records. VC. Johnson shared that the NDUS Academic Affairs Council proposed an alternate recommendation that suggested that the proceedings before the standing committee on faculty rights should be open to the public, but that either the faculty member or the institution may request that the proceedings be closed.
 - b. Ryan moved, Black seconded, to adopt recommended language that stated "proceeding before a standing committee on faculty shall be open to the public. The faculty member or the institution may request that the proceedings be closed, in which case the proceedings shall be closed", to waive the second reading of Policy 605.2 and approve as presented. Biller, Black, Bye, Campbell, Eriksrud, Ryan, and Mihalick voted yes. Motion passed 7-0.
- f. Policy 605.3 [Nonrenewal, Termination or Dismissal of Faculty](#)
 - a. VC. Johnson shared that Member Black suggested striking the subsections in section 1, a which states notice shall be given 90 days prior to termination for the first year of probationary employment, 180 days prior to termination during the second year of probationary employment, one year prior to termination after two years or more of probationary employment, and instead notice shall be given at least 90 days prior to termination for those who are on probationary status.
 - b. Member Black commented that the SBHE should be looking at the modernization of employment practices and that he believes one year is too generous for a probationary faculty member who is not yet tenured.
 - c. Dr. Monplaisir shared that CCF has heard concerns from institutions regarding the 90-day notice, and a consideration could be one semester notice so that institutions could potentially make alternative arrangements.
 - d. Member Eriksrud shared that from a student perspective, if a faculty member is on a termination plan it could cause negative experiences for students.
 - e. Member Ryan suggested changing the timeframe to 120 days to better align with one semester notice (17 weeks x 7 days/week = 119).
 - f. Language was added to section 3 stating an institution may terminate a multi-year contract with no less than 90-day notice of nonrenewal based upon a determination by the SBHE that a financial exigency exists which requires such action is necessary because of loss of legislative appropriation, loss of institutional or program enrollment, consolidation of organizational units or program areas or elimination of courses.
 - g. VC. Johnson shared that Member Black suggested striking section old 4 which would remove the review by the Standing Committee on Faculty Rights from all but tenured faculty.
 - i. VC. Johnson shared that the NDUS Academic Affairs Council did not support this recommendation.

- ii. Mr. Pieske shared that if this section is removed from the policy it would result in those professors and instructors having fewer rights than all other state employees outside of higher ed.
- h. VC. Johnson indicated section old 5 was moved to Policy 605.4, 1.
- i. VC. Johnson shared that Member Black suggested edits section 4 which states a faculty member may terminate an appointment by giving 90-day notice in writing.
 - i. VC. Johnson shared that the NDUS Academic Affairs Council did not support the 90-day notice requirement and that it could possibly exacerbate the problem. Several presidents have cited that this has not been a pervasive problem.
 - ii. Member Black commented that without requiring written notice, it could be unfair to a faculty member's colleagues, as well as the students.
 - iii. Ms. Meredith Larson stated that the current policy reads as though the faculty member would need to complete their contract, and it doesn't allow them to terminate in advance of their contract completion date. Furthermore, Ms. Larson stated that the employee's contract is the prevailing authority. Ms. Larson suggested that the policy language be rewritten so that it is interpreted the same by all board members and employees alike.
- j. VC. Johnson shared in section 5 Member Black recommended reducing the notice given to tenured faculty who are terminated due to financial exigency, program elimination, elimination of courses, etc., from 12 months to 90 days. VC. Johnson shared that the NDUS Academic Affairs Council did not support this edit.
- ~~g. Policy 605.4 [Hearings and Appeals](#)~~
- ~~h. Policy 605.5 [Mediation](#)~~

Adjourn

Ryan moved, Ericksrud seconded to adjourn the meeting at 12:35 p.m. CT.
Approved by consensus.

Approved January 30, 2025.