

North Dakota State Board of Higher Education

September 18, 2019, Governance Committee Meeting Minutes

The State Board of Higher Education Governance Committee met on Wednesday, September 18 at 3:30 p.m. CT., via conference call, originating from the North Dakota University System Office Conference Room, State Capitol, 10th floor, 600 E. Boulevard Ave., Bismarck, ND 58505.

Mr. Traynor called the meeting to order at 3:30 p.m. CT.

Members Present:

Mr. Dan Traynor (Chair)
Ms. Jill Louters
Mr. Nick Hacker

Others Present:

Chancellor Hagerott
President Shirley, MiSU
President Darling, LRSC
President Bresciani, NDSU
Dr. Joshua Wynne, UND
Ms. Tammy Dolan, NDUS
Ms. Karol Riedman, NDUS
Ms. Lisa Johnson, NDUS
Ms. Kristie Hetzler, NDUS
Ms. Terry Meyer, NDUS
Dr. Jen Weber, NDUS
Mr. Darin King, CTS
Ms. Laura Schrott, NDUS
Mr. Eric Olson, Asst. A.G. and General Counsel

1. **Agenda**

Louters moved, Hacker seconded, to approve the agenda.

Louters, Hacker, and Traynor voted yes.

2. **Meeting Minutes**

Louters moved, Hacker seconded, to approve the June 19, 2019, meeting minutes.

Hacker, Louters, and Traynor voted yes.

3. **Presidential Contract(s)**

The SBHE recently (June meeting) discussed the need for a more detailed/robust presidential contract and requested legal counsel draft and submit a document to the Governance Committee for initial review. During the June meeting, Board member Traynor was tasked with

providing additional language to be including in new Presidential hire contracts. He worked with Assistant Attorney General Olson and requested he get feedback from the Chancellor's

Cabinet. Mr. Olson stated he did receive feedback from the current Presidents and he also studied several contracts from across the country and ended with the [current proposed draft](#). He provided an overview, including, but not limited to the following:

- Employment/responsibilities/performance reviews
- Terms
- Compensation
- Resignation before end of term/suspension or termination for cause;
Committee had concerns with language on page 8, paragraph 9, sections c and e:
(c) Arrest of [President] on, or bringing of, charges that are likely to result in a conviction of a felony or a crime of moral turpitude with such determination of likelihood to made by the SBHE in its sole discretion.
d. Conviction or an entry of a plea of guilty or of nolo contendere to a felony or crime of moral turpitude.
(e) A finding by the State Auditor's Office, the SBHE Office of Compliance or Internal Audit, or any outside auditor of fraud, misappropriation, or fiscal misconduct by [President]; provided that all reviews and appeals related to any such finding have been exhausted.

Committee Chair Traynor asked Mr. Olson to go through some of the concerns of current campus Presidents:

General Concerns:

- Many requirements and consequences, but no real incentives (bonuses, etc.). This was a common refrain throughout. Concerns were raised that with NDUS already well below the national average, imposing these contractual terms could make candidates less likely to apply.
- Several Presidents expressed concern that having so much detail in contracts would be detrimental where similar information and requirements are also set forth in policies, where if the policies change it would require revisions to contracts. Presidents would prefer to see more information left in policy, and far less information in the contract.
- Presidents were unanimously opposed to any part of this contract being incorporated into annual renewals. Some stated if that was the plan, there would need to be conforming changes so that existing Presidents would be held in conformance with their existing duties and so forth.

Specific Concerns:

- Presidents expressed concerns that the recruitment fee is effectively a noncompete clause that lacks incentives and would be a significant deterrent for applicants. There were also concerns raised regarding effectiveness, as it would largely not affect the presidents, as their new institution would be covering the fee, and if they are resigning for any other reason it would not be imposed anyway.
- A president raised the issue of the extent to which this more in-depth contract would need to trickle down to vice presidents, provosts, etc.
- Resignation for Good Cause (Section 10) – A president raised concerns that it was inconsistent with Paragraph 7, as that Paragraph only applied if presidents went to another institution.

The following specifics were also briefly discussed:

- Liability/protections to all parties bound to contracts
- Current contracts in place for Presidents
- Performance bonuses
- Demographic compensation/benefits
- Inclusion of responsibilities outside a President's control (*ex: change enforced by outside entities, such as, the National College Athletic Association (NCAA)*)
- The possibility of two versions of Presidential contracts will be necessary, a new hire contract and a renewal contract:
 - Chancellor Hagerott expressed concern with changing renewal contracts; however, he agrees for the need of updating Initial (new hire) contracts and have it completed prior to UND and BSC completing their current process.

Committee Chair Traynor stated this draft was only the initial one; he will continue to work on it based on input from today and the committee will re-visit at their next meeting.

4. **Policy 308.3 Political Activities**

Ms. Karol Riedman and Ms. Lisa Johnson reviewed proposed amendments to [policy 308.3](#). The vetting process was explained, including conversations with the SBHE student representative and the NDSA President.

*Louters moved, Hacker seconded, to recommend approval of first reading of policy 308.3.

The committee discussed further.

Traynor moved to table policy 308.3, lack of a second, motion failed.

*The committee re-verted back to Louter's motion to recommend approval for first reading. Louters voted yes, Hacker voted no, Traynor abstained, motion failed.

Committee Chair Traynor exercised his authority to move first reading of policy 308.3 forward to the full Board without a recommendation from the committee.

5. **Policy 308.4 Conflict of Interest**

Ms. Riedman reviewed proposed amendments to [policy 308.4](#).

*Louters moved, Hacker seconded, to recommend approval of first reading of policy 308.4.

The committee discussed concerns regarding acting on unknown areas of conflict and lawyer ethics rules. Members agreed it is difficult to be aware of all potential conflicts. Legal counsel will further review both concerns and return with more input at the next committee meeting.

Hacker moved to table policy 308.4, lack of a second, motion failed.

*The committee re-verted back to Louter's motion to recommend approval for first reading. Louters voted yes, Hacker and Traynor voted no, motion failed.

6. Board self-evaluation

Ms. Schratt reviewed the [Board self-evaluation report](#) that was completed by Board members to identify areas of potential improvements. If approved, the next step is to prioritize the work needed in those areas.

Louters moved, Hacker seconded, to recommend approval of the Board self-evaluation as a final report.

Louters, Hacker, and Traynor voted yes.

7. Prioritization of 2019 Board Self-evaluation

Ms. Schratt reviewed a draft document [prioritizing identified areas for Board improvement\(s\)](#). The committee requested Ms. Schratt draft a recommendation that the committee can utilize as a base to consider. They also requested to re-visit it at their next meeting.

8. U.S. Congress Investigation of ED TECH and Student Privacy: Briefing and Discussion

Mr. King and Dr. Weber

- Institutional Research – [Ethical and Responsible Use of Analytics in Reporting](#)
- [Data Collection Article](#)
- [School Issued Devices and Student Privacy Article](#)

9. Large Project Summary Report

Mr. Darin King provided a report on current [Core Technology's large projects](#)

10. Improving NDUS Efficiencies

The committee inquired if there were any efficiencies to streamline processes and procedures in the back end of creating the Board agenda and/or the meeting. The system office staff explained the process and flow that involves multiple representatives from all the institutions through the various council meetings. They also stated the process for policies and procedures has also been thoroughly streamlined to best keep the institutions apprised and ample time to provide input prior to Board review. Each council lead also invites representatives from the North Dakota Student Association to participate. The office staff stated they will inquire if the institutions have recommendations during their October council meetings and report back to the committee at their next meeting.

11. Advocacy for Chancellor Contract

The system office indicated there has been ongoing discussions regarding improving the Chancellor's annual performance review process by replicating the process taken in closed session for the Presidents. This would allow more open and direct input from all Board members and provide better guidance to the Chancellor in areas he/she may need. Chancellor Hagerott stated he has been in support of this change for the past couple of years and would like to see a draft bill submitted at the next legislative session. He explained open meetings restrict conversations that are significant for the Board, Chancellor, and campus leadership to have to ensure the system as a whole is moving in the right direction in specific areas. Ms. Dolan indicated it would not be difficult to propose a bill. She will work with Mr. Olson to amend language utilized for the Presidents and simply duplicate for the Chancellor. The Committee agreed they will use that as a base to begin their discussion at their next meeting.

12. SBHE Committees

The committee postponed discussions regarding [SBHE Committee](#) membership until their next meeting.

13. Search Firms/RFP process

Ms. Tammy Dolan explained that in 2015 the system entered into three-year contract with four selected agencies the system office and/or institutions can select from to hire for specific searches. In 2018 those contracts were renewed until 2021. She noted the masterplan submitted to a selected agency can be modified to fit the scope as needed and having the agreement in place minimizes the time it takes for new hire searches. The RFP and masterplan did not require Board approval; however, the committee requested to review both the RFP and masterplan to determine if there are restrictions limiting options, including, but not limited to, internal searches for cost savings. The Committee will re-visit at a future meeting.

The meeting adjourned at 4:40 p.m. CT.

Approved October 17, 2019.