The State Board of Higher Education met Monday, February 13, 2012, at 3:04 p.m. CT, by conference call. The call originated in the North Dakota Attorney General’s office, 1st floor, State Capitol, Bismarck, ND.

Members present:
- Mr. Grant Shaft, President
- Mr. Duaine Espegard, Vice-President
- Dr. Terry Hjelmstad
- Mr. Robert Vallie, Student Member
- Ms. Janice Hoffarth, Staff Senate Advisor
- Dr. John Girard, Faculty Advisor

Staff members present:
- Mr. William G. Goetz, Chancellor
- Mr. Pat Seaworth, General Counsel
- Ms. Erika Lorenz, Secretary

Presidents/Dean participating:
- Dr. Gary Hagen, MaSU
- Dr. David Fuller, MiSU
- Dr. Dean Bresciani, NDSU
- Dr. John Richman, NDSCS
- Dr. Robert Kelley, UND
- Dr. Steve Shirley, VCSU
- Dr. Raymond Nadolny, WSC

Others participating:
- Mr. Wayne Stenehjem, North Dakota Attorney General

Update regarding UND nickname and discussion with Attorney General Stenehjem
Mr. Shaft said the signatures from the referendum petition drive have been submitted to the North Dakota Secretary of State’s Office. Submission of the signatures has effectively placed a hold on the statute repealing the required use of the Fighting Sioux nickname. The University of North Dakota (UND) is now required to use the Fighting Sioux nickname until a referendum vote is held June 2012. The Secretary of State’s office is in the process of certifying the signatures submitted.

Mr. Wayne Stenehjem, North Dakota Attorney General, said the SBHE has the ability to request a declaratory decision from the court on the constitutionality of the law requiring UND to use the nickname and logo. The SBHE could also not choose to seek a declaration of the constitutionality and let the matter proceed to a vote and based on the outcome of the vote then ask for the declaratory decision.
Mr. Stenehjem said the issue concerns whether the 2011 legislative enactment encroached upon the authority of the SBHE. He said North Dakota courts have made it clear that legislative enactments are presumed to be constitutional. Also, it requires four out of five North Dakota Supreme Court Justices to declare a statute unconstitutional. He believes if the matter is brought to the North Dakota Supreme Court, the court would decide the statute violates the North Dakota Constitution. Mr. Stenehjem said a petition could be brought seeking an injunction and asking for an expedited hearing. Mr. Stenehjem recommended the SBHE not wait until after the referendum vote in June. He would attempt to get an agreement for an expedited hearing and a ruling by the middle of March.

In response to a question from Dr. Hjelmstad regarding the possibility of a vote by the Standing Rock Tribe, Mr. Shaft said the SBHE undertook exhaustive efforts to obtain the approval of the Standing Rock and Spirit Lake tribes. Attorney General Stenehjem said the terms of the settlement with the NCAA established a time limit by which agreement of the tribes was required; the time limit expired in November of 2010. The Spirit Lake Tribe held a vote and the tribal council gave its approval. The Stand Rock tribal council did not give its approval.

In response to a question from Mr. Vallie regarding NCAA sanctions, Mr. Stenehjem said he suspects the NCAA has placed UND back on the sanctions list. Mr. Shaft said the NCAA policy has not changed and action is not required by the NCAA in order for UND to revert back to “sanction” status.

Mr. Shaft said the SBHE is required to uphold the Constitution of the State of North Dakota and to act in the best interest of the institutions. With due respect to the referendum, the SBHE needs to act in the best interest of UND and its student athletes. Those who have had a serious involvement in the nickname discussion have come to the conclusion that continued use of the nickname and logo cannot continue. The sanctions continue to harm UND and its student athletes.

SBHE members expressed concern regarding a perception that the SBHE is not allowing the people of North Dakota to vote on the issue. Mr. Shaft said this is not an issue of disenfranchising a public vote; rather it is making a determination of a constitutional issue.

In response to questions from Mr. Vallie, Ms. Kylie Overson, President, UND Student Government, said UND students would like to see the issue settled.

Mr. Lembke would like to let the vote go through and ask for the court ruling after the vote. Mr. Shaft expressed concern about waiting until after the referendum in June as there will be irreversible harm to the university. Ms. Hoffarth encouraged the SBHE to move forward with action that will allow the university to move forward.
**It was moved** by Espegard, seconded by Smith, to ratify the SBHE President’s direction to the University of North Dakota to stay any effort to discontinue use of the Fighting Sioux logo and nickname until such time as a court decision has been reached on the constitutionality of the legislative enactment; however, UND athletes who qualify for post season NCAA tournament play will not be required to display the nickname and logo in order to comply with the NCAA policy. Diederich, Smith, Espegard, and Shaft voted yes. Haugen, Lembke, Hjelmstad, and Vallie voted no. The motion failed.

**It was moved** by Haugen, seconded by Lembke, to move to direct UND to resume the use of the Fighting Sioux logo and nickname, and UND athletes who qualify for post season NCAA tournament play be required to display the nickname and logo. Haugen, Hjelmstad, Lembke, and Vallie voted aye. Smith, Diederich, Espegard, and Shaft voted no. The motion failed.

SBHE members expressed concern that student athletes will not be allowed to participate in post season play due to the requirement that UND teams compete as the UND Fighting Sioux. Attorney General Stenehjem and Mr. Seaworth agreed the law does not specifically require UND to display the logo on uniforms.

**It was moved** by Lembke, seconded by Diederich, to direct UND to follow NDCC 15-10-46; furthermore, to allow UND athletic teams, in post season play, to wear any uniform permitted under the law. Lembke, Smith, Diederich, Vallie, Hjelmstad voted aye. Haugen, Espegard, and Shaft voted no. The motion carried.

**It was moved** by Espegard, seconded by Smith, to request the Attorney General to seek a declaratory judgment from the North Dakota Supreme Court to declare NDCC 15-10-46 unconstitutional. Diederich, Smith, Haugen, Vallie, Hjelmstad, Espegard, and Shaft voted yes. Lembke voted no. The motion carried.

**Update on DSU**
Chancellor Goetz said DSU is in the process of ensuring it meets all federal, state, and SBHE policies and laws regarding international students. He said President Coston is continuing to meet with students. Chancellor Goetz said three key DSU administrative personnel have resigned

Chancellor asked for the SBHE’s continuing support of President Coston and himself as the process of reorganizing DSU’s administration moves forward. A full report will be presented to the SBHE at the February 23rd meeting. Mr. Shaft said the SBHE fully supports President Coston in his actions and leadership at DSU.

Mr. Haugen expressed concern regarding a statement there will be no disciplinary action at DSU. Mr. Shaft said President Coston will continue with action as he sees fit based on the findings of continuing investigations.
The meeting adjourned at 5:10 p.m.

Executive Secretary

President

February 23, 2012
Date