Members present:
Mr. Duaine Espegard, President  Dr. Kirsten Diederich, Vice President
Dr. Terry Hjelmstad   Ms. Kari Reichert
Mr. Sydney Hull   Mr. Grant Shaft
Mr. Don Morton   Ms. Janice Hoffarth, Staff Senate Adviser
Ms. Kathleen Neset   Dr. Douglas Munski, CCF Adviser

Staff members present:
Dr. Hamid Shirvani, Chancellor
Dr. John Haller, Interim Vice Chancellor for Academic and Student Affairs
Mr. Randall Thursby, Chief Information Officer
Ms. Claire Holloway, General Counsel
Ms. Linda Donlin, Director of Communications and Media Relations
Mr. Noah Brisbin, Special Assistant to the Chancellor
Ms. Kirsten Franzen, Chief Compliance Officer

The State Board of Higher Education met Thursday, March 21, 2013, by conference call originating in the Horizon Building Conference Room, Bismarck State College, Bismarck, North Dakota. President Espegard called the meeting to order at 2:03 p.m. CT.

Allegation report follow-up regarding open meetings
Ms. Holloway announced that the Board had asked for an update on the follow-up of her report to the Board from a week ago. Since that meeting, Ms. Holloway stated, she has met with the Attorney General’s office to develop guidelines on open meeting law compliance. She plans to meet again before finalizing guidelines and distributing them to the Board. The Fargo Forum has asked the Attorney General to follow up regarding two Board meetings’ compliance with open meeting laws; the NDUS office is currently responding to the Attorney General’s letter to assist their final determination as to those meetings.

Ms. Reichert reiterated her confidence in Ms. Holloway’s report and conclusions, and asked about the inclusion of outside sources. She welcomed the Attorney General’s involvement. Ms. Reichert then suggested that the report points to larger themes such as communication, trust, and transparency issues. She asked what the Board can do to ameliorate these issues, and expressed hope that the Board can create an atmosphere of cooperation.

President Espegard agreed that discussion was needed, and pledged that communication would be the number one topic of the upcoming Board retreat. Ms. Reichert stated that she believed discussion is warranted now. Mr. Shaft agreed that the Board needs a full discussion on its communication, but expressed his discomfort with having that discussion over the telephone. He suggested that the retreat is an ideal time to have an open discussion. Dr. Diederich agreed with Mr. Shaft’s preference for a face-to-face meeting.
Ms. Reichert stated that the Board’s problems are evident; although the Chancellor has been the main subject of scrutiny, she said, the Board has some responsibility for creating its current environment. She explained that her hope is to have forthright communication and open dialogue at meetings, and she invited stakeholders and the public to contribute. President Espegard stated that the retreat would be a proper setting for that discussion as an open meeting facilitated by a third-party moderator. Mr. Shaft expressed that he would like the Board to have as much information in front of it as possible, such as guidance from the Attorney General’s office on open meetings issues. Ms. Hoffarth agreed with Ms. Reichert’s call for a review of Board communication, and with Mr. Shaft’s opinion that the discussion should be in person.

**Performance evaluations of Chancellor and NDUS office staff**

President Espegard explained that the Board has the responsibility to evaluate the Chancellor annually based on set goals. He recommended that Dr. Diederich conduct the performance evaluation, reviewing past years’ performance and achievements relative to expectations and determining goals for next year, with the assistance of two other board members. Dr. Diederich stated that she asked Mr. Morton and Ms. Reichert to assist her; both confirmed their willingness to do so.

President Espegard noted that Board policy requires evaluations to be completed by June, and stated that he expected the group to conform to that timeframe. He also expressed hope that supervisors could provide an office staff review for the first time, such that the Board would have a high-level look at the NDUS office.

President Espegard continued discussing the Chancellor’s performance evaluation, noting that the Board receives an annual report. He recalled that the Board agrees to delegate evaluation, which is then brought before the Board for its approval. Dr. Hjelmstad agreed with that, and suggested that a committee be developed for that purpose. Mr. Morton and Ms. Neset also agreed with the delegation of evaluation.

Ms. Reichert asked how the Board wanted to conduct evaluations going forward, suggesting best practices from human resources to enhance the process. She emphasized that the method one takes to accomplish goals is also worth considering, suggesting that evaluations might consider the criterion of how well one reflects the system’s core values. Dr. Diederich stated that the evaluation committee will devise an evaluation plan in the course of its work.

**System support**

Mr. Shaft explained that since the start of the legislative session, the NDUS, Board, and Chancellor have been the subject of many public events, the circumstances of which have often been the Board’s responsibility. The issues that the NDUS and Board have worked through include the hearing on the IT building, Ms. Holloway’s report on her review of open meetings allegations, criticism of the Board’s policies and budget request, and the performance audit report confirming some of the Board’s positions based on the prior independent risk assessment.

At the midpoint of the legislative session, and having worked through several public issues, Mr. Shaft explained that he feels it necessary for the Board to show formally its support for the Chancellor, NDUS staff, and revised Board policies. Mr. Shaft distributed a proposed resolution
to the Board and described it as a simple document outlining broadly its support while acknowledging the need for improved communication. He explained that it is important for the Board to have resolve so that it is clear to constituencies that the Board believes in the Chancellor and its policy while recognizing areas for improvement. Mr. Shaft then read the resolution to the Board.

Mr. Hull stated that his chief concern was that Board members had not had adequate time to review the proposed resolution in advance of the meeting. When the problems brought forward included the Board’s communication and the expedition of agenda items for the Board’s passage, passing a resolution distributed to the Board in final form ninety minutes before the meeting sends a mixed message.

Ms. Reichert expressed that she would like the Board to be able to settle its issues and return to its business, but requested that the board further identify issues it should address. She noted concern with the resolution giving unqualified support to the Chancellor without first addressing these issues through frank conversation and the development of strategies to resolve them. Mr. Morton noted that the document addresses very visible charges to settle those. He acknowledged that the Board has much more work to do, but stated that the resolution clarifies previous accusations.

Mr. Shaft referred to the resolution’s statement that the Board supports the Chancellor’s efforts to improve higher education, which follow from Board policy, and that the Board stands behind his goals to improve system quality. He, too, acknowledged that the Board has areas for improvement, which the resolution emphasizes. With the resolution, Mr. Shaft concluded, he wanted to encapsulate the Board’s support for Pathways, Board policies, its proposed budget, and the Chancellor’s implementation of those.

Dr. Hjelmstad observed that communication is tough to measure, questioning how improvement could be ascertained. He noted that presidents, legislators, and students have wondered whether they can talk to Board members, and stated that people should not be afraid to communicate to the Board. President Espegard replied that there have been several memoranda encouraging communication among stakeholders, and stated that substantive comments are most appropriately addressed to the Chancellor.

Mr. Shaft explained that when the Board was under his presidency, campuses complained that they needed a better-defined communication hierarchy, as there were no direct lines of communication within the system. The Board resolved to adopt a new line of communication beginning with the Board, going next through the Chancellor, then the campus presidents, then their provosts, then deans, and finally campus staffs. Mr. Shaft issued a letter to presidents and campuses clearly outlining that communication process for substantive policy communication, though not day-to-day communication. This was meant to prevent bypassing levels of the NDUS hierarchy. Soon after the letter was issued, Mr. Shaft continued, there were rumors that no one could talk to anyone. Mr. Shaft has repeatedly conveyed to legislators and others that this directive was meant to pertain only to substantive communication, and that its implementation had nothing to do with Chancellor Shirvani specifically. In conclusion, Mr. Shaft noted that the
Board should make a clear policy widely available, reinforcing the documentation which shows no intent to cut off communication to the Board.

Ms. Reichert suggested that social events on campus, as have been held in the past, might create a comfortable environment for people to talk to the Board. She also asked if the Board needed a resolution to address past allegations, noting that the Board accepted Ms. Holloway’s report previously and could ratify its findings. Ms. Reichert expressed a reluctance to state that matters are fully resolved.

Mr. Shaft explained that his presidency coincided with the end of several former Board members’ terms; those members were concerned with the Board’s workload, and the Board followed their input to shorten Board meeting days by limiting socials and campus tours. He welcomed the suggestion to resume those events.

For today’s purposes, Mr. Shaft continued, the Board should determine whether it wants to indicate its support for the Chancellor and Board policies, either by the written resolution or by a discussion and vocal resolution. Mr. Shaft stated his willingness to address communication and social events, but emphasized his desire for the Board to make clear its support.

Dr. Hjelmstad expressed his appreciation for Mr. Shaft’s comments; however, he suggested that by endorsing the Board’s policies, it seems to indicate that the Board is fully supportive of all of the events that have transpired and will transpire, when no one can be sure what will happen. President Espegard stated that he did not perceive that the resolution approves all of what has happened in past months, but that it expresses the Board’s supports for its policies and a unified system of higher education. Remaining issues, such as the Board’s communication and a forthcoming performance review, can be left for the Board to deal with in the near future, and can inform the Board if it wishes to revisit its support, he said.

Ms. Reichert stated that it would be an oversimplification for the Board to state its support or lack thereof for the Chancellor. She expressed that the resolution would not acknowledge continuing issues for the Board to address. Mr. Hull questioned the purpose of the resolution, comparing it to previous editorial articles. He disagreed with the notion that support of the Chancellor and the Board’s work was a dichotomous proposition.

It was moved by Espegard, seconded by Diederich, to adopt the resolution stating the Board’s support for the Chancellor and his leadership. Espegard, Diederich, Shaft, Neset, and Morton voted yes; Reichert, Hull, and Hjelmstad voted no. The motion carried.

**Public Comment**
Dr. Diederich then welcomed comments from those in attendance.

Senator Tony Grindberg suggested that he offer his opinion on how the Board reached its current condition. President Espegard asked Senator Grindberg if he believed in a unified system of higher education; Senator Grindberg replied that he did. He stated that when he carried his buyout amendment to the Senate, he indicated that supporters of higher education are very concerned about the present state of affairs. Senator Grindberg stressed that he is working on
higher education’s behalf, as over ten years ago, he helped the state create a shared vision for higher education.

Chancellor Shirvani started at the NDUS in July, Senator Grindberg continued. At that time, the Chronicle of Higher Education called Senator Grindberg, and he welcomed the Chancellor to the state and laid out his opinion on what would make a new chancellor successful. Later last summer, a rumor that the Chancellor and President Espegard discussed the removal of university presidents spread among legislators. Senator Grindberg spoke with House Majority Leader Al Carlson and a new Board member at that time, and perceived that the rumors seemed abnormal. The Board then rapidly enacted policy changes in the fall.

When the legislative session began, Senator Grindberg said, he felt a duty to clear the air about the idea of removing presidents. Senator Grindberg asked the Chancellor and President Espegard about the rumor, and President Espegard denied that the discussions took place. Later, however, Senator Grindberg learned that the Chancellor had met Representative Carlson and told him that the NDUS has five unqualified presidents. Days later, the IT building issue broke. At that time, Senator Grindberg stated, he decided to offer the buyout amendment as a tool to change the direction of the current leadership and environment of North Dakota higher education.

Mr. Shaft thanked Senator Grindberg for attending and commenting directly to the Board on his opinion of the current situation. Mr. Shaft stated that as Board president, he never turned over the Board’s authority to hire and fire presidents, and denied that that has changed since Chancellor Shirvani’s arrival. He also noted that he has not heard any Board member express a desire to relinquish presidential hiring authority. Mr. Shaft continued by stating that the Board is not considering terminating any president and that Chancellor Shirvani has not recommended any such termination. In conclusion, Mr. Shaft noted that the policy regarding the Board’s authority to hire and terminate presidents is clear, and it will not change.

Ms. Reichert agreed with Mr. Shaft’s statements. She expressed that if one did not have the confidence of one’s boss, she or he should seek new employment. Mr. Morton echoed Mr. Shaft and Ms. Reichert’s positions.

President Espegard stated that he stood before the Senate Appropriations Committee to address the rumor about campus presidents. He added that he has spoken to presidents and assured them that there has not been any intention to place them on a performance plan. Board policy states that presidents are appointed and removed by the Board, he concluded.

Ms. Hoffarth opined that the NDUS has eleven quality institutions and presidents, and that under qualified guidance, the system and its institutions will improve. She stated that it was in the Board’s best interest to state that the Board does not plan to remove any of the NDUS presidents. Dr. Munski concurred with Ms. Hoffarth’s statements.

The meeting adjourned at 3:15 p.m.