North Dakota State Board of Higher Education
Minutes – May 23, 2013

Members present:

Mr. Duaine Espegard, President
Dr. Terry Hjelmstad
Mr. Sydney Hull
Mr. Don Morton
Ms. Kathleen Neset

Dr. Kirsten Diederich, Vice President
Ms. Kari Reichert
Mr. Grant Shaft
Ms. Janice Hoffarth, Staff Senate Adviser
Dr. Douglas Munski, CCF Adviser

Staff members present:

Dr. Hamid Shirvani, Chancellor
Ms. Laura Glatt, Vice Chancellor for Administrative Affairs
Mr. Randall Thursby, Chief Information Officer
Mr. Bill Eggert, Director of Internal Audit and Risk Assessment
Ms. Claire Holloway, General Counsel
Ms. Kirsten Franzen, Chief Compliance Officer
Ms. Linda Donlin, Director of Communications and Media Relations
Mr. Noah Brisbin, Special Assistant

The State Board of Higher Education met on Thursday, May 23, 2013, at 2:00 p.m. CT, in the Harry McGovern Alumni Center, North Dakota State University, 1241 North University Drive, Fargo, ND.

Election of Board officers for 2013-14

It was moved by Espegard, seconded by Hull, to elect Dr. Kirsten Diederich as Board president and Dr. Terry Hjelmstad as Board vice-president for 2013-14. Espegard, Neset, Shaft, Morton, Diederich, Hjelmstad, Reichert, and Hull voted yes. The motion carried.

NDSU request to construct an $11 million aquatic center addition to the current Wallman Wellness Center, pending legislative authorization

President Espegard stated that the Board approved this request at its May 9 meeting, but that he requested that the Board reconsider its approval because the project would involve collecting student fees well in advance of the center’s construction. He described the project as being only a concept, without any bidding, legislative authorization, or master planning yet having taken place. President Espegard emphasized that allowing fee collection for 3 to 4 years before the building’s completion would be bad public policy for the NDUS.

It was moved by Espegard, seconded by Shaft, to rescind the Board’s approval of the NDSU request to construct an $11 million aquatic center addition to the current Wallman Wellness Center, pending legislative authorization and deny the request.

Mr. Hull requested that Mr. Robbie Lauf speak as to the opinion of NDSU students about the project. Mr. Lauf told the Board that students had authorized the fee collection in a campus-wide
vote. Since the closing of the BSA pool, NDSU has not had a pool on campus, he continued. Mr. Lauf stated that the aquatic center was the third part of the master plan for NDSU’s wellness center. He also noted that the approval of the fee collection by student election goes above and beyond what the Board and chancellor advocated for with respect to approving mandatory fee increases greater than one percent of tuition costs. Mr. Lauf noted that the Board has not communicated with students regarding concerns about the project, and expressed hope that the Board would not alter a student-driven project without seeking student input. For its part, NDSU student government has made over one hundred visits to speak with thousands of students about the project, and disseminated information about the project in the weeks leading up to the election.

Mr. Morton asked Mr. Lauf what the turnout was for the election; Mr. Lauf replied that about three thousand students voted. President Espegard reiterated that he has no objection to the construction project, but he believes it to be bad public policy to collect fees before the center’s construction. Ms. Reichert noted that people rely on the Board’s decisions, and it would therefore be unsettling for the Board to reconsider its decisions. Ms. Hoffarth explained that she verified that UND students paid for the construction of their campus’s wellness center before its construction, and UND allowed fee-paying students access to the facility for the same amount of time that they paid fees for it.

Espegard, Neset, and Shaft voted yes; Morton, Diederich, Hjelmstad, Reichert, and Hull voted no. The motion failed.

**Revisiting of 2013-14 tuition and fee rate guidelines**

President Espegard explained that he had looked at the final funding scenario for the NDUS in more detail since the May 9 Board meeting, including equity funding, performance funding, and costs to continue. In a $900 million system budget, the $71 million cost to continue includes salary increases and estimates for utilities, new construction, and inflation. Based on the Office of Management and Budget’s implied cost sharing between students and the state of North Dakota, the state is responsible for about $46 million, and students responsible for about $24 million, of the costs to continue. The legislature appropriated $39.5 million of the state’s $46 million responsibility, leaving a shortfall of nearly $7 million, but included $5 million in performance funding. President Espegard stated that he sees the legislature’s intent is to put some funding at risk.

Option 1 of the tuition guidelines presented at the May 9 meeting, President Espegard continued, directed tuition increase caps to be set to allow institutions to collect the students’ share of the cost of education and also recover the shortfall left by the legislature’s appropriation. President Espegard explained that Option 2 would be a fairer option because it would require students to pay their share of education costs, as expected, but it would not subject them to paying for the unfunded portion of the state’s share. He reiterated that the NDUS institutions have performance funding available to them, encouraged the institutions to be mindful of their expenses, and noted that this would acknowledge previous pledges to keep tuition low for students and families.

President Espegard acknowledged that it was unusual to raise tuition guidelines again at a subsequent meeting, but explained that the Board’s decision had a monumental effect on
students, and opined that more conversation was warranted. Option 2 would authorize increase maximums of 2.18 to 4.76 percent, whereas Option 1 authorized increases of 2.35 to 6.63 percent. President Espegard stated that it would be admirable for presidents to set tuition rates lower than the guidelines’ upper limits regardless of which set of guidelines the Board approved.

Mr. Morton explained that he had had a conversation with UND leaders, and asked Mr. Nick Creamer to comment. Mr. Creamer described that in the last 10 years, UND tuition had risen by 101 percent, while the cumulative inflation for the same time period had been 25.3 percent. Given that 75 percent net increase, Mr. Creamer asked that tuition be kept as low as possible, stating his support for Option 2 against Option 1 and suggesting even lower rate guidelines in the future. Option 2 would prompt institution administrations to look at campus needs and operate more efficiently, which is a service institutions owe to the students and taxpayers who make an incredible investment into North Dakota higher education. Mr. Creamer predicted that North Dakotans would not accept continual tuition increases in the face of unprecedented levels of state support of the NDUS institutions. He explained that the financial figures before the Board are estimates with lots of difficult-to-analyze component information, and expressed hope for more transparency to be able to explain clearly to students how North Dakota colleges and universities are keeping costs as low as possible.

Mr. Hull, when asked by President Espegard to share his thoughts, indicated that he has received numerous phone calls from students on both sides of this question. It is a monumental issue deserving of discussion. While many students want to keep tuition as low as possible, Mr. Hull continued, other student representatives, such as those from the NDSA, NDSU, and NDSCS, want to see the new funding model fully realized. He concluded that it was a difficult question for the Board to consider in the face of legislative short-funding.

President Espegard responded by explaining his opinion that the appropriation put some money at risk while also allocating performance funding for the NDUS to distribute. He stated that students should not pick up shortfalls in funding the state share of educational costs.

Ms. Neset welcomed revisiting the tuition guidelines. She recalled Ms. Glatt’s caution that students face fee increases in addition to potential tuition increases, and recommended Option 2 or Option 3 for setting tuition rate guidelines.

Chancellor Shirvani praised the governor’s model, and also noted that Mr. Creamer raised important issues. He cited the large proportion of North Dakota college students carrying student debt in a state with a relatively low median income as troubling. It is worth questioning why things cost what they do in order to increase efficiency, accessibility, and affordability to keep up with other states, Chancellor Shirvani added.

Ms. Reichert renewed her question about the wisdom of revisiting a Board decision, based on campuses beginning their budgeting process based on the prior determination. She stated that she assumes there is not much fat in institution budgets, and asked whether shortfalls would affect the level of service North Dakota institutions provide. Ms. Reichert favored keeping Option 1 while requesting that presidents target increases at Option 2 levels and report if they raise tuition above those levels.
President Espegard asserted that this discussion primarily focuses on the predicted inflation factor and the $5 million in outstanding performance funding, rather than the entire budgeting process. The point of reconsidering guideline levels, he continued, is to prevent students from paying more than their share of the cost of college education.

Ms. Hoffarth asked how UND and NDSU would cope with $3.2 million and $2.4 million shortfalls that they could face under Option 2 guidelines. President Espegard responded that the campuses would need to manage their budgets effectively and prioritize as needed. Ms. Hoffarth next asked about those institutions’ ability to apply for performance funding, and whether that funding was intended as one-time or ongoing funding. President Espegard stated that the performance funding should be ongoing, and declared his intent that the Board distribute all of the performance funding allocated to it.

Dr. Diederich asked for a further explanation of the performance funding. Ms. Glatt explained that the funding was marked as one-time, though that does not mean it cannot be appropriated again. She noted the difficulty in using one-time funding for base expenditures and the uncertainty campuses have in knowing when and what amount of performance funding they will receive. President Espegard noted that the Board will have another opportunity to address tuition levels next year. Dr. Diederich asked if performance funding could be used to address tuition levels for 2014-15.

Chancellor Shirvani indicated that he would discuss performance criteria for each institutional tier with the Cabinet. Afterward, the NDUS will determine funding recipients as quickly as possible. Chancellor Shirvani also raised that there are deeper questions to consider, such as the reengineering of institutions’ cost structures by consolidating programs and services, in order to respond to pressure from consumers of the NDUS and react to the exponential increase in the cost of higher education. Given the unprecedentedly generous budget, with a 12 percent permanent allocation increase, it is best to recognize students’ needs while remaining sympathetic to colleges’ concerns.

President Espegard stated that the introduction of the governor’s funding model should not require students to pay for budgetary shortfalls, and stressed that the Board should hold tuition increases as low as possible.

Mr. Hull expressed reluctance at the idea that performance funding should ameliorate a shortfall in the state share for ongoing expenses. He reminded the Board of the split in opinion between student governments about keeping tuition low and fully realizing the governor’s funding model.

President Espegard urged the Board not to have students pay the state share of higher education costs, noting that the Board will have the opportunity to revisit tuition levels next year. Ms. Reichert questioned the use of performance funding as catch-up funding for shortfalls in equity appropriations. Ms. Hoffarth supported the notion of revisiting financial situations in a year, while recommending that the Board urge presidents to keep tuition rate increases within Option 2 guidelines under an official cap set forth by Option 1. She stated that it would be desirable for presidents to find efficiencies and reduce the need for subsequent tuition increases.
President Espegard noted that two presidents have stated that they will not need increases at Option 1 levels, which is wonderful to hear and what he expects will happen. He expects departments to look for priorities, efficiencies, and combinations. The point of today’s discussion, President Espegard continued, is to have students pay their share and only their share, while encouraging colleges to work to create more efficiencies. Mr. Morton asked if these budgets were not created with some cushion room. President Espegard stated that institutions have reserve funds and room for cash flow.

Ms. Hoffarth requested asking the presidents what implications Option 2 guidelines would have. President Espegard replied that this discussion was meant for the Board to consider the NDUS as a whole and its students. Option 2, he asserted, was the guideline that would treat fairly NDUS students. Dr. Diederich stated that it would be uncomfortable to have it appear that Board members voting for Option 1 do not students’ interest in mind; rather, they support Option 1 for its support of the new funding model. She expressed discomfort with revisiting the Board’s previous decision.

Ms. Reichert stated that it would be incorrect to frame this as pitting students against their institutions. She noted that the Board is accepting the figures presented to it on the amounts needed to continue operations without taking a deeper look at earlier steps in the budgeting process. Ms. Reichert observed that while North Dakota students are among the lowest in average student debt load, they hold student loan debt in high proportions. She suggested leaving the decision to presidents to make cuts or take the full available tuition increases.

**It was moved** by Espegard, seconded by Morton, to rescind the Board’s approval of the tuition rate increase guidelines outlined in Option 1 of the 2013-14 annual budget guidelines and approve the Option 2 tuition rate increase guidelines. Espegard, Neset, Morton, Diederich, Hjelmstad, Hull, and Shaft voted yes; Reichert voted no. The motion carried.

The Board recessed at 3:10 p.m., and reconvened at 3:22 p.m.

**Presentation of audit report – Mr. Bill Eggert**

Mr. Eggert stated that he would read the audit report he prepared in response to the fraud hotline report submitted by Ms. Linda Baeza Porter. He explained to the Board that the NDUS has a fraud hotline set up with an accounting firm in-state and that submitted claims are anonymous. Eide Bailly sends reports regarding the NDUS system office to Mr. Eggert, who investigates the claims. These claims are submitted annually to the State Auditor’s Office, which looks for control gaps to address. Relevant policies include Board Policy 611.10, which states that employees are expected to report suspected fraud, theft, or improper use of resources, including making false statements, reporting false information, and the misapplication or misleading use of information. Board Policy 308.1 requires that Board members not engage in false records or communication or make misleading representations.

For this report, there are questions as to data use and as to presentation, Mr. Eggert stated. Ms. Baeza Porter observed circumstances that she thought were suspicious and did the right thing to call for an investigation. More specifically, the claim addressed two documents—the
presentation made by Chancellor Shirvani on March 18, and the responses to questions posed by Representative Bob Skarpohl.

Regarding Rep. Sharpohl’s questions, Mr. Eggert reviewed the NDUS’s answers and verified the data included against IPEDS data. The data reported was identical to its source. This information was not presented. Thus, there was no fraud with respect to this report, Mr. Eggert concluded.

The presentation Chancellor Shirvani gave on March 18 involved more substantial investigation. Ms. Baeza Porter’s claim complained about the use of U.S. News and World Report information, which may be prudent, given revelations of colleges inflating data submitted to that publication. For the data included in the presentation, however, Mr. Eggert verified that all variables matched those from IPEDS.

With respect to the presentation of the information, Mr. Eggert noted that one could conclude that comparison schools were chosen to make NDUS institutions look bad. Whether that form of presentation was appropriate depends on whether Chancellor Shirvani framed the presentation as stating that these were aspirational comparators for NDUS institutions. For remediation rates data, it would have been advisable to note that the NDUS’s remediation policy has changed in a way that affects the reported rates.

In sum, Mr. Eggert reported, there was no violation of Board policy in Chancellor Shirvani’s report, though the framing of data with comparison institutions may push the envelope. Mr. Eggert recommended that the NDUS use a consistent data source, a verification team with clear roles and responsibilities, and an institutional researcher to respond to requests for data with obtainable information that is clearly objective.

Ms. Reichert asked if the comparisons of remediation rates over time were not straightforward. Mr. Eggert reiterated that the policies measuring remediation have changed, thereby changing the reported rates. Ms. Reichert then asked what is meant by the term “peer institution”; Mr. Eggert replied that in IPEDS, schools can choose institutions as peers, and IPEDS can also generate peers based on data attributes. He explained his understanding that the comparison institutions included in the presentation were meant as aspirational peers. Chancellor Shirvani noted that some NDUS institutions have self-selected aspirational peer institutions.

Ms. Reichert asked what criteria made universities aspirational comparators. Chancellor Shirvani explained that these institutions were highly respected Midwestern universities with land-grant status and research missions. Ms. Reichert then asked what makes an institution exceptional; Chancellor Shirvani cited the volume of research activity and graduation and retention rates as important factors.

Dr. Munski explained that he serves in the only comprehensive geography department in state, offering the only in-state graduate program in geography, and only online GIS certificate in North Dakota. He stated that when UND graduate students in geography wish to continue for their doctorate degrees, 4 of the 5 aspirational schools listed in the presentation have doctorate geography programs that would be a major indicator of exceptional quality programming at
To have a doctoral program, UND’s offerings would have to reach the level of the Universities of Wisconsin, Iowa, Minnesota, and Nebraska.

Ms. Reichert asked if the Board wanted those program offerings, or would want to have NDUS alumni attend those kinds of programs. Dr. Munski replied that faculty would aspire to national-level programs.

Mr. Morton observed that the presentation of aspirational data makes a strong case for entering admissions standards, as North Dakota institutions’ admissions are fairly open. He noted that NDSU’s self-selected peer cohort would be a respectable group to compare to.

President Espegard confirmed with Mr. Eggert that his report’s conclusion was that there was no misinterpretation of data or presentation of false numbers, but that Mr. Eggert suggested methods for better data management going forward. President Espegard then asked if there were other comments about the audit report, and called Mr. Randall Thursby forward, asking Mr. Eggert to remain nearby.

Mr. Thursby stated that parts of the fraud report required comment and clarification. For instance, a quotation of an email from Ms. Glatt needs the added context of the remainder of the email and a phone conversation between Mr. Thursby and Ms. Glatt.

In summary, Chancellor Shirvani’s presentation used the correct data. Legislative Council requested that the NDUS give meaning to campus data in a system context, which is not an unusual request, Mr. Thursby stated. Before the data was presented to the legislature, he continued, Ms. Baeza Porter distributed a version of the data containing errors that were subsequently fixed. Then, Ms. Baeza Porter shared information in a series of emails with Ms. Reichert, Dr. Joshua Riedy, and Ms. Hoffarth, and emailed Ms. Reichert and Ms. Hoffarth questioning the work of the data validation team.

Mr. Thursby opined that if Ms. Baeza Porter had more thoroughly examined the documents exchanged by the SITS data validation team, the misunderstandings leading to her filing of a fraud complaint and testifying to the legislature may not have occurred. He stated that the negative public relations impact on the Board and the NDUS might have been reduced if Board members who obtained information from Ms. Baeza Porter had followed up with NDUS staff.

Mr. Thursby also questioned why Mr. Eggert shared a draft version of the audit report with Ms. Baeza Porter and solicited edits to the report. There were significant differences between the draft version of the audit report that Mr. Eggert divulged and the final report sent to the Board Audit Committee and Ms. Claire Holloway, Mr. Thursby asserted.

Ms. Reichert questioned Mr. Thursby’s qualifications to question the NDUS auditor’s audit report and working practice in producing that report. She and Ms. Hoffarth stated that Mr. Thursby did not contact either of them with questions about the audit report. Mr. Thursby responded that Ms. Baeza Porter, Dr. Diederich, Ms. Reichert, and Ms. Hoffarth never brought concerns forward or shared material with the NDUS. He stated that the patterns of interaction
call into question the accuracy of the report and the intent and motivations behind final release of report.

Mr. Thursby then outlined a series of emails he had exchanged with Ms. Hoffarth that Ms. Hoffarth had allegedly sent to Board members to indicate that Mr. Thursby could access email accounts. He also clarified a misunderstanding that he had told Ms. Glatt that she could not speak to Ms. Baeza Porter after Ms. Baeza Porter testified to the legislature, explaining concerns about complying with whistleblower protections and the need to channel communications through legal counsel. Mr. Thursby stated that he was offended by a pattern of information being passed among certain Board members that mischaracterizes Mr. Thursby and the NDUS’s work, without those members asking to follow up on those characterizations.

Ms. Reichert asked who Board members should ask to review the usage of data; Mr. Thursby recommended inquiring with legal counsel, who can assure that proper protocols are followed. Ms. Hoffarth asked how Mr. Thursby could retrieve emails without administrative access; Mr. Thursby explained that messages were forwarded to him.

Ms. Reichert stated that it would be inappropriate to accept a report from Mr. Thursby, who is not an NDUS auditor. President Espegard verified that Mr. Eggert had left the meeting. Chancellor Shirvani expressed his dismay at the situation, calling Mr. Eggert’s report defaming and factually incorrect. He questioned the independence of an audit in which suggestions for revision from the complainant are solicited before the report’s release.

Ms. Reichert stated that the report was disingenuous and shameful. Chancellor Shirvani recommended that the Board dismiss the allegations in the report for lack of merit, citing the present situation as unprofessional. President Espegard noted that the report lacked credibility, and expressed disappointment that Mr. Eggert left the meeting.

Mr. Shaft explained that it was difficult to comment. Regarding the audit report before the Board, however, sharing the drafted report with individuals for their review would take the audit outside the scope of a properly independent audit. On that basis, Mr. Shaft stated that the Board should not accept the report, though it could take the document for what it is worth afterward. President Espegard agreed with Mr. Shaft’s statement.

Ms. Reichert asked if any conclusions would change in an acceptable audit report. Mr. Thursby commented that the standards Mr. Eggert used to measure potential violations of Board policy cannot be met reasonably, and that the request for full footnoting of data sources is impractical and burdensome. Mr. Thursby also stated that the changes to the report between the distribution of the draft report and distribution of the final report concerned him. President Espegard stated that such revisions are unacceptable, as was the sharing of the draft report with the complainant prior to sending the final report to the Board.

Ms. Reichert emphasized that the audit report found that there was no fraud. President Espegard suggested engaging an outside auditor to confirm that, given evidence that the audit report was compromised. Ms. Reichert decried the working environment of the Board and NDUS and cited
the damage caused by it. Chancellor Shirvani agreed, noting that bad publicity affects the Board, himself, and the NDUS.

Dr. Diederich expressed that she disliked the handling of this report, comparing it to Board members being called before Rep. Skarphol’s committee for a hearing. She stated that she wished Mr. Thursby would have brought his concerns to the Audit Committee. Dr. Diederich noted that the Board cannot advance without trusting each other, and that the present circumstance may come from NDUS employees feeling the same way.

Ms. Reichert suggested that another audit report could be conducted. President Espegard concurred, stating that he was not already aware of the issues raised by Mr. Thursby and suggesting that Mr. Eggert’s report not be accepted.

It was moved by Shaft, seconded by Morton, to not accept Mr. Eggert’s audit report. Espegard, Neset, Shaft, Morton, and Diederich voted yes; Hjelmstad, Reichert, and Hull voted no. The motion carried.

The Board adjourned at 4:29 p.m.