NORTH DAKOTA UNIVERSITY SYSTEM

North Dakota State Board of Higher Education
Minutes – June 2, 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
- Mr. Don Morton
- Ms. Janice Hoffarth, Staff Senate Adviser
- Mr. Sydney Hull
- 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
- Dr. Lisa Feldner, Vice Chancellor for Information Technology and Institutional Research
- Ms. Kirsten Franzen, Chief Compliance Officer
- Mr. Noah Brisbin, Special Assistant

The State Board of Higher Education met on Sunday, June 2, 2013, at 10:00 a.m., in the Missouri Room, Rough Riders Hotel, 301 3rd Avenue, Medora, ND. President Espegard called the meeting to order at 10:00 a.m.

President Espegard explained that the Board retreat facilitator, Dr. David Longanecker, had experienced travel delays, necessitating the change in schedule for the Board retreat.

Appointment of outside counsel to provide legal advice regarding chancellor’s contract
Mr. Shaft explained that the Board will enter executive session to negotiate the chancellor’s contract in a meeting tomorrow, and that he had asked Sara McGrane to assist the Board in this process. In-house counsel has recused itself because of its professional relationships with both the Board and the chancellor, he stated. The Board has engaged in representation for similar negotiations in the past, Mr. Shaft continued; the Board will seek Ms. McGrane’s appointment as a special assistant attorney general to facilitate that representation. Ms. McGrane has served in that capacity previously, he noted, for UND and NDSU matters.

It was moved by Shaft, seconded by Hull, to appoint Sara McGrane as outside counsel for the purpose of providing legal advice regarding the chancellor’s contract. Diederich, Hjelmstad, Hull, Morton, Neset, Reichert, Shaft, and Espegard voted yes. The motion carried.

Board training on open records and open meetings law
Mary Kae Kelsch, an assistant attorney general from the Office of the Attorney General, gave the Board a presentation on open records and open meetings law.

During the open records portion of the presentation, Ms. Reichert asked if the best course of action upon receiving an open records request would be to contact an agency attorney. Ms.
Kelsch affirmed that, noting that administrative organizations should handle open records requests coming to its personnel.

Dr. Diederich also noted confusion about whether a person whose records have been requested has the right to notification of such requests. Ms. Kelsch stated that there is no legal requirement to do so. Mr. Shaft added that in cases of thorough requests encompassing personal accounts, the NDUS would notify Board members to obtain information from those accounts.

Ms. Kelsch reviewed the elements of open meetings, noting that any discussion of public business of a quorum of the governing body of a public entity constituted a meeting that North Dakota law requires to be open, regardless of the time, place, or manner of the discussion’s occurrence. There are exceptions that allow board members to gather at national, regional, or state association meetings, at purely social functions, or to allow one member with delegated authority to act on his or her own. Ms. Kelsch noted that committees, which are created when a governing board delegates any of its public business to more than one of its members, present the most common problems in compliance with open meeting requirements. Open meetings law, Ms. Kelsch explained, is designed to cover all phases of the decision-making process, providing access to discussions that explain governing boards’ actions.

In response to a question from Mr. Shaft about exigent circumstances, Ms. Kelsch stated that best efforts to comply with ministerial requirements can substantially comply with legal requirements. Special meetings, however, have additional specificity requirements that must be satisfied to notice them properly. In giving proper notice for a meeting, Ms. Kelsch continued, an agenda should contain all known topics of discussion for the meeting at the time the agenda and notice are drafted.

Ms. Kelsch also explained the topics of discussion that justify calling executive sessions, including confidential and exempt information and attorney consultation and negotiation strategizing. It is not permissible, however, to call executive sessions to discuss personnel matters or conduct negotiations. Mr. Shaft and Ms. Kelsch discussed the propriety of including non-Board members in executive sessions when appropriate. Ms. Kelsch concluded by mentioning remedies for knowing or repeated open records and meetings violations and online resources available to the public.

The Board recessed for lunch at 11:59 a.m., and reconvened at 1:19 p.m.

Board training and discussion
After reconvening, Dr. David Longanecker, president of WICHE, led a Board discussion on topics such as fiduciary duties; conflicts of interest; conducting board meetings; the roles and responsibilities of board members, the chancellor, institutional presidents, and NDUS staff; protocol for working with the chancellor, presidents, and staff; proper lines of communication; and communication with third parties. He noted that North Dakota has resources and pride of substantial magnitude, but also needs and has the opportunity to bring about substantial change.

Dr. Longanecker suggested as a potential area of focus the assessment of student learning outcomes in conjunction with monitoring institutional completion rates. He also noted that
course completion is increasingly serving as a metric by which state governments appropriate funds to colleges and universities. Dr. Longanecker recommended that the Board rely on evidence to drive its decision-making processes; Mr. Shaft acknowledged that the NDUS’s IT department has excelled to gather, extract, and use available data.

Dr. Longanecker next cited the importance of Board cohesion in advancing its mission. Pathways to Student Success would engage appropriate stakeholders in creating stronger processes for student completion for traditional and non-traditional students alike, he noted. In order to make a board effective, Dr. Longanecker continued, the Board need not always agree, but must have a manner of negotiating and promulgating a united message.

Mr. Shaft explained the background of the Board’s struggle in managing communication among the Board, the chancellor, the legislature, institutional presidents, and other institutional stakeholders. Dr. Longanecker replied that to operative effectively within a system structure, rules of engagement are necessary to ensure that stakeholders take issues to appropriate people within the system. Board members continued discussing the nature of communication among Board members, the chancellor, institution presidents, the legislature, and other parties. The Board also discussed its role in governance and policy setting for the NDUS and its institutions.

Ms. Neset observed that if the Board defined the story in North Dakota higher education by focusing on the academic reform of Pathways, an innovative funding model, and other advantageous conditions, it prevents media and other outsiders from creating the narrative about the state of higher education in North Dakota. Dr. Haller noted that the Board does not obtain much information from campuses to measure the NDUS institutions’ success in their educational missions and to represent the system to the public. The NDUS has undertaken work to bring about uniformity, he continued, noting that several reports will come to the Board in the next year.

The discussion then turned to the appropriate role of a chancellor. Dr. Longanecker explained that a chancellor should act as a chief executive, obtaining ample input from subordinates to inform his ultimate decision, which he can make even without broad-based support. The chancellor should not be subject to Board supervision in hiring his staff, Dr. Longanecker noted. More important for a board is to support its chancellor, or to decide to select a chancellor anew; it is difficult to hold a chancellor accountable when he does not have the authority to manage a system, Dr. Longanecker stated. For a chancellor’s part, he continued, he should know what issues deserve a board’s vetting.

The Board then discussed the difficulties imposed by the timing of the approval of Pathways to Student Success shortly after the Board hired a new chancellor and experienced a high amount of turnover and soon before a legislative session. Ms. Reichert asked if it would be more constructive for the Board to meet more regularly during the activity of legislative sessions. Dr. Longanecker suggested that the Board continue to work to become more comfortable with and respectful of each other’s perspectives and differences of opinion. He then presented case studies of other governing boards and their attempts to create stronger system-based governance. Ms. Neset noted that the Board’s violations of open meetings laws have put it in a position where Board members cannot practically meet for non-business reasons.
Mr. Morton asked about discussions with Dr. Narcisa Polonio regarding the chancellor’s evaluation; Dr. Longanecker recommended her assistance in conducting an evaluation. Ms. Reichert observed that previous Board meetings have felt restricted in their subject matter, and that Board members should feel free to discuss issues organically and openly. Mr. Shaft stated that a proper communication protocol should resolve many of the Board’s extant issues.

The meeting adjourned at 6:05 p.m.