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Constitutional Measure 3 (HCR 3047)
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SBHE Position Description

Constitutional Responsibilities in Article VIII, Section 6

1. A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the following state educational institutions...

6. b. The said state board of higher education shall have full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions. In furtherance of its powers, the state board of higher education shall have the power to delegate to its employees details of the administration of the institutions under its control. The said state board of higher education shall have full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and do each and everything necessary and proper for the efficient and economic administration of said state educational institutions.

c. Said board shall prescribe for all of said institutions standard systems of accounts and records and shall biennially, and within six (6) months immediately preceding the regular session of the legislature, make a report to the governor, covering in detail the operations of the educational institutions under its control.

d. It shall be the duty of the heads of the several state institutions hereinbefore mentioned, to submit the budget requests for the biennial appropriations for said institutions to said state board of higher education; and said state board of higher education shall consider said budgets and shall revise the same as in its judgment shall be for the best interests of the educational system of the state; and thereafter the state board of higher education shall prepare and present to the state budget board and to the legislature a single unified budget covering the needs of all the institutions under its control. "Said budget shall be prepared and presented by the board of administration until the state board of higher education organizes as provided in subsection 6a." The appropriations for all of said institutions shall be contained in one legislative measure. The budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota state university of agriculture and applied science may be separate from those of state educational institutions.

e. The said state board of higher education shall have the control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this state; provided, however, that funds appropriated by the legislature and specifically designated for any one or more of such institutions, shall not be used for any other institution.

7. a. The state board of higher education shall, as soon as practicable, appoint for a term of not to exceed three (3) years, a state commissioner of higher education, whose principal office shall be at the state capitol, in the city of
Bismarck. Said commissioner of higher education shall be responsible to the state board of higher education and shall be removable by said board for cause.

b. The state commissioner of higher education shall be a graduate of some reputable college or university, and who by training and experience is familiar with the problems peculiar to higher education.

c. Such commissioner of higher education shall be the chief executive officer of said state board of higher education, and shall perform such duties as shall be prescribed by the board.
Policies and Procedures

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SUBJECT: 100s: Introduction               EFFECTIVE: September 26, 2012
Section: 100.6 Authority and Responsibility of the State Board of Higher Education

1. The State Board of Higher Education (Board) was established by an initiated measure approved by the voters in 1938 (now 11article VIII, section 6 of the state constitution). Article VIII, section 6 states the Board “shall have the control and administration of” all of the state institutions established in the state constitution at that time and “such other state institutions of higher education as may hereafter be established.” Further, the Board “shall have full authority over the institutions under its control” and “full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and do each and every thing necessary and proper for the efficient and economic administration of said state educational institutions.” The Board shall appoint a commissioner of higher education as its “chief executive officer.” In 1990, the Board established a unified system of higher education, with its Commissioner/Chancellor as the system’s chief executive officer. Later, the state legislature enacted North Dakota Century Code § 15-10-013, which states:

The institutions of higher education under the control of the state board of higher education are a unified system of higher education, as established by the board, and are designated as the North Dakota University System.

2. Holding the North Dakota University System (NDUS) in its trust, the Board:

   a. Ensures the NDUS achieves the purposes of its mission and goals;
   
   b. Ensures the NDUS is properly led and managed;
   
   c. Maintains the quality of academic programs;
   
   d. Provides responsible policies and procedures for proper governance;
   
   e. Safeguards NDUS assets;
   
   f. Honors the mission and integrity of each institution and its people;
   
   g. Serves as a catalyst to create more efficient and effective programs and services through partnership and resource sharing;
   
   h. Maintains student affordability;
i. Represents the institutions to the public and vice versa, assisting where appropriate in the understanding of each other’s needs,

j. Ensures effective stewardship of its financial, physical, and intellectual assets;

k. Achieves cost savings due to economies of scale, where appropriate;

l. Secures cooperative and planning advantages;

m. Shapes, supports, and achieves complementary institution missions;

n. Ensures excellence in programs, faculty, and students;

o. Minimizes unnecessary duplication through cooperative endeavors;

p. Gains public and legislative support for the system through unified efforts, and

q. Shields institutions from direct political and other outside interference.

3. In fulfilling its Mission and Vision, the Board will govern the institutions in the NDUS in accordance with the North Dakota Constitution and state statutes and will be guided by the Belief Statements and Core Values adopted by the Board. The people of North Dakota created the Board through the state constitution to ensure the institutions and their employees were protected from political interference. Recognizing the legitimacy and importance of such protection and believing each institution properly retains substantial responsibility for its own affairs, the Board and the system honor the integrity of each institution and its people. The Board will provide the leadership and governing environment necessary to maximize the opportunities for the NDUS colleges and universities to be successful in fulfilling their individual missions and enhancing the economic and social vitality of North Dakota.

4. The state constitution provides the Board with broad powers and specifies the Board retains any powers it does not specifically delegate to the institutions. The Board has adopted the following guiding principles regarding the responsibility of the Board, as stewards of the system, and the institutions.

a. Board approval for new or discontinued programs and organizational units ensures the overall pattern of service to the state is coherent and efficient.

b. Board review of institutional and program quality ensures the institutions provide positive educational experiences and seek continually to improve. Academic program quality and faculty quality determinations are made by faculty peers and campus administrators. The Board’s responsibility is to provide oversight, and hold the institutions accountable for results.

c. Board budget guidelines and final approval of budget requests promote equity and appropriate investment of state resources throughout the system.

d. Board priority-setting of facility requests promotes facilities funding on the basis of statewide need.

e. On matters that involve major costs for equipment or facilities which could be shared effectively among campuses, such as computing and telecommunications, the Board expects and will help facilitate such sharing,

f. The Board sets system priorities regarding all requests of the legislature and executive branch. Those representing the institutions are not to undermine those priorities.
g. The Board is the appointing authority for institution presidents and has final authority concerning contract terms. The Board shall exercise this authority in consultation with the Chancellor and has delegated to the Chancellor authority to conduct searches and recommend a candidate and contract terms to the Board.

h. The Board delegates substantial authority and responsibility to each institution's president through the Chancellor, as defined in Board policy, and holds each accountable for performance.

i. The Board shall have access to information about students, programs, faculty, staff, and finances of each campus to carry out its responsibilities.

j. The Chancellor shall bring to the Board's attention any difficulties in the application of any of the above responsibilities that threaten to impede institutional effectiveness or efficiency. The Board is committed to free and fair inquiry and just resolution of such difficulties.

k. General education courses and programs are central to the mission of all NDUS institutions and overlap among institutions is expected and necessary. However, the Board will continue to guard against unnecessary program duplication and collaborative delivery will be encouraged where the quality of the program can be maintained and the total cost of delivery can be reduced.

l. Professional, technical, vocational, and graduate courses and programs require institutional and Board judgments regarding their number and missions.

m. The Board retains authority for naming academic units (college, school, department, center and institute), professorship and endowed chairs, and physical structures.

5. Within the framework of the NDUS is a division of labor between the Chancellor and the services operating at each institution. In addition to a strong Board and Chancellor, achieving the advantages and purposes of a multi-institution NDUS require the energies, leadership, and talent of equally strong presidents who are dedicated to the mission and goals of their respective institutions. While the principal role of the Board and Chancellor lie in policy, overall direction, and planning, the leadership demanded of the presidents is primarily focused on implementation and direct operational control. As a general rule, system-level services exist only when there is a strong rationale justifying cost efficiencies and unnecessary duplication of functions. These include academic policy, planning, and quality assessment; capital planning and construction; budgeting; human resources policy and compliance; institutional research; risk management; auditing; legal services; information technology systems and services shared among the institutions; and legislative and community relations.

6. The Chancellor is the chief executive officer of the Board and NDUS and exercises such powers as are necessary for Board and NDUS governance and functions. Chancellor duties and responsibilities are delegated in Policy 304.1 and other Board policies or directives.

7. A president is the chief executive officer of the institution and a member of the Chancellor's executive staff. The presidents report to and are responsible to the Chancellor. The presidents are the chief executive officers of their respective institution. This designation includes the right and responsibility to manage the institution within the overall policies and directives issued by the Chancellor and Board. Presidents' duties and responsibilities are delegated in Policy 305.1 and other Board policies or Board or Chancellor directives.
History:
Amendment SBHE Minutes, April 15, 2004.
Amendment SBHE Minutes, September 26, 2012
Appointment Authority for SBHE Member Assignments

Academic and Student Affairs Committee. SBHE Policy 302.1 states, in part:

2. The Academic and Student Affairs Committee shall consist of not less than three voting members, including the student member, appointed by the Board President. The President may also appoint additional SBHE faculty and staff advisors, as ex-officio non-voting members. The Chancellor shall be ex-officio non-voting member. Members shall be appointed annually at or following the meeting when Board officers are elected. with vacancies to be filled by appointment by the Board President as they occur.

3. The Board President shall designate a Committee Chair. The Committee shall meet at the call of the Chair. The Chancellor shall assign support staff for the Committee.

Association of Community College Trustees (ACCT). This is a membership organization, and BSC is a member (NDSCS is not a member). The SBHE, as the governing board for BSC, may attend ACCT meetings.

Audit Committee. SBHE Policy 302.2(3) states:

The Audit Committee will consist of three voting members of the Board. The Board president will appoint committee members and the committee chair and may also appoint additional SBHE faculty and staff advisors, as ex-officio non-voting members. Each committee member will be both independent and financially literate.

Budget and Finance Committee. SBHE Policy 302.3 states, in part:

The Budget and Finance Committee shall consist of three voting members of the Board, and may also include additional SBHE faculty and staff advisors as ex-officio non-voting members, as appointed by the Board President. The President shall appoint the members at the same time the Board elects its officers. The committee members shall serve terms beginning July 1. The terms may not exceed three years and shall be staggered to ensure continuity of membership over the budget cycle. In the event a vacancy on the committee occurs before the next scheduled election, the President shall appoint a committee member to fill the vacancy no later than the next regular meeting of the Board. The Chancellor shall serve as an ex-officio member of the Committee.

Centers of Excellence Commission. N D C.C. §15-69-03 states:

The centers of excellence commission consists of six members. The foundation shall appoint three of the foundation's members to serve on the commission and the board shall appoint three of the
board's members to serve on the commission. The commission members shall designate a chairman and a vice chairman of the commission. Each member of the commission shall serve for a term of three years, beginning July first; may be reappointed for additional terms; and serves at the pleasure of the appointing entity. If a commission member ceases to serve as a member of the appointing entity, that member's membership on the commission ceases immediately and the appointing entity shall appoint a new member for the remainder of the term. Terms of commission members must be staggered. On a meeting-by-meeting basis, an appointing entity may substitute a member of that appointing entity to serve in place of one of the regular members appointed by that entity. If the commission chairman and vice chairman are not present at a meeting, the commission members present at that meeting shall select a commission member to serve as chairman for that meeting. A commission member may receive compensation and travel and expense reimbursement from the appointing entity. The department of commerce shall provide the commission with appropriate staff services as may be requested by the commission.

**Challenge Grant Review Committee.** N.D.C.C. § 15-10-51(1) states:

There is created a grant review committee consisting of:

a. The governor, or the governor's designee, who shall serve as the chairman;

b. Two members of the house of representatives appropriations committee, selected by the majority leader of the house of representatives;

c. Two members of the senate appropriations committee, selected by the majority leader of the senate;

d. Two members appointed by the governor, with the consent of the legislative management; and

e. Two members appointed by the state board of higher education, with the consent of the legislative management.

**Midwestern Higher Education Compact (MHEC).** N.D.C.C. § 15-10.2-02 states:

1. The members of the midwestern higher education commission representing this state are:
a. The governor or the governor's designee.
b. One member of the senate and one member of the house of representatives, appointed by the chairman of the legislative management.
c. Two at-large members, one of whom must be knowledgeable about the field of higher education, appointed by the governor.

2. The term of each legislative appointee is two years. One initial at-large member must be appointed for a term of two years and the other for a term of four years. Thereafter, the term of each at-large member is four years.

3. If a member vacates the position to which the member was appointed, the position must be filled for the remainder of the unexpired term in the same manner as that position was filled initially.

North Dakota University System Foundation (NDUSF). Article IV of the bylaws states:

The Trustees of the Foundation shall consist of the President and Vice President of the North Dakota State Board of Higher Education and five other Trustees appointed by the State Board of Higher Education. The Chancellor of the North Dakota University System shall serve as an ex-officio, non-voting Trustee. If any appointed Trustee by death, refusal, resignation, removal or disability fails to serve as Trustee, a replacement shall be appointed by the State Board of Higher Education to fill the remainder of the unexpired term so vacated.

School of Medicine and Health Sciences Advisory Council. N.D.C.C. § 15-52-03 states:

1. To assure the proper coordination of the university of North Dakota school of medicine and health sciences with all other health activities of the state, a permanent school of medicine and health sciences advisory council is established to perform the duties in section 15-52-04.

2. The council consists of fifteen members:
a. (1) Two members of the senate, one of whom must be from the majority party and one of whom must be from the minority party, selected by the chairman of the legislative management; and
(2) Two members of the house of representatives, one of whom must be from the majority party and one of whom must be from the minority party, to be selected by the chairman of the legislative management;
   b. One member selected by each of the following:
      (1) The department of human services;
      (2) The state board of higher education;
      (3) The state department of health;
      (4) The North Dakota medical association;
      (5) The North Dakota hospital association;
      (6) The veterans administration hospital in Fargo; and
      (7) The university of North Dakota center for rural health;
   and
   c. Four members selected by the dean of the university of North Dakota school of medicine and health sciences, one from each of the four campuses of the school of medicine and health sciences with headquarters in Bismarck, Fargo, Grand Forks, and Minot.

3. The representatives named by the state agencies and boards must be selected to serve as members of the advisory council for periods of at least one year, but may not serve longer than their term of office on the public agency. The representatives from the North Dakota medical association and the North Dakota hospital association shall serve a term of three years or until their successors are named and qualified.

4. The council shall name its own chairman and the dean of the university of North Dakota school of medicine and health sciences shall serve as executive secretary of the council. The executive secretary does not have voting privileges. The council shall meet not less than twice each year, and, from time to time, on its own motion or upon request of the university administration.

Western Interstate Commission for Higher Education (WICHE). WICHE is governed by three gubernatorially-appointed Commissioners from each state. See http://www.wiche.edu/commission.

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SUBJECT: 300s: Governance and Organization
EFFECTIVE: February 27, 2014
Section: 302.1 Academic and Student Affairs Committee

1. The Board establishes an Academic and Student Affairs Committee with responsibility for reviewing and recommending full board action, studies and reports related to academic and student matters, as well as strategic planning and workforce development, including:
   a. All academic and student policies except those for which authority has been expressly delegated to the Chancellor;
   b. Proposals for the establishment, allocation, and abolition of all educational units;
   c. Approval and termination of all academic programs of study;
   d. Academic standards;
   e. Transfer and articulation;
   f. Reports on program reviews and accreditation actions completed in the preceding year;
   g. Proposals for honorary degrees; and,
   h. Other matters central to academic quality, student life, strategic planning and workforce development.

2. The Academic and Student Affairs Committee shall consist of not less than three voting members, including the student member, appointed by the Board President. The President may also appoint additional SBHE faculty and staff advisors, as ex-officio non-voting members. The Chancellor shall be ex-officio non-voting member. Members shall be appointed annually at or following the meeting when Board officers are elected, with vacancies to be filled by appointment by the Board President as they occur.

3. The Board President shall designate a Committee Chair. The Committee shall meet at the call of the Chair. The Chancellor shall assign support staff for the Committee.

History:
New Policy, SBHE Minutes, September 26, 2012 (numbered Policy 302.11)
Repealed, SBHE Minutes, June 20, 2013
Readopted, SBHE Minutes, February 27, 2014 (renumbered Policy 302.1)
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SUBJECT: 300s: Governance and Organization                          EFFECTIVE: February 27, 2014
Section: 302.2 Audit Committee

1. PURPOSE

To assist the State Board of Higher Education (Board) in fulfilling its oversight responsibilities for the financial reporting process, the system of internal control, the audit process, and the North Dakota University System's (NDUS) process for monitoring compliance with laws, policies, regulations and the code of conduct.

2. AUTHORITY

The Audit Committee has authority to conduct or authorize investigations into any matters within its scope of responsibility. It is empowered to:

   a. Appoint, compensate, and oversee the work of any registered public accounting firm employed by the organization.
   b. Resolve any disagreements between management and the auditor regarding financial reporting.
   c. Pre-approve all auditing and non-audit services.
   d. Retain independent counsel and request appointment of legal counsel by the attorney general as a special assistant attorney general, accountants, or others to advise the committee or assist in the conduct of an investigation.
   e. Seek any information it requires from employees (all of whom are directed to cooperate with the committee's requests) or external parties.
   f. Meet with officers, external auditors, or outside counsel, as necessary.

3. COMPOSITION

The Audit Committee will consist of three voting members of the Board. The Board president will appoint committee members and the committee chair and may also appoint additional SBHE faculty and staff advisors, as ex-officio non-voting members. Each committee member will be both independent and financially literate.

4. MEETINGS

The committee will meet at least four times a year, with authority to convene additional meetings, as circumstances require. All committee members are expected to attend each meeting, in person or via teleconference or video-conference. The committee will invite members of management, auditors or others to attend.
meetings and provide pertinent information, as necessary. It may hold executive sessions in compliance with law. In compliance with law, meeting agendas will be prepared, and provided in advance to members, along with appropriate briefing materials. In compliance with law, minutes will be prepared.

5. RESPONSIBILITIES

The committee will carry out the following responsibilities:

a. Financial Statements:

i. Review significant accounting and reporting issues, including complex or unusual transactions and highly judgmental areas, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.

ii. Review with management and the external auditors the results of the audit, including any difficulties encountered.

iii. Review the annual financial statements, and consider whether they are complete, consistent with information known to committee members, and reflect appropriate accounting principles.

iv. Review other sections of the annual report and related regulatory filings before release and consider the accuracy and completeness of the information.

v. Review with management and the external auditors all matters required to be communicated to the committee under generally accepted auditing Standards.

vi. Understand how management develops interim financial information and the nature and extent of internal and external auditor involvement.

vii. Review interim financial reports with management and the external auditors and consider whether they are complete and consistent with the information known to committee members.

b. Internal Control:

i. Consider the effectiveness of the university system's internal control system, including information technology security and control.

ii. Understand the scope of internal and external auditors' review of internal control over financial reporting, and obtain reports on significant findings and recommendations, together with management's responses.

c. Internal Audit:

i. Approve an internal audit charter.

ii. Ensure there are no unjustified restrictions or limitations, and review and concur in the appointment, replacement, or dismissal of the chief auditor.

iii. Approve the annual audit plan and all major changes to the plan.

iv. Review the internal audit activity's performance relative to its plan.

v. Review with the chief auditor the internal audit budget, resource plan, activities, and organizational structure of the internal audit function.

vi. At least once per year, review the performance of the chief auditor and recommend the annual compensation and salary adjustment.

vii. Review the effectiveness of the internal audit function, including conformance with The Institute of Internal Auditors' the Definition of
Internal Auditing, Code of Ethics and the International Standards for Professional Practice of Internal Auditing.

vii. On a regular basis, meet with the chief auditor to discuss relevant matters.

d. External Audit:

i. Review the external auditors' proposed audit scope and approach, including coordination of audit effort with internal audit.
ii. Review the performance of the external auditors.
iii. On an 'as-needed' basis, meet with the external auditors to discuss relevant matters.

e. Compliance:

i. Review the effectiveness of the system for monitoring compliance with laws and regulations and the results of management's investigation and follow-up (including disciplinary action) of any instances of noncompliance.
ii. Review the findings of any examinations by regulatory agencies, and any auditor observations.
iii. Review the process for communicating the code of conduct to Board members and university system personnel, and for monitoring compliance therewith.
iv. Obtain regular updates from management and Board and university system legal counsel regarding compliance matters.

f. Reporting Responsibilities:

i. Regularly report to the Board about committee activities, issues, and related recommendations.
ii. Provide an open avenue of communication between internal audit, the external auditors, and the Board.
iii. Review any other reports the company issues that relate to committee responsibilities.

g. Other Responsibilities:

i. Perform other activities related to this policy as requested by the Board.
ii. Institute and oversee special investigations as needed.
iii. Review and assess the adequacy of the committee policy annually, requesting Board approval for proposed changes, and ensure appropriate disclosure as may be required by law, policy or regulation.
iv. Confirm annually that all responsibilities outlined in this policy have been carried out.
v. Evaluate the committee's and individual members' performance on a regular basis.

History:
New Policy, SBHE Minutes, February 27, 2014.
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SUBJECT: 300s: Governance and Organization

EFFECTIVE: February 27, 2014

Section: 302.3 Budget and Finance Committee

The State Board of Higher Education Budget and Finance Committee is established to ensure the North Dakota University System's fiscal stability and long-term economic health.

The Budget and Finance Committee shall consist of three voting members of the Board, and may also include additional SBHE faculty and staff advisors as ex-officio non-voting members, as appointed by the Board President. The President shall appoint the members at the same time the Board elects its officers. The committee members shall serve terms beginning July 1. The terms may not exceed three years and shall be staggered to ensure continuity of membership over the budget cycle. In the event a vacancy on the committee occurs before the next scheduled election, the President shall appoint a committee member to fill the vacancy no later than the next regular meeting of the Board. The Chancellor shall serve as an ex-officio member of the Committee.

The Committee shall meet at the call of the Chair as necessary to fulfill its duties and responsibilities. The Committee is responsible for reviewing and recommending the following to the full Board for approval:

1. Annual budget guidelines, including tuition and fees that promote SBHE goals;
2. Biennial budget requests to the legislative and executive branches consistent with the SBHE's constitutional requirement to prepare "a single unified budget covering the needs of all institutions under its control";
3. Priorities for institutions' capital requests and the system-wide capital master plan;
4. Funding mechanisms and methodologies;
5. Allocation of funds directly appropriated to the Board;
6. Annual budget for the functioning of the SBHE;
7. Major policies regarding finance and budget to ensure sound fiscal practices;
8. Changes to budget and financial related reporting provided to the Committee or SBHE;
9. Major financial studies;
10. Retirement plan changes;
11. Proposed bond issues;
12. Proposed purchases, sales or exchanges of real property;
13. Proposed development of state land;
14. Proposed significant changes or expansions to capital projects; and
15. Review and recommend to the Board an annual operating budget for the system office.
The Committee shall be responsible for receiving annual budget and finance reports, including:

1. tuition waivers;
2. financial review report;
3. semi-annual budget report;
4. student affordability;
5. financial statements.

History:
New Policy, SBHE Minutes, February 27, 2014.
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SUBJECT: 300s. Governance and Organization

EFFECTIVE: November 17, 2005

Section: 310.1 Board President and Member Responsibilities

1. The State Board of Higher Education President has no authority to make decisions or to establish policy on behalf of the Board except as specifically delegated the authority to do so by the Board. The Board delegates the following authority to its President and, in the President's absence, to its Vice President.

   a. The President (or the Chancellor, pursuant to the authority provided to the Chancellor in SBHE Policy 304.1) shall be the spokesperson of and represent the Board by explaining, defending, advocating or announcing Board-stated positions.

   b. As elected leader of the Board, the President has the ultimate responsibility for assuring the beliefs and core values adopted by the Board are known to all Board members and that the Board strives to uphold these values at all times.

   c. The President shall be responsible for efficient operation of the Board including a Board established planning and action cycle.

   d. The President shall ensure that new Board members are informed of their responsibilities and oriented to the Board's operations. The President, with the Chancellor's assistance, shall arrange for an orientation program after a new member is appointed. The new member orientation program shall include opportunities for new members to become familiar with NDUS campuses and programs, such as campus tours or other events scheduled in conjunction with Board meetings, new member visits to campuses, an on-line "tour" or other suitable means.

   e. The President shall chair Board meetings by exercising all commonly accepted responsibilities of that position.

   f. The President may call special meetings of the Board pursuant to the provisions of the Board's bylaws.

   g. The President shall communicate directly and consult with other Board members and the Chancellor as frequently as necessary and consistent with applicable open meetings and open records laws, to assure the Board members and the Chancellor are kept informed on issues relevant to the
Board's duties and responsibilities:

h. The President may appoint ad hoc committees to advise the Board.

2. Board Member Responsibilities include:

a. A member shall be a link between the State Board of Higher Education and the public which it serves.

b. A Board member shall at all times conform to and advocate the Board's beliefs and core values.

c. A member shall help build and sustain an atmosphere of respect, openness, civility and partnerships in all relationships with fellow Board members, the Chancellor and System staff, and the presidents, faculty and staff of each institution of higher education in North Dakota.

d. A member shall, through service on the State Board of Higher Education, acquire a reasonable level of knowledge of:

1. the mission of each institution of higher education in the North Dakota University System and how the institution, through its administration and faculty, plans to achieve its mission;

2. the traditional organization and governance structure of an associate, baccalaureate, and graduate degree-granting institution of higher education;

3. the relationship of North Dakota University System institutions with other institutions of higher learning and other educational systems within North Dakota;

4. the competitive position of North Dakota University System institutions in the regional and national marketplace.

5. the provisions of state law governing the Board and its activities;

6. the internal and external forces which affect the environment in which higher education and the North Dakota University System operate; and

7. the structural relationship among the Governor, the legislature, the Chancellor, the System office, the North Dakota University System institutions and the Board.

e. A member shall be an advocate of quality, efficient, and effective higher education in North Dakota by:

1. assisting in the development and ongoing review of a clear and concise Board strategic plan, including the goals and objectives, for the North Dakota University System;

2. assisting in establishing appropriate measures to monitor and assess achievement of the goals;

3. assisting in evaluating Board performance, and the performance of the Chancellor;

4. participating responsibly in board meetings;
5. devoting the time necessary to carry a fair share of Board leadership responsibility;

6. assisting in establishing effective policies of governance; and

7. taking part in reasonable amounts of professional development.

1. A member shall represent the people of North Dakota and be an advocate for the North Dakota University System without special regard to a particular institution, interest, political affiliation, community, or constituency.

History:
New Policy. See SBHE Minutes, June 19, 1997 page 6778.
Amendment SBHE Minutes, November 18-19, 1999.
Amendment SBHE Minutes, April 15, 2004.
Amendment SBHE Minutes, November 17, 2005.

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SUBJECT: 300s: Governance and Organization  EFFECTIVE: January 21, 2013
Section: 310.2 Board Officers, Elections

1. The officers of the Board shall be a president and a vice president.

2. The president shall be elected by the Board from its members and shall serve for a term of one year or until a successor is elected and qualified. No Board member shall be eligible to serve more than two consecutive terms as president. The president shall preside at all meetings of the Board and, as directed by the Board, shall have such other duties, powers, and responsibilities as are assigned by the Board.

3. The vice president shall be elected by the Board from its membership and shall serve for a term of one year or until a successor is elected and qualified. The vice president shall act as the president in the absence of the president and shall have such other duties, powers, and responsibilities as may be assigned by the president of the Board. In the event the office of the president becomes vacant during the elected term, the vice president shall act as temporary president until a new president is elected to fill the vacancy and serve the balance of the unexpired term.

4. The Board shall appoint an executive secretary to serve at the pleasure of the Board. The executive secretary shall be responsible to the chancellor and shall be charged with the responsibility of recording, maintaining, and distributing a record of all the board meetings and performing such other duties as the Board or the chancellor may direct.

5. The election of officers of the Board shall be held no later than May each year. Nominations may be made and voting conducted at the same meeting. The terms of office shall begin July 1. In the event an office is vacated, an election to fill the unexpired term shall be held at the next regular meeting of the Board.

History:
New policy. SBHE Minutes, January 17, 2002.
Amendment. SBHE Minutes, March 19, 2009.
Amendment. SBHE Minutes, January 17, 2013

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SUBJECT: 304.1 Governance and Organization

EFFECTIVE: February 27, 2014

Section: Chancellor/Commissioner of Higher Education: Authority and Responsibilities

1. The terms ‘Commissioner’ and ‘Chancellor’ shall be used interchangeably throughout this manual.

2. Consistent with Policy 100.6, the Chancellor serves as the chief executive officer of the Board and North Dakota University System (NDUS). The Chancellor is empowered to execute all documents and exercise all powers necessary to the discharge of that office. Operating under the overall direction and policy control of the Board, the Chancellor:

   a. Provides vision and overall leadership for the NDUS and a single focus of accountability to the state and its citizens.

   b. Shall be the chief executive and administrative authority for the NDUS

   c. Serves as the primary link between the Board’s responsibilities for policy and the presidents’ responsibilities for operations.

   d. Promotes and preserves the overall mission and goals of the NDUS by working with each institution president to plan, build, and sustain appropriate academic and co-curricular programs and initiatives that minimize duplication and link NDUS resources to state, regional, and national needs.

   e. Working in conjunction with the presidents, proposes to the Board short- and long-term planning goals, policies, and actions which serve the best interests of the NDUS.

   f. Working in conjunction with the presidents, promulgates guidelines and regulations for the consistent interpretation and application of Board policies.

   g. Monitors and evaluates the performance of the presidents and the institutions in pursuit of their established missions and goals.

   h. Serves as the “voice” of the NDUS to the citizens, governor, state legislature, and the Board regarding the capacity of the NDUS in meeting the priorities of the state and other matters not reserved to the Board.
i. Communicates the needs of the state to the NDUS community.

j. Serves as a "shield" against outside interference in NDUS and institutional matters.

k. Working in conjunction with the presidents, develops inter-institution cooperative academic and operational programs and services designed to reduce cost while improving efficiencies and accountability.

l. Ensures that the office of the Chancellor can meet NDUS responsibilities that include academic policy, planning, and quality assessment; capital planning and construction; budgeting; human resources policy and compliance; institutional research; risk management; auditing; legal services; information technology systems and services shared among the institutions; and legislative and community relations.

m. Serves as the channel of communication between the Board and all subordinate administrative officers and personnel, including presidents.

n. May consult with each institution's constituency groups through the presidents on matters which the Chancellor deems appropriate for constituency involvement.

o. Administers the academic, financial, and other functions of the NDUS in a manner which assures support for the approved mission of each campus.

p. Directs the activities of the presidents in a manner which promotes the general welfare of the NDUS while, at the same time, ensuring support for the approved mission of each institution.

q. Evaluates the performances of the presidents on an annual basis.

r. Balances the sometimes competing interests of the institutions.

3. Among other duties and responsibilities, the Chancellor shall:

a. Execute and administer the policies, decisions, and rules of the Board;

b. Prepare policy recommendations for the Board’s consideration.

c. Exercise administrative control, consonant with Board policy, over inter-institutional matters including, but not limited to, those pertaining to budgets, curriculum, research, and public service, and extension activities.

d. Appoint, determine the composition of and delegate duties to such committees or councils as the chancellor deems advisable.

e. Subject to applicable Board policies, make recommendations to the Board concerning appointment and compensation and other terms of employment for institution presidents.

f. Provide for the administration and staffing of the NDUS office.

g. Following recommendations of the college or university president, make recommendations to the Board regarding tenure.

h. Review and approve or refuse to approve dismissal or termination of an appointment of an institution's chief finance officer or internal auditor.

i. Serve as the official representative of the Board and the institutions and entities it governs to the legislature, to the Governor, to the executive branch, and to other governmental entities.
j. Serve as the channel of communications between the Board and all NDUS administrative officers and personnel. In this connection, the Chancellor shall have direct access to the Board and, in conjunction with the presidents, inform and advise the Board with respect to operations of the NDUS and its institutions.

k. Act on behalf of the Board during the interim between meetings provided that the Chancellor shall promptly inform the Board President and report and request ratification of the action taken at the next Board meeting.

l. Act on behalf of the Board as the sole authority authorized to request opinions from the Attorney General's office and coordinate all legal services of the institutions and entities governed by the Board.

m. Approve, on behalf of the Board, grants that have been recommended by the grant review committee established by N.D.C.C. § 15-10-51.

n. Exercise such other authority and perform such other responsibilities as may be assigned by the Board.

4. In exercising this authority and carrying out these responsibilities, the chancellor shall at all times conform to and advocate the Board's beliefs and core values.

5. The Chancellor shall establish a process or forum enabling presidents to provide advice to the Chancellor regarding matters affecting the university system. The Chancellor shall ensure that NDUS institutions cooperate to improve academic offerings, expand access to education, promote faculty development, improve support services, reduce unnecessary duplication and enhance efficiency.

6. The Chancellor serves at the pleasure of the Board. The Chancellor shall have a written contract for a term not to exceed three years. The Board shall annually evaluate the Chancellor's performance as provided in Policy 604.2. Subject to satisfactory performance, the Board may each year extend the Chancellor's contract for an additional term of not more than three years. The Board may, upon its annual evaluation of Chancellor performance and in its discretion, decide to not extend the term of a contract or give notice that a contract will not be renewed beyond the end of a current term.

7. The Board may dismiss the Chancellor for just cause during a contract term, following written notice of its intent to do so and an opportunity for an evidentiary hearing. The board may appoint a hearing officer or administrative law judge to conduct the hearing before the Board.

8. A tenured faculty member at an NDUS-governed institution who is appointed Chancellor may retain the tenured status at that institution during the term as Chancellor. The Board, at the time of initial appointment or thereafter and commensurate with qualifications, may award a tenured full professorship to an individual appointed Chancellor if the individual has had a tenured full professorship appointment at another institution prior to or at the time of the appointment.

AMENDS OR REPEALS:
Article I, Section 7 A., portion of Article I, Section 7 B

Reference: NDUS Procedure - 301

History:
SBHE Minutes, February 18-19, 1982, page 5003
Amendment SBHE Minutes, May 24-25, 1990, page 6003
Amendment SBHE Minutes, January 20, 1994, page 6427
Amendment SBHE Minutes, April 15, 2004.
Amendment SBHE Minutes, September 26, 2012.
Amendment SBHE Minutes, February 27, 2014.
## NDUS Senior Staff

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<td>Chief Auditor</td>
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<td>Sonia Cowen</td>
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<td>Linda Donlin</td>
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### Larry C. Skogen, Ph.D.

**Chancellor**

Dr. Larry C. Skogen is Interim Chancellor for the North Dakota University System. A native of Hettinger, N. Dak., Skogen has been president of Bismarck State College since 2006. Previously he was academic dean and deputy superintendent for academic affairs at New Mexico Military Institute, Roswell, N.M. Dr. Skogen has taught history in collegiate and military settings and served in other capacities in the U.S. Air Force, as director of operations and inspector general of the Francis E. Warren Air Force Base in Wyoming from 1998 to 2001. In 2004, he was an educational consultant to the United Arab Emirates. He holds a B.S. in secondary education from Dickinson (N.D.) State University, an M.A. in history from Central Missouri State University, Warrensburg, Mo., and a Ph.D. in history from Arizona State University, Tempe, Ariz.

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### Timothy P. Carlson, B. A.

**Chief Auditor**

Timothy Carlson is the University System's chief auditor. He is responsible for leading the university system's internal audit function.
and conducting audits to mitigate risk. Carlson has over 20 years' experience in internal auditing, risk assessment, finance and operations. His expertise includes implementing complex information systems, designing internal controls, and staff leadership and development. Carlson also brings over seven years of executive level experience at a regional medical center subject to multiple Federal and state regulations.

Born and raised just north of the Twin Cities in Forest Lake, Minn., Carlson received bachelor's degrees in Business Administration with an emphasis in Accounting and English with an emphasis in Written Communication from Concordia College. Since that time, he has lived in five states including North Dakota and, most recently, St. Louis, Mo.

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Sonia S. Cowen, Ph.D.
Interim Vice Chancellor for Academic and Student Affairs

As the chief academic officer of NDUS, Dr. Cowen oversees all academic and student affairs functions within the system including policy development, implementation management, and multi-campus coordination. She has more than 30 years' experience in senior to executive academic posts, including responsibilities for academic and student affairs in three statewide university systems. Dr. Cowen was contracted by the U.S. Army and Air Force to teach leadership to officers and recruits. She has served in various capacities as faculty and administrator in institutions that are similar in mission to NDUS - community colleges as well as regional and research universities. Her work has been published in numerous national refereed journals on topics specific to higher education, including leadership, accreditation, critical thinking and use of simulation-modeling-visualization technologies. She has been appointed to various national and state advisory boards and task forces, including rural revitalization, P-16 advisory, workforce investment, accreditation and reciprocity.

Dr. Cowen earned her Ph.D. in Educational Leadership: Higher Education Administration from Gonzaga University, Spokane, Wash.; her Master's in Fine Arts in Creative Writing from the University of Montana, Missoula, Mont.; and her bachelor's degree in English from Eastern Washington University, Cheney, Wash.

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Linda Donlin, M.S., B.S.
Director of Communications and Media Relations

Linda Donlin is the University System’s director of communication and media relations. She oversees communications with diverse NDUS audiences across the system and with the public. She previously worked at Mayo Clinic in Rochester, Minn. as public affairs manager, where she was responsible for strategic communication with various audiences including the Board of Trustees, Board of Governors, 58,000 employees across Mayo’s campuses and the public. Donlin is a native North Dakotan and also worked as director of communications and public relations at MDU Resources Group, Inc., and as senior editor at Basin Electric Power Cooperative, both in Bismarck. She has a master’s degree in management with a human resources emphasis and a bachelor’s degree in business management with a minor in public
Lisa Feldner, Ph.D.
Vice Chancellor for Information Technology and Institutional Research

Lisa Feldner, Ph.D., Vice Chancellor for Information Technology and Institutional Research, oversees the NDUS Core Technology Services (CTS) and institutional research, one of the most critical components of university system operations.

Dr. Feldner previously was CIO for the Information Technology Department for the State of North Dakota, where she oversaw technology activities in state and local government, managed a staff of 300 employees and a budget of $82 million. Feldner also held leadership roles in coordinating major IT initiatives, including the Statewide Technology Access for Government and Education Network (STAGEnet), the Criminal Justice Information System (CJIS), ConnecND, and the Geographical Information (GIS) Hub.

Prior to Dr. Feldner's appointment as ITD's CIO, she served as the Technology Director for Bismarck Public Schools, where she managed the budget and staff, including the development, design, and integration of software and hardware systems for more than 13,000 users at 26 campuses.

Feldner has a Ph. D. in educational leadership from the University of North Dakota, a master of science in mathematics education from Minot State University, and bachelor's of science degrees in computer science and business education, also from MISU.

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Laura Glatt, M.B.A., C.P.A.
Vice Chancellor for Administrative Affairs

Laura Glatt is the University System's chief financial and administrative officer. She is responsible for developing policy and coordinating services for financial and capital planning and budgeting, accounting, system human resource services, state financial aid programs and information technology.

Glatt is a certified public accountant and holds a bachelor's degree in accounting and a master's degree in management from the University of Mary, Bismarck. Prior to assuming this position in 1994, Glatt served as NDUS director of finance. She also worked as a management and fiscal analyst for the North Dakota Office of Management and Budget and as a controller for the State Treasurer's Office.

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Murray G. Sagsveen, J.D.
Chief of Staff and Ethics Officer

Murray Sagsveen is an attorney with a wealth of experience in developing policies and working with government agencies, boards and associations. Sagsveen is assisting the Chancellor in shaping and implementing a solid organizational plan and structure. He will serve in this position during the leadership term of Interim Chancellor Skogen. Sagsveen's legal career includes state government, private practice, and the military. Governor Ed Schafer recalled him to active duty to coordinate law enforcement and flood recovery efforts during the 1997 flood in Grand Forks and surrounding areas. He also served as the State Health Officer, when he represented a multi-state region on the executive committee of the Association of State and Territorial Health Officials. Sagsveen was employed as the associate executive director and general counsel of the American Academy of Neurology and related organizations in St. Paul, Minn., for 10 years before retiring to relocate to North Dakota in 2011. Gov. Jack Dalrymple recalled him to state active duty as the State Flood Recovery Coordinator, focusing on the 2011 Souris River flood in Minot. In February 2013, the Leadership North Dakota board of directors asked him to be the organization's first chief operating officer and to establish a senior executive leadership program for the state.

Sagsveen is a graduate of Concordia College in Moorhead, Minn., and the University of North Dakota School of Law in Grand Forks. He has studied ethics and theology and is a Certified Association Executive as well as a graduate of the Minnesota Executive Program at the Carlson School of Management at the University of Minnesota. He is active in human rights efforts.

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Connie Sprynczynatyk
Director of Strategic Planning

As the University System's Director of Strategic Planning, Connie Sprynczynatyk is coordinating the effort by the State Board of Higher Education and University System to create a new, meaningful strategic plan. She is a graduate of North Dakota State University who spent 32 years in elected office, including 20 years on the Bismarck Board of City Commissioners. She served as executive director for the North Dakota League of Cities for 17 years, and is appointed by Secretary John McHugh as North Dakota's Civilian Aide to the Secretary of the Army. Sprynczynatyk served on the North Dakota Supreme Court's Judicial Nominating Committee, the board of directors for the North Dakota Insurance Reserve Fund, the National League of Cities board of directors, and the board of directors of Starion Financial. Sprynczynatyk has decades of experience with strategic planning and board development, has been a member of the North Dakota National Guard family for more than 40 years. She and her husband David live in Bismarck.

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Rebecca Wimer, B.A.S.
Executive Assistant to the Chancellor

Rebecca Wimer is the University System's executive assistant to Interim Chancellor Larry Skogen. Wimer helps to conserve the chancellor's time by maintaining his calendar, managing
communication and visitors and arranging his activities and services.

Wimer has been with the NDUS since 2002. Along with being administrative support staff for the NDUS office during this time, she has also worked specifically as the State Board of Higher Education secretary, academic and articulation and transfer assistant and most recently the assistant to the vice chancellor for academic and student affairs. Prior to joining the NDUS, Wimer worked as an administrative assistant for the Department of Public Instruction.

Wimer earned an associate’s degree in administration from Bismarck State College and a Bachelor of Applied Science degree from Dickinson State University.

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SUBJECT: 100s: Introduction  EFFECTIVE: November 21, 2002
Section: 100.5 Beliefs and Core Values of the State Board of Higher Education

I. Beliefs:

- We believe the most valuable asset of any state is its human capital: well-educated and highly skilled citizens, employees, business owners, community leaders, and contributing members of society.

- We believe a brighter future for North Dakota is directly linked to and dependent upon its University System. Likewise, a brighter future for the University System is linked to the economy of North Dakota.

- We believe the University System, in conjunction with the elected and private sector leadership in North Dakota, can and should take positive steps to enhance the economy of North Dakota.

- We believe depopulation is a major threat to the overall viability of North Dakota and if not addressed, with urgency, the infrastructure, quality of life, and services available to the citizens of the state will diminish.

- We believe the faculty are the foundation of the North Dakota University System.

- We believe performance of the University System will be enhanced in an environment which is conducive to innovation, creativity, and flexibility - coupled with appropriate accountability.

- We believe in the implementation of education programs and curriculums to meet the needs of a culturally diverse student population and to prepare students to interact in an increasing pluralistic society.

- We believe the citizens and the legislature created and expect the University System to function as a system, i.e., to collaborate, whenever appropriate and feasible, in offering programs, serving students and citizens, and in providing administrative services.

- We believe the benefits of the University System can and should be available to all of North Dakota, geographically and demographically.

- We believe it is important for all the key stakeholders of the University
System to adopt and apply the same set of expectations and accountability measures which were identified and agreed to by the 1999 Roundtable on Higher Education.

- We believe it is possible to create a University System for the 21st century, as envisioned by the 1999 Roundtable on Higher Education and further believe making it a reality will require all entities to do their part as described in the Report of the Roundtable.

II. Core Values - To be reflected in how the Board and all personnel of the University System carry out responsibilities on a daily basis:

- High integrity
- Open, honest, forthright and mutually respectful in discussion and actions
- Trustworthy
- Accountable
- Cooperative valued partner with other state agencies and entities
- Responsible stewards of state investment in the University System
- Scholarship and the pursuit of excellence in the discovery, sharing, and application of knowledge
- Support and embrace diversity

History:
Amendment SBHE Minutes, November 21, 2002.

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SUBJECT: 300s: Governance and Organization
EFFECTIVE: June 17, 2010

Section: 308.1 Officer and Employee Code of Conduct

1. Introduction and Application:

This Officer and Employee Code of Conduct governs the State Board of Higher Education and its members and establishes minimum standards for all NDUS officers and employees. The Board and the entire NDUS are committed to uphold the highest ethical and professional standards. All Board members and NDUS officers and employees must, at all times, comply with all applicable laws, regulations, policies and procedures. Activities that achieve results unlawfully or in violation of applicable policies or procedures or by unethical behavior - including, but not limited to, payments for illegal acts, indirect contributions, rebates, or bribery - are not tolerated and must be reported. All conduct must meet or exceed minimum standards established by law.

The Board has established its Beliefs and Core Values in SBHE Policy 100.5 and in SBHE Policy 100.6. The Board sets forth Authority and Responsibility of the Board, including its Guiding Principles. SBHE Policies 100.5 and 100.6 establish a foundation or framework for Board action and conduct of its members and NDUS officers and employees; this Code of Conduct reinforces and supplements those policies.

2. General Conduct:

The Board supports an environment that is free of discrimination or harassment. All Board members, officers and employees are expected to conduct themselves in a businesslike manner. Unlawful consumption of alcoholic beverages or use of illegal drugs, being at work while under the influence of alcohol or drugs, disruptive behavior, unlawful gambling, unauthorized use of public property or resources and other unauthorized activities that disrupt the efficient and economical administration of the NDUS, are prohibited. Violation of applicable laws or policies governing possession and use of alcoholic beverages or drugs, including the Drug Free Workplace Act, SBHE Policy 615 or applicable system office or institution policies, are prohibited. Likewise, sexual or other harassment (including actions contributing to a hostile work environment) in violation of federal or state law or SBHE Policy 603.1, is prohibited.

3. Conflicts of Interest.
All Board members, officers and employees are expected to perform their duties conscientiously, honestly, and in accordance with the best interests of the NDUS. All Board members, officers and employees must comply with applicable federal and state laws. Board members, officers and employees may not unlawfully use their position or the knowledge gained as a result of their position for private or personal advantage. All Board members, officers and employees are responsible for their own actions. Any individual who has concerns or questions regarding a perceived or potential conflict or regarding application or interpretation of federal or state law or SBHE policy is encouraged to communicate with a superior or with legal counsel.

4. Outside Activities and Employment.

Board members, officers and employees share responsibility for good public relations, especially at the community level. Their readiness to help with religious, charitable, educational, and civic activities brings credit to the NDUS and is encouraged. However, officers and employees must comply with applicable federal and state laws, policies in Section 511 of the SBHE Manual and related system office and institution policies. At all times, employees must avoid outside activities that create an excessive demand upon their time and attention, thus depriving the NDUS of their best efforts in fulfilling their job duties or that create a conflict of interest, or an obligation, interest, or distraction that interferes with the independent exercise of judgment in the NDUS' best interest.

5. Relationships With Clients and Suppliers, Conflicts of Interest.

Board members are not NDUS employees and may have other full or part-time employment and other professional, civic and personal responsibilities and activities, in addition to their part-time service as Board members. Nevertheless, Board members must be familiar with and comply with applicable laws governing conflict of interest that apply to Board members and should strive to avoid other activities that create an obligation, interest or distraction that interferes with the independent exercise of judgment in the best interest of the NDUS. They should avoid investing in or acquiring a financial interest for their own accounts in any business organization that has a contractual relationship with the NDUS or NDUS institution, or that provides goods or services to the NDUS, if such investment or interest could influence or create the impression of influencing their decisions in the performance of their duties.


Excluding only de minimus contributions, such as purchase of a meal at reasonable value as part of a conference or other event with no conditions attached to such purchase and as permitted under applicable federal and state laws. Board members, officers and employees may not accept entertainment, gifts, or personal favors that could influence, or appear to influence, decisions in favor of any person or organization with whom or with which the NDUS or NDUS institution has, or is likely to have, business dealings. Similarly, Board members, officers and employees may not accept any other preferential treatment under circumstances that because of their position with the NDUS, the preferential treatment may influence or be perceived as influencing their official conduct. Board members, officers and employees may not receive payment or compensation of any kind from any source for NDUS duties and responsibilities, except as authorized under applicable law or NDUS pay policies. Specifically, the acceptance of "kickbacks" or commissions in any form from vendors, suppliers or others is prohibited.

7. NDUS Funds and Other Assets.

Board members, officers and employees who have access to NDUS funds and other assets in any form must follow the prescribed procedures for recording, handling, and protecting money and other assets as detailed in applicable NDUS procedure manuals or other explanatory materials. Any person who has information concerning
possible fraud or dishonesty shall immediately report such information to a superior or to legal counsel.

Board members, officers and employees responsible for spending or approving expenditure of NDUS funds or incurring any reimbursable expenses must comply with all applicable laws and policies and use good judgment on behalf of the NDUS to ensure that good value is received for every expenditure. NDUS funds and all other assets are for NDUS purposes only and not for personal use or benefit. NDUS or other public equipment, supplies and other property or assets may not be used for private or personal use, except as authorized under SBHE Policy 611.5 or other applicable law or policy.

8. NDUS Records and Communications.

Accurate and reliable records of many kinds are necessary to meet NDUS legal and financial obligations and to manage the affairs of the NDUS. NDUS books and records must reflect in an accurate and timely manner all business transactions. Board members, officers and employees responsible for accounting and recordkeeping must fully disclose and record all assets and liabilities and exercise diligence in enforcing these requirements. Board members, officers and employees must not make or engage in any false record or communication of any kind, whether internal or external, including, but not limited to, false expense, attendance, enrollment, financial, or similar reports and statements, or false advertising, deceptive marketing practices, or other misleading representations.


Board members, officers and employees must take care to separate their personal roles from their NDUS positions when communicating on matters not involving NDUS business. They may not use NDUS identification, stationery, supplies, and equipment for personal or political matters. When communicating publicly on matters that involve NDUS business, Board members, officers and employees may not represent that they speak for the NDUS, unless that is one of their duties or they are otherwise authorized to do so. When dealing with anyone outside the NDUS, including public officials, Board members, officers and employees must take care not to compromise the integrity or damage the reputation of the NDUS or any institution.

10. Prompt Communications.

In all matters involving communication with NDUS students, customers, suppliers, government authorities, the public and others, Board members, officers and employees must endeavor to make complete, accurate, and timely communications and respond promptly and courteously to all proper requests for information and complaints.

11. Privacy, Confidentiality and Open Records.

Board members, officers and employees must at all times comply with applicable laws, regulations and SBHE policies concerning privacy, confidential records, access to open records and records retention.

12. Reporting Suspected Violations; Procedures for Investigating Reports.

Officers and employees shall report suspected violations of this Code to their superior, some other senior manager or administrator or legal counsel. In addition, the NDUS shall maintain a fraud hotline and suspected violations may be reported by use of that hotline. Any officer or employee who makes a report in good faith shall be protected against retaliation of any kind; any officer or employee who retaliates or attempts retaliation in response to a good faith report shall be subject to dismissal or other discipline. Failure to report known or suspected violations is in itself a violation and may lead to dismissal or other disciplinary action.
Board members who have information concerning a possible violation of this Code or are uncertain about application or interpretation of any legal requirement should report the matter to the chancellor, legal counsel or the attorney general.

Alleged violations of this Code involving NDUS officers or employees shall be investigated by the appropriate NDUS officer. All officers and employees shall cooperate in investigations of alleged violations. A violation of this Code is cause for dismissal or other appropriate disciplinary action, in addition to any criminal or other civil sanctions that apply.

13. Institution Codes.

The NDUS office and each NDUS institution shall adopt and implement a Code of Conduct consistent with this Code and Committee of Sponsoring Organization of the Treadway Commission (COSO) standards. NDUS office and institution codes shall include:

a. A statement of the organization’s values;
b. The people or groups of people affected;
c. A brief description or list of key behaviors that are accepted and not accepted;
d. How to identify and resolve conflicts of interest;
e. How to report violations and to whom;
f. Consequences of violating the Code;
g. Consequences of failure to report known or suspected violations, and
h. How reports will be investigated.

The NDUS office and each institution shall require that each new employee review the Code of Conduct and sign a statement certifying the employee has read and agrees to comply with the Code. Further, all benefitted employees are required to annually certify in writing or electronically that they have read and are in compliance with the Code of Conduct.

History:
New policy. SBHE Minutes, June 17, 2010.

[ Back to website ]
Although a state employee enjoys certain protections, the employee can still be sued for job-related actions or decisions. The real question is whether the lawsuit will be successful. The North Dakota Legislature has enacted several laws to protect state employees from job-related lawsuits. However, the employee must follow all established procedures in order to be protected by these laws. These procedures, and the employee’s responsibilities, are explained briefly in this fact sheet.

**Within the Scope of Employment**

North Dakota law provides that a lawsuit based on the actions of a state employee “within the scope of the employee’s employment” must be brought against the State and not the state employee. A state employee’s actions are “within the scope of employment” if the employee was performing duties or tasks lawfully assigned to the employee. These protections apply to temporary and permanent employees, present and former officers or employees of the State and all persons acting in an official capacity on behalf of a state agency, board, commission or department.

**Statutory Immunity**

However, if the person bringing a suit ignores state law and sues a state employee, as an individual, for job-related actions, the employee has “statutory immunity” under state law. Under this statutory immunity, a state employee may not be held “personally liable” - that is, be ordered by a court to pay money damages out of his or her own pocket - for job related actions within the employee’s scope of employment.

The person suing has the burden of convincing the court that the employee was not acting “within the scope of employment.” The law provides additional immunities to protect state employees. For example, a state employee may not be held liable for:

- Discretionary actions;
- Legislative or rule-making activities;
- Judicial or quasi-judicial actions, like deciding a contested case or appeal; or
- Exercising reasonable care in implementing a statute or rule, even if that statute or rule later is found to be invalid.

If one of these immunities applies, the state employee should be dismissed from the lawsuit.

A federal court or a court in another state may not apply all of the protections given by North Dakota law and our state laws do not necessarily apply in those courts. To deal with this possibility, state law provides that, except for punitive damages, the State will “indemnify” (or stand behind by insuring) a state employee who is found personally liable for actions “within the scope of employment,” if that employee gave timely notice of the claim and cooperated in the defense of the case.

Courts or juries sometimes award “punitive damages” to people who sue successfully. The purpose of these particular awards is to punish the person who committed the wrongdoing. Punitive damages are awarded rarely and usually only for extreme misconduct. The State will not pay a “punitive damage” award for a state employee.
The Lawsuit: The law requires anyone who sues a state employee for job-related actions to send a copy of the legal papers starting the lawsuit to the State’s Office of Management and Budget (OMB). When OMB receives these papers, someone from the Risk Management Division of OMB or the Office of Attorney General will contact the employee. If a state employee is served with legal papers, however, the employee should not wait to be contacted by OMB.

- If a state employee is sued, the employee should notify the supervisor and the Office of Attorney General immediately, in writing.

Depending on the case, the State may provide an attorney hired by the Risk Management Fund or an attorney from the Office of Attorney General to represent the employee. While the employee may choose to hire a private attorney, the State will not pay the private attorney’s fees, nor will it pay a judgment against the employee if the case is lost.

If Legal Papers Are Served:

- Write down the DATE the legal papers were received, and how the papers were delivered.
- IMMEDIATELY contact the agency supervisor and the Office of Attorney General.
- Give written notice of the lawsuit to the head of the agency and the Office of Attorney General within 10 days of being served with legal papers. The state employee MUST do this in order to qualify for many of the available benefits.
- If the employee wants the state to provide a lawyer, a written request for defense must be given to the agency head and the Office of Attorney General within 10 days of the papers being received. It’s best to do this immediately.
- Give the legal papers to the designated attorney along with the relevant background information.
- To qualify for representation by a state attorney, and most other related benefits, the employee must provide full cooperation and complete disclosure throughout the defense of the case.

Minimize the Risks: If a state employee is concerned that job-related actions or decisions are putting the agency or the State at risk of being sued, please discuss the situation with the appropriate supervisor. The supervisor may wish to contact the agency’s attorney or the Risk Management Division to discuss the issue further and take appropriate actions to minimize the risks of a lawsuit.

Contact Information: More information on this subject as well as information on reducing the risk of lawsuits is available from:

- The Risk Management Division, Office of Management & Budget, 1600 East Century Ave, Suite 4, Bismarck, ND 58503-0649; Tel: (701) 328-7584, Fax: (701) 328-7585. E-mail: rminfo@state.nd.us; or online at http://www.state.nd.us/risk/.

This fact sheet is provided for informational purposes and is not intended to cover all situations. For more information, contact the Risk Management Division of the Office of Management and Budget.
The public has the right to know how state and local government functions are performed and how public funds are spent. North Dakota has "sunshine laws," which provide that all government records and meetings must be open to the public unless a specific law authorizes a record or meeting to be closed.

ALL PUBLIC ENTITIES ARE SUBJECT TO OPEN RECORDS AND MEETINGS LAW.

Public entity includes: state and local government agencies, rural fire and ambulance districts, public schools, private businesses or non-profit organizations that are supported by or expending public funds, and contractors, if the contractor is providing services in place of a public entity rather than providing services to that entity. Courts are not subject to open records and meetings law.

Anyone has the right to attend meetings of a public entity or to access and obtain copies of the entity's records, regardless of where they live. Before a public entity may deny access to a record or meeting, it first has to explain which law closes the record or meeting.

- To deny access to records, the public entity must explain, within a reasonable time, the legal authority (the specific law) for denying the request. If asked, the entity must put the denial and explanation in writing.

- To deny access to a meeting, the public entity must identify the topics to be considered and the legal authority for closing a meeting before asking the public to leave the meeting room.

Opinion Requests

Anyone may ask the Attorney General to issue an opinion regarding an alleged violation of open records or meetings law. The request must be made within 90 days of an alleged meeting held without notice or within 30 days for other violations of open meetings law or of any open records law (regardless of the date on which the requester became aware of the violation). There is no charge for the opinion, which is issued to the public entity with a copy to the requester.

If the Attorney General finds a violation, the entity has seven days to take the corrective action required by the opinion. Even if the opinion finds that the public entity violated the law, the opinion cannot change, void or overrule a decision of, or action taken by, the public entity.

- The basic open records and meeting laws are found in Chapter 44-04 of the North Dakota Century Code (N.D.C.C.), beginning at Section 44-04-17.1.

QUICK TIPS

- Generally, a public entity cannot ask why the records are requested, ask for identification, or require a request be made in writing (or in person).

- A request for information is not a request for a record. A public entity has no obligation to respond to questions about its duties and functions, or to explain the content of any of its records.

- A statute may declare certain records to be exempt or confidential. If a record is exempt, a public entity may release it or withhold it, at its discretion. If a record is confidential, the public entity either cannot release it or first must redact the confidential information.

- A member of the public does not have the right to speak to the governing body at an open meeting, only the right to see and hear what happens at the meeting and to record or broadcast those observations.

- Generally, there is no requirement that a meeting notice be published in the newspaper.

- Draft minutes should be made available to anyone who requests them, even if the minutes have not been approved.

- Economic development information identifying the name, nature and potential location of a business considering relocating or expanding within the state can be closed until the business announces its intentions.

- Public employee salary and job performance information is open but certain personal and payroll information is exempt or confidential. Generally, a public entity may not close a meeting to discuss salary issues or employee job performance.

- A governing body may close a meeting to talk with its attorney if the discussion pertains to the attorney's advice regarding a "pending or reasonably predictable" lawsuit involving the public entity.

- Confidentiality clauses in a contract or settlement agreement involving a public entity are against public policy and are declared void by state law.
OPEN MEETINGS

"Meeting" means any gathering of a quorum of the members of a governing body of a public entity regarding public business, and includes committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone, e-mail, or any other electronic communication (either at the same time or in a series of individual contacts).

If a governing body delegates any authority or assigns a portfolio to two or more people, the newly formed committee also is subject to open records and meetings law.

- The only time a gathering of a quorum of members is not a meeting is if it is a purely social gathering—as soon as any public business is discussed, it becomes a "meeting."

Prior written notice is required for all meetings of a public entity. The notice must include the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered at the time of the meeting. For special or emergency meetings, however, only the specific topics included in the notice may be discussed.

Generally, there is no minimum advance notice period for public meetings. Notice must be posted, filed at the central location (or on the entity's website), and given to anyone who has requested it, at the same time the members of the governing body are notified of the meeting.

Meeting notices must be filed with the Secretary of State (state agencies), the City Auditor (city-level entities) or the County Auditor (all other entities) OR the public entity may choose to post the meeting schedules and notices on its official website. The meeting notice also must be posted in the entity's main office, if it has one, and if the meeting is held elsewhere, at the location of the meeting on the day of the meeting.

Additionally, notice of special or emergency meetings must be given to the entity's official newspaper and any media representatives who ask for notice of special or emergency meetings. Copies of meeting notices can be obtained from the appropriate office. If asked, a public entity must provide a requester with personal notice of its meetings.

Before a governing body may close a portion of its meeting, it must convene in a properly noticed open meeting. Next, it has to announce the legal authority to close the meeting and the topics to be considered during the closed portion of the meeting. Unless the law requires a closed meeting, the governing body must vote on whether to close the meeting.

Any executive session must be tape recorded. Final action on the topics considered in the executive session must be taken during the open portion of the meeting. All substantive votes must be recorded by roll call.

OPEN RECORDS

"Record" includes all recorded information regardless of physical form (e.g., paper, e-mail, computer file, photograph, audiotape or recording, video, text message, etc.) that has a connection with how public funds are spent or with the public entity's performance of its governmental functions or its public business.

Anyone has the right to view or get a copy of public records, regardless of the reason. However, a request must reasonably identify existing records. A request for information is not a request for a record under open records law.

A request for public records can be made in any manner—in person, by mail, e-mail, fax, or by phone. The entity must respond to the request within a reasonable time, either by providing the requested record or by explaining the legal authority for denying all or part of the request. Generally, a "reasonable time" is measured in hours or a few days, but depending on the amount and type of records requested and various other factors, it may be several days or weeks.

A public entity may only deny access to or a copy of a record for which there is a specific statute closing all or part of the information. The remaining information is open to the public and must be provided. If a request for records is denied, the entity must explain what specific federal or state law makes all or part of the record closed. If asked, the entity must put the reason for the denial in writing.

- An entity does not have to convert its records to another format, create or compile records that do not exist, or obtain records originating from another public entity that it does not have in its possession.

Access to records is generally free. An entity may charge up to 25¢ a page for copies on standard letter or legal size paper. For other records (photos, maps, etc.), the entity may charge the actual cost of making the copy, including labor, materials and equipment. The entity should inform you if other statutes authorize a different fee.

The first hour of locating requested records (including electronic records) is free. After the first hour, the entity may charge up to $25/hr for locating records. An entity also may charge up to $25/hr (after the first hour) for the time it takes to redact any exempt or confidential information.

Generally, electronic records are provided at no cost. However, if providing electronic records takes more than one hour, in addition to charges for locating and redacting, the entity may charge the actual cost incurred by Information Technology resources to access and copy the records.

The entity may charge for postage to mail the records (and will need a name and address for mailing purposes). The entity can require payment of estimated costs before copying or releasing the requested records.
A Summary of North Dakota’s

OPEN RECORDS AND MEETINGS LAW
Office of Attorney General, 600 E. Boulevard Avenue, Bismarck, ND 58505
Tel: (701) 328-2210. Website: www.ag.nd.gov

All public entities in North Dakota are subject to open records and open meetings law. “Public entity” includes state and local government agencies, rural fire and ambulance districts, public schools, private businesses or non-profit organizations that are supported by or expending public funds, and contractors, if the contractor is providing services in place of a public entity. The courts are not subject to open records and open meetings law.

MEETINGS

All meetings of a public entity are open unless a specific exception applies to permit the entity to close a portion of the meeting or hold an executive session. Anyone, regardless of where they live, has the right to attend and record meetings of a public entity. A member of the public does not have the right to speak at an open meeting. As a general rule, there is no minimum or mandatory advance notice period for public meetings.

MEETINGS

A “meeting” means any gathering of a quorum of the members of a governing body of a public entity regarding public business, and includes: committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone, e-mail, or other electronic format (either at the same time or in a series of individual contacts). Even e-mails or text messages between members of a committee or subcommittee regarding public business may constitute a meeting.

- A gathering of a quorum of members is not a meeting if it is a purely social gathering, or if the members are present but not discussing public business; however, as soon as public business is discussed, it is a “meeting.”
- Before a governing body can close a portion of its meeting, it must first convene in a properly noticed open meeting. Next, it has to announce the legal authority to close the meeting and the topics to be considered during the closed portion of the meeting. Unless the law requires a closed meeting, the governing body must vote on whether to close the meeting. Any executive session must be tape recorded.
- All substantive votes must be recorded by roll call.

COMMITTEES

If a governing body delegates any authority to two or more people, the newly formed committee is subject to the open meetings law, even if the committee does not have final authority or is just fact-finding. What it is called does not matter, it is still a committee. Committee and subcommittee meetings must be noticed.

- Portfolios are a committee of the governing body if more than one commissioner holds the portfolio.

NOTICES

Prior written notice is required for all meetings, including committee and sub-committee meetings.

- The notice must include, at a minimum, the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered or added to at the time of the meeting. For special or emergency meetings, only the specific topics included in the notice may be discussed.
- If an executive session is anticipated, the meeting notice also must include the executive session as an agenda item, along with the subject matter and the legal authority for the executive session.
- Meeting schedules and notices must be filed with the Secretary of State (for state agencies), the City Auditor (city level entities), or the County Auditor (other entities); alternatively, the public entity may choose to post the meeting schedules and meeting notices on its official website.
- The notice must be posted in the entity’s main office, if it has one, and at the location of the meeting (if the meeting is held elsewhere), filed at the appropriate central location (or the entity’s website), and given to anyone who has requested it—at the same time the governing body is notified of the meeting.
- Notice of special or emergency meetings also must be given to the entity’s official newspaper, as well as to any media representatives or members of the public who have asked to be notified of meetings.

MINUTES

The minutes of meetings are public records and must be provided to anyone upon request. Draft minutes should be made available to the public even if the minutes have not been approved. Some public entities are required by law to provide minutes to the official newspaper.

- Minutes must include, at a minimum, the names of the members attending the meeting, the date and time the meeting was called to order and adjourned; a list of topics discussed regarding public business; a description of each motion made at the meeting and whether the motion was seconded; the results of every vote taken at the meeting; and the vote of each member on every recorded roll call vote. This requirement applies to all governing bodies, including committees and subcommittees.

For more detailed information, see www.ag.nd.gov

Continued on page 2 (OPEN RECORDS SUMMARY)
ALL records of a public entity regarding public business are open unless a specific statute makes a record or part of a record confidential or exempt. Everyone has the right to access and obtain copies of public records. A public entity cannot require a request be made in writing, ask the requester's identity, or inquire about the reason for the request. An entity must provide reasonable public access to electronically stored records. If requested, electronic records must be provided in electronic format. The entity does not have to respond to questions about public records, create records that do not exist, or convert records to a different format. A public entity cannot refuse to provide an otherwise open record simply because it contains confidential or exempt information; instead, that information must be redacted and the record provided within a reasonable time (generally a few hours or days). An entity must provide the statutory authority for denying all or part of a record, and, if requested, put the denial in writing.

**RECORDS**

OPEN Records
(MUST be released)

- Any communication with a public entity or official relating to public business, including minutes, memos, reports, outlines, notes, and other information kept for or relating to official business or public funds, regardless of format or location, including video & audiotape, computer data, e-mails, and photographs, employee salary and job performance records, financial records, telephone records, and travel vouchers.

EXEMPT Records
(MAY be withheld at the discretion of the public entity)

- Address, home/cell phone number, employee identification number, driver's license number, dependent information and emergency contact of public employees (§ 44-04-18.1(2)) or individuals licensed by a state occupational/professional board, association, agency, or commission (§ 44-04-18.1(4));
- Personal financial information of public employees used for payroll purposes (§ 44-04-18.1);
- The work schedule of employees of a law enforcement agency (§ 44-04-18.3(2));
- Active criminal intelligence, criminal investigative information, officer training materials and other information that may impact officer safety (§ 44-04-18.7);
- Homicide or sex crime scene images or any image of a minor victim of a crime (§ 44-04-18.7(8));
- Attorney work product (§ 44-04-19.1(1));
- Financial account numbers (§ 44-04-19.9);
- Security system plans (§ 44-04-24) and public health & security response plans (§ 44-04-24, § 44-04-25);
- Critical infrastructure information vital to maintaining public safety, security, or health (§ 44-04-24);
- Bids/proposals in response to an RFP, but once all proposals opened/presentations heard, it is open (§ 44-04-18.4(6));
- Identifying information that could be used to identify a victim of domestic violence (§ 44-04-18.20);
- Personal information of applicants/recipients of economic assistance programs administered by division of community services or a community action agency (§ 44-04-18.19);
- Fire department/rural fire protection district operating procedures/infrastructure plans (§ 44-04-30(2));
- Email address/phone number of an individual provided for purposes of communicating with a public entity, except this exemption cannot be used to shield the person's identity (§ 44-04-18.21);
- Driver's license number, phone number, day/month of birth, and insurance information from a motor vehicle accident report form, except it is open to the parties involved in the accident or their insurers (§ 39-08-13(4));
- Risk Management records of claims against the state/employee (§ 32-12-2.11(1)) & state agency loss control committee records (§ 32-12-2.12);
- Records related to the name and medical condition of an individual and treatment provided by a public entity during an emergency medical response (§ 44-04-18.22);
- Recordings of 911 calls and related responses, except a person may listen to, or obtain written transcript of, the recordings (§ 57-40-6.07(4)).

CONFIDENTIAL Records
(CANNOT be released)

- Social Security numbers (§ 44-04-28);
- Address & home phone of an employee of a law enforcement agency (§ 44-04-18.3);
- Any information that would reveal the identity of an undercover law enforcement officer (§ 44-04-18.3);
- Public employee medical treatment records (§ 54-52-1.12, § 44-04-18.1(1), Ch. 23-01-3)*;
- Employee Assistance program records (§ 44-04-18.1(1));
- Patient records at university system medical centers or public health authority* (§ 44-04-18.16);
- Criminal history records (§ 12-06-16, § 12-60-16.5);
- Identifying information of a living child victim or witness of a crime, except in the case of a traffic accident or victim of fire (§ 12.1-35-03);
- Names of persons injured or deceased, but only until law enforcement has notified the next of kin or for 24 hours, whichever occurs first; after that, the information is open (§ 39-08-10.1);
- Income tax and sales & use tax returns and information (§ 57-38-57), (§ 57-39-2.23);
- Autopsy photographs, images, audio/video recordings, working papers, notes except the final report of death, which is open (§ 44-04-18.18, § 23-01-5.5);
- Trade secret, proprietary, commercial & financial information, if it is of a privileged nature and has not yet been publicly disclosed (§ 44-04-18.4);
- Electronic (computer or telecommunication) security codes and/or passwords (§ 44-04-27);
- Fire investigations until the investigation is completed, then the information is open (§ 44-04-30(1));
- WSI employer files, except a Safety Grant recipient's name & amount awarded is open (§ 65-04-15);
- Foster care records (§ 50-11-05);
- Law enforcement & correctional facility records of delinquent, unruly, or deprived child (§ 27-20-52(1)).

* Federal law (HIPAA) may prohibit release of health information from other sources.

** Criminal history records may be obtained only from the BCI. There is a statutory fee.
OPEN RECORDS AND MEETINGS OPINION
2013-O-12

DATE ISSUED: August 6, 2013

ISSUED TO: State Board of Higher Education

CITIZEN’S REQUEST FOR OPINION

This office received separate requests for an opinion under N.D.C.C. § 44-04-21.1 from Ryan Johnson, reporter for The Forum, and Nick Smith, reporter for the Bismarck Tribune, asking whether the State Board of Higher Education violated open meeting laws by holding meetings not open to the public.

FACTS PRESENTED

On June 12, 2013, three members of the State Board of Higher Education (SBHE), President Duaine Espegard, Vice President Kirsten Diederich, and Mr. Terry Hjelmstad, met with ten of the eleven North Dakota University System (NDUS) presidents, individually, on the campus of Bismarck State College. The purpose of the meetings was for the SBHE to gain information and perspective from the president by “engag[ing] in a dialogue about their individual institutional priorities, the challenges they see in the system as a whole, and their recommendations regarding important characteristics and goals for the next chancellor.”2 “It was assumed that the three members who participated in the meetings would share their findings with the [SBHE] at a later date.”3

Mr. Ryan Johnson and Mr. Nick Smith each allege that the June 12, 2013, meetings were subject to the state’s open meeting laws.

1 See Letter from Kirsten Diederich, Vice President of SBHE, to Attorney General’s office (June 28, 2013) (on file with author).
2 See Memorandum from SBHE Chair, Vice Chair, and Trustee to SBHE Trustees and NDUS President (June 20, 2013) (on file with author).
3 See Letter from Kirsten Diederich, Vice President of SBHE, to Attorney General’s office (June 28, 2013) (on file with author).
ISSUE

Whether the meetings involving three of the eight members of the SBHE and NDUS presidents on June 12, 2013, were subject to open meeting laws.

ANALYSIS

All meetings of a public entity must be open to the public unless otherwise specifically provided by law.\(^4\) A “meeting” is defined as a “formal or informal gathering of [a] quorum of the members of the governing body of a public entity regarding public business.”\(^5\) A “quorum” means “one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.”\(^6\)

The SBHE is subject to open meeting laws because it is the governing body of a public entity, the NDUS.\(^7\) A “[g]overning body also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.”\(^8\) Under this definition, “any group of persons” delegated authority to perform any function on behalf of a governing body, including fact gathering, reporting or recommending action, as well as taking action, is subject to the state’s open meeting laws.\(^9\) Thus, committees of a governing body have the same requirements to notice its meetings and prepare minutes because they are subject to the open meeting laws.

Because the SBHE is an eight-member board, a gathering of three SBHE members would generally not constitute a quorum.\(^10\) However, a gathering of three members would be subject to the open meeting laws if the members were meeting pursuant to authority delegated to them by the SBHE.\(^11\)

\(^{4}\) N.D.C.C. § 44-04-19.

\(^{5}\) N.D.C.C. § 44-04-17.1(9).

\(^{6}\) N.D.C.C. § 44-04-19.1(15).

\(^{7}\) N.D.A.G. 2013-O-07; N.D.A.G. 2013-O-06; see also N.D. Const. art. VIII, § 6; N.D.C.C. §§ 15-10-01, 44-04-17.1(12)(a).

\(^{8}\) N.D.C.C. § 44-04-17.1(6) (definition of “governing body”).


\(^{10}\) Four members is a quorum of the SBHE. N.D.A.G. 2013-O-07; N.D.A.G. 98-O-05.

\(^{11}\) N.D.A.G. 2009-O-12; see also N.D.A.G. 2009-O-05 (“regardless of the label given to a group of persons, as long as there is a delegation of authority from the governing body, it is a committee”).
According to the SBHE, it never delegated authority to Mr. Espegard, Ms. Diederich, or Mr. Hjelmstad to meet with the University presidents. Rather, Ms. Diederich explains that it was Mr. Espegard and she who privately discussed the idea of meeting with the presidents “after listening to [a] consultant who led the [SBHE’s] training” during the SBHE’s annual retreat, held on June 2-3, 2013, in Medora, North Dakota. Shortly after the retreat, Ms. Diederich received an e-mail from Minot State University president, Mr. David Fuller, which, among other things, requested the SBHE to “enlist the support of the presidents and the campuses” and to “arrang[e] a time for all the presidents to meet alone and discuss the current situation and to entertain suggestions for the [SBHE] and the NDUS.” Ms. Diederich responded that she and Mr. Espegard had already discussed meeting with the presidents and relayed her hope to set up the meetings in the near future. Ms. Diederich and Mr. Espegard scheduled the ten meetings on June 12, 2013, with the NDUS presidents. Ms. Diederich and Mr. Espegard decided to invite the incoming SBHE vice-president, Mr. Hjelmstad, to the meetings but did not inform any other board members or even NDUS staff of the scheduled meetings. Ms. Diederich, in her response to this office, explained that “[i]t was assumed that the three members who participated in the meetings would share their findings with the [SBHE] at a later date.”

Attorney General’s opinions under N.D.C.C. § 44-04-21.1 must be based on the facts given by the public entity. Accordingly, this office cannot question the written assurance from the SBHE that at no time did the entire SBHE consent or otherwise delegate authority to three members to meet with NDUS presidents. I, therefore, conclude that the June 12, 2013, meetings between three SBHE members and NDUS presidents, were not “meetings” subject to open meeting laws because neither a quorum of the SBHE nor a committee thereof was present.

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12 See Letter from Kirsten Diederich, Vice President of SBHE, to Attorney General’s office (June 28, 2013) (on file with author). A member of my office reviewed the detailed draft minutes from the June 2, 2013, meeting during the Medora retreat and found no indication of a delegation of authority.
13 See Letter from Kirsten Diederich, Vice President of SBHE, to Attorney General’s office (June 28, 2013) (on file with author).
14 See E-mail from David Fuller, President, Minot State University (June 5, 2013) (on file with author).
15 See E-mail from Kirsten Diederich, SBHE Vice President, to David Fuller, President, Minot State University (June 5, 2013) (on file with author).
16 See Letter from Kirsten Diederich, Vice President of SBHE, to Attorney General’s Office (June 28, 2013).
17 Id.
18 Id.
CONCLUSION

The meetings involving three SBHE members and the NDUS presidents on June 12, 2013, were not subject to open meeting laws.

Wayne Stenehjem
Attorney General

slv/vkk
Reference SBHE Policy 302.2 – Audit Committee

For information on Internal Audit, Compliance, and Risk Management Programs
SUBJECT: 700s: Compensation  
EFFECTIVE: September 15, 2011  
Section: 706.1 Board Member and Advisor Per Diem Payments

1. Board members shall be paid per diem at the rate established by the legislative assembly. The Budget and Finance Committee shall recommend and the Board in its annual budget shall establish limits on the total number of days in each year for which a Board member may claim per diem, subject to adjustments made by the Board.

2. Per diem shall be paid for the following events, within the budget approved by the Board and as documented on the required reimbursement form:

   a. Attendance at regularly scheduled meetings and special meetings, except telephonic conference meetings requiring one hour or less which do not require travel by Board members. For telephonic conferences requiring more than one hour but less than four hours, Board members are entitled to one-half the per diem for a full day and for telephonic conference meetings requiring four hours or more, Board members are entitled to the full per diem.

   b. As the spokesperson and representative of the Board according to Policy 310.1, the Board president may claim per diem for dedication ceremonies, informal meetings with the governor or other officials and other groups or other events involving discussion of Board business. The Board president may request that the vice president or other Board member participate in a dedication, meeting or other event in place of or in addition to the president, in which case the vice president or other Board member may claim per diem.

   c. Attendance by a Board member in an official capacity as a designated representative of the Board at other meetings or functions, including meetings of the medical center advisory council, Board subcommittees or task forces, new Board member orientation, legislative hearings, commencements and meetings of interstate compacts or other organizations to which the state or Board, or Board member as an official representative of the Board belongs.

   d. In addition to events attended as an official representative of the Board or at the request of the Board president, the annual Board budget shall include funds for reimbursement, including per diem, for up to five days, including partial days for each Board member to attend informal meetings or other events involving Board business at the Board member's discretion, with the
Board president’s approval. Board members shall inform and consult the Board president regarding the topic or topics to be discussed in advance unless it is not practical to do so, in which case they shall inform and consult the Board president as soon as practical after the event. In addition, upon request in advance by a Board member, the Board president may approve reimbursement of per diem in excess of five days for attendance at such events by a member, subject to Board approval of allocation of additional funds for such reimbursement. Board members are entitled to reimbursement including per diem for such events only as approved by the Board president.

3. A Board member is not entitled to per diem for attendance at campus athletic, social or cultural events, or other campus events or meetings with campus officials attended upon invitation of campus officials and not as the official representative of the Board.

4. Per diem shall be paid for travel days when travel is necessary on the day before or after a meeting or other function for which per diem is paid. For travel days for which per diem is not otherwise due, Board members shall be paid one-half the per diem for a full day for travel less than four hours and the full per diem for travel requiring four or more hours.

5. Board members shall be reimbursed for travel expenses from the system office appropriation for attendance at meetings and functions for which per diem is paid. Travel expenses for attendance by Board members at other campus functions at the invitation of the campus chief executive officer shall be reimbursed by the host campus; however, expenses for travel to campus athletic, cultural or social events not involving Board business may not be reimbursed. The faculty and staff advisors shall be reimbursed for travel expenses from the system office appropriation for attendance at Board meetings and functions and council of college faculty or staff senate meetings. The faculty and staff advisors shall be reimbursed for mileage only from the system office appropriation for other official meetings or functions requiring travel to or from campuses. Lodging and meals for the faculty and staff advisors for these additional events shall be furnished by the host campus.

6. Per diem and reimbursement for travel to out-of-state meetings or conferences shall be paid only when approved in advance, in writing, by the president of the Board.

STATUTORY REFERENCE: N.D.C.C 15-10-08

History:
Replaces Article I, Section 5, A. 1-4, page I-6.
SBHE Minutes, March 8, 1984, page 5220.
Amendment SBHE Minutes, January 20, 1994, page 6427.
Amendment SBHE Minutes, April 20, 1994, page 6463.
Amendment SBHE Minutes, January 27, 2005.
Amendment SBHE Minutes, September 15, 2011.
SBHE Per Diem and Travel Expense Voucher Guidelines
June 20, 2014

➢ Travel Expense vouchers are processed as they are received and payments are made in a timely manner. Per Diem reimbursements are paid per our payroll schedule, on the 15th of the month and the last day of the month.
➢ If you would like a copy of your travel expense voucher returned to you with your payment notice, please let me know or just the ACH voucher form is dispersed.

Items required for expense Reimbursement

➢ The departure and arrival time for each event/activity. This is necessary to determine whether per diem will be paid for a half day or full day. Write in the time you leave for the event/activity and the time you have finished for the day. If you are at an event overnight again put in the time you leave on the first day and upon your return put in the time that you arrived back at your destination and the event was finished. Include your travel time as your start and finish time. See examples attached
➢ Indicate the purpose of the travel/expense, do not abbreviate.
➢ Indicate meals to be reimbursed. Do not include meals that are included in the event because these cannot be reimbursed. Also include an agenda if possible.
➢ Lodging receipt. Any extras added to your room should be put on a personal credit card or paid by the SBHE member.
➢ Taxi and parking receipts must have a receipt if they are over $10 each.
➢ Identify with a receipt for any business phone calls that need to be reimbursed. If internet is needed send in receipt.

Per Diem and Meals In State ($148 per day for SBHE Members Only- Faculty, Staff and Student not included):

➢ Per Diem pay will be determined based on the start/stop times recorded on the travel expense voucher, so this is real important it is filled out correctly. If per diem pay reimbursement is not requested please note this on the form.
Telephonic conference or other meetings requiring more than one hour but less than four hours, Board members shall be paid one-half the per diem for a full day and the full per diem shall be paid for telephonic conference meetings requiring four hours or more. SBHE Policy: Subject Compensation Section 706.1 Board Members Per Diem Payments.

- Travel times are eligible for per diem pay, on your voucher expense sheets put the time you leave for your conference as your starting time.

- Conferences: If you elect to attend any conference in or out of state which registration or any other expense has been submitted from the System Office and you find that you are unable to attend please notify the office as soon as you can. Most places will not refund us the expenses already paid and therefore we will forfeit the payment. If taking any personal days with conference days please note this on the travel voucher so we can adjust accordingly to stay within reimbursement policies. If taking any extra personal days while attending board business out of state please show the cost of air leaving the scheduled conference dates and the dates you are taking personal days, for auditing purposes we need to make sure that we reimburse for the amount of the conference dates only. Ex: If conference dates are Mon- Wed and you want to leave on the Friday before run a scenario that shows the cost from Friday to Wed ($800) and then from Sunday – Wed ($900.00), in this case the office would not be paying any extra for the additional person days but if this example would be switched the Board Member would need to pay the additional $100 for the additional days. (any questions please don’t hesitate to contact Sharon.

Mileage Reimbursement:

- When traveling SBHE Members and the Student Rep will need to take their personal vehicle and request reimbursement, Faculty and Staff advisor will need to request a state fleet vehicle unless preapproved by Board President or Vice Chancellor, Laura Glatt. If you take a state fleet you can call the front office and we would be happy to schedule a vehicle for you. If you reserve a car yourself make sure that you tell them the dept number of 215 and the cost center is 1000. It will then be direct billed to the NDUS office and indicate “used state vehicle”. If you take a personal vehicle, list the number of miles in the “Vehicle Miles” Column, the personal vehicle rate is reimbursed to you at .56 per mile at this time. (Can change at the beginning of each year and FY.)

- If using NDSU or UND Plane, please indicate as such. Campuses are generally only reimbursed for plane costs if plane is specifically used for SBHE member travel only. If plane is scheduled for trip to meeting for benefit of campus employees as well, no reimbursement is generally provided to campus. (NDSU will charge for traveling with plane)

- Taxi and Parking: Over $10, please attach receipt.
Rental car: If you are reserving a rental car you will need to justify the need for a car versus a taxi for reimbursement. Otherwise you will be reimbursed the cost of a taxi to and from the conference. (Generally a taxi will be used) Again same as the air for a conference, we need to justify for auditing purposes the reasoning for a rental car versus a taxi. Documentation is needed for payment.

**Miscellaneous Expenses:**

- Misc. Expenses include but not limited to: Postage, phone calls, copier, etc. Receipts are required for reimbursement.
- With an overnight stay, up to $5 per day is allowed to call home, you must have a receipt. Lodging receipt is adequate if phone is charged to the room.
- Other “SBHE business” phone calls to be reimbursed: attach receipt/record. You should use the calling card for business calls if at all possible.

The in state rate for meals is: Breakfast $7, lunch $10.500 and Dinner is $17.500. No receipts are required for instate meals. 1st quarter must be in travel status: four or more hours for meal reimbursement from 6am to 12:00(noon). Chapter 44-08-04 NDCC provides that employees shall not be reimbursed for the 1st quarter if travel begins after 7 a.m. 2nd quarter begins at 12:00(noon) to 6:00 p.m and 3rd quarter is from 6:00 p.m. to 12:00(midnight).

- Meals not requiring an overnight stay are taxable to you. (unless for certain meetings as per board policy.) Any meals included in registration fee may not be reimbursed. The tax is deducted from your per diem salary check.
- Must be in travel status: four or more hours for meal reimbursement.
- For 2nd and 3rd quarters, must be in travel status one hour before start of quarter and extend one hour into quarter being claimed.

**Lodging: In state**

- If you make reservations on your own, make sure you tell the hotel that you are a state employee and you will receive state rate if offered. State rate that will be reimbursed is $74.30 per night; NDUS cannot pay any more for a room, (unless documentation is noted as per board and NDUS policies.) if the room is more the SBHE member will be liable to pay the difference. If you would like the front office would be happy to make the reservations for you and direct bill the office.
If you charge the room you will be reimbursed for the cost of the room (State Rate) plus the tax. If the room is more than state rate we will reimburse off a formula up to state rate plus tax. (Example on back of Travel Reimbursement form)

An official receipt is required for reimbursement.

If the Board Secretary reserves a room for you and you need to cancel make sure that you let us know in advance or the NDUS office will be billed for a room not used. If the room has not been cancelled and we do have a charge, the Board Member will be required to state the circumstance of the cancellation. If direct billed you will be required to pay any incidental costs billed your room.

Lodging and Meals: Out of State

Out of state meals are reimbursed according to the GSA allowance rate for the area of travel. I use the per diem look link below: [http://www.gsa.gov/portal/category/100120](http://www.gsa.gov/portal/category/100120)

NDUS office accountant will determine amount. Circle the meals requiring reimbursement on your expense voucher. (If no meals circled no reimbursement will be provided.)

Make sure before any Out of state travel is arranged, the Out of State authorization form has been first signed by the Board President.

The actual cost plus tax for out of state lodging is reimbursed. When accompanied by a spouse or other person, not a state employee, the actual cost plus tax for the “single rate” is reimbursed only.

Our office will make airfare arrangements and direct bill the airfare for you if you would like. You can call the front office staff to help you. In the event you wish to make your own arrangements and pay the airfare, attach proof of payment, such as the itinerary receipt from the travel agency or online reserving. If you have to pay a luggage charge you will need the actual receipt to be reimbursed. If making your own reservations you will have to pay the hotel and air with your personal credit card and the NDUS Office will reimburse you with actual receipts when submitted.

All information in these guidelines are subject to change by SBHE, NDUS and OMB policies.
If you have any questions at all on any expenses you are not sure of send in the receipt to me and I will verify and let you know.

Send in your voucher expense forms as soon as you can so I can update the travel budget on a quarterly and timely matter.

Any questions please contact me at: 701-328-4112

Sharon Schwartzbauer: Office Accountant

Sharon.schwartzbauer@ndus.edu

SBHE — Faculty-Staff Member Signature:
Building Effective Boards At Public Institutions

BY MERRILL P. SCHWARTZ

While the formal authority of a governing board lies within the corporate body, how individual members comport themselves contributes to a board’s overall effectiveness.

This recent publication is designed to provide an overview and clarify the fiduciary responsibilities for which boards are held accountable. It reminds board members that while the formal authority of a governing board lies within the corporate body, how individual members comport themselves contributes to a board’s overall effectiveness. The guide is intended to aid both experienced and new board members.

The core of the document is an updated list of the board’s fundamental responsibilities and a list of exemplary practices. “Hallmarks of an Effective Board,” (included below), The list of basic responsibilities may be used at an orientation or retreat to stimulate and inform discussion among board members, as well as with the president and other key administrators. (A version for private colleges was published in 2009.)

Fundamental Responsibilities

The fiduciary role of the governing board of a public college, university, or system has many facets. Most notably, a board should recognize and accept the following basic responsibilities:

1. Ensure that the mission of the institution (with “institution” here referring to the campus or system, whichever is appropriate) is kept current and is aligned with public purposes. In the case of a multi-campus system, ensure the alignment of each campus’s mission with the system’s vision and public purposes.
2. Select a chief executive to lead the institution.
3. Support and periodically assess the performance of the chief executive and establish and review the chief executive’s compensation.
4. Charge the chief executive with the task of leading a strategic-planning process, participate in that process, approve the strategic plan, and monitor its progress.
5. Ensure the institution’s fiscal integrity, preserve and protect its assets for posterity, and engage in fundraising and philanthropy.
6. Ensure the educational quality of the institution and its academic programs.
7. Preserve and protect institutional autonomy, academic freedom, and the public purposes of higher education.
8. Ensure that institutional policies and processes are current and properly implemented.
9. In concert with senior administration, engage regularly with the institution’s major constituencies.
10. Conduct the board’s business in an exemplary fashion and with appropriate transparency, adhering to the highest ethical standards and complying with applicable open-meeting and public-records laws; ensure the currency of board governance policies and practices; and periodically assess the performance of the board, its committees, and its members.
Hallmarks of an Effective Board

The effectiveness of a governing board can be judged in many ways. One possible standard is that the board should get the credit for the institution’s success (or failure). Yet so simplistic a measure misses many subtleties and may often be wrong—for example, when the institution thrives despite an ineffectual board or falters despite heroic efforts by an energetic and committed board. A more sensitive set of criteria is needed for guiding board conduct and assessing the effectiveness of the board as a fiduciary body, divorced from the ebbs and flows of the institution for which it bears ultimate responsibility. Fundamentally, a board must set high standards and understand its responsibilities, which can be encapsulated as follows.

1. An effective board understands and respects the vital difference between governing and managing, and it nurtures and supports presidential leadership.
2. An effective public board always balances the institution’s interests and welfare with the needs and priorities of the state.
3. An effective public board balances advocacy and oversight.
4. An effective board observes and imposes the highest ethical standards and avoids even an appearance of conflict of interest.
5. An effective board, even when sharply divided, speaks with one voice.
6. An effective board listens to and learns from the institution’s constituencies without giving any of them a veto.
7. An effective board nurtures and enhances the legacy of the institution.
8. An effective board recognizes its special responsibility to students for the quality and value of their educational experience.
9. An effective board represents and advocates for the institution in the larger community.
10. An effective board commits itself and the institution to due process and academic freedom for faculty and students.
11. An effective board commits adequate time and energy not only to its basic tasks, but also to the enjoyment of the board experience.

The guide describes each of these standards of excellence and can be useful in evaluating board performance and identifying areas in which improvement or board education in needed. Even good boards will recognize one or more areas that continue to present challenges, such as supporting a decision that was not unanimous. Creating a climate of accountability, as well as collegiality, should be a concern of the board chair and the institution’s chief executive. The list of hallmarks of an effective board could be the focus of a board-building discussion at a retreat, focusing on those areas that present the greatest interest or concern. A high-functioning and well-informed board respects and understands its own responsibilities, as well as those of the administration and faculty.

Writing in the Harvard Business Review on “What Makes Great Boards Great,” Jeffrey A. Sonnenfeld, a Yale dean and management professor, asserted: “Good board governance can’t be legislated, but it can be built over time.” Although his advice was directed at companies, his tips can also provide useful insights for leaders of higher-education boards, including:

“Evaluate the board’s performance. Examine [board members’] confidence in the integrity of the enterprise, the quality of the discussions at board meetings, the credibility of reports, the use of constructive professional conflict, the level of interpersonal cohesion, and the degree of knowledge. In evaluating individuals, go beyond reputations, résumés, and skills to look at initiative, roles and participation in discussions, and energy levels.”

Merrill P. Schwartz is AGB’s director of research (mschwartz@agb.org).
Board Responsibilities

Governing boards of public and independent institutions bear an abiding responsibility to preserve and enhance a legacy of learning, scholarship, and free inquiry that is unique to the college or university. As fiduciaries accountable for the public trust that's placed in higher education, they must also exemplify the highest standards of integrity.

To accomplish these goals, a board is accountable to fulfill the following basic responsibilities.

Basic Responsibilities of Governing Boards

- Establish, disseminate, and keep current the institution's mission. At public institutions, ensure that the mission is aligned with public purposes.
- Recruit, appoint, support, and evaluate the chief executive officer to lead the institution.
- Charge the chief executive with the task of leading a strategic planning process, participate in that process, approve the strategic plan, and monitor its progress.
- Ensure the institution’s fiscal integrity, preserve and protect its assets for posterity, and engage directly in fundraising and philanthropy.
- Ensure the educational quality of institution and its academic programs.
- Preserve and protect the institutional autonomy and academic freedom.
- Ensure that institutional policies and processes are current and properly implemented.
- In concert with senior administration, engage regularly with the institution’s major constituencies.
- Conduct the board’s business in an exemplary fashion and with appropriate transparency, adhering to the highest ethical standards. Ensure the currency of board governance policies and practices, and periodically assess the performance of the board, its committees, and its members.

Characteristics of an Effective Governing Board

A governing board will complete the basic responsibilities with these additional operational characteristics:

- The chief executive displays appropriate leadership.
- The board is focused on strategic priorities.
- The board chair and president have an effective working relationship.
- The chief executive's cabinet is regularly welcomed into board conversations.
- The faculty are meaningfully engaged in institutional or system governance.
• The board operates in a culture of cohesiveness, candor, and transparency.

**Distinctions for Public Boards**

Public boards bear several universally shared responsibilities that deserve special emphasis:

• Respect the public trust: Board members should ensure that the public purposes of higher education are served through balancing the needs of the institution and the state, pursuing what is best for the public they serve and the institution they govern.

• Serve as advocates: Board members should serve as advocates for the value of public higher education and focus on enhancing the quality of life for citizens by providing needed educational services, access, and equity.

• Remain autonomous: The board should preserve the college's or university's autonomy, determining its needs and pursuing its interests by avoiding competing personal interests or the inappropriate dictates of a public official or body from which the board's authority derives.

• Comply with applicable open-meeting and public-records laws.

AGB's *Effective Governing Boards* for boards of both public and independent institutions contain more detailed discussions of each responsibility.

**Takeaways:**

Governing boards should act effectively and ethically in their duties related to overseeing the institution's mission, fiscal integrity, and educational quality, and to recruiting, supporting, and evaluating the chief executive.

Highly effective governing boards accomplish these tasks while maintaining a strategic focus.

Public boards have the additional responsibilities of maintaining the public trust and balancing the needs of the state and those of the institution they govern.

**Key Questions:**

How does the board regularly assess the status of the institution's various assets, including physical, human, and reputational assets?

How can the board appropriately engage in ensuring the educational quality of the institution's programs without preempting the vital prerogatives of the faculty and administration?

Does the board understand its obligations to safeguard institutional autonomy?

**References:**


AGB Statement on Board Accountability (1)
Source URL (retrieved on 07/28/2014 - 1:59pm): http://agb.org/knowledge-center/briefs/board-responsibilities

Links:
A Joint Paper

of the

National Association of System Heads
American Association of State Colleges and Universities
Association of Governing Boards of Universities and Colleges

May 2009
This publication is intended to inform discussion. It is not intended as a substitute for legal advice or counsel.

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FOREWORD

Societal pressures, scarce financial resources, and heightened requirements for accountability and transparency demand that system board members, system heads, and campus chief executives work together in concerted and productive ways to achieve their individual and collective purposes. There is a need for a clearer articulation of how a state system board, a system executive, and individual campus chief executive officers can engage one another most effectively. What are the respective responsibilities of these players within a state system? What are the rules of engagement—the procedures and guidelines to ensure that a system and its campuses work together effectively and are accountable for their performance? How can the leaders of a collection of higher education institutions—often characterized by differences in mission, size, and programmatic strengths—function most effectively together in a combined strategy to serve a state and its citizens in exchange for state financial and political support?

It was to address such questions as these that the Association of Governing Boards of Universities and Colleges (AGB), the National Association of System Heads (NASH), and the American Association of State Colleges and Universities (AASCU) convened a special session to focus on characteristics of effective public college and university systems. The AGB-NASH-AASCU discussion sought to identify key principles and practical strategies to guide system board members and their chairs, system heads, and campus chief executives in achieving an effective working relationship to help advance the needs of states and their communities. The discussions from this event yielded a clearer delineation of the responsibilities of the system board, the system head, and campus chief executives within a public college and university system of higher education.

This paper offers a summary of key points and recommendations from the discussion and other sources. Its purpose is to provide guidelines to each of the major figures in the leadership dynamic, helping bring about increased effectiveness in public higher education systems while contributing to a heightened understanding of these systems by state policymakers and higher education researchers.

We are pleased that our three associations could collaborate to address the important leadership dynamic within college and university systems. We thank those who joined us on May 30, 2008, for a wide-ranging discussion of these issues and who helped frame many of the points in this paper. Special recognition is owed Dr. Thomas Meredith, an individual who has served higher education as an institutional president and system executive in three university systems. Tom is the immediate past president of the National Association of System Heads. He was instrumental in seeing that this paper was produced.

Richard D. Legon, President, Association of Governing Boards of Universities and Colleges

Charles B. Reed, President, National Association of System Heads

Constantine W. Curris, President, American Association of State Colleges and Universities
Introduction

The vast majority of public universities and colleges in the United States are part of public college and university systems. The impetus that gave rise to such systems was a desire within state governments to impart greater coherence to a state's public universities and colleges for purposes of addressing public priorities more seamlessly, to reduce unproductive competition among them, to realize a more efficient use of state resources, and to create a political and economic environment that would allow institutions of different sizes and missions to thrive and succeed.

Public higher education systems are made up of institutions of all kinds, including state flagship universities, smaller regional universities, and community and technical colleges. Leaders at any of these institutions may wish at times for a more direct and unfettered course to a legislature and governor—a path that could allow them to define and pursue the institution's destiny more completely on its own terms. At the same time, however, institutions within public college and university systems often reap the benefits a system confers. While those at a flagship research university may feel that smaller campuses of a system are an impediment to their institution's trajectory, in many cases the system can strengthen a flagship's particular case for financial and political support by presenting it in the context of other state goals for education. Those at smaller institutions may at times feel relegated to the shadow of the public research university, though a system can provide a collective voice with an influence in state government that smaller campuses would not likely attain individually.

A former head of three different systems once said that a university system is a place where countervailing public forces come into equilibrium. At its best, a system provides a clearly understood context to guide the actions of individual colleges and universities. At the same time, every system requires a degree of flexibility that allows individual institutions to contribute to a state's educational goals in different ways according to their distinctive strengths. The relationship among different parties in the leadership dynamic of a higher education system must include elements of responsiveness and mutual support, even as each is held to clearly defined standards of accountability.

The dynamic of shared powers and responsibility among the board, system chief executive, and institution chief executives inevitably is a source of some tension in public university and college systems. The challenge in every case is to make the tension productive—to make the relationship one that sets meaningful expectations and holds each player accountable to high standards of integrity and professionalism, while at the same time providing the support that allows each party to be effective in fulfilling his or her leadership responsibilities, particularly those that help achieve state priorities and public purposes.

A system governing board has responsibilities similar to and yet distinct from the board of a single public institution. Effective system boards balance the demands of several, sometimes competing, institutional interests while presenting a unified front to policymakers and the public. They lead and monitor several institutions while simultaneously advancing the system and its strategic agenda as a collective. A high performing system board represents all of the state's citizens and all of the system's institutions equitably.

The chief executive of a public university or college system occupies a space among a state
government's elected officials, the board, and the chief executives of the public universities and colleges that constitute the system. He or she is the top educational leader and spokesperson for the entire system (or for all of state higher education), as well as the top administrator with management responsibilities to see that the system office implements the policies of the governing board. The system head is the conduit to the board for institutional presidents, the mediator of institutional disputes, the lever for cooperation and collaboration, and above all, the champion for a strategic agenda to address the needs of the state and its citizens. Though the sphere of influence is extensive, the system head may find it in some ways to be a lonely realm. Unlike campus chief executives, system heads do not have faculty, students, and alumni of their own and such things as football or basketball teams to help elicit loyalty and support.

An institutional chief executive within a college or university system is not a branch manager but a leader provided the authority and autonomy to run a given institution with minimal interference from the system office or board. The campus chief executive is also a member of a system policy-making team, formally through the system's council of presidents. Campus presidents within systems have a different sphere of influence from that of a president with an independent governing board; the external influence may be only in one's region or community and not statewide. Some institutional presidents find this constraining, others find it liberating. Successful institutional executives understand the mission of the institution within the context of the system mission and their responsibility to see both missions fulfilled.

**Principles and Strategies for Effective System Leadership**

The leadership dynamic of public university and college systems occurs in a space defined by the intersection of political, social, financial, and academic interests. At its best, a public higher education system helps a state to optimize its investment in higher education and to achieve a well-coordinated response to challenges facing a state and its citizens. For a system to reach its full potential as an instrument of governance, each of the major players must have integrity as well as a shared commitment to achieving common purposes through higher education.

The insights and recommendations presented below address each of the major agents in this leadership dynamic—the system board, including the board chair; the system chief executive; and the institutional chief executive—in five identified areas of critical importance to system effectiveness:

- providing a collective and unified voice;
- building interdependent support;
- balancing central authority with institutional differentiation, autonomy, and creativity;
- strategic planning and direction; and
- performance assessment.
Providing a collective and unified voice

The fundamental purpose of a public university or college system is to be an interface between a state's higher education institutions and the needs of the state and the nation at large, helping provide individual institutions with a broader perspective on particular societal challenges that are occurring within a state while optimizing the capacities of a state's public universities to meet those challenges. A system helps give a more productive cast to the competition for resources and recognition that inherently exists among all higher education institutions in a state. As such, a system allows for all of a state's higher education institutions to address the governor and state legislature and make, in a unified voice, the case for state investment in higher education. A system enables a state to leverage its investment in higher education in an optimal way, helping to effect a cooperative approach among different institutions that might otherwise be difficult to achieve.

One of a system's major responsibilities is to create an environment in which each campus understands its own well-being as directly aligned with the well-being of other institutions within the system, including the flagship campus or research institution, if there is one. A successful system conveys a sense that the fortunes of all institutions within the system are interrelated: the support, active engagement, and buy-in of institutions of different sizes, missions, and capacities are required if these institutions are to achieve their commonly identified goals.

A key challenge for a campus chief executive is to recognize and build upon the advantages of working cooperatively with the system head and leaders of other campuses to achieve combined purposes that no one institution could accomplish alone. In their approach to the leadership dynamic, campus chief executives should seek to regard other institutions in a system primarily as partners rather than as competitors. Smaller campuses should accept that the kinds of expectations placed on other institutions in the system—including a flagship—may call for different levels and different kinds of financial support.

Institutions reside within specific communities, however, that frequently see themselves in competition with other communities, including those in which other system institutions reside. Those communities see institutional presidents as the essential spokespersons for their communities and often expect them to advocate for resources and programs that will advance the community. But such advocacy may at times be at odds with the priorities of the system or the state.

It is in helping to resolve such tensions and conflicts that the system governing board can demonstrate its leadership and the value of holding a broad perspective. The board must bring a dispassionate view in regarding the wishes of constituents and special interests, and it must base any actions or decisions on system policies and goals. Doing so may mean constraining institutional ambitions that conflict with these policies and goals. Individual board members may understand one institution of a system better than others and may conceive of their responsibilities as serving or advancing the interests of that particular institution; a responsible board or board chair will act to correct this behavior.

In some instances, legislators with a system campus in their district may play favorites in the legislative process, either as a result of institutional advocacy or by their own initiative. A system head and system board should enforce a policy that all system institutions are to support system funding priorities that have been negotiated internally. At the same time, experienced system leaders recognize that special appropriations occasionally do occur. If an individual institution is to receive a special appropriation

**Providing a collective and unified voice**

**System board**
- Advocate for all institutions in the system equally and as a collective asset to serve the state and its communities.
- Speak with one voice as a board.

**System head**
- Create a sense of broader purpose.
- Develop a relationship of trust, and create an expectation of professional integrity in working with campus leaders.
- Create an environment that discourages end-runs.

**Institutional executives**
- Model an approach to leadership that regards other campuses in a system primarily as partners rather than as competitors.
- Avoid end-runs.
- Communicate the importance of the system.
from the legislature, a system head must be adamant that the appropriation be new or additional funding—not reallocated monies from another system institution. A system leader must also ensure that a special appropriation does not create major funding imbalances with other system institutions or subvert institutional mission.

System board

- Advocate for all institutions in the system equally and as a collective asset to serve the state and its communities. Avoid any tendency to favor one institution over others in any and all aspects with internal and especially external constituents of the system. Understand that innocent comments about institutions can easily be misconstrued.

- Speak with one voice as a board. The board chair or the system executive should be the primary spokesperson for the board. Avoid situations in which individual board members are asked to comment publicly on controversial issues before the board, the system, or individual institutions.

System head

- Create a sense of broader purpose. In carrying out a system initiative or strategic plan, the system head needs to convey to institutions that his or her primary concern is with the vitality and effectiveness of the system and the state as a whole, reminding campus executives of the desired alignment of system and campus interests, and of the benefit to students and communities that can result from collaboration and cooperation among system institutions.

- Develop a relationship of trust, and create an expectation of professional integrity in working with campus leaders. A system head must feel assured that campus chief executives will not seek to undermine the system by appealing directly to the system board, the legislature, or the governor. The system head and the campus chief executive must have mutual respect and trust for an optimal working relationship, one that will preclude any inclination on the part of the system head to step in and attempt to manage the institution.

- Create an environment that discourages end-runs. Be politically astute when confronted by efforts in the legislature to advance the interests of a particular institution of the system. End-runs that circumvent system priorities should be strongly discouraged and addressed up-front with institutional chief executives. Occasionally it may be necessary to enlist the help of a governor to veto a project initiated from an end-run, but it is better to deal with such actions internally and discretely.

Institutional executives

- Model an approach to leadership that regards other campuses in a system primarily as partners rather than as competitors. Institutions within a system must adopt an outlook that in order to be successful, other institutions must also be successful. An executive must respect the existing differentiation of mission that allows the institution to distinguish itself on its own terms, and seek ways to collaborate with other system institutions.

- Avoid end-runs. Do not seek to undermine the integrity of the system by appealing directly to the system board, legislators, or the governor. In cases when an individual institution has a well-justified cause to address the board or elected public officials directly, the campus leader must come to clear agreement with the system head, proceeding with that person's knowledge and consent.

- Communicate the importance of the system. Convey to members of the campus community the value of the system and the critical role it plays for the institution. In addition, campus presidents need to communicate the system's importance to key external audiences in the community or region.
Building interdependent support

It is a complex and evolving relationship that exists among the three different levels of leadership in a state higher education system: the system board (including the board chair, the system head, and the campus chief executive). In one sense the relationship is one of mutual support and interdependence; for any one of these players to be effective, the other two must conduct their responsibilities with integrity.

If an effective relationship among these three parties is characterized by mutual support on the one hand, it must also be characterized by accountability on the other. Campus chief executives ultimately are accountable to a system head, even as they look to the system head as perhaps their most important source of advice, encouragement, and support. A system head in turn requires not just the cooperation of campus chief executives but also the support of the system board—and of the board chair in particular—to succeed in engaging a state’s public universities and colleges to achieve a strategic public agenda. Finally, the board itself is accountable to a state and its elected officials in fulfilling its responsibilities both to the mission and to the fiduciary well-being of the system and its individual institutions. To succeed in this charge, a board must have the trust of both the system head and individual campus chief executives.

System board

- **Provide support and guidance for the system head.**
  The board needs to convey its consistent support for the system head both in its communications and its actions. If an incoming system head does not have the strong support of the board, it will be difficult for that person to develop relationships with the governor and legislature. The board chair, especially, should provide major support and understanding and appreciate the mutual responsibilities that he or she assumes, along with the system executive, for leading the system. On some occasions, it may be appropriate to identify someone outside the board itself who can serve as a mentor to a new system leader.

- **Through the system head, provide support and guidance to campus chief executives.** Wise system leaders recognize the pivotal leadership of each campus executive, while at the same time recognizing the limits of campus leaders’ authority. A set of internal and external stakeholders exists for each institution, different from but parallel to those for the system, and their consent is frequently required if positive change is to occur. Board leaders should understand that implementation of system policies at the ground level may not come as easily as they might desire, and that support and guidance through the system head is essential. In addition, governing boards should be aware that new campus leaders may need mentors that the system can identify.

- **Help a newly appointed system head become familiar with the culture of a state.** Introduce the system head to key people, such as political and civic leaders, as well as business leaders who help drive the state’s economic agenda and who have been appointed by the governor to important task forces in the state.

- **Be willing to take the heat on controversial issues to protect executive leaders.** System boards (chairs, in particular) need to provide “cover” for system heads or individual campus chief executives on contentious or sensitive political issues, or on such matters as union contracts negotiated at the system level.

- **Have confidence in the professional expertise of the system office staff to do their jobs; communicate any concerns about staff directly to the system head.** Building a strong, competent central office staff is essential for any successful system. If concerns do arise about the competence of system staff or the general staff capacity of the system office, then the board should address the issue directly with the system executive.
Building interdependent support

Special responsibilities of the board chair
- Help build leadership within the full board.
- Insist that board members work for the benefit of the whole system and not any single component or constituent.

More than any other single agent, the board chair ensures that the board conducts its governance responsibilities with effectiveness and integrity, while avoiding any conflicts of interest. One of the most important responsibilities of a board chair is to convey to fellow board members what it means to serve as agents of the public trust with fiduciary responsibility for a state’s universities and colleges. The board chair must assume the responsibility of ensuring that board members act appropriately and discipline individual members if necessary: a system head cannot be expected to take on this role.

- Help build leadership within the full board. It is important for the chair to identify and nurture other board leaders by assigning them to important work committees and task forces. And given that most board chairs serve for a period of two years (or less), it is essential to a smooth transition of leadership within the board that it be facilitated by the outgoing chair.

- Insist that board members work for the benefit of the whole system and not any single component or constituent. No matter how members were appointed to the board, their responsibilities are to all of the citizens of the state and all of the system’s constituent institutions. The tendency of some board members to represent or advocate for particular institutions or communities undermines the board and the system. The chair has a special responsibility to remind members of the broader purposes of their system board service. In these and similar instances, when individual board members are out of line, it is the chair who must take corrective action: a system executive cannot reprimand board members.

System head
- Call attention to instances when campuses and their leaders are doing a good job of contributing to the fulfillment of a state’s strategic goals. A simple but powerful step in creating an environment of cooperation and shared pursuit is to give public recognition to leaders whose actions contribute to this purpose.

- Encourage an appropriate relationship between campus executives and the system governing board. The board, particularly the chair, has a critical role to play in overseeing the performance of the entire system, and as a general rule the board should direct all issues through the system chancellor or president. If a positive culture of trust and integrity exists between the system head and campus executives—one that undergirds proper roles, responsibilities, goals, and protocols—then direct contact of campus executives with board members and the chair at board meetings, social occasions, or campus events should be encouraged. Seeking to prevent any such contact is counterproductive in establishing a dynamic of system success.

- Be the system’s chief internal communicator. The importance of good communication as a major factor in good system governance cannot be overstated. The system head should check regularly with the board chair, board members, institutional executives and his or her staff to assess the quality and frequency of communication throughout the system. Assuring that key individuals learn of important matters in a timely fashion can avoid perceptions that the system head may be acting unilaterally.

- Support campus leadership. Campus chief executives are at the center of innumerable and intense pressures. While their offices are afforded considerable authority, the effectiveness of the campus leader is based on his or her influence and persuasion. Suspicions that the system office does not support the campus president undermine his or her effectiveness and can lead to institutional paralysis.

Institutional executives
- Cultivate a relationship with a system head that makes it possible for that person to provide support and advice when needed. Campus executives should seek out opportunities for engaging the system head as an important source of guidance and support for issues that the campus chief executive is facing or will soon face.

- Support system leadership. It is important that institutional leaders not undermine system leadership even when...
institutional goals cannot be supported. Campus presidents must understand and appreciate the responsibility of system leadership to balance successfully several competing claims for the good of all campuses, and ultimately for the good of the students and state citizens. It is particularly important to voice disagreements internally, and not to external stakeholders—alumni, donors, elected leaders, or the press.

### Building interdependent support

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- **Flagship president and system head relations.** Many business, government, and civic leaders see the president of the system’s major flagship/research university as the state’s top higher education leader. When this occurs, the system head is overshadowed. Best practice suggests that these situations are most constructively handled up-front by the board at the time of hire, when expectations and lines of authority can be made clear and potential conflicts minimized or averted. In reality, there may need to be a unique understanding reached privately between the system head and the flagship president regarding the times when the latter’s input will be desired for maximizing system effectiveness. Conversely, there are instances in which the system head overshadows the campus leadership of the flagship president. In the end, common sense must prevail for the good of the system and the institution. The campus executive and the system head must each have enough confidence to let the other take the lead when it will advance the overall cause.
Balancing central authority with institutional differentiation, autonomy, and creativity

One of the key benefits of a system is to enable a comprehensive approach to decision-making while retaining the flexibility that allows different campuses to address common needs according to their particular strengths. The danger of a system is that it can result in too great a centralization of power, effectively diminishing the creative drive of individual campuses. The challenge to a higher education system is to achieve a balance that reaps the benefits of collaboration without stifling the motivation that allows individual institutions to meet state challenges through the development of their own distinctive strengths. Even as it provides a framework of statewide goals for education, research, and service, a system must allow each institution to contribute to broad system goals in its own way, drawing on its unique mission, culture, and strengths as well as characteristics of its particular region.

In the course of leading a system-wide plan, as well as in the more general course of events, a system head must establish clearly with campus leaders (in writing, if necessary) who has responsibility for what issues. A system head must be sensitive to a campus chief executive's needs and responses to a given situation; he or she must recognize when to allow a campus leader to take the lead in handling an issue that has arisen on his or her campus.

The very location of the system office can have an important symbolic effect in delineating between system and campus concerns. It is important that the system head and the board maintain that sense of critical distance from any given campus, particularly a flagship, even if located in the same community. It is possible for a system to become conflated with a flagship, particularly when athletics are involved. Both the system head and board need to recognize and resist this distorting tendency and maintain the separation required for principled and effective governance.

Institutional boards exist in several public university systems. Some of these boards are advisory to the system board; others have prescribed governing responsibilities. In addition, nearly every public college and university has a related foundation board that helps raise and manage private monies on behalf of the institution. Clear delineations of governance authority (again, in writing, if necessary) are needed, and opportunities for regular communication should be encouraged by respective leaders of each board, the system head, and institutional executives.

System board
- Understand the mission of all institutions, their service area, programs, and unique circumstances.
- Institutional missions should be reviewed periodically by the system board and updated as necessary (as should the statement of mission for the system). In addition, the board should have a clear understanding of the educational quality of each institution's academic programs, including its institutional and major program accreditation status, as well as its status against a regularly updated set of peer institutions. Lastly, the board should urge differentiation in policies whenever appropriate, for example, in tuition levels, and fiscal and management flexibility.
- Focus primary attention on system-wide policies and priorities. System boards need to operate primarily as the governing board for the higher education system. At the same time, the board is the governing body for each constituent institution of the system. As such, it may be

Balancing central authority with institutional differentiation, autonomy, and creativity

System board
- Understand the mission of all institutions, their service area, programs, and unique circumstances.
- Focus primary attention on system-wide policies and priorities.
- Listen to and respect local institutional governance.
- Avoid any tendency to micromanage single institutions or the system office.

System head
- Treat individual campuses in a fair and transparent manner.
- Create financial incentives.
- Delineate clearly who has responsibility for what issues.
- Use data effectively for planning and decision-making.

Institutional executives
- Understand reporting relationships.
- Help keep the university foundation focused on the right activities.
necessary for the system board to approve institution-specific plans or budgets, or attend to a crisis. Board meetings should be rotated among all system institutions, and members should take the opportunity to get familiarized with the institution and senior staff. Individual board members should attend commencement or other major ceremonies held at individual institutions.

- **Listen to and respect local institutional governance.** Where an institutional advisory or governing board exists, the system board should develop a specific statement of duties and powers for the local board (even if it is created by state law) that makes distinctions in responsibilities as clear as possible so as to increase effectiveness at each level of governance.

- **Avoid any tendency to micromanage single institutions or the system office.** System board members need to resist any temptation to over-engage in the execution of a system initiative or project, thus interrupting or intruding upon the management responsibilities of system staff. The system head and the system office must function as the primary contact with system institutions. In addition, system rules and regulations that dictate institutional policies and practices and seek uniformity of practice can go too far and create resentment and push back from campuses, particularly if they are promulgated without institutional input.

**System head**

- **Treat individual campuses in a fair and transparent manner.** If there are differences in resources distributed or in research expectations and support, these must be clearly stated in writing, and the rationale for the differences must be clear.

- **Create financial incentives.** The system head should have a modest amount of funds available as an incentive for campuses to formulate their own ambitions in alignment with the priorities of the system and the state, and to promote collaborations that improve educational services and increase efficiencies.

- **Delineate clearly who has responsibility for what issues.** The board, system head, and campus chief executives must reach a clear agreement about what are campus issues, what are system issues, and what issues could involve both the system and campus to a significant degree. For example, in times of economic austerity, tough financial decisions affecting campuses tend to be made at the system level, but the campus executive should have autonomy in deciding how those tough decisions are implemented on individual campuses.

- **Use data effectively for planning and decision-making.** A sense of shared understanding and purpose can help a system head and campus chief executive reach common accord about such matters as the amount and kinds of information a system can reasonably request of its campuses. It is particularly important that a system office be able to trust the accuracy and consistency of information received from campuses. A system office can supplement institutional research capacity and use data to prod institutions toward system goals and mission fulfillment.

**Institutional executives**

- **Understand reporting relationships.** Campus executives in a system may feel that they serve many “masters,” including the system board, system executive, and a local governing or advisory board (if one exists). Although negotiating several layers of authority may seem confusing, unnecessary, or duplicative, campus executives are ultimately accountable to the system head and system board for their own and their institution’s performance.

- **Help keep the university foundation focused on the right activities.** Although related foundations are legally separate entities from the host institution, campus executives can be critically important in ensuring that a foundation focuses on fundraising and fund management in an ethical manner, and that it refrains from asserting perceived prerogatives in institutional governance. Although the foundation exists to serve the institution, nothing the foundation or the foundation board does should contradict or circumvent system priorities. In best practice, the campus executive should ensure that a memorandum of understanding exists between the foundation and the institution that clarifies responsibilities and working relationships, and that it is shared with the system office.
Strategic planning and direction

To be effective, a public college and university system must develop and convey a clear and compelling vision of a state’s higher education needs; that vision must provide a common direction for the public universities that constitute the system; and it must establish a strategic plan for achieving the vision and advancing the well-being of the state and its citizens through higher education. The system plan needs to focus on statewide issues, for example, student access and success, agriculture, health care, economic development, or technological capacity and skill.

In formulating a plan to achieve the state’s higher education needs, a public university or college system needs to engage many constituencies in defining a state’s public priorities and identifying the role of a state’s higher education institutions in addressing those priorities—drawing on leaders of state government, as well as business and industry, and the leaders of system institutions. Having individual institutions at the table and achieving their buy-in during the planning stages helps ensure productive collaboration as the plan develops. Campus leaders should have the ability to chart the particular course their institution will pursue in helping to meet state needs. Having done so, they must commit to specific goals and timetables, and they must periodically report progress in meeting their goals.

System board and system head

- **Oversee the development of a plan outlining the strategic goals of the system.** The plan should be clear on the responsibilities of the system’s universities and colleges in achieving those goals. The planning process should include external stakeholders such as public officials and leaders of business and industry.

- **Develop an implementation plan for achieving the goals of the system’s strategic plan or system initiatives, assigning explicit responsibility for particular tasks and including benchmarks for assessing progress.** The implementation plan should recognize the different missions and strengths of different campuses. While the criteria of evaluation will differ for each institution, each must be held accountable for contributing to system goals. A plan, for example, to increase institutional retention and graduation rates (and overall system rates) or to close achievement gaps among different groups, should recognize the differing student demographics and levels of student preparation at each institution.

Institutional executives

- **Sustain a focus on the state’s or system’s strategic goals with external stakeholders.** Work with public officials, civic leaders, and leaders in business and industry to build support that sustains a focus on the plan and ensure their support and commitment to long-term strategic goals such as college readiness, degree attainment, and economic development priorities. Help assure a broad, “non-parochial” view among institutional and elected leaders, as well as the board itself.

- **Align institutional planning with the system strategic plan.** With a system plan in place, each institution should establish a campus plan to determine how it will contribute to reaching the system’s goals, drawing on the institution’s distinctive strengths and culture.
Performance Assessment

Assessment at all levels is critically important for assuring accountability and improving performance. The system head, campus executives, and the board itself should all be assessed.

One of the system head’s responsibilities is to assess the performance of campus chief executives in the context of the system goals and the institution’s particular progress in helping achieve those goals. The evaluation should be conceived as part of a process of developing a better means of supporting a campus chief executive and fostering a sense of partnership. To ensure the effective operation of the system, it is important to conduct fair and principled assessments of campus chief executives for both the short and long term. The system head should regard the evaluation of campus chief executives as an opportunity to engage in a continuing dialogue focusing on the content of a shared educational vision and strategies for achieving the system’s goals.

Likewise, effective system boards see the evaluation of the system executive as a means, both to provide support and improvement and to gauge how well the system is fulfilling its core purpose of meeting the state’s needs for higher education.

- **Set high expectations of the system head in meeting the state’s strategic goals.**

- **Establish clear expectations that align board policy with campus head evaluations.**

- **Engage in periodic self-assessments of the board’s own performance.**

System head

- **Develop a clear evaluation process for holding campus chief executive officers accountable.**

Institutional executives

- **Welcome regular performance reviews from the system head.**

- **Establish clear expectations that align board policy with campus head evaluations.** Evaluations should be tied to mutually agreed-upon goals related to institutional mission and strategic plans. Boards should ensure that stated goals and behaviors are the actual behaviors being evaluated. For example, if collaboration among institutions is expected, the system board should ensure that campus heads will be evaluated on how well they achieve collaborative activities, and not on criteria which foster competition.

- **Engage in periodic self-assessments of the board’s own performance.** System governing boards often hold annual retreats but infrequently use the retreat to do a thorough self-critique of their performance, reflectively or prospectively. Boards should ensure that their retreats accomplish these purposes. Regular and rigorous self-evaluation is necessary for maximizing board effectiveness and creating a sense of common purpose.

**System head**

- **Set high expectations of the system head in meeting the state’s strategic goals.** Monitor the progress of the system chancellor or president and conduct annual evaluations, as well as comprehensive evaluations, every four to five years. Use the system mission and goals of the system strategic plan, as well as additional leadership goals mutually developed by the board and system head, as a framework for evaluation.

- **Establish clear expectations that align board policy with campus head evaluations.** Evaluations should be tied to mutually agreed-upon goals related to institutional mission and strategic plans. Boards should ensure that stated goals and behaviors are the actual behaviors being evaluated. For example, if collaboration among institutions is expected, the system board should ensure that campus heads will be evaluated on how well they achieve collaborative activities, and not on criteria which foster competition.

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**System head**

- **Develop a clear evaluation process for holding campus chief executive officers accountable.** Assuming the system head has the delegated authority to conduct evaluations of institutional chief executives, the system board should have full opportunity to review the evaluations and ask questions. Local governing or advisory boards within a system may add a layer of complexity but need to be centrally involved in the evaluation. Evaluations should be conducted annually, with more comprehensive evaluations that solicit input from a significant number of internal and external stakeholders conducted every four to five years. While a system head may provide an important listening ear for a campus chief executive, theirs is, at heart, a professional working relationship that requires feedback and assessment of performance as essential ingredients for success.

**Institutional executives**

- **Welcome regular performance reviews from the system head.** Campus chief executives should insist that performance reviews take place in the context of system goals as set forth in a strategic plan. They should use these reviews as occasions to focus on the institution’s contribution to that plan and to improve campus leadership performance.
CONCLUSION

Public higher education systems have evolved considerably. Once they were considered essentially bureaucratic agencies, managing state institutions, "keeping everyone happy and advocating for more money." Today, the most effective systems identify and lead a state or system strategic agenda that addresses the critical needs of the state, its regions and communities, and its citizens, leveraging institutions to respond to the agenda in their own unique ways.

Systems are increasingly regarded as essential for ensuring the continued vitality of higher education in addressing public purposes in the years ahead. It is therefore incumbent upon all of the major players to seek unity of purpose and maximization of joint effort through productive working relationships. Tensions and conflicts will inevitably arise. But by creating and sustaining an expectation and atmosphere of trust, candor, integrity, and public accountability, the major players of a system can manage the tensions and resolve differences, thus enabling the system to move forward. In the end, it is not about credit, blame, winning, or losing; it is about serving students, citizens, and communities, and fulfilling public purposes.
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Sources Consulted


Petit, Lawrence K. Old Problems and New Responsibilities for University System Heads, NASH 1989 Monograph Series Number 1.

The National Association of System Heads (NASH) is a membership organization of Chief Executive Officers of the 52 public higher education systems in 38 states and Puerto Rico. The goal of the association is to improve the governance of public higher education systems. Its member systems enroll the lion’s share of college students nationwide: about 70% of all four-year college undergraduates. A major commitment of NASH is to work with K-12 systems and civic leaders to build statewide K-16 vehicles to promote and carry out a coordinated, standards-based education reform strategy. www.nashonline.org

The American Association of State Colleges and Universities (AASCU) was established in 1961. AASCU’s 430 public college and university members are found throughout the United States, and in Guam, Puerto Rico and the Virgin Islands. AASCU believes that through stewardship and commitment to access, opportunity, and students, public colleges and universities effectively and accountably deliver America’s promise, honoring and fulfilling the public trust. www.aascu.org

For more than 80 years, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country’s unique form of institutional governance through its research, services, and advocacy. Serving more than 1,200 member boards and 35,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions with resources that enhance their effectiveness. In accordance with its mission, AGB has developed programs and services that strengthen the partnership between the president and governing board; provide guidance to regents and trustees; identify issues that affect tomorrow’s decision making; and foster cooperation among all constituencies in higher education. www.agb.org
Policies and Procedures
SBHE Policies

SUBJECT: 700s: Compensation  EFFECTIVE: June 26, 2014
Section: 703.3 Compensation

1. NDUS Retirement Plans:
   a. The North Dakota University System ("NDUS") retirement plans, 403(b), 457 (b) and 401(a), ("the Plan") are intended to provide eligible employees the opportunity to generate the long-term accumulation of retirement savings through employer and employee contributions to individual participant accounts and the earnings thereon. The Plan is an employee benefit plan intended to comply with all applicable federal laws and regulations. The Plan's purpose is to provide a vehicle to accumulate and grow assets to fund retirement needs on an individual basis for eligible employees.
   b. It is the intent to provide a range of investment options under the Plan that will enable participants to invest according to varying risk tolerances, and other financial goals. The investment options offered under the Plan shall be administered solely in the interests of the plan participants and their beneficiaries.

2. Responsibilities:
   a. The SBHE, as plan sponsor, retains authority and must approve changes to the Plan including plan design, contributions, eligibility and investment menu and also approves the Investment Policy Statement (IPS) proposed by the Retirement Plan Oversight Committee. SBHE members are fiduciaries of the plan. The SBHE may delegate investment fiduciary responsibilities to the Chancellor and/or Retirement Plan Oversight Committee for plan performance review, employee education and communication, compliance and other operational activities proposed by the Retirement Plan Oversight Committee.
   b. The Chancellor, as CEO of the North Dakota University System, is the Plan Administrator and a fiduciary of the Plan. The Chancellor appoints the NDUS Retirement Plan Oversight Committee (the "Committee") and delegates authority to the Committee to monitor the plan and make recommendations to the Plan Administrator or Plan Sponsor. The Chancellor may also retain legal and financial advisors or consultants to assist the SBHE, Chancellor, and Committee. The Chancellor shall report to the SBHE at the end of each fiscal year concerning the administration of the plans.
History:
New policy. SBHE Minutes, June 26, 2014.
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* as of 7/28/2014
Policies and Procedures

SBHE Policies

<< return

SUBJECT: 100s: Introduction
EFFECTIVE: January 27, 2011

Section: 100.4 Mission and Vision of the North Dakota University System

Our Mission:

"To enhance the quality of life for all those we serve and the economic and social vitality of North Dakota through the discovery, sharing and application of knowledge."

Our Vision:

"Leading the nation in educational attainment through access, innovation and excellence."

History:
Amendment, SBHE Minutes, January 27, 2011.
I am pleased to share with you a copy of the North Dakota University System’s Strategic Plan. This is a forward-looking plan that focuses on creating a dynamic future for North Dakota through a highly educated population. This Strategic Plan was developed in accordance with North Dakota Century Code 15-10-14.2:

"The state board of higher education shall adopt a strategic planning process and develop a strategic plan to define and prioritize university system goals and objectives. The Board shall provide an annual performance and accountability report regarding performance and progress toward the goals outlined in the university system’s strategic plan and accountability measures."

As a result of its July 2009 retreat, the State Board of Higher Education expressed the need to develop a compelling new strategic plan for the University System. Board members emphasized the importance of defining clear and concise goals with related objectives that are specific, measurable, and actionable.

The attached document outlines the resulting vision, four goals, and measurable objectives associated with each goal. These goals emerged through a convergence of common themes from the Board’s 2009 retreat, the work of the Higher Education Roundtable (October 2008), Legislative Interim Higher Education Committees (2007-08, 2009-10), NDUS Strategy Forum (June 2009), Presidential group meetings (May and June 2009), and the Chancellor’s Cabinet retreat (June 2009). The common themes reflected by the four goals are: access, funding/affordability, economic development, and flexibility and responsiveness. These are united by the overarching theme of increasing the educational attainment of the state.

Progress toward each of these goals will be assessed through specific objectives. The majority of these stated objectives are directly linked to the required accountability measures outlined in SB 2038 adopted during the 2009 legislative session. The major policy areas addressed by each of the goals also are listed as an indication of the concrete initiatives the State Board of Higher Education believes are critical areas of focus.

A strategic plan is a living, evolving document that must respond to inevitable changes in the environment if it is to remain current and viable. The State Board of Higher Education will annually assess this strategic plan to evaluate progress toward the objectives, determine whether any changes are required, and develop action steps for the year.

Thank you for your support of North Dakota public higher education.

Sincerely,

William Goetz
Chancellor
2009-13
NDUS Strategic Plan and Objectives

Our Vision: Leading the nation in educational attainment through access, innovation and excellence

Roundtable Cornerstone: Education Excellence

THE OBJECTIVE: North Dakota will rank #1 in the nation in the education of our population.

Roundtable Cornerstone: Accessible System

Goal 1: The North Dakota University System is accessible, a view held by all North Dakotans.
Objectives, 2009-13

1.1 Increase the percentage of recent North Dakota high school graduates enrolled in NDUS institutions by 5 percentage points
1.2 Increase the percentage of North Dakota's total young adult population (25-34) enrolled in NDUS institutions for credit to 6 percent
1.3 Increase the percentage of North Dakota's total population (35-44) enrolled in NDUS institutions for credit to 2 percent
1.4 Increase the total number of certificates, associate, and baccalaureate degrees awarded by 4 percent
1.5 Increase the total number of graduate and professional degrees awarded by 3 percent
1.6 The percentage of family income in North Dakota needed to pay for community college after deducting grant aid will decrease to the national average.

Roundtable Cornerstone: Funding

Goal 2: North Dakotans recognize that the North Dakota University System is affordable at a level that can be sustained.
Objectives, 2009-13

2.1 North Dakota will rank in the top 20 percent of states in per capita support for higher education, a level that is both achievable and sustainable.
2.2 North Dakota will rank in the top 10 percent of the most productive states in total funding per degree/certificate awarded.
2.3 The Strategic Plan guides allocation of resources to achieve the vision.

Policy Focus Areas:
- Improve preparation for college
- Promote college awareness
- Better serve working adults
- Increase outreach to underrepresented students
- Expand access to on-line delivery
- Expand flexible program delivery
- Enhance student support services
- Improve student retention and completion

Policy Focus Areas:
- Maintain affordability
- Support productivity improvements
- Leverage technology to increase efficiencies
Roundtable Cornerstone: Economic Development Connection

Goal 3: The North Dakota University System increases the overall vitality of the state through exceptional education, research, training, and service.

Objectives, 2009-13

3.1 Increase completions in targeted, high potential programs (agriculture, energy, health care, life sciences, advanced technology) by 5 percent.
3.2 Increase the number of certificates and associate degrees awarded in vocational and technical fields at community colleges by 5 percent.
3.3 North Dakota will rank first in the nation for the percentage of degrees and certificates awarded in Science, Technology, Engineering and Math (STEM) fields.
3.4 NDUS students will perform at or above the national average on all nationally recognized examinations.
3.5 NDUS students will exceed the national average first-time pass rates on all professional licensure examinations.
3.6 UND and NDSU research activities will, at a minimum, demonstrate overall progress on several research criteria based on an external evaluation including collaborations in and outside of North Dakota, patents, proposals, publications, and new faculty hires.
3.7 The Centers of Excellence will, at a minimum, meet expectations according to the criteria established by the Centers of Excellence Commission for the annual review.
3.8 NDUS alumni and students will report levels of satisfaction with preparation in their selected major, acquisition of specific skills, and technology knowledge and abilities that exceed the national average.
3.9 Employers will report high/increased levels of satisfaction with the preparation of recently hired NDUS graduates benchmarked against historical trends.
3.10 Increase the number of businesses served by TrainND workforce training by at least 4 percent.
3.11 Demonstrate progress in knowledge transfer and commercialization through increased performance in the majority of defined metrics (IP licenses, licensing income, agreements, etc.)
3.12 Increase the number of NDUS students involved in the statewide network of entrepreneurial resources and activity in partnership with the Department of Commerce and other certified entrepreneurial centers throughout the state.

Roundtable Cornerstone: Flexible and Responsive System

Goal 4: The eleven institutions comprising the North Dakota University System work together to achieve the vision effectively.

Objectives, 2009-13

4.1 The NDUS will report the number of students who successfully transfer into a degree program at another NDUS institution.
4.2 North Dakota University System institutions will benchmark the number of student credit hours delivered to students attending another NDUS institution against historical data.
4.3 Integrate the role of each NDUS institution within the overall system mission and strategic plan.
4.4 Increase awareness of the System and its institutions through a common, consistent message.
4.5 Increase SBHE opportunity for discussion of strategic policy topics.

2009-13 NDUS Strategic Plan and Objectives
Policy Title: Criteria for Accreditation
Number: CRRT.B.10.010

The Criteria for Accreditation are the standards of quality by which the Commission determines whether an institution merits accreditation or reaffirmation of accreditation. They are as follows:

Criterion One. Mission
The institution’s mission is clear and articulated publicly; it guides the institution’s operations.

Core Components

I.A. The institution’s mission is broadly understood within the institution and guides its operations.
1. The mission statement is developed through a process suited to the nature and culture of the institution and is adopted by the governing board.
2. The institution’s academic programs, student support services, and enrollment profile are consistent with its stated mission.
3. The institution’s planning and budgeting priorities align with and support the mission. (This sub-component may be addressed by reference to the response to Criterion 5.C.1.)

I.B. The mission is articulated publicly.
1. The institution clearly articulates its mission through one or more public documents, such as statements of purpose, vision, values, goals, plans, or institutional priorities.
2. The mission document or documents are current and explain the extent of the institution’s emphasis on the various aspects of its mission, such as instruction, scholarship, research, application of research, creative works, clinical service, public service, economic development, and religious or cultural purpose.
3. The mission document or documents identify the nature, scope, and intended constituencies of the higher education programs and services the institution provides.

I.C. The institution understands the relationship between its mission and the diversity of society.
1. The institution addresses its role in a multicultural society.
2. The institution’s processes and activities reflect attention to human diversity as appropriate within its mission and for the constituencies it serves.

I.D. The institution’s mission demonstrates commitment to the public good.
1. Actions and decisions reflect an understanding that in its educational role the institution serves the public, not solely the institution, and thus entails a public obligation.
2. The institution’s educational responsibilities take primacy over other purposes, such as generating financial returns for investors, contributing to a related or parent organization, or supporting external interests.
3. The institution engages with its identified external constituencies and communities of interest and responds to their needs as its mission and capacity allow.

Criterion Two. Integrity: Ethical and Responsible Conduct
The institution acts with integrity; its conduct is ethical and responsible.

Core Components
2.A. The institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff.

2.B. The institution presents itself clearly and completely to its students and to the public with regard to its programs, requirements, faculty and staff, costs to students, control, and accreditation relationships.

2.C. The governing board of the institution is sufficiently autonomous to make decisions in the best interest of the institution and to assure its integrity.
   1. The governing board's deliberations reflect priorities to preserve and enhance the institution.
   2. The governing board reviews and considers the reasonable and relevant interests of the institution's internal and external constituencies during its decision-making deliberations.
   3. The governing board preserves its independence from undue influence on the part of donors, elected officials, ownership interests, or other external parties when such influence would not be in the best interest of the institution.
   4. The governing board delegates day-to-day management of the institution to the administration and expects the faculty to oversee academic matters.

2.D. The institution is committed to freedom of expression and the pursuit of truth in teaching and learning.

2.E. The institution's policies and procedures call for responsible acquisition, discovery, and application of knowledge by its faculty, students and staff.
   1. The institution provides effective oversight and support services to ensure the integrity of research and scholarly practice conducted by its faculty, staff, and students.
   2. Students are offered guidance in the ethical use of information resources.
   3. The institution has and enforces policies on academic honesty and integrity.

The institution provides high quality education, wherever and however its offerings are delivered.

Core Components

3.A. The institution's degree programs are appropriate to higher education.
   1. Courses and programs are current and require levels of performance by students appropriate to the degree or certificate awarded.
   2. The institution articulates and differentiates learning goals for its undergraduate, graduate, post-baccalaureate, post-graduate, and certificate programs.
   3. The institution's program quality and learning goals are consistent across all modes of delivery and all locations (on the main campus, at additional locations, by distance delivery, through contractual or consortial arrangements, or any other modality).

3.B. The institution demonstrates that the exercise of intellectual inquiry and the acquisition, application, and integration of broad learning and skills are integral to its educational programs.
   1. The general education program is appropriate to the mission, educational offerings, and degree levels of the institution.
   2. The institution articulates the purposes, content, and intended learning outcomes of its undergraduate general education requirements. The program of general education is grounded in a philosophy or framework developed by the institution or adopted from an established framework. It imparts broad knowledge and intellectual concepts to students and develops skills and attitudes that the institution believes every college-educated person should possess.
3. Every degree program offered by the institution engages students in collecting, analyzing, and communicating information; in mastering modes of inquiry or creative work; and in developing skills adaptable to changing environments.

4. The education offered by the institution recognizes the human and cultural diversity of the world in which students live and work.

5. The faculty and students contribute to scholarship, creative work, and the discovery of knowledge to the extent appropriate to their programs and the institution’s mission.

3.C. The institution has the faculty and staff needed for effective, high-quality programs and student services.
   1. The institution has sufficient numbers and continuity of faculty members to carry out both the classroom and the non-classroom roles of faculty, including oversight of the curriculum, and expectations for student performance; establishment of academic credentials for instructional staff; involvement in assessment of student learning.
   2. All instructors are appropriately qualified, including those in dual credit, contractual, and consortial programs.
   3. Instructors are evaluated regularly in accordance with established institutional policies and procedures.
   4. The institution has processes and resources for assuring that instructors are current in their disciplines and adept in their teaching roles; it supports their professional development.
   5. Instructors are accessible for student inquiry.
   6. Staff members providing student support services, such as tutoring, financial aid advising, academic advising, and co-curricular activities, are appropriately qualified, trained, and supported in their professional development.

3.D. The institution provides support for student learning and effective teaching.
   1. The institution provides student support services suited to the needs of its student populations.
   2. The institution provides for learning support and preparatory instruction to address the academic needs of its students. It has a process for directing entering students to courses and programs for which they are adequately prepared.
   3. The institution provides academic advising suited to its programs and the needs of its students.
   4. The institution provides to students and instructors the infrastructure and resources necessary to support effective teaching and learning (technological infrastructure, scientific laboratories, libraries, performance spaces, clinical practice sites, museum collections, as appropriate to the institution’s offerings).
   5. The institution provides to students guidance in the effective use of research and information resources.

3.E. The institution fulfills the claims it makes for an enriched educational environment.
   1. Co-curricular programs are suited to the institution’s mission and contribute to the educational experience of its students.
   2. The institution demonstrates any claims it makes about contributions to its students' educational experience by virtue of aspects of its mission, such as research, community engagement, service learning, religious or spiritual purpose, and economic development.

Criterion Four. Teaching and Learning: Evaluation and Improvement
The institution demonstrates responsibility for the quality of its educational programs, learning environments, and support services, and it evaluates their effectiveness for student learning through processes designed to promote continuous improvement.

Core Components

4.A. The institution demonstrates responsibility for the quality of its educational programs.
1. The institution maintains a practice of regular program reviews.
2. The institution evaluates all the credit that it awards for experiential learning or other forms of prior learning, or relies on the evaluation of responsible third parties.
3. The institution has policies that assure the quality of the credit it accepts in transfer.
4. The institution maintains and exercises authority over the prerequisites for courses, rigor of courses, expectations for student learning, access to learning resources, and faculty qualifications for all its programs, including dual credit programs. It assures that its dual credit courses or programs for high school students are equivalent in learning outcomes and levels of achievement to its higher education curriculum.
5. The institution maintains specialized accreditation for its programs as appropriate to its educational purposes.
6. The institution evaluates the success of its graduates. The institution assures that the degree or certificate programs it represents as preparation for advanced study or employment accomplish these purposes.

4.B. The institution demonstrates a commitment to educational achievement and improvement through ongoing assessment of student learning.
1. The institution has clearly stated goals for student learning and effective processes for assessment of student learning and achievement of learning goals.
2. The institution assesses achievement of the learning outcomes that it claims for its curricular and co-curricular programs.
3. The institution uses the information gained from assessment to improve student learning.
4. The institution’s processes and methodologies to assess student learning reflect good practice, including the substantial participation of faculty and other instructional staff members.

4.C. The institution demonstrates a commitment to educational improvement through ongoing attention to retention, persistence, and completion rates in its degree and certificate programs.
1. The institution has defined goals for student retention, persistence, and completion that are ambitious but attainable and appropriate to its mission, student populations, and educational offerings.
2. The institution collects and analyzes information on student retention, persistence, and completion of its programs.
3. The institution uses information on student retention, persistence, and completion of programs to make improvements as warranted by the data.
4. The institution’s processes and methodologies for collecting and analyzing information on student retention, persistence, and completion of programs reflect good practice. (Institutions are not required to use IPEDS definitions in their determination of persistence or completion rates. Institutions are encouraged to choose measures that are suitable to their student populations, but institutions are accountable for the validity of their measures.)

Criterion Five. Resources, Planning, and Institutional Effectiveness
The institution’s resources, structures, and processes are sufficient to fulfill its mission, improve the quality of its educational offerings, and respond to future challenges and opportunities. The institution plans for the future.

Core Components
5.A. The institution’s resource base supports its current educational programs and its plans for maintaining and strengthening their quality in the future.
1. The institution has the fiscal and human resources and physical and technological infrastructure sufficient to support its operations wherever and however programs are delivered.
2. The institution's resource allocation process ensures that its educational purposes are not adversely affected by elective resource allocations to other areas or disbursement of revenue to a superordinate entity.
3. The goals incorporated into mission statements or elaborations of mission statements are realistic in light of the institution's organization, resources, and opportunities.
4. The institution's staff in all areas are appropriately qualified and trained.
5. The institution has a well-developed process in place for budgeting and for monitoring expense.

5.B. The institution's governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission.
1. The governing board is knowledgeable about the institution; it provides oversight of the institution's financial and academic policies and practices and meets its legal and fiduciary responsibilities.
2. The institution has and employs policies and procedures to engage its internal constituencies—including its governing board, administration, faculty, staff, and students—in the institution's governance.
3. Administration, faculty, staff, and students are involved in setting academic requirements, policy, and processes through effective structures for contribution and collaborative effort.

5.C. The institution engages in systematic and integrated planning.
1. The institution allocates its resources in alignment with its mission and priorities.
2. The institution links its processes for assessment of student learning, evaluation of operations, planning, and budgeting.
3. The planning process encompasses the institution as a whole and considers the perspectives of internal and external constituent groups.
4. The institution plans on the basis of a sound understanding of its current capacity. Institutional plans anticipate the possible impact of fluctuations in the institution's sources of revenue, such as enrollment, the economy, and state support.
5. Institutional planning anticipates emerging factors, such as technology, demographic shifts, and globalization.

5.D. The institution works systematically to improve its performance.
1. The institution develops and documents evidence of performance in its operations.
2. The institution learns from its operational experience and applies that learning to improve its institutional effectiveness, capabilities, and sustainability, overall and in its component parts.

Policy Number Key
Section CRRT: Criteria and Requirements
Chapter B: Criteria for Accreditation
Part 10: General

Last Revised: June 2014
First Adopted: August 1992
Notes: Former Policy Number: 11 May 2013 - 1 1 Part A, 1 1 Part B. The Revised Criteria for Accreditation, Assumed Practices, and other new and revised related policies adopted February 2012 are effective for all accredited institutions on January 1, 2013. See Appendix A for information on the related policies that sunset December 31, 2012.
Related Policies:
Accreditation of NDUS Schools and Programs

The Higher Learning Commission provides the cornerstone accreditation for all NDUS institutions. However, separate schools and programs at the NDUS institutions are also accredited. The accredited schools and programs are summarized below:

Bismarck State College
- Automotive Collision Technology, Automotive Technology – National Automotive Technicians Education Foundation
- Carpentry (Residential) – Associated General Contractors of America
- Electrical Transmission Systems Technology – North American Electric Reliability Council
- Engineering Technology – Accreditation Board for Engineering Technology
- Medical Laboratory Technology, Phlebotomy Technician – National Accrediting Agency for Clinical Laboratory Science
- Nuclear Power Technology – Nuclear Energy Institute, Institute of Nuclear Power Operations
- Paramedic Technology, Surgical Technology – Commission on Accreditation of Allied Health Education Programs
- Practical Nursing, AND-RN, North Dakota Board of Nursing
- All Career and Technology Education Programs – Department of Career and Technical Education

Dakota College at Bottineau
- Medical Transcription – Association of Healthcare Documentation Integrity (AHDI)
- Nursing (Associate Degree, candidate) – Higher Learning Commission
- Nursing (Practical, candidate) – Accreditation Commission for Education in Nursing
- Paramedic Technology (candidate) – Commission on Accreditation of Allied Health Programs (CAAHEP), Committee on Accreditation for the EMS Professions (CoAEMSP)

Dickinson State University
- Nursing – Accreditation Commission for Education in Nursing
- Environmental Health – National Environmental Health Science and Protection Accreditation Council

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1 The North Dakota Board of Nursing “approves” nursing programs, but does not “accredit” them.
2 The Department “approves” programs, but does not “accredit” them.
- Teacher Education – Council for the Accreditation of Educator Preparation (CAEP), f/k/a National Council for Accreditation of Teacher Education (NCATE)
- Business/Management – International Assembly for Collegiate Business Education
- Music – National Association of Schools of Music

Lake Region State College
- Automotive Technology – National Automotive Technician Education Foundation
- Fitness Trainer Technician – Commission on Accreditation of Allied Health Education Programs
- Nursing (candidate) – Accreditation Commission for Education in Nursing

Mayville State University
- Teacher Education – Council for the Accreditation of Educator Preparation (CAEP), f/k/a National Council for Accreditation of Teacher Education (NCATE)

Minot State University
- College of Education and Health Sciences
  - Teacher Education – Council for the Accreditation of Educator Preparation (CAEP), f/k/a National Council for Accreditation of Teacher Education (NCATE)
  - Nursing – Accreditation Commission for Education in Nursing
  - School Psychology – National Association of School Psychologists
  - Speech Pathology – The American Speech-Language-Hearing Association
  - Social Work – The Council on Social Work Education
  - Education of the Deaf – Council on Education of the Deaf
  - Addiction Studies – The National Addiction Studies Accreditation Commission
  - Athletic Training – Commission on Accreditation of Athletic Training Education
- College of Arts & Science
  - Division of Music – National Association of Schools of Music
- College of Business
  - BADM, BIT & Acct. & Finance – International Assembly of Collegiate Business Education

North Dakota State School of Science
- **Auto Body Repair and Refinishing Technology, Automotive Technology** - National Automotive Technicians Education Foundation, Inc. (NATEF)
- **Dental Hygiene and Dental Assisting** - Commission on Dental Accreditation of the American Dental Association
• Diesel Technology - Associated Equipment Distributors, Inc
• Health Information Technician - Commission on Accreditation for Health Informatics and Information Management Education (CAHIM), in cooperation with American Health Information Management Association (AHIMA)
• Occupational Therapy Assistant - Accreditation Council of Occupational Therapy Education (ACOTE)
• Pharmacy Technician - American Society of Health System Pharmacists
• Practical Nursing - National League for Nursing Accrediting Commission (NLNAC) and ASN and Practical Nursing Programs have full approval by the North Dakota Board of Nursing
• Academic Services Center - National Association of Developmental Education (NADE)

North Dakota State University
• College of Agriculture, Food Systems and Natural Resources
  o Veterinary Technology – American Veterinary Medical Association Committee on Veterinary Technician Education and Activities
  o Food Science – Institute of Food Technologists
• College of Arts, Humanities and Social Sciences
  o Architecture Program – National Architectural Accrediting Board
  o Landscape Architecture Program – Landscape Architectural Accreditation Board
  o School of Music – National Association of Schools of Music
  o Department of Theater Arts – National Association of Schools of Theatre
  o Department of Visual Arts – National Association of Schools of Art and Design
• College of Business
  o College of Business – Association to Advance Collegiate Schools of Business
• College of Engineering
  o All undergraduate programs except Construction Management – Agricultural and Biosystems Engineering (ABET)
  o Construction Management - American Council for Construction Education
• College of Human Development & Education
  o Hospitality and Tourism Management – Accreditation Commission for Programs in Hospitality Administration
  o Exercise Science – Commission on Accreditation of Allied Health Education Programs
  o Coordinated Program in Dietetics and Didactic Program in Dietetics – American Dietetic Association
  o Family Financial Planning – Certified Financial Planner Board of Standards, Inc.
• Athletic Training – Commission on Accreditation of Athletic Training Programs
• Couple and Family Therapy Program – Commission on Accreditation of Marriage and Family Therapy Education
• Community Counseling; School Counseling; Counselor Education and Supervision – Council for Accreditation of Counseling and Related Educational Programs
• Interior Design – Council for Interior Design Accreditation
• Secondary Teachers, K-12 Teachers in Music and Physical Education; Education Administration; School and Community Counseling; Masters of Education and Masters of Science in Education – National Council for Accreditation of Teacher Education and North Dakota Education Standards and Practices Board
• College of Pharmacy, Nursing, and Allied Sciences
  • Pharmacy Program – Accreditation Council for Pharmacy Education
  • Nursing Program – Commission on Collegiate Nursing Education and North Dakota Board of Nursing
  • Allied Sciences – Committee on Accreditation for Respiratory Care
• College of Science and Mathematics
  • Psychological Clinical Science PhD Program – American Psychological Association’s Commission on Accreditation

University of North Dakota
• Art & Design – National Association of Schools of Art & Design
• Aviation Department (Commercial Aviation and Air Traffic Control) – Aviation Accreditation Board International
• Degree Programs in BAcc, BBA, BAEcon; MAcc, MBA, MSAE – AACSM International, The Association to Advance Collegiate Schools of Business
• Chemistry – Committee on Professional Training & American Chemical Society
• Speech Language Pathology (Masters) – Council on Academic Accreditation in Audiology & Speech-Language Pathology
• Computer Science (B.A.) – Computing Accreditation Commission of the Accreditation Board for Engr and Technology
• Coordinated Program in Dietetics – Commission on Accreditation for Dietetics Education (the Accreditation Agency for the American Dietetic Association
• Basic & Advanced Programs for Education (Baccalaureate, Master, Doctorate, Specialist Diploma) – North Dakota Education Standards & Practices Board
• Civil Engineering, Electrical Engineering, Geological Engineering, Mechanical Engineering, Chemical Engineering – Accreditation Board for Engineering & Technology (ABET)
Law – American Bar Association (Section of Legal Education and Admissions to the Bar)
- Music – National Association of Schools of Music
- Music Therapy (Baccalaureate Degree) – American Music Therapy Association
- Nurse Anesthesia – Council on Accreditation of Nurse Anesthesia Educational Programs
- Nursing (Baccalaureate and Masters) – North Dakota Board of Nursing
- Clinical Psychology – American Psychological Association
- Counseling Psychology (PhD) – American Psychological Association
- Public Administration (Masters) – National Association of Schools of Public Affairs and Administration
- Social Work (graduate and undergraduate) – Council on Social Work Education
- Technology – Association of Technology, Management, and Applied Engineering
- Theatre Arts – National Association of Schools of Theatre
- School of Medicine – Liaison Committee on Medical Education of the American Medical Association & Association of American Medical Colleges
- School of Medicine (M.D.) – Accreditation Council for Continuing Medical Education, Accreditation Council for Graduate Medical Education
- Athletic Training – Commission on Accreditation of Athletic Training Education
- Medical Lab Science – National Accrediting Agency for Clinical Laboratory Science
- Cytotechnology – Commission on Accreditation of Allied Adult Education Programs, Accreditation Review Committee for Cytotechnology
- Histotechnician – National Accrediting Agency for Clinical Laboratory Science
- Internal Medicine Residency, Psychiatry Residency, Surgery Residency, Family Medicine Residency (Bismarck, Minot) – Accreditation Council for Graduate Medical Education
- Occupational Therapy (including OT at Casper College, WY) – The American Occupational Therapy Association
- Physical Therapy – Commission on Accreditation in Physical Therapy Education
- Physician Assistant – Accreditation review Commission on Education for the Physician Assistant
- Transitional Year for UND School of Medicine & Health Sciences / Sanford Health, Fargo – Accreditation Council for Graduate Medical Education

Valley City State University
- Teacher Education – Council for the Accreditation of Educator Preparation (CAEP), f/k/a National Council for Accreditation of Teacher Education (NCATE)
- Music – National Association of Schools of Music

Williston State College
- Diesel Technology – National Automotive Technicians Education Foundation (NATEF)
- Nursing Program – North Dakota State Board of Nursing (Approval)

MGS:20140729
Policies and Procedures

SBHE Policies

SUBJECT: 300s: Governance and Organization  EFFECTIVE: April 6, 2011
Section: 340.2 Foundations

1. The purpose of this policy is to promote and strengthen the operations of an institution's affiliated foundations, alumni associations, athletic clubs and other related organizations, ("foundations"). The following provisions set forth a framework which enables and enhances a sound and mutually supportive foundation/institution relationship. The foundation-institution relationship is derived from a shared interest in the institution's development. An institution's participation in and support of foundation operations are, therefore, appropriate and desirable.

2. For the purposes of this policy, a foundation is defined as an independent, non-profit organization established to support and advance the mission and objectives of an institution or institutional functions, including an athletics booster organization for which an institution is ultimately responsible or accountable under athletic association or conference rules.

3. A foundation is a private legal entity separate from the institution and must be governed accordingly to protect the foundation's private, independent status. However, because the State Board of Higher Education is responsible for ensuring the integrity and reputation of the University System, it must be assured of the manner in which any affiliated foundation will operate. Therefore, each institution and its foundation(s) shall negotiate and maintain a written operating agreement. The agreement must include:
   a. A description of the services and benefits the institution and foundation provide each other and any payments made, including use of institution and foundation facilities, equipment, or employees by the other party or payments by one party to the other or to the other party's employees;
   b. A description of reporting relationships and appointing authority for all employees employed by both a foundation and institution and employees employed by one entity with assigned duties and responsibilities to the other;
   c. A description of any government functions delegated to the foundation and the foundation's acknowledgment and agreement that the institution retains ultimate authority regarding the delegated government functions. Although not intended to be an exhaustive list, the Board has determined that the following foundation activities are not government functions:
      1. All employment decisions concerning foundation employees including decisions related to appointment, compensation and benefits, dismissal, discipline and terms and conditions of employment;
      2. Determining foundation needs and priorities;
3. Buying, selling, donating, investing and managing real and personal property owned by the foundation;
4. The means and methods of distributing and determining the amount of foundation assets made available to the institution, its students, staff, faculty and officers;
5. The means and methods of distributing and determining the amount of foundation support for institution extracurricular, instructional, programmatic or department activities;
6. The means and methods of cultivating and soliciting potential individual, corporate or government donors and raising funds for the foundation;
7. The means and methods of accepting donations of any type and accounting for them;
8. The means and methods of recognizing students, staff, faculty, alumni, donors and persons of interest to the foundation;
9. Collecting, creating data bases and using information about current and former students, alumni, staff, faculty, donors and persons of interest to the foundation, provided that disclosure to or use by a foundation of student information maintained by an institution is subject to governing federal law restrictions;
10. The means and methods of marketing the foundation and its functions;
11. Participating in or supporting the social, cultural and athletic activities of the institution or its alumni association, athletic clubs, booster organizations or other organizations; and
12. Obtaining a fee from the institution in exchange for value related to any of these enumerated foundation activities.

Nothing in this subparagraph c. relieves a foundation from compliance with applicable federal or state laws, other Board policies and governing athletic association, athletic conference or other athletic organization rules applicable to these enumerated foundation activities.

d. A process to ensure that the foundation will solicit input from the institution before defining the major needs and priorities of the foundation.

e. A requirement to provide the institution with GAAP-compliant financial statements, including separately reported current assets, noncurrent assets, current liabilities and noncurrent liabilities on the face of the financial statements and an annual GAAP audit of the foundation, or a draft of an audited financial statement submitted for but pending foundation board approval by September 15 each year for:

   1. all entities considered component units of the NDUS under GASB 39, and
   2. all other related organizations that are not component units, whose total assets exceed $1 million and total program expenses exceed $100,000, for the previous fiscal year-end

f. How gifts, grants, donations and endowments are accepted and accounted for, including circumstances under which institution approval is required;

g. The terms and conditions that govern any joint fundraising efforts and fundraising for institution capital projects, including language requiring Board approval to begin a formal fundraising campaign for new building construction, major renovations, or major building additions, as required by SBHE Policy 902.1.

h. A provision governing access to, disclosure, security and custodial responsibility for confidential information;

i. To the extent a foundation is supported in whole or in part by public funds, or expending public funds, or exercising public authority or performing a government function, a provision acknowledging application of North Dakota’s open records laws to records relating to activities paid for with public funds or government functions delegated to the foundation. However, payment of a fee by an institution for services provided by a foundation that constitutes an exchange for value received does not constitute public support of a foundation and the use of those funds by a foundation does not give rise to a claim that the foundation expends public funds;

j. A requirement and mechanism for foundation disclosure, reporting and accounting relating to any intellectual property assigned by the institution to the foundation under SBHE Policy 611.2, including, but not limited to.
provisions requiring that the foundation report to the institution regarding
patents and patent applications, licensing and licensing agreements and
other or additional developments and improvements;
k. A provision governing use of the institution's name, trademark or other
intellectual property, and
l. A provision that addresses conflicts of interest or potential conflicts of
interest involving institution and foundation officers or employees.

4. Agreements shall be reviewed annually, and updated as necessary. A copy of each
agreement shall be filed with the NDUS General Counsel.

5. Institution presidents shall inform the Chancellor of concerns regarding foundation
activities they are not able to resolve by informal discussion. Institution presidents
shall promptly report to the Chancellor any breach of an agreement or failure on the
part of foundation officers or employees to adhere to standards appropriate to such
organizations. Foundation officers may inform the Chancellor of any breach of an
agreement or failure on the part of institution officers to adhere to appropriate
standards. The Chancellor shall take reasonable and appropriate action responding
to such reports, which may include informal discussion with the parties, a request or
recommendation to the parties, a report to the Board or recommendation for Board
action.

History:
Amendments. SBHE Minutes, October 23, 2009.
Amendments. SBHE Minutes, June 17, 2010.
Amendments SBHE Minutes, April 6, 2011.

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OPEN RECORDS AND MEETINGS OPINION
2014-O-07

DATE ISSUED: July 28, 2014

ISSUED TO: North Dakota State University Development Foundation

CITIZEN’S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Rob Port asking whether the North Dakota State University Development Foundation violated N.D.C.C. § 44-04-18 by denying a request for expenditure records.

FACTS PRESENTED

On December 23, 2013, Mr. Port requested the following records from the North Dakota State University (NDSU) Development Foundation:

1. An itemized copy of all payments to or on behalf of NDSU President Dean Bresciani from the foundation in 2013 through December 23rd.

2. A copy of all expenditures by the NDSU foundation in general for 2013 through December 23rd.

Having received no response, Mr. Port contacted the NDSU Development Foundation again on December 30, 2013, requesting acknowledgment of receipt of his open records request. On January 7, 2014, the NDSU Development Foundation provided records regarding NDSU President Dean Bresciani’s discretionary account supported by the foundation’s resources, in response to the first set of records requested. However, the NDSU Development Foundation denied Mr. Port’s second request regarding foundation expenditures because “most of our expenditures are non-public

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1 Email from Rob Port, Editor, SayAnythingBlog.com, to Doug Mayo, NDSU Dev. Found. President (Dec. 23, 2013; 10:07 PM). At the end of the email, Mr. Port stated that if the NDSU Development Foundation had any questions regarding his request, it should call or email.

2 See Email from Rob Port, Editor, SayAnythingBlog.com, to Doug Mayo, NDSU Dev. Found. President (Dec. 30, 2013, 8:19 AM).

fund expenditures; we have our own staff (non-public employees) and our Trustee’s [sic] make independent decisions on how to expend our resources.” 4 Instead, the NDSU Development Foundation directed Mr. Port to review the audited financial statements publicly available on the foundation’s website. 5 Mr. Port submitted a request for an opinion to this office on whether the NDSU Development Foundation properly denied his request for expenditure records. 6

On February 12, 2014, the NDSU Development Foundation provided this office with additional reasons for its denial of the records request that were not included in its original denial to Mr. Port. Included in this reasoning were allegations that the request was “exceptionally broad,” it “would be costly prohibitive and a strain on the personnel resources of the NDSU Foundation to produce a copy of all expenditures” of the foundation, some expenditure records would “likely . . . fall within exemptions” to the open records law although “no specific documents have been identified as exempt or confidential,” and that the NDSU Development Foundation is “not a public entity.” 7

After this office issued an opinion on April 24, 2014, regarding the extent to which foundations affiliated with public universities are “public entities” subject to open records law, the NDSU Development Foundation was given an opportunity to amend or otherwise supplement its response to this office for its denial of the expenditure records. 8 In its supplemental responses, the NDSU Development Foundation reiterated its previous arguments and further contended that some of its functions are not “governmental functions” performed on behalf of NDSU and records related to such nongovernmental functions would therefore not be subject to open records law. Finally,

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4 Id.
5 Id.
7 Letter from Christopher McShane, counsel for NDSU Dev. Found., to Sandra L. Voller, Ass’t. Att’y Gen. (Feb. 12, 2014).
the NDSU Development Foundation argues any student scholarship records in its possession are protected.⁹

ISSUE

Whether the NDSU Development Foundation violated open records law by denying a request for expenditure records.

ANALYSIS

All records of a “public entity” are open to the public unless otherwise specifically provided by law.¹⁰ Any records that relate to the public business of a public entity are subject to the open records law.¹¹ “Once a person makes a request for open records, it is the responsibility of the public entity to respond to the request within a reasonable time and the requester is not required to contact the entity again to find out when the records will be provided or made available.”¹² Once a request for records is made, a public entity does not have discretion to decide whether the request is meritorious and may only deny the request if a law specifically provides that the record is either exempt or confidential.¹³

This office recently issued an opinion providing guidance on the extent to which foundations affiliated with public institutions are subject to open records law. In that opinion, the Dickinson State University (DSU) Foundation was considered a public

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⁹ Email from Christopher McShane, counsel for NDSU Dev. Found., to Rob Port, Editor, SayAnythingBlog.com (May 9, 2014, 8:01 AM). It appears the NDSU Development Foundation is attempting to claim some of its expenditure records are confidential pursuant to the Family Education Rights and Privacy Act (FERPA). It is questionable whether scholarship records are in fact protected under FERPA. If the foundation has previously released information on recipients of scholarships, it cannot now claim an exemption. Further, under FERPA, “directory information” may be disclosed which includes a student’s name, honors, and awards received, as this information is not generally considered harmful or an invasion of privacy. 34 CFR § 99.3. In any event, this office requires public entities claiming a FERPA exception to do an analysis on whether the record can be disclosed by redacting personally identifiable information. N.D.A.G. 2013-O-08. The NDSU Development Foundation provides no proof it has done this required analysis.

¹⁰ N.D.C.C. § 44-04-18.

¹¹ Public business is defined to include “all matters that relate or may foreseeably relate in any way to [t]he performance of the public entity’s governmental functions.” N.D.C.C. § 44-04-17.1(12).


entity subject to open records law because it acted as an agent of its affiliated university, DSU, performing governmental functions on DSU’s behalf. This office recognizes that the solicitation and receipt of donations for a public university, along with promoting, aiding, and fundraising for the university, are governmental functions and when foundations undertake these activities on behalf of universities, they become “public entities,” despite their status as private, nonprofit corporations. The DSU Foundation’s sole purpose, as demonstrated by its By-Laws and an Agreement with DSU, was to support and assist DSU. All functions performed by the DSU Foundation were “governmental functions,” rendering it a public entity subject to open records law.

Like the DSU Foundation, the NDSU Development Foundation’s sole purpose and function, as outlined in its By-Laws and numerous agreements with NDSU, is to support and assist NDSU. The NDSU Development Foundation is a public entity subject to open records laws because it performs governmental functions on behalf of NDSU.

Here, the NDSU Development Foundation did not provide records of its expenditures because it claims some of the work done by the foundation is not “public business” or does not relate to its “governmental functions” and, therefore, is not subject to the open records law. As an example, the foundation contends that its electricity bill is not “public business” and analyzing all of its expenditures to extract such records would be cost prohibitive. Records related to expenditures for resources a public entity needs to

15 Id.
16 Id.
17 Id.
18 North Dakota State University Development Foundation Bylaws (as amended Oct. 5, 2012), "The purpose of this Foundation is to aggressively acquire resources for the support of North Dakota State University of Agriculture and Applied Science,... ."
19 There are numerous agreements between the NDSU Development Foundation and NDSU. The agreement that exemplifies the broad delegation of government functions from NDSU to the NDSU Development Foundation is titled: Agreement Between North Dakota State University[,] The North Dakota State University Development Foundation and The North Dakota State University Alumni Association, signed by the respective parties on December 6, 2011. The Agreement provides that NDSU asks the Foundation and Alumni Association to assume primary responsibilities of, among other things, acquiring resources to support NDSU, assist NDSU in building endowment and addressing long-term academic priorities of NDSU, identify potential donors and nurture the relationships of such persons with NDSU, and to solicit support, accept gifts, and fundraise on behalf of NDSU.
operate, such as electricity, relate to the entity's public business.\textsuperscript{21} The NDSU Development Foundation failed to provide evidence that it retains any expenditure records unrelated to its public business or the governmental functions it performs on behalf of NDSU, nor has it cited any law suggesting its expenditure records are exempt or confidential.\textsuperscript{22}

As explained in the "facts" section, the NDSU Development Foundation also objects that the request was "too vague," would be "cost prohibitive," and a "strain on the personnel resources" to fulfill. Such allegations are not exceptions to the open records law and are not legal bases for denying a records request. The amount of work needed to respond to a records request may affect the time necessary to respond, but it does not render the request insufficient under N.D.C.C. § 44-04-18.\textsuperscript{23} Additionally, and as explained in past opinions, if a public entity does not understand a request, it has a duty to contact the requester for clarification in a timely manner.\textsuperscript{24} Here, it was only after prompting from this office, approximately four months later, that the NDUS Development Foundation sought clarification from the requester.

It was not until May 22, 2014, five months after Mr. Port's initial request, and only after numerous interventions from this office, that the NDSU Development Foundation produced any sort of expenditure records to the requester.\textsuperscript{25} The NDSU Development Foundation spent more time trying to avoid the open records request than determining

\textsuperscript{21} N.D.C.C. § 44-04-17.1(12) (definition of "public business" includes "all matters that relate or may foreseeably relate in any way to [t]he performance of the public entity's governmental functions.") See also N.D.A.G. 2013-O-17; N.D.A.G. 2013-O-10; and N.D.A.G. 2002-O-09; see also N.D.A.G. 94-L-103. ("No state statute provides a specific exemption under the open records law for a city checkbook. If the checkbook contains any information which is specifically exempted from the open records law by statute, access to that information may be denied. The remainder of the checkbook remains an open record.")

\textsuperscript{22} See N.D.A.G. 2003-O-10 and N.D.A.G. 99-O-03. (If public funds have been pooled with other revenue of a private, non-profit corporation, and not segregated in a separate account, then all financial records must be open to the public.)

\textsuperscript{23} See N.D.A.G. 2001-O-12. (A request for a large number of records is not, by definition, overbroad. The breadth of request affects the time within which a public entity is required to respond, but not whether the request is sufficient under N.D.C.C. § 44-04-18.) As a public entity, the NDSU Development Foundation may charge the allowable amounts under N.D.C.C. § 44-04-18(2), in order to defray some of the costs associated with providing public records.

\textsuperscript{24} See N.D.A.G. 2013-O-17. (If the public entity is unclear on what records were being requested, it has a duty to contact the requester for clarification in a timely manner.)

\textsuperscript{25} Email from Christopher McShane, counsel for NDSU Dev. Found., to Rob Port, Editor, SayAnythingBlog.com (May 22, 2014, at 4:13 PM).
how to fulfill the request and, instead of working with its requestor, continually denied
the request on incorrect legal grounds.\textsuperscript{26}

CONCLUSION

The NDSU Development Foundation violated the open records law when it denied a
request for expenditure records on incorrect legal grounds and when it delayed its
response by months, even after acknowledging that it had responsive records.

STEPS NEEDED TO REMEDY VIOLATION

Although the NDSU Development Foundation produced some records related to its
2013 expenditures, the foundation must now communicate with Mr. Port about any
further records it has in its possession that relate to its 2013 expenditures. The NDSU
Development Foundation must provide a copy of any requested records, free of charge,
although the foundation may charge the appropriate fee for locating any records as
allowed by N.D.C.C. § 44-04-18. Any further denials of expenditure records will be
subject to review by this office.

Failure to take the corrective measures described in this opinion within seven days of
the date this opinion is issued will result in mandatory costs, disbursements, and
reasonable attorney fees if the person requesting the opinion prevails in a civil action
under N.D.C.C. § 44-04-21.2.\textsuperscript{27} It may also result in personal liability for the person or
persons responsible for the noncompliance.\textsuperscript{28}

Wayne Stenehjem
Attorney General

\textsuperscript{26} If it were not for Mr. Port's request for an opinion, and intervention from this office, I
doubt any expenditure records would have ever been produced by the Foundation. It
was only after several interventions from this office that any records were produced,
several months later.
\textsuperscript{27} N.D.C.C. § 44-04-21.1(2).
\textsuperscript{28} Id.
Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013

HOUSE CONCURRENT RESOLUTION NO. 3047
(Representatives Carlson, Martinson, Nathe, Vigesaa)
(Senators Grindberg, Hogue, Schaible)

A concurrent resolution to create and enact a new section to article VIII of the Constitution of North Dakota, relating to the creation of a commission of higher education; to repeal section 6 of article VIII of the Constitution of North Dakota, relating to the state board of higher education; and to provide an effective date.

STATEMENT OF INTENT

This measure would create a three-member commission of higher education beginning on July 1, 2015, to oversee and administer the provision of all public higher education in this state.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article VIII of the Constitution of North Dakota and the repeal of section 6 of article VIII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2014, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article VIII of the Constitution of North Dakota is created and enacted as follows:

1. A three-member commission of higher education is created for the purpose of overseeing and administering the provision of public higher education at sites that include Bismarck, Bottineau, Devils Lake, Dickinson, Fargo, Grand Forks, Mayville, Minot, Valley City, Wahpeton, and Williston.

2. The governor shall appoint each member of the commission from a list of at least three nominees agreed to by a majority of the following:
   a. The speaker of the house of representatives;
   b. The president pro tempore of the senate;
   c. The chief justice of the North Dakota supreme court;
   d. The superintendent of public instruction; and
   e. A representative of an educational interest group selected by three of the four aforementioned individuals.

3. The governor shall ensure that one member of the commission has leadership experience in a private sector business, industry, or service, and that one member, at the time of appointment, holds a professional position within the higher education sector. Each member of the commission must be confirmed by the senate.

4. The term of office for each commission member is four years, except that the initial terms must be staggered by lot so that no more than one member's term expires each year. Each term begins on July first and members may be reappointed to three consecutive terms.

5. A member of the commission is subject to removal by impeachment in the same manner as that established for the removal of the governor.
6.  a. The commission has full executive responsibility for the management and operation of the North Dakota university system, within constitutional and statutory requirements and limitations.

   b. The commission shall hire a president for each institution within the system and each president shall report to the commission.

7. The legislative assembly may provide for the appointment of an advisory board that includes a faculty and a student representative.

SECTION 2. REPEAL. Section 6 of article VIII of the Constitution of North Dakota is repealed.

SECTION 3. EFFECTIVE DATE. If approved by the electors, this measure becomes effective on July 1, 2015.
SYSTEM GOVERNANCE

3. Accountability through annual and 5 year evaluation of CEO by Board. CEO responsible for annual and five year reviews of campus heads.

4. Board by-laws, policies, committee system kept up to date

5. Board periodically conducts own self-evaluation and conducts an effective orientation program for new members.

SYSTEM GOVERNANCE

6. CEO main spokesperson for System. Chief interface with government leaders and government agencies. Board chair the spokesperson for the board.

7. Government relations carefully coordinated by CEO with campus heads and Board assisting in advocacy process. A collective, unified voice.

8. Campuses treated fairly and in a transparent manner. A true spirit of cooperation and realization of need for interdependency.
<table>
<thead>
<tr>
<th>SYSTEM GOVERNANCE</th>
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<tr>
<td>9. A realistic strategic plan for System and campuses fitting both good times and bad.</td>
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<td>10. Judicious balance between campus autonomy that encourages creative leadership and role differentiation, and control that ensures consistency, synergism, and fairness over budgeting, planning, and advocacy.</td>
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<td>11. Performance incentives that reward institutional success and encourages institutional collaborations.</td>
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<th>SYSTEM GOVERNANCE</th>
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<td><strong>Pitfalls to Avoid</strong></td>
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<tr>
<td>1. Favoring one campus over another</td>
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<td>2. Conflicts of interest, micromanaging, and influence peddling</td>
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<td>3. A federated arrangement with CEO and campus leaders seen as equals. Everyone in charge means no one in charge.</td>
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<tr>
<td>4. One trick pony Board members</td>
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<tr>
<td>5. Board member loyalty to special interests rather than mission</td>
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North Dakota University System

Dr. Tom Meredith, Senior Fellow

How to Have a Mediocre Board

- Under-engaged/Over-engaged
- Avoid discomfort
- Have the chancellor frame the agendas
- Have the chair try to be president or chair.
- Avoid focusing on the work of the board; focus only on the work of the system
- Have the board's executive committee make all the decisions

How to Have a Mediocre Board

- Use meeting time the same way every time
- Have personal agendas
- Focus on the past
- Believe academic quality is only a faculty issue
- Don't evaluate the chancellor or provide constructive feedback
- Avoid risk
- Allow one board member to dominate, disrupt
- Get the chancellor to police board misbehavior
What Effective Governing Boards Do

1. Ensure the mission of the system and the institutions is current (and aligned with public purposes)
2. Select the chancellor
3. Work with and assess the chancellor and comp.
4. Approve the strategic plan and monitor progress
5. Ensure fiscal integrity and preserve system assets

What Effective Governing Boards Do

6. Ensure the academic quality of the system institutions and their academic programs
7. Protect institutional autonomy, academic freedom and the public purposes of higher education
8. Ensure policies and processes are current and implemented properly

What Effective Governing Boards Do

9. Engage relevant constituencies appropriately with the administration
10. Be transparent and ethical
11. Assess own performance
12. Focus on strategy
Hallmarks of Highly Effective Boards

1. Actively engaged in governance work
2. High level of trust and candor
3. Engage multiple perspectives
4. Concentrate on governance, not management
5. Focus on strategic issues that matter
6. Emphasize system perspective, not personal agendas

Hallmarks of Highly Effective Boards

7. Listens to constituents but without veto
8. Enhances and nurtures the legacy of the system
9. Recognizes its responsibility to students to provide a quality education
10. Balances advocacy and oversight
11. Commits to due process and academic freedom
12. Commits to adequate time and effort to do the board's work

Hallmarks of Highly Effective Boards

13. Balances system and institutional needs and welfare with the state's needs and priorities
14. Imposes the highest ethical standards
15. Speaks with one voice
16. Commits itself and the system to due process and academic freedom
Hallmarks of Highly Effective Boards

17. Assess system and institutional leadership and the board's performance for continuous improvement
18. Participate and enjoy the experience

BOARD PERFORMANCE

- Board and institutional performance are closely related
- Boards have major impact-positive or negative

- Reputation Counts in Higher Education
  - Donors
  - Recruiting Faculty & Best Students
  - State Funding
BOARD PERFORMANCE

- Boards have reputations of their own mostly based on how they conduct board business and themselves
  - Internal constituencies
  - External constituencies

- Board meetings should be models of good governance #

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Essential Responsibilities of Boards

1. Boards have ultimate fiduciary responsibility

2. Boards are responsible for the recruitment, compensation, and performance review of the Chancellor of the system.

3. The board defines the educational mission of each institution, determines the academic programs each institution shall offer, and is accountable for the quality.

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Essential Responsibilities of Boards

4. Boards are overseers of the public trust they hold, and must be accountable.

5. Boards are responsible for ensuring independence of the system and the institutions and for safeguarding academic freedom.
Essential Responsibilities of Boards

6. Boards define the terms of shared governance through respect for traditions including delegation of recommendations for academic policy to faculty.

7. Boards are responsible for financial decisions.

Essential Responsibilities of Boards

8. Boards are responsible for reaching out to multiple constituencies

9. Boards need to understand the legal and regulatory environment within which their system operates.

10. Boards must conduct the board’s business in an exemplary fashion. #
Responsibilities of Individual University Trustees

1. To seek to be fully informed.
2. To support the mission of the university.
3. To speak one's mind at board meetings but support decisions made.
4. To understand the trustee's role as policymaking and not management. (Results Not Process)

Responsibilities of Individual University Trustees

5. To strengthen and sustain the chancellor while asking probing questions and exercising critical judgment.
6. To communicate promptly to the chancellor and board chair any significant concern or complaint and then let the chancellor handle it.

RESPONSIBILITIES OF INDIVIDUAL TRUSTEES

7. To defend the autonomy and independence of the system's institutions.
8. To maintain an overriding loyalty to the system and not to a constituency.
RESPONSIBILITIES OF INDIVIDUAL UNIVERSITY TRUSTEES

9. To maintain a decent respect for the opinions of my fellow board members and a proper restraint in my criticism of the system.

10. To not allow end runs realizing it destroys TRUST.

Responsibilities of Individual University Trustees

11. To recognize that only the chancellor is the spokesperson for the system and the board chair is the only spokesperson for the board.

12. To foster openness and trust among Board members, the administration, faculty, staff, students, state government and the public.

Responsibilities of Individual University Trustees

13. To remember the system and its institutions were created to help the state and its citizens.

14. To recognize that no board member shall make any request or demand any action that violates the written policies, rules or regulations of the board or the university.
RESPONSIBILITIES OF INDIVIDUAL UNIVERSITY TRUSTEES

15. To maintain the highest ethical standards and to never allow any conflict of interest.

16. To not rush to judgment and to give everyone the benefit of the doubt.

HOW TO BE A GREAT BOARD MEMBER

Great Trustee (cont'd)

- Be Engaged
- Keep Learning
- Know Your Colleagues
- Keep Students First
- Avoid the Shoelace Syndrome
- Make Meetings a Teaching Moment
- Remember, the Body Corporate
Great Trustee (cont’d)

- Learn the Board Culture
- Respect Your Fellow Board Members and Earn Their Respect and Trust
- Remember Policy Not Management
- Think Strategically
- Advocate as Well as Oversee
- Remember, You Are Always a Board Member

Great Trustee (cont’d)

- Support Your CEO
- Remember Institutions are Fragile. Watch What You Say and How You Say It
- Read and be prepared
- Have Fun and Enjoy!

• COMMITMENTS
COMMITMENTS

- Commit to the Public Trust
- New First to Understand
- Act with Integrity
- Confidential
- No Conflict of Interest
- Objective and Fair
- No Personal Comment

COMMITMENTS (cont.)

- Respect Final Decision
- Chair and President as Spokespersons
- Build Strong Relationships
- Seek Views of Others and Accept Criticism
- Treat Other Board Members and Be Worthy of Their Trust
A person is guilty of corrupt practice within the meaning of this chapter if the person willfully engages in any of the following:
1. Expends any money for election purposes contrary to the provisions of this chapter.
2. Engages in any of the practices prohibited by section 12.1-14-02 or 12.1-14-03.
3. Is guilty of the use of state services or property or the services or property of a political subdivision of the state for political purposes.

16.1-10-02. Use of state or political subdivision services or property for political purposes.
1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, commission, or political subdivision thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:
   a. "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial. Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question.
   b. "Property" includes motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
   c. "Services" includes the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

16.1-10-03. Political badge, button, or insignia at elections.
No individual may buy, sell, give, or provide any political badge, button, or any insignia within a polling place or within one hundred feet [30.48 meters] from the entrance to the room containing the polling place while it is open for voting. No such political badge, button, or insignia may be worn within that same area while a polling place is open for voting.

16.1-10-04. Publication of false information in political advertisements - Penalty.
A person is guilty of a class A misdemeanor if that person knowingly, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a