

STATE BOARD OF HIGHER EDUCATION
Minutes – March 10, 1998
Bismarck, North Dakota

The State Board of Higher Education met for a special meeting in the Missouri Room of the Bismarck State College Student Union on March 10, 1998. The president called the meeting to order at 2:00 P.M. Present at this meeting were:

Paul Ebeltoft, President	Craig Caspers
Joe Peltier, Vice President	Shane Waslaski, Student Member
Jeanette Satrom	Kay Fulp, Faculty Representative
Beverly Clayburgh	

Cynthia Kaldor and John Hoeven were connected by telephone.

Staff present were:

Larry A. Isaak, Chancellor
H. P. Seaworth, General Counsel and Executive Secretary
Stacy Herron, Director of Communications
Carol Asplund, Administrative Officer

Mr. Ebeltoft opened the meeting by stating that the purpose of this meeting was to comply with the recommendations made in the March 3, 1998 Attorney General's opinion concerning two unscheduled meetings attended by four Board members each on February 10 and February 19, telephone conversations, and in-person gatherings held from January 20 through February 19, 1998 by certain Board members. Draft minutes, e-mail, faxes, notes, and correspondence among Board members discussing Board members' conversations regarding Dr. Baker from January 20, 1998, as well as documents from President Baker's office, had been distributed to the Attorney General, media, and public prior to the meeting.

Mr. Ebeltoft said it was never his intention or the intention of any Board member to circumvent state law. The Board wanted to be fair and sensitive to a personnel issue. The Board thought it could forge a course of action that would be fair to Dr. Baker and fair to the public and lawful. The Attorney General told us that the Board was in error. The Board accepts that and is holding this meeting now to comply with her recommendation on how to mediate the situation.

It was moved by Mrs. Clayburgh, seconded by Mrs. Satrom and unanimously carried to approve the minutes of the February 10, 1998 and February 19, 1998 meetings as distributed.

Mr. Ebeltoft asked each Board member to recount the discussions they had when they met privately either on the phone or in person since January 20 regarding Dr. Baker. He said Board members will thereafter respond to questions regarding conversations they had with each other concerning President Baker. He stated that the Attorney General's opinion does not require Board members to respond to questions on what they

were thinking or at what point they came to a conclusion on what the preferred option for handling the situation. Mr. Ebeltoft then summarized his actions since January 20.

- ◆ Mr. Peltier and Mr. Ebeltoft met with President Baker on January 20. In addition to discussions summarized by e-mail. Mr. Ebeltoft told Dr. Baker he had talked with Board members but nothing had been decided and he did not intend to deliver any messages from them. In response to Dr. Baker's question whether or not he should attend the Legislative Audit and Fiscal Review Committee meeting the following day, he was advised to do so.
- ◆ After the January 20 meeting, Mr. Ebeltoft said he could not recall how many Board members he talked to. He told Mrs. Clayburgh that Dr. Baker was not open to discussing his contract at the meeting. He said that Mr. Isaak strongly advised both Mr. Peltier and he not to undertake any initiative at the meeting. Because of Mr. Isaak's position, Mr. Peltier and Mr. Ebeltoft thought it best to rethink their positions.

Later Mr. Ebeltoft talked with Mr. Hoeven. Mr. Hoeven expressed that Mr. Ebeltoft should have been more aggressive in asking for Dr. Baker's resignation. Mr. Ebeltoft responded that neither he, Mr. Isaak nor Mr. Peltier were clear on the Board's message. Later on Mr. Peltier confirmed that the approach on January 20 was reasonable under the circumstances.

- ◆ On January 21 and 22, Mr. Ebeltoft talked with Mrs. Satrom, Mr. Peltier, and possibly others that it was reported to him that the LAFRC meeting was a vicious event and was hurtful personally and professionally to Chancellor Isaak, Dr. Baker, and the Board.
- ◆ After January 22, Mr. Ebeltoft did not talk to Mrs. Clayburgh since she was vacationing. He saw Mr. Caspers in Bismarck and said the Board needed to bring this matter to a conclusion at the February 19-20 meeting in Wahpeton. No methods to do this were discussed.
- ◆ On January 24 Mr. Ebeltoft talked to Mr. Peltier. Mr. Peltier said the time for scheduling concrete action in Wahpeton was beginning to erode and that the Board needed to do something to give direction to the discussions. He wanted to float some ideas for consideration at the Wahpeton meeting. Mr. Ebeltoft told Mr. Peltier that he would relay options that he felt were appropriate by e-mail.
- ◆ On January 26 Mr. Ebeltoft made some proposals to the Board via e-mail. Thus on January 27 and 28 he received e-mail or faxes in response to his proposals. He had verbal contact at this time only with Ms. Fulp. Ms. Fulp had been in Grand Forks for other business and said Dr. Baker was perceived by the faculty to be a system player. She relayed the message to the Chancellor, and he asked that she share that with other Board members. Mr. Ebeltoft also asked her to share this information with other Board members. Thereafter, Mr. Ebeltoft received an e-mail from Mr. Isaak suggesting that the Board not proceed along the lines Mr. Ebeltoft had outlined in his e-mail but reconsider.

- ◆ On January 28 Mr. Ebeltoft talked with Mr. Caspers who expressed some surprise at the Chancellor's position and said the Chancellor's position needed to be clearly understood. Mr. Ebeltoft said it was Chancellor Isaak's right and duty to advise the Board on these matters and once the advice was given, the Board should think hard before proceeding in a different way. Mr. Ebeltoft talked to Mr. Peltier on January 28 who felt the same way as Mr. Caspers. Mr. Peltier thought it would be helpful to have a conference call following a telephone conversation with several UND faculty to make sure Board members understood what the options were for the February meeting. Now that the Chancellor had provided his advice, Mr. Peltier felt that Mr. Ebeltoft's e-mail of January 26 was now moot, with the exception of one or two Board members who had said they considered Chancellor Isaak's e-mail but felt they should proceed as outlined in their e-mail responses. The others felt it useless to proceed further and to consider the lines suggested in Mr. Ebeltoft's e-mail. Mr. Ebeltoft asked Ms. Herron to set up a conference call. Mr. Ebeltoft then heard from Mrs. Satrom who also suggested that the ideas raised by Mr. Isaak be explored.
- ◆ On January 30, at the request of UND faculty member Dr. Elizabeth Hampsten, Mr. Hoeven, Mr. Ebeltoft and Mr. Peltier had a conference call with UND faculty. Following that call, Mr. Ebeltoft said he was opposed to any unnoticed meeting of the Board. He restated what he believed was correct legal advice previously received from Board counsel that a meeting of four or fewer Board members was permissible if no action was taken and if there was no intent to avoid the law. Mr. Ebeltoft expressed that it was important that the Board's processes be without taint and everyone agreed. Mr. Ebeltoft said he would, over e-mail, outline possible actions the Board could take at the February 19 meeting. He discussed with the Chancellor whether or not to put "contract restrictions" for Dr. Baker on the Board agenda so that if someone wanted to discuss these the Board could be prepared.
- ◆ On February 3, Mr. Ebeltoft, through e-mail reiterated his position. He thought that some Board members were confused about what "executive session" meant and whether or not the Board could call an executive session without notice to the public. Mr. Ebeltoft advised that this was wrong. Mr. Peltier responded to the e-mail with a fax.
- ◆ The next Board member discussion Mr. Ebeltoft had was February 10 at a dinner meeting with Mrs. Kaldor, Mr. Waslaski, Mr. Caspers, Ms. Fulp, and Chancellor Isaak. This was in a public restaurant during a long-scheduled social dinner. There was no led discussion. Chancellor Isaak had discussed prior to the dinner with all attendees a letter of apology from Dr. Baker and an acceptance by the Board. All members present expressed their agreement to the general concept. They discussed the timing, whether or not Dr. Baker would accept this concept, and what topics should be included in the apology letter and the Board response. Mr. Ebeltoft said everything was contingent upon an acceptable draft and Board members thought they could work out the details privately and then present it publicly. Since all of the Board members had ideas of what would be an acceptable apology, Mr. Ebeltoft told the other Board members he would prepare a draft taking into considering other Board members' input and give it to Dr. Baker for his deliberation. If this was not

acceptable to Dr. Baker, then the Board would look at other options. The other Board members agreed with the concept.

Mr. Ebeltoft talked later on to everyone, individually, by telephone with Mr. Peltier, Mrs. Satrom and Mr. Hoeven. Mr. Peltier wanted to reschedule the second dinner. Mr. Ebeltoft declined to attend because there would be a quorum present. Mr. Hoeven responded as per an e-mail summarizing the evening. Mrs. Satrom felt strongly about the wording of the proposed apology and responses but Mr. Ebeltoft had nothing to share with her. Mr. Ebeltoft had no further conversations with Board members until the February 19 Board meeting.

At this time other Board members recalled the events.

Mr. Hoeven said Mr. Ebeltoft's recollection of contacts with him was accurate. He added that Mr. Ebeltoft called him and told him six Board members had agreed to the letter of apology. Mr. Hoeven said following the January 5 audit subcommittee meeting, he was prepared to move to either ask for Dr. Baker's resignation or set a termination date on his contract. However, after talking to Mr. Ebeltoft, he decided not to do that. Mr. Hoeven said he thought (1) there should be some stipulations set out if Dr. Baker continues as UND president and (2) when it is necessary to hire a president, the Board should have a larger selection in the final interview process instead of having only three candidates to vote on. He also suggested that the Board participate more in the search process. Because Mr. Hoeven was out of state much of the time between January 5 and February 18, he wanted to talk to Dr. Baker in Wahpeton.

Mrs. Kaldor apologized for actions that made this meeting necessary. She said she did not recall any phone conversations, however she did respond to Mr. Ebeltoft's e-mail. She said Mr. Ebeltoft's report of the February 10 meeting was accurate as far as timing and alternatives.

Mr. Peltier said he was responsible for arranging the meeting on February 19 in Wahpeton. He had nothing more to add.

Mrs. Clayburgh said the meeting in Wahpeton was not meant to be a secret meeting, however she was out of the State most of the time since January 5 and wanted to visit with Dr. Baker to let him know this was a serious situation.

Mr. Caspers said Mr. Ebeltoft covered the events of the February 10 dinner meeting adequately. Mr. Caspers said he had a few short phone conversations and sent an e-mail to Mr. Ebeltoft saying he would work with the Chancellor on his ideas. Mr. Caspers had nothing to add to the material distributed before the meeting.

Mrs. Satrom said at the February 19 meeting her main concern was that if other campuses are abiding by the auditing practices, the Board also expected UND to do so and she wanted Dr. Baker to know her concern. She had nothing else to add.

Mr. Waslaski said it was not in secrecy that business was conducted but with extreme concern for an individual and others in the System. He said it is his intention to fulfill the law and his duties as a Board member. He said the Attorney General's opinion

encourages Board members not to converse by e-mail or otherwise but to go from month to month without evaluation of vital issues in higher education. He said he weighed the information he was aware of and consulted with Board members who have more experience and knowledge in order to make a wise decision. He said the February 10 dinner was scheduled long before the audit issue arose and it was to be a time to socialize and develop ideas about issues that concerned each of the members. Because of events that developed in the interim, it was only natural to discuss those issues. The members at the dinner discussed how the System Office was handling the numerous requests for information. They recognized President Baker had many qualities that made him an effective leader at UND, the support affirmed by the Grand Forks community, and that replacing him would create many difficulties. They discussed the integrity of the System, the severity of not being made aware of the fact that deficits existed prior to the audit report, and how Board policy may need to be amended to help provide direction and guidance in such matters. They discussed Dr. Baker's willingness to make a statement to the Board, what it should contain, and the Board's response to the statement. They also discussed the tuition study.

Ms. Fulp said that although she doesn't have a vote on the Board, she is involved in discussions, however she was not involved in any conference calls on this issue. She responded, in an advisory capacity, to the e-mails she received and in no way did she indicate a vote on the issue. After meeting with the faculty in Grand Forks, she called Chancellor Isaak and Board members, except Mrs. Kaldor, to say that this matter was taking a toll on the UND campus and any way this issue could be handled without further upset to UND would be in everyone's best interest.

At this time individuals in attendance at the meeting, including the press, were allowed to ask questions and Board members responded to those questions. In responding to these questions, Board members supplemented their summaries of their discussions.

Mr. Ebeltoft responded to a question concerning why he decided to retain Dr. Baker. He said that from January 5 to February 19 he learned that the issue was complex beyond his earliest beliefs and as he considered the complexities he came to appreciate the difficulties and incredible pressures college presidents have in running large campuses. Through the process, Mr. Ebeltoft said he considered whether or not Dr. Baker was capable of leading UND and working with the system concept in North Dakota. Mr. Ebeltoft concluded that Dr. Baker was.

Mrs. Satrom said, as a Board member, she represents the state and considered the pros and cons and found that the students, staff and people from Grand Forks were nearly 100% behind Dr. Baker. She agrees with the final decision and supports Dr. Baker.

Mr. Waslaski said he took into consideration all of the facts and decided that Dr. Baker was doing a fine job at the University. In evaluating the many points of view, he feels comfortable with the Board's decision and thinks Dr. Baker and UND will continue to be a very valuable asset to the State.

Mr. Caspers agrees with the final conclusion. He said Chancellor Isaak's help in evaluating the Board's options and his suggestion for the option the Board agreed on was a good one.

Mr. Ebeltoft thanked Chancellor Isaak for providing advice that led to the decision that was made even though it was done at personal cost to the Chancellor. The Board valued the recommendation of the Chancellor. Even though it was not a requirement for their action, it provided the framework for their discussion and final decision.

Responding to another question, Mr. Caspers said, as the newest Board member, he is surprised to realize that a group that works very hard, is very deliberate and very open will put themselves up to this type of public scrutiny. After reviewing pages of e-mail correspondence, he concludes that it would appear to an outside observer that the Board tried to keep public debate to a minimum. He said that through their actions, or lack thereof, the Board has created an ongoing media soap opera. In the Board's attempt to limit the public scrutiny and criticism of one of the college presidents, the media and public has switched from the accountability at the University of North Dakota to the accountability of the North Dakota University System. Mr. Caspers said North Dakota has had a long-standing priority to make certain students are offered the best possible preparation for the future. He said the Board needs to focus its goals, to reorganize and make a new commitment not to dwell on past mistakes but to encourage examination of its performance. He said Board members will not resign at this time.

Darrell McQuay, retired Bismarck citizen, said the Board did an excellent job in dealing with a difficult situation. He hoped the Board and UND leadership learned from their mistakes and that the press was satisfied with the results of this meeting. He encouraged the Board to get on with the future in governing the other ten higher education institutions.

Chancellor Isaak read the following statement:

"The events of the past two and a half months have been difficult ones for the Board and all entities of the North Dakota University System. There is no doubt about that. What has happened is the focus of our work has been taken off of students, research and public service, which are all part of the missions of our campuses. Mistakes and errors in judgment have been made. President Baker acknowledges his mistakes and judgment errors and has presented a plan to remedy the Medical School situation. The Board acknowledges their mistakes and judgment errors, has expressed regret and has acted to implement the remedies suggested by the Attorney General. Our office also acknowledges its mistakes and errors in judgment in advising you about these matters. I believe the Board was trying very hard to do its best to handle a personnel issue in a sensitive manner. We have all learned from this.

"It is now time to continue with your work on several important policy issues. One area is policy review. For several years, this Board and past Boards have been working to streamline your policies to free up your time for discussion of broader policy issues. You have been diligent and deserve credit for this. Examples of your actions include no longer approving course title changes, distance education delivery programs,

detailed personnel changes, and other items. You deserve credit for steps you have already taken down this path, but you may want to consider further changes including some that you have discussed previously and which the governor and some legislators have encouraged.

“There are certain policies that are inconsistent and leave the presidents, our office and the Board wondering who can and should be doing what. For example, there is no concise policy that says who should approve presidents’ salaries and terms of contracts. At times you have expected me to set these as part of the preparation of the annual budgets for the campuses. At other times your approval of the annual budget has included the presidents’ salaries. This is an example of an approach that is confusing when another Board policy says that the Board should approve all personnel actions involving presidents, yet there is no definition of ‘personnel actions.’

“There are other examples where Board policy could be changed or deleted to streamline the work of the Board and give the campus presidents more responsibility to run their campuses. Such changes could allow the Board and our office to focus more on major policy issues and implementing the new six-year plan. You are a part-time volunteer citizen Board. You have one of the smallest System Office staffs in the nation. Because of this, I believe that the Board and System Office need to focus its efforts. I believe it is my responsibility in concert with the presidents and people in our office to advise you of these matters, and we must be more diligent in doing so.

“Therefore, I am proposing that you continue reviewing changes to Board policies and procedures that could potentially further streamline the work of the Board. I make these suggestions based on the thoughts of many present and past Board members. These suggestions are not made in the way of criticism. They are made so the Board can constructively continue discussing changes and improvements that have been evolving for several years.

“The System Office has been reviewing all policies in the past several months in keeping with your past discussions about policy governance and the role of the Board. We believe you should consider clarifying or deleting certain policies that will result in having the Board and the System Office focus on broader policy issues and give the presidents broader responsibility to manage their campuses.

“The Board should enact policies and then expect the campuses to follow these policies. The System Office should not have to “look over the shoulder” of every president. To do so, would require a permanent internal audit and compliance staff which adds significant expense but does not add a great deal of value in serving students. To your credit, you have not directed the System office staff to engage in this type of work. The presidents should be given responsibilities based on policy and be expected to comply with these policies.

“I ask for your consideration of policy changes based on that philosophy. If circumstances require special reviews, then the Board should consider hiring independent consultants so that the work of your staff stays focused on advising you on major policy issues. I have not had the opportunity to review any suggestions with the

presidents but will do so if the Board wants to consider these changes. Here are the areas where I believe the Board could discuss possible changes.

- ◆ Consider amending policies where the Board says it establishes certain committees (i.e. Human Resources Council) and state that the Chancellor or the presidents should establish these committees.
- ◆ Consider if final approval of tenure decisions should be at the campus level, but have the Board continue to receive an annual report on tenure.
- ◆ Allow final approval of temporarily hiring persons who have been given early retirement to be at the campus level.
- ◆ Consider deleting requirements for appeal of campus constitutions to the Board.
- ◆ Delete requirements in several policies that call for the campuses to file annual reports with the System Office or the Board.
- ◆ Consider deleting Chancellor's approval for institutions that want to apply for special accreditation.
- ◆ Clarify policies on setting the annual salaries and terms of contract for presidents and the chancellor. I recommend that this be delegated to the Board president. The Board should retain authority over final decisions on hiring and termination of presidents and the chancellor.
- ◆ Clarify the definition of 'personnel actions' as stated above.
- ◆ Allow campuses to have final approval of emeritus designations.
- ◆ Permit more than one Board member to be an ex-officio member of presidential search committees.
- ◆ Delete outdated policy requiring Board approval of vacancy announcements for certain positions.
- ◆ Streamline policies on evaluation of presidents and the chancellor.
- ◆ Delete approval of System Office for approval of outside legal counsel by a campus.
- ◆ Permit employee grievances to have final settlement at the campus.
- ◆ Permit final approval of leaves of absence to be at the campus.
- ◆ Permit final approval of campus salary administration plans to be at the campus level. The Board would continue to set annual salary guidelines.

- ◆ Permit campuses to set access fees for distance education courses.
- ◆ Permit final approval of student activity fees at the campus level.
- ◆ Permit campuses to set fees for credits from articulation agreements.
- ◆ Permit final approval of system-wide application fee to be set by the Chancellor.
- ◆ Delete requirement of reporting on grants and contracts at every Board meeting. Instead have an annual report provided to the Board.
- ◆ Delete requirements for Board approval of gift funds.
- ◆ Delete requirement for Board approval on exceptions to credit policy.
- ◆ Delete Chancellor approval of leases of real property for more than one year.
- ◆ Determine if Board approval of architects is required.

“If you agree that the Board should consider these policy changes, I will ask Board counsel to prepare the necessary amendments to Board policy and present them at future meetings. This will give you the opportunity to see these changes in the context of the entire policy.

“I trust that after today the Board can view the possibility of these changes as a way to continue to focus its efforts on public policy issues that benefit students. You deserve credit for previous changes you have made. It is time to continue moving forward for the good of the students, faculty and staff at our outstanding campuses and for the good of the people of North Dakota to know that serving students is the number one priority. The people of this great state have always valued education. Therefore, it is time to put the focus back where it belongs – on education and on students.”

It was moved by Mr. Caspers, seconded by Mrs. Clayburgh to authorize the Chancellor to bring these issues to the Board over time for the Board’s consideration. Mrs. Kaldor, Mr. Peltier, Mrs. Satrom, Mr. Hoeven, Mrs. Clayburgh, Mr. Caspers, Mr. Waslaski, and Mr. Ebeltoft voted aye. The motion carried.

Mr. Isaak thanked all of the Board members for their patience and for their thorough deliberations on the issues discussed at this meeting.

The meeting adjourned at 4:30 P.M.