

Minutes of the
NIU Board of Trustees
Of Northern Illinois University
Ad Hoc Committee on Governance
November 17, 2014

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 1:07 p.m. by Chair John Butler in the Board of Trustees Room, 315 Altgeld Hall. Recording Secretary Susan Oppenborn conducted a roll call of Trustees. Members present were Trustees Robert Boey, Robert Marshall, and Marc Strauss, Student Trustee Paul Julion, and Board and Committee Chair John Butler. Also present were President Douglas Baker, Provost Lisa Freeman, General Counsel and Committee Liaison Jerry Blakemore, Board Liaison Mike Mann, and UAC Representative William Pitney. With a quorum present, the meeting proceeded.

VERIFICATION OF APPROPRIATE NOTICE OF PUBLIC MEETING

Chair Butler asked Mr. Blakemore to confirm that appropriate notification of this meeting had been provided. Mr. Blakemore indicated that appropriate notification of the meeting had been provided pursuant to the Illinois Open Meetings Act.

MEETING AGENDA APPROVAL

Chair Butler called for a motion to approve the agenda. Student Trustee Julion made the motion to approve the agenda and Trustee Boey seconded. The motion was approved.

CHAIR'S COMMENTS/ANNOUNCEMENTS

Chair Butler deferred his comments to the committee charge portion of the agenda.

PUBLIC COMMENT

Chair Butler asked Board General Counsel Jerry Blakemore if any members of the public had registered a written request to address the Committee in accordance with state law and the Board of Trustees Bylaws. Mr. Blakemore noted that no timely requests had been made to address this Ad Hoc Meeting.

Chair Butler recognized the University Advisory Council representative Bill Pitney and asked if he had any statement at this time. He did not and Chair Butler offered that he should feel comfortable speaking at any time during the meeting.

DISCUSSION ITEMS

Discussion Item 6 – Committee Charge

John Butler spoke about the committee charge. The committee charge item is the first item on the agenda, and I want to talk about what gave rise to this ad hoc committee and what the charge of the committee is. The committee charge itself is Item 6 and it's a memorandum that I authored for the meeting of September 18, 2014, and that memorandum includes on page two the parameters of the ad hoc committee on enrollment which we had our first meeting of on Friday and then on page three is the charge of the ad hoc committee on governance. Let me begin by pointing out some of the context. Several trustees and several members of the administration attended an Association of Governing Boards conference on board committees. And one of the committee workshops that several of us attended was one on a board committee on governance. I have the document from that meeting which includes a

number of articles about the importance of a governance committee. Many boards have standing committees on the subject of governance. I decided to put together an ad hoc committee on governance because I thought we had a lot of things that we needed to do as a board: to address our bylaws, to address our structure, to evaluate our performance and so forth; and, I figured this was the right time to do it. I wanted to do it as an ad hoc committee because the alternative, given our existing structure, is for myself and my colleague Marc Strauss and whoever we can get on the phone to just sort of do it in an informal capacity and work with Mr. Blakemore and President Baker to introduce changes to our bylaws, but why not just bring people together so that it's not such a unilateral activity and we can work as a group?

I want to introduce into the record a report we were given at the AGB conference titled "Consequential Boards Adding Value Where it Matters Most." In September 2013 the Board of Directors of the Association of Governing Boards constituted a special commission on the future of higher education governance and the commission issued this final report which essentially, without going into a lot of detail, says, boards that govern colleges and universities need to make significant changes if we are to adapt to the existing trends and changes that are occurring in higher education. And the commission charge was to review the capacity of higher education governance to meet the challenges confronting the sector in the 21st Century and to develop recommendations aimed at improving the effectiveness of college and university governing boards. When they made the recommendation in this report, which I think everybody should read, and maybe we can get copies of it, three recommendations in particular drive the impulse to create this ad hoc committee. Number five in this list, reads, "boards must improve their own capacity and functionality through increased attention to the qualifications and recruitment of members, board orientation committee composition, and" – a provision that's a little bit more geared toward private boards – "the removal of members for cause." Number six is "boards must focus their time on issues of greatest consequence to the institution by reducing time spent reviewing routine reports and redirecting attention to cross cutting and strategic issues not addressed elsewhere." And the seventh recommendation, "boards must hold themselves accountable for their own performance by modeling the same behaviors in performance they expect from others in the institution," which I think is particularly relevant to the issue of board assessment, and which we will talk about at some point today. So this report makes several recommendations for what a college and university board should be concerned with in dealing with today's unique challenges in higher education. It's one source where we can go to that says we need to look at our structure, who we are and what we do, and think about whether or not we have the proper model in place.

The charge for the committee that I put to paper in September was three-fold; in talking with several members of the board and Mr. Blakemore, we're adding a fourth today. The first is to recommend a comprehensive set of revisions to board bylaws. This is something that our bylaws demand that we do periodically and so it makes sense for us to do it. The last time the board approved significant changes to the bylaws was three years ago. I believe the bylaws recommend that every three years the board convene an ad hoc committee to review of the bylaws, and so it's good practice for us to do this at this time. Second, to recommend a protocol for board self-evaluation, which we'll talk about today. Third is to establish board goals and policies related to board member education and professional development. The one that I'm recommending we add today is to be a more deliberate, to examine our current number and structure of board committees and committee workloads..

We'll be moving relatively quick as an ad hoc committee. If we adopt the work plan that's been recommended by Mr. Blakemore, we'll be moving particularly in regard to bylaws. Do any of the committee members or anyone else here have any questions about that charge?

Let's move then to Item 7, which is a review of proposed bylaw reforms. If we go to item number seven, what you have before you is a recommended outline of areas of attention that this ad hoc committee may rely on to perform its review of bylaws and other organic governance documents. And I would ask that Mr. Blakemore help us by describing what is very briefly described here and what each of these mean.

Discussion Item 7 – Review of Proposed Bylaw Reforms

Jerry Blakemore reviewed the draft work plan. This is a draft developed in conjunction with the president, the cabinet, as well as recommendations that came specifically from members of the board. This is a comprehensive list, but I would indicate to you that it is not by any means a full list. There may be other items that members of the board determine should also be included. These represent, in part, a number of items that were not resolved when the board last took action. These represent additional areas that the cabinet, president, and the general counsel's office feel the board should take under consideration. I'll say two things very quickly and then I will walk through this. One is these are within the prerogative of the board. This is how the board actually governs itself. There is one area where, in terms of constitutional review, which is not exclusively within the purview of the board, but involves shared governance. Under our current constitutional provisions, changes to the constitution require votes on the part of the faculty to make changes.. These areas have been identified as high priority. The board will want to consider each of them, but you may, as part of your deliberations, determine that you want to narrow this as well. I'm going to walk through at your request, each of these very quickly.

I have divided these into areas of A, B and C. **Area A issues** are very, very typical to board issues and they are what I would refer to as the foundation. There's always some deliberation that is associated with them, but there's not a lot of, in my opinion, controversy associated with them. The Office of General Council, again in conjunction with the president and the cabinet, have actually looked at these. We would be prepared to present to the committee options with respect to each of these. The heavy lifting has either started or is already done in these areas and we would just be presenting them. The other items B and C require, in my opinion, a lot more time and effort, and they also require more direction from the board and then we would be in a better position to draft at least what I refer to as an "options memo" under each of these that gives the board options related to them.

Going back to category A, **presidential succession policy**, this is a broad policy. It's typical in any circumstance to clearly delineate what happens in terms of presidential succession. When I say "succession," I'm not talking only about a change in the presidency; I'm also talking about delegation by the board of authority that goes down the line to act in the absence of the president. The president, for example, may travel to China for a month for university business; then you've got to keep the ship going and we need to be clear, particularly given the change in structure under President Baker. No one will be surprised what my recommendation will be here, but you start with your executive VP and provost and then do planning accordingly.

Naming rights; the current board bylaw is at best unclear about who has what authority in terms of naming things with the exception of buildings. A proposal had been circulated earlier that delineates the authority of the president or his designates to make certain types of naming rights decisions. We need to delineate what is in the purview of the board. Again, most institutions have very clear naming rights policies. And our naming rights policy has to be done in conjunction with our foundation for obvious reasons, and so this is a matter that my office, in conjunction with the cabinet and the foundation, would develop and present.

There are a number of areas involving Finance, HR and the General Counsel's office related to **record retention policy** and **insurance and employee policy**. As an example, our prototype for insurance has not changed since 1996, so we obviously need to update that policy. The indemnification policy of the board is antiquated. There is now case law with respect to what you, as a board, can indemnify. For example, under court decisions you cannot, not that you would want to and I would certainly never recommend that you do, indemnify an employee if they are found to be in violation of a criminal code. However, your board policy is silent on that issue and we want to clean that up. There are some state statutes, particularly related to police officers that require the board to provide indemnification. What we need to do is to be clearer about those circumstances under which we would provide indemnification, whether its criminal or not, and we need to make it clear pursuant to new Supreme Court decisions, Illinois Supreme Court decisions.

That's the first group we would put together recommendations for your consideration. I've recommended a half a day workshop to deal with that. The next items (referring to **Area B items**) include, first, an update of the **conflict of interest policy**. The board's conflict of interest policy has not been updated since 1996. We are woefully lacking in that area. We need to bring that up to date. That is one of the most critical parts of a governance committee, not just setting policy, but also enforcing the conflict of interest policies; therefore, there would be not only the policy but the procedures that go along with that.

Second, is the establishment and clarification of an **administrative leave policy**. Either the Tribune or the Sun Times maybe approximately a year ago did a survey of public universities and how many people for various reasons, were on administrative leave. We have various different times and circumstances either by federal or state law that leave is granted. There is some discretion that senior management has in terms of that, but we don't have a policy that talks about criteria for placing persons on administrative leave, the duration of that leave and a process for determining that. That is something that is critical for us and I think public universities in particular were shocked to find out how many people were actually out on some type of leave. Very difficult to justify particularly if we don't have an established policy that lays out the rationale for it.

A couple other areas that I would call to your attention; the **travel and reimbursement policy** is self-explanatory, so I won't go into that.

One of the issues the board does have to come to grips with is the issue of **the presidential house** and it's best to do those when there's not some issue associated with it. President Baker indicated very early his interest and going forward with the house. The house is the property of the State of Illinois so it's not like we could sell it anyway, but there are significant tax implications that specifically affect the president so we need to be clear about the policy and, if we want to change that, or, if the president wanted the board to consider that, we need a mechanism for him to do that. I call it a "house cleaning" sort of item.

One of the members of the board had raised the issue of **employee's residency requirement** so that board member can speak to that issue.

The **role of tenure** was put on by a member of the board and so I will not go into those discussions.

And number ten [**Reform of all Standing Committee Charter/Charges**] is related to the fourth item that the chair just talked about. What the thought here was have each of the standing committees have goals, benchmarks, etc., similar to what we've done with the CARL Committee and that still needs to be flushed out a little bit as well, to provide some consistency where we can have consistency in the committee structure.

I'll defer the category C because that again is pretty self-explanatory, but that is a very protractive process and at some point we'll present to the board more particulars as to what the constitutional requirements are for any changes there. Suffice it say, we need two-thirds vote of the faculty if I'm remembering that percentage correctly to take action on the constitution. Again, the constitution was put in place before 1996 and so we're still living with that. That's my summary.

Following Mr. Blakemore's summary of discussion items, the following discussion occurred:

Robert Boey: 1996 was the first year we had our own Board of Trustees?

Jerry Blakemore: Exactly, and the constitution was actually passed by that first board. It was developed prior to that board and the board basically adopted that constitution.

John Butler: So let's start with general questions about what these mean and then we'll talk about whether we want to adopt this as our work plan.

Robert Boey: The role of the Board of Trustees in tenure. Help me a little bit more with that.

Jerry Blakemore: There were members of the board who put a couple of the items on so I'll sort of leave that to them.

John Butler: I think if I recall, there's two dimensions to this, one that's been raised is that the board only receives information on final recommendations for tenure, and there's been, throughout the years, an interest on the part of some trustees to learn not only the final recommendations but also some information on whether there were earlier recommendations that didn't make it to the board, the reasons why and so forth. I don't know if there's continued interest, but that was a concern early.

Robert Marshall: I think with the issue of diversity we certainly need to know what's happening. So I for one favor going forward with that section.

Robert Boey: In tenure?

Robert Marshall: Having more interest in the tenure process and the folks that are being presented for hire here at the university.

Robert Boey: I agree.

Lisa Freeman: Could I ask a question for clarification? Are the trustees envisioning a personnel discussion that would rise into the level of closed session in this scope of their consideration of the tenure process?

John Butler: I don't think so. Marc, maybe you can help because you've mentioned this in the past. I think there's a desire to know what isn't being recommended to the board. I think what we've talked about before is just the number of people that might have been recommended by their departments but then not moved forward because of college level recommendations, and then just to have a sense of the final recommendations. Those are constitutive of what portion of what was earlier recommended through the process?

Marc Strauss: I can't tell you that I have anything particular in mind. I will say that what I would like to do is just simply have the Board in a position where they can effectively monitor this process. I am not interested personally in seeing that the board gets involved in a vetting process. I think that process is where it belongs currently with people who have the knowledge and the skill to be able to perform those functions, but I do think that the Board has to make sure that there's integrity to the process and as I've thought about it there are a couple places where potentially this could go off track. One could be that there are people who are vetted out of this process in a way that's inappropriate and we would never know about it because what happens there is a black box as far as the Board is concerned now. There are recommendations that come forth to the Board and we're asked to vote only on those recommendations and we'd have no idea if there were people being excluded inappropriately. And I don't know what the appropriate mechanism is to be able to get us enough information so that we feel comfortable about it, but that's one of the things that I've had an interest in having us at least talk about and figure out whether we have a role to play in that. And then the second thing that could happen is there could be controversy surrounding a recommendation. The reports that have come to us during the time that I've been on the Board would not include any information about whether there was a split vote, there were appeals or there was something else that we should be mindful of before we vote on the recommendation. Again, just speaking personally, it seems to me that it could be that all that's required is that there is some additional information that comes to us so that we have comfort that the process is working properly. That's what I have mentioned before. I don't know how other Board members feel about it. We've never really had the opportunity to talk about this among ourselves. So I think it would be good to have a conversation about it without my having a preconception about what that conversation would yield or whether any sort of action is appropriate.

John Butler: Any other thoughts?

Douglas Baker: I would just say we really need to be careful about this process. I think it's one where we have people in the disciplines, colleges, and then a process that we go through that's agreed upon and that is in policy. So we need to have the decisions made where the expertise is and, secondly, there is an appeals process inherent in this. So, if there were flaws and a concern in the way they were treated and the process, there are a number of feedback groups to allow for appeal. So, I think the fact that you're not getting many of those would indicate that there is a just process that's under way. So, I think it's fine to talk about this, but we need to be careful to make sure the decision power is where it needs to be.

Robert Boey: I agree. It's very sensitive. I had two questions. Since 1996 the only time we changed Presidents is due to retirement. There's a presidential succession policy that we want to talk about. Are we going to talk about also the removal policy if there was ever a happening?

Jerry Blakemore: That was not what was contemplated here. What we needed to do was to be clear in the event of illness, extended period of time away, and there is a disability policy that kicks into play here as well. Who then would be responsible for assuming presidential authority during that time?

Robert Boey: Temporary?

Jerry Blakemore: Right, exactly.

Jerry Blakemore: From the General Counsel's Office perspective, that's what we were trying to get to.

Robert Boey: And again, it's just that when I see "succession," I say, what about the previous step before succession; and, that's what I'm talking about.

Douglas Baker: To follow on what Jerry was saying, I think it would be important not just, in the first step, if I was gone then Lisa, for example, would take over; but, if she and I are in a car accident together, then what?

Jerry Blakemore: And, when we get to the insurance policy related issues, there are some policies that would not allow the two of them, the president and the provost, to travel on the same plane and we would have those kind of discussions. I won't raise the motorcycle issue; the president won't let me raise that.

Robert Boey: That's good. These are the sorts of things that were surrounding the whole subject of succession and that's why I wanted to talk about it.

John Butler: I have a question about number four [insurance and employee policy]. Can you help me out a little bit more about what you mean by this?

Jerry Blakemore: The Board will be presented with at least one or two, and I'm about to talk outside of my area of expertise here. Celeste [Celeste Latham, Assoc. VP, Administration and Human Resource Services] is not in the room, but right now we've got our outside counsel working very closely with the Office of General Counsel, but more significantly, Finance HR on employee benefits that are changing in large part because of federal law. We've got the Affordable Care Act, for one, and we'll be coming to the Board with that. The whole issue of what types of retirement plans that are currently in place, that we could put in place. Those are the kinds of issues that are ongoing that the Board really needs to pay some attention to, and they're more housekeeping in some ways than others. So, that's what I mean by insurance and employee benefits policy.

Robert Boey: You mentioned retirement; I thought that's a state, and not an individual or university matter.

Jerry Blakemore: Well, yes and no. All of the public universities have actually retained the same outside

counsel to work on that, so they're very similar, but the Board will have some discretion in terms of what it provides, what it allows, and what it will provide to various different classes of employees. There's a non-discrimination clause in most of these areas so you can't do much distinction between classes of employees, but this is an area where an update is really necessary.

John Butler: Other questions about area A? Are there items that the committee would like to see us deal with under A, which would mean we would deal with them in a more rapid fashion than the first issues we would deal with? I would like to add under B, for example, that the Board take a look at its officer election policy. There's at least one provision in the protocol for officer elections that I would like to clarify formally in the bylaws and there may be others.

Jerry Blakemore: I have added that.

John Butler: In here I do not mean changing the terms of office. I'm interested in the actual procedure, which is left up to the chair and the General Counsel to manage, in the process of officer elections. There is one provision that bothers me and I'd like us to talk about it, but I would add an overall review of the policy as a B item.

John Butler: I think I want to clarify number 12 [employees residency requirement] so that we don't create any kind of concern. I think some trustees have talked about how we may want to incentivize residency for new faculty and staff. I don't think necessarily we were talking about a residency requirement. I think what we were talking about is some sort of incentive as we move forward and replace some of the lost faculty through retirements, and that we think about whether we want to create some kind of a policy that would provide an incentive for new faculty and staff to live in either DeKalb or Sycamore.

Robert Boey: An encouragement policy.

John Butler: An encouragement policy, not a requirement. I've not heard anyone say "requirement," unless someone wants to keep that word on the table. I think we've always meant it as an incentive, not a requirement.

Jerry Blakemore: I'm going to strike "requirement" and say "employee resident incentives," unless there's objection.

John Butler: In number 8 [travel and reimbursement policy], I believe in that item we were talking, probably about three years ago, not just about a reimbursement policy, but a professional development policy. It was how much professional development activity would the Board support for each trustee on an annual basis?

Jerry Blakemore: Yes, that is assumed in this, although I can clarify that and make sure that we have "Board and senior management professional development travel and expense reimbursement."

John Butler: I would like it to be policy that board members have the right to pursue professional development, as they see fit, based on the role they're taking on the Board; whether they're chairing a committee and so forth; that it not necessarily be up to whoever is currently chair of the Board at that time, and, if it was a policy, then it would be expected that they'd be able to take advantage of that policy as they saw fit. We've seen drafts of this in the past and I don't think there's any issue with some of the language that's been introduced in the past, but I'd like to bring that back to the table.

Marc Strauss: We have a long list, so in terms of moving forward, it makes sense to me that the ones that we have in some state of readiness we ought to take up first. So whether that's just the first five or we have more than five, but it seems to me that the five that are under A wound up there because we believe that we can get to those quickly and, again just personally, I'd rather take off the table as many of these as we can, as rapidly as we can, then we can see what's left. And, after Jerry and his colleagues

take some time to look at the balance of the list, they ought to be able to give us a time forecast for when they can be ready to have meaningful things for us to talk about for the other items.

John Butler: Are you recommending that anything be moved up?

Marc Strauss: I don't know the state of preparation for anything else. It seems to me that the five in A got there because there's some state of readiness. If there are other things where there is some state of readiness and they won't involve protracted discussion, move those to the front and get those off the table. That must have been part of the other underlying consideration, what do we think reasonably we can dispose of rapidly? Move up the things that we think are ready and don't appear to be overly controversial.

Jerry Blakemore: We can do that assessment. I know of three additional items that I can probably add to the five, just off the top of my head, from the 13. For example, what you just mentioned about the board and senior management professional development travel policy; we can move that up. I don't see any problem with moving up number nine [the presidential house], and the reason that I say that is we really need to have a policy in place so that if the president is ever audited he can point to a requirement and this is something the Board and the president are in agreement on, but we need to be explicit in the Board's documents on this issue. So that can be moved up.

John Butler: Can we just take a stab at the election issue as one of the first A point issues, and, if it's difficult, then we'll just push it down? I'll just be very clear. We have a provision in our bylaws that when no trustee gets five votes in the first round, the trustees with the least amount of votes are dropped from the subsequent ballot. It's not clear in the bylaws what that means exactly, and I want to clarify that. What do we mean by "the least amount of votes"? Would that include people who get zero votes? Would they get dropped in the first round or would that include anyone who got less than the two top vote getters. I don't want to resolve this now; I just think we could resolve that quickly.

Jerry Blakemore: The best way for us to resolve this and any other issues related to election, is that if people have ideas or they ultimately want to pursue X resolution, if I'm made aware of that, then I can draft that, or I can take the draft that is provided me and we can include it in the item; so that's fine. And I'm familiar with, and will obviously work with you, on that language. There may be other provisions under election, though, that people would like to have. The recommendation that I made, just for the record here, which requires legislative approval, concerns the annual election of officers, which is mandated by the state legislature. It's not typically how most boards operate and it's really up to those boards to make that governance decision; and so, I believe that, in the event that all publics we're willing to have that revision made, that would really serve the Board well.

John Butler: That would be a much bigger issue.

Marc Strauss: Jerry, you know that my suggestion in this regard was, the first time around, we drop the zeros, so I hope that that will be one of the options. Other people may have other options, but that seems to me to be one that doesn't put people to a test of whether to participate or not. Everybody who wants to can participate, and I believe it has the virtue of fairness and simplicity. I don't think we had a full hearing on that aspect of it. So, again, other people may have other approaches, but that's the one that I would like to see included as an option.

Robert Marshall: A request: As we look at each item on the list, if there's a state or federal mandate that is impacted, can we get a lead in on each of the items?

Jerry Blakemore: Yes, that will be part of the options memo that we will prepare. We'll do a background statement on each and if there is a relevant federal state law then obviously we will do that. That's a very good point.

John Butler: So can we do an elections "one" and elections "two?" We've got a desire for a bylaw change

that would affect the procedure for electing officers that is a relatively simple proposal, and I don't think it will be too controversial once we have a chance to talk about it. That's the only thing I would like to put in A, that one single proposal. And then, I would like a larger review of the elections process and procedures put in B, and that could include the item that you [Mr. Blakemore] mentioned.

Jerry Blakemore: Or, the Board authorizing that, at least, that be pursued. The A and B approach, I think, is a good one. If I may, I would add to the B discussion a critical area in terms of board elections. You have a bylaw that requires five votes of the board to elect officers. People can determine that that's good, bad, or indifferent. The reality for us is that, in the event that you have a board member who is missing that day, and you don't have five members, you, in effect, and this has happened to us, have to delay the election until the next time and there isn't even a provision to delay it. The Board just delayed it. Whether you need five or four is within the purview of the Board. A majority of the members of the Board, as opposed to a majority of the quorum present at a particular meeting, is what that issue is about. So again, I'm not recommending one way or the other, but major substantive revision for B would include issues of that type as well.

John Butler: That would be fine. That's fine, from my perspective, if we put that in B. In this format I think it's worthwhile for us to look again at some of the controversies that we've looked at before and see if we can come to some resolution, if there's preferences, or there aren't, we'll learn that. But, I would like to address the issue of subsequent balloting when five are not reached in the first round, because, as Trustee Strauss mentioned, I think it affects the willingness and calculation of Board member to run for an office in the first place, and I would like a system where no trustee ever has any reason not to run for an office, and anyone would put their hat in the race if they were interested.

Robert Boey: What we're talking about is what happens if there is not sufficient members in attendance.

John Butler: No, that's a different issue. That's the issue Jerry just mentioned as a B issue, an issue we might talk about in more extended discussion. The issue that I think we can resolve quickly is what happens when five votes are not achieved in the first round. What happens is, according to the bylaws, we drop the trustees with the lowest amount of votes, and I want to clarify that we drop – first – the trustees who received zero votes.

Robert Boey: Which I think is a proper thing to do.

John Butler: Yes, but it's not clear. Is there anything else that anyone wants to add to this list?

Robert Marshall: A minor point, but orientation for incoming trustees, I think we need to broaden it.

John Butler: We can make that a matter under B, but that would imply then that we are going to consider the possibility of adding some provision in the bylaws mandating an orientation of some kind. So, we can add that to B.

Robert Boey: John, what do you have in mind when you put "the conflict of interest policy updating"?

John Butler: Well as far as I'm concerned, our conflict of interest policy is just fine. Just kidding.

Marc Strauss: Don't look at me on this one.

John Butler: The burden of proof rests with Mr. Blakemore who has a problem with the status quo.

Jerry Blakemore: Yes, my problem with the status quo is that the current conflict of interest policy only considers financial potential conflicts. It is not clear as to what can be recused as opposed to what can simply be disclosed. Conflicts occur every day. Some require disclosure to the Board; some require that you cannot vote. Some conflict of interest policies go as far as to say that, if the chair or any other member have a conflict, they can't be in the room when action is taken. We don't have those types of

clarifications or procedures in our conflict of interest policy. Reputational conflict can be more significant than potential financial conflict, and, at both the federal and the state level, there may be requirements for a current conflict of policy as part of accepting grants or dollars, etc. I don't raise this because there has been some problem. In fact, when issues have come up with particular Board members, and I won't go into particulars, the Board members have gone the extra mile and recused themselves in situations where technically or legally they didn't have to, because they've been very sensitive to it. I will make the argument to the full Board why I think it should change and show you some comparisons and, to Trustee Marshall's point about where there are statutory requirements to do so, we will make sure that we include those.

Robert Boey: And it's obvious that you have in mind a certain statement that would clarify that.

Jerry Blakemore: Without a doubt. My thought was to present to the Board by memo the options before the working session so that we can focus on where there are differences.

Robert Boey: That's fine with me Jerry.

Jerry Blakemore: And ultimately it's a Board decision.

John Butler: I don't mean to imply I don't see any room for improvement. I do think there is a process for disclosure of a potential conflict of interest, which I think we could clarify – what happens when that is disclosed, what procedures are followed? Let's say I have an employment change; I may believe there could be something involved in that employment change that presents a conflict. What process do we follow to determine whether there is a conflict? To be clear, trustees, this is not only the work plan for the whole committee and the work that we're doing. This is very specific to bylaw changes that we would be recommending to the Board. Are there other areas of interest that the trustees have with regard to this list? Mr. Pitney, is there anything that concerns you about this list?

Bill Pitney: Thank you for asking. I think for me the only concern I have is related to the employee residency incentive. I think we just need to be sensitive. I'm not saying not to explore that, but, in so doing, just be sensitive to some of our faculty, for example, in the Visual and Performing Arts, who have found it necessary to be in the greater Chicago area to execute their research in artistic creative endeavors, and also I think we can point to some faculty in various research clusters where to reside closer to the accelerator to do their research, as an example, and commute to DeKalb to do their teaching and service components. It just makes a lot more sense for them in their situation. So I would just encourage that we have some sensitivity to that.

John Butler: Thank you very much. We'll obviously be looking to you in the C items to see if we have some commonalities of interest, things that we might move forward in a more rapid fashion versus things that we won't necessarily be able to move forward with in a rapid fashion.

Marc Strauss: My assumption is that Jerry, or somebody in his area, has gone through in some detail the bylaws to try to determine whether there are any other items. I can tell you I have not, although in the past when I had looked at the bylaws, there were also other areas where we had bylaw provisions that conflicted with other various organic documents. What we contemplated when we added the provision to our bylaws that required us periodically review them was that we would have some sort of an opportunity, in a more organized way, to ferret those out. Now we have a pretty broad scope of things that we want to talk about and, for this ad hoc committee, I don't know that we want to take on any more than is already on the list. I know I am perfectly happy with what is on the list. But, in saying that, we may leave some other things that I haven't thought about. Maybe what we could do is just leave the door open and ask Jerry to take another look and make sure that we've caught at least the things that are not terribly controversial. We could add them. Maybe just make sure that we pick up as many of those as we could.

Jerry Blakemore: I think that's fine. That door is always open. The committee's charge, as has been laid

out, does not provide limitations at all. I really think it is going to be the committee's workload that's going to dictate how far we get. This is an ongoing process. We don't know what will happen after the next legislative session in various different additional requirements. We know, for example, at the federal level there are additional requirements, I think under Sarbanes-Oxley, that are going to become relevant for public institutions as well. So, it's ongoing and I have the internal auditor here; she's probably got her list. I know our Research Vice President has a list, so it is ongoing.

John Butler: We're completely open in terms of adding things to this list as we move forward. Marc, did I gather you are suggesting that this committee engage in a review, or just move forward with this list?

Marc Strauss: Given the proposal, the number of meetings, and the time table, I don't know that we can take the burden of an additional task, but I think that, if there's something that's going on in parallel that reveals other items, I just want us to be able to address those. And there's some reasonable limitation on what we can manage to get accomplished in the number of meetings and the period of time that's laid out here. I don't want to make that something that we can't complete.

Jerry Blakemore: If I may, at one of the meetings we will probably, just given what we're doing it anyway, be in a position to lay out, here's current board policy; here's current bylaws; this is how it's organized; here's regulations, etc. We can pull that out and take fifteen minutes to walk through that with the committee. I would rather do that in the second [reference to second recommended 1/2-day committee working meeting] so we can focus on action items, but we can make that part of what we pull together internally and come back to you and walk through basically all of the relevant provisions.

John Butler: I have no problem with that.

Robert Boey: John, how many meetings do you have in mind?

John Butler: I think the work plan proposes that we have a relatively immediate meeting and then we would probably meet again after the first of the year to begin to deal with the B items. I would suspect that by June we'll probably have, counting this one, four meetings.

Jerry Blakemore: The thought was dealing with the A items by the close of this calendar year. So, a meeting in December with all of the recommendations from the General Counsel's Office and the cabinet. With the first items, the committee would come to some consensus on each of those, present those at the first regular meeting of the full Board, so you get your first reading, so you've got eight already in process; and, then January/February would be a second meeting of the ad hoc working group with the other issues, and then those first readings start at the next regular meeting of the Board.

Robert Boey: Okay that makes sense.

John Butler: President Baker, do you have any thoughts about this list? Anything you think should be here that isn't or anything that's on here that shouldn't be? Any thoughts?

Douglas Baker: I think it's a pretty good list. A couple of things I wonder if they're Board level, like the incentive program. I don't know if that needs to be a Board governance issue. I think that's a personnel issue that we probably ought to work with inside the institution as we incent faculty and staff. I don't think its necessarily a bad idea, it's just maybe not a Board governance issue. The rest of them are pretty good. The tenure one I think is going to be sensitive. I don't think you want to wander into a minefield and get someplace you don't want to be. I think it's good to be cognizant of the process and make sure it's just and appropriate, but you just have to be careful about what level you want to be at in that.

John Butler: Can we do this on the tenure matter: would it be appropriate, Mr. Blakemore, for you to, working perhaps with Provost Freeman, look at other governing boards and see if there are other practices that are used in the final decisions on tenure and promotion that differ from ours, and in what ways they differ, as that might provide some alternative to the current process we use? That could

address some of the issues that Trustee Strauss mentioned.

Jerry Blakemore: I could, at your direction, do that. Let me suggest the following: given the nature of this item, I think it fits more in NIU constitutional reform than it does in B. Anything done in that area is going to be governed in large part by what's in the constitution to start with. The only area where the Board has a specific role in terms of appeals, that is exclusive to the Board, is the criteria for what can be appealed to the Board, and I can find out what other institutions do in that regard. I can get the information on the appeals issue, and I can look if there's other specifics, but it's really the appeal and how that's done and, to be candid, boards purposefully limit what comes to them in these matters for all kinds of reasons, not the least of which is that most appeals to the board are limited to whether the process, to use Trustee Strauss's words, is lacking in integrity or there's been abuse of the process. I would think that we would want to keep it that way, and I'd be shocked if there are institutions that go beyond that on the appeal.

Lisa Freeman: If I could add something to that. If the Board would like more data snapshots regarding the various percentages of cases that come to the University Council Personnel Committee in terms of unanimous decisions, what decision, etc., it is, as I understand it, within the purview of the Board to ask to receive that information as a report, either confidentially or in small numbers. Under the auspices of the Academic Affairs, Student Affairs and Personnel Committee, no one has ever asked me for that information. Had I been asked, I certainly would have worked with Mr. Blakemore and the chair to ensure that the trustees had that information so that they could interpret it in the light that they saw fit.

John Butler: I think we're talking here about a different format for reporting information, possibly which Provost Freeman and Trustee Marshall can discuss.

Marc Strauss: Yes, I have no problem with that as part of the solution. I think the other part is what Jerry has commented on, which is how do the appeals rights work, and, between the two of those, I think we probably accomplish what I had in mind. I guess my nightmare scenario has been, of the current data that we get annually, we're asked to vote on tenure and we do. But what could happen is we could vote and we don't typically have that information. I don't mean to imply that there was an unwillingness to furnish the information, but the next thing that could happen, after we take a vote, is we're advised that there's been a lawsuit filed. I think that's not a position that a Board member ought to be in. I think if there is controversy about it, we ought to know, and I do think we have an obligation to make sure that the process works, that there's something on paper that allows people to participate as a teaching professional in a meaningful way. It just may be a situation where I feel uncomfortable, where I don't have enough information about the way in which that process works. I think we can work through these items. I assure everybody it is not my intention to try to substitute my judgment on tenure for the faculty's judgment on tenure, that's not where I'm headed with this.

Robert Boey: John, in all my years, I don't remember ever having any negative vote on tenure forwarded to the Board of Trustees.

John Butler: That's correct. We don't see that, and I think that was Marc's point from the beginning.

Robert Boey: We'd never say no to anyone named.

John Butler: Correct. The Board, as far as I know, has never rejected a recommendation from the university.

Robert Boey: Is that process what you're worried about, the fact that we don't know it's submitted to us?

John Butler: I think what Trustee Strauss is saying is there is the potential for a controversy at the university level that the Board will later have to deal with, either through litigation or through an appeal, and Trustee Strauss is saying it would be better perhaps to know about that controversy in some reporting format prior to a decision to tenure and promote, or not to. When we vote to provide tenure

and promotion, we're voting yes to the university recommendation, but simultaneously we at some level may be endorsing rejection decisions early on in the process as well. We may want to have some knowledge of what occurs at the earlier stage. I think it would be good for the Board to learn that data and to understand the process in more detail. So we've expressed a desire for the university to consider some policy that might promote or incentivize residency for faculty who can live in the area and we've come to an agreement that we will talk more about how the Board can learn more about the tenure promotion process at the committee level.

Marc Strauss: I don't have any problem taking 12 [employee residency requirement] off. On 11 [role of Board of Trustees in tenure], with regard to the grievance or appeal process, that's something that may require a rule or regulatory change, and I would like to keep that for consideration. The other aspects of it are the internal components. I have no problem sending it to Academic Affairs, Student Affairs, and Personnel, assuming that Trustee Marshall has no problem accepting that challenge.

Trustee Marshall: I'm going to add something to the discussion though. When you mentioned possible incentives for folks to live in the general area of the university, might that also entail some discussion with say the city founders of DeKalb where the incentive is not necessarily coming totally from the university, but from the city itself as well as Sycamore?

John Butler: Sure. So I understand then that Trustee Strauss is saying he would like to learn more about the appeals process and I think you've taken notes on that. I think this could be a complementary process. I think we'll learn more in Academic Affairs [reference to AASAPC] and then we'll take the issue up as has been described thus far.

Jerry Blakemore: That's fine. I've just rewritten this to review of appeal criteria to the Board of Trustees. This is a pretty important area and it goes beyond the tenure issue, so I will present it broadly in that regard.

John Butler: Good. This is working the way it should. Alright, well thank you trustees and everyone else who is here who has provided commentary on this list, particularly Mr. Blakemore for putting it together and driving forward this effort to review proposed bylaw reforms.

Discussion Item 8 – Board Assessment Options

John Butler: Let's move if we can to the next item on the agenda, which is board assessment options. One of the things we've learned is that most boards of trustees of public and private universities periodically assess their performance. We have provisions in our bylaws already that refer to the assessment of the Board's performance in conjunction with the assessment of the president's performance. So we've already carved out the expectation that we're going to look at our own performance, but we've never talked about how we're going to do that. There are protocols, and we've asked Mike Mann if he would look into some of those protocols for us. Now in the interest of full disclosure, we know about some of them because of going to the AGB conferences, that there are a number of these formats, so some of this we already know; Mike why don't you give us a sense of what you put together.

Mike Mann: Thank you chair, members of the committee. Number eight provides a little background on board assessment in general and then the second half focuses more on the types of board assessment activities that are available and recommended by the folks who do this type of work. As the chair alluded to a couple of times, it is common practice for a board of trustees of all types – non-profit, for-profit organizations, whether they be educational or corporate types of entities – to conduct a periodic evaluation or self-assessment to answer the questions: are they structured appropriately, are the committees functioning, is the board organized in a manner which meets both the fiduciary responsibilities of the board and the needs of the university. The Association of Governing Board offers, as a facilitator, to help boards conduct an evaluation or self-assessment. The first step they recommend is a discussion between a facilitator provided by an organization, like AGB, along with the president, or

the board, or a committee, to discuss the specific needs of the institution or the board. In general, they offer a variety of tools in their toolbox, and they like to customize their approach depending on the board and the specific areas that the board is interested in looking into. So, in the item on the third page is really where they get to the type of activities. I don't want to just specifically mention AGB and make the assumption that we need to be conducting this type of work; suffice it to say that these are the types of activities any type of facilitator would probably recommend. First of all, some sort of survey would be conducted of the Board members and these surveys could be fashioned to ask Board members not only what they think about the Board but they're also types of surveys that are aimed at Board members' actual assessment of each Board member's performance. The AGB would also take the results of those types of surveys and actually come to the campus and put on some sort of a workshop with the committee, or Board, about the Board's responsibilities and roles, and also they would base that conversation on the information that they gather from the survey. The workshop agendas would typically include the discussion of the Board's responsibilities and would allow Board members to talk about the Board's roles and the responsibilities. Then they can discuss the need for, or possibility of, a follow-up survey asking Board members what the next steps they would like to see. At the conclusion of the assessment process, strategies would be discussed by the board and become the basis for further review and action, potentially leading to Board action on committee structure, numbers, set ups and other issues.

John Butler: Questions? Marc?

Marc Strauss: Comment. When I envision this process, which I support, I think there is real value that will come out of this process, but I want to have us take a good look at the scope of this, at least the first time through, because I think that some of the fundamentals many of the board members already have a pretty clear idea about, and I don't want to spend a ridiculous amount of money engaging in a consulting service that we probably don't require, at least not today. I think from my perspective what we really need to do is to get some idea about our participation and the way in which the members view the strengths then shortcomings of the Board and we be able, with a facilitated conversation, to come up with an action plan based on that. I have to believe that there are some computerized survey instruments that are available that will get us the data that we need to have that conversation without entering into a large scale consulting agreement. I may be wrong but that's just a bias that I enter this conversation with.

Paul Julion: How often do we get assessed as a board?

John Butler: As far as I know we've never assessed our own performance.

Paul Julion: Okay.

Robert Boey: That's the way I remember it too.

John Butler: Something practical that might come out of an assessment: we might determine that there is consensus around an alternative committee structure; we might determine that we want to mandate that committees be limited to four or five Board members (right now all of our trustees serve on all of our standing committees); we might determine that we want to move to a committee of the whole structure because we want to talk about all the issues at a committee level, so maybe we should shift into that type of a structure. A number of different and practical outcomes could come of this, which would improve the Board's performance.

Robert Boey: Chair, as long as we talk about Board members in general. You talk about the performance assessment. I don't remember ever addressing, as an example, attendance issues. If you don't have sufficient attendance, how are you going to have the capability of assessing anything? How do we fit that in?

John Butler: One of the things that these processes result in, often, is what's called a "Statement of

Expectations.” The board actually produces a Statement of Expectations for board member performance. We say, essentially, each Board member is committed to doing these things as a Board member, and one of them would be you actually come to meetings and have a regular attendance at meetings; and then, in that Statement of Expectations, there would actually also probably be a provision, if you’re not meeting those obligations, that you will step off the Board at some point if you can’t commit to that.

Robert Boey: But therein lies the problem. The Board members are approved by the governor and the removal implies the governor removed them.

John Butler: You’re right. Mr. Blakemore has a perspective on this.

Jerry Blakemore: Two very quick points, with the respect to the removal by the governor of a Board member: it’s not legal, and the current governor found that out with respect to one public institution wherein there was an attempt to remove the members. My view is that you are an independent body and you can govern yourselves, including discipline and removal. I would be on much firmer legal grounds if there were a statutory provision that said that, but I do believe that you, like any other board that is an independent body, can determine the criteria by which you require the expectations that the chair just talked about, and if people don’t meet them then you can take action. And, I believe that’s up to and including removal. I take the view that, as an independent body, you can do that. You need to be clear about what the criteria is and be candid. I would like to be on firmer legal grounds before I advise you to terminate someone, and it would be helpful to have that as the statute or at least that authority more clearly indicated in this statute, but the governor cannot remove. Once that appointment is made you’re an independent body and you have all of the rights, responsibilities, and obligations associated with it.

Marc Strauss: I want to be clear; I’m not looking to terminate anybody. I do think that we’re going to take from this some valuable information, and self-assessment will also help us evaluate whether we have professional development that needs to be done by all of us or some of us, in all areas or some areas, that will help make our meetings more efficient. I also believe that, when we go through this process, we’ll be able to consider whether we want to have rules about when materials have to be ready for us to take a look at; how our meetings ought to be conducted in a meaningful way, so that we can have an intelligent conversation at a higher level, instead of dealing with specifics that ought to be left to the administration; and all of the other host of issues that seem to swirl around us as we go through the performance of our duties. So, I think this is a very important undertaking for us. All I suggested in my first comment was that we see if we can find a way to do this quickly and economically. I don’t want to wind up with a one-year consulting arrangement, for hundreds of thousands of dollars, for something that we can do in a month for a lot less money, and I’d like to see us organize it so that we can get this launched and get results back sooner rather than later. I think we will greatly benefit from going through the process.

John Butler: So how do we do that? Obviously, I’m assuming I speak for all the trustees, we’re not looking at anything that’s going to rise to the level of the Board contractual threshold. So can we request the President and Mike Mann further explore options and then work with me to come up with a proposal for this ad hoc committee at our next meeting for contracting services?

Marc Strauss: I think we only listed this for discussion and not for action.

John Butler: That’s true.

Marc Strauss: So making a motion or taking a vote, is it appropriate?

Jerry Blakemore: The consensus of the board can be determined without a formal vote, and I would also add, in terms of the Chair’s remarks, you can certainly have the President report back to the Chair with a plan to go forward that meets the criteria that’s been set up: the financial costs, the scope, etc. I do not believe that you need to have this committee come back and take formal action at all.

Marc Strauss: In that case I'm perfectly OK with that approach, just speaking personally. That fulfills my concerns.

Douglas Baker: I'd be happy to put together some scenarios for you to consider.

John Baker: Great. That will move us forward quickly so that we can do what we're planning to do. Any more thought on this item?

Discussion Item 9 – Next Steps/Work Plan

John Butler: Now we're going to move to the work plan and this agenda's second action item. The work plan that's been proposed concerns primarily the bylaw reform items. Mr. Blakemore, can you summarize this plan with us?

Jerry Blakemore: As I indicated earlier, the plan calls for a delineation of the bylaws which you would like to review and ultimately take action on. The draft that was presented to you has been revised and we will get out a revised draft to the Board, but you would be approving that draft and the timetable for action. The ad hoc committee on governance would determine the next meeting date and we would present to you all of those actions you would take. The consensus was going with those bylaws that were presented with the amendments that we already talked about.

John Butler: So the items that we explored under the category A, as amended by our discussion, we would discuss and propose to the Board that those be taken for initial review at the December 4th board meeting?

Jerry Blakemore: December 4th, you're correct.

John Butler: If our goal is to present for first reading, which does not mean they have to be perfect, we'd be presenting draft changes on December 4th?

Marc Strauss: Is it permitted Mr. Blakemore, for you to propose something that would constitute a first reading, whether it bears much relation to what is finally considered or not? Then we wouldn't have to meet again before December 4th. We'd have an equivalent of a placeholder and proposal for December 4th to satisfy the first reading requirement, and then come back after we have a chance to meet either at the end of December or in January for our next round; full board meetings would be in February [reference to Board standing committees] and March [reference to Regular Board Meeting] if my memory serves me correct?

Jerry Blakemore: Yes, we can do that. What you're basically talking about here is trusting that the first draft will be something that general consensus will support, so we can skip the step of revisions in between or before.

Marc Strauss: Right, what we would have to do is address the topics that we intend to have addressed and we'll have the opportunity to come back and completely rework it if we want to; but, at least we've introduced the topics and satisfied the first reading requirement. Would that work?

Jerry Blakemore: Yes, we can do that.

Marc Strauss: I'll make a motion that we proceed in a way that I just described, that Mr. Blakemore presents something with regard to the first items [reference to category A items] directly to the full Board on December 4th and thereafter we proceed to have a meeting to talk about those proposals and the others with an eye toward advancing those in connection with the schedule contained in our work plan.

Jerry Blakemore: I'm fine with that. I would only point out that I would want to, within the period between now and the 4th, continue to have consultation with individual Board members. Any comments

people might have on any of these, get them to me. Once I have a draft I'm going to circulate something. I'm comfortable with that so you're not surprised on December 4th, or the week before December 4th, when you get the recommendations. We'll just use the time for consultation with the President, the cabinet and the Board.

Marc Strauss: That's fine. I don't think I need to modify my motion.

Jerry Blakemore: No you don't. I just want to be clear.

John Butler: Okay, the motion's been made and seconded on the matter of discussion. When we refer to consultation with the Board, I would propose that the consultation prior to December 4th be limited to the members of the ad hoc committee.

Jerry Blakemore: That's what my thought was. That was merely just a clarification.

John Butler: Is there other discussion on the motion?

Chair Butler conducted the vote and the motion passed without opposition.

OTHER MATTERS

Chair Butler asked if there were any further matters for discussion and there were none.

NEXT MEETING DATE

After discussion about various schedule conflicts, the committee came to the consensus that the next meeting would be on **January 15, 2015 at 1:00 p.m. in the Board of Trustees meeting room, AL315.**

ADJOURNMENT

Trustee Strauss moved to adjourn the meeting and Student Trustee Julion seconded the motion. With no opposition, the meeting was adjourned at 2:45 p.m.

Respectfully submitted,

Susan Oppenborn
Recording Secretary

In compliance with Illinois Open Meetings Act 5 ILCS 120/1, et seq, a verbatim record of all Northern Illinois University Board of Trustees meetings is maintained by the Board Recording Secretary and is available for review upon request. The minutes contained herein represent a true and accurate summary of the Board proceedings.