

Minutes of the
NIU Board of Trustees
Ad Hoc Committee on Governance
October 14, 2015

1. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 3:15 p.m. by Chair John Butler in the Board of Trustees Room, 315 Altgeld Hall. Recording Secretary Kathy Carey conducted a roll call. Members present were Trustees Robert Boey, Robert Marshall, Marc Strauss, Raquel Chavez, Timothy Struthers, and Committee Chair John Butler. Also present: Board Liaison Mike Mann, President Doug Baker, General Counsel Jerry Blakemore, Executive Vice President and Provost Lisa Freeman, UAC representatives Greg Long and Deborah Haliczzer, Anne Kaplan, Greg Brady, Catherine Squires.

2. VERIFICATION OF QUORUM AND APPROPRIATE NOTICE OF PUBLIC MEETING

General Counsel Blakemore indicated the appropriate notification of the meeting has been provided pursuant to the Illinois Open Meetings Act. Mr. Blakemore also advised that a quorum was present.

3. APPROVAL OF PROPOSED MEETING AGENDA

Chair Butler asked for a motion to approve the meeting agenda. Trustee Strauss so moved and Trustee Boey seconded. The motion was approved.

4. REVIEW AND APPROVAL OF MINUTES OF JUNE 15, 2015

Chair Butler asked for a motion to approve the minutes of June 15, 2015. Trustee Strauss so moved and Trustee Boey seconded. The motion passed.

5. CHAIR'S COMMENTS/ANNOUNCEMENTS

Chair Butler welcomed new Trustees Rachel Chavez and Tim Struthers to the Ad Hoc Committee on Governance. He began by reviewing the progress of the committee to date including the revision and development of new Board of Trustees policies in the area of BOT Travel and Expense Reimbursement and development of Board of Trustees Presidential Succession Policy. In addition, several amendments to the Board of Trustees bylaws including amended the Operating Procedures, Appearances Before the Board in Section 4 Article II; amended Section 5 of Article V concerning the procedure for the Election of Officers; amended Section 5 of Article V concerning the Duties of Officers by adding a particular duty and the position of Board of Trustees Liaison; amended the Duties and Responsibilities of the President in Article 7 in several respects including Board and Presidential Assessment; added a Mandate of Presidential Housing to Article 7. We have updated significantly and altered the Board's Article 9 concerning Indemnification. In addition to that, we've made changes to the Board of Trustees Regulations in the area of Educational Benefits with respect to faculty and administrative employees and civil service employees, and, we've made significant changes with respect to the Obligations of Financial Resources in Section 5 concerning financial affairs dealing with the area of administrative approval and Board approval and professional services and consulting. These are all items that we reviewed as a committee and then forwarded to the full Board. They've adopted unanimously all of the recommendations of this committee so we have a significant record to be quite proud of. In addition to that, the Ad Hoc Committee has passed amendments to its bylaws in direct response to concerns expressed by the public with respect to making public appearances before the Board. I've also been informed that a prior public comment indicating that the University was not in compliance with Sections 4 and 5 of the State's Freedom of Information Act by not prominently displaying required information about

the institution and its administrative offices, that has been corrected and there is now a binder downstairs.

Chair Butler continued, we're trying to be as responsive as we can to the concerns that are being brought to the committee. This is a committee that I hope will have a reputation for being open. What we work on and our agenda will be determined as we continue our work by the input that we receive. We've also implemented policy changes related to the affiliate category of employees, however it's not something that was passed by this committee, but changes that took place in relation to the adjustments made administratively in response to the Affordable Care Act as a mandate which we must comply with. We have an agenda today that shows many of the issues that we're going to continue to discuss. We're going to continue discussing Item C4 from the June 15th meeting dealing with the hiring of direct reports to the President. We're going to look at proposed disclosure of interest policies or a conflict of interest policy. That will be a significant topic for today and it may result in a recommendation for the full Board. We're going to continue to look at the issue of presidential spending authority and we're going to educate that committee on the areas of Board involvement as it stands now and what the different categories of exemptions are for bringing things to the Board. We're going to discuss our administrative leave policy. We've long been discussing the reform of the manner in which standing committees are described in our bylaws. In our bylaws, one of our committees has a significantly longer description of its mandate and duties than the other standing committees. We're hoping to bring that in to conformity. We're going to talk about orientation and professional development of trustees and the possibility, as we've discussed before, doing a performance audit of the Board. We're going to talk about the criteria and clarification for rights for appeals to the Board, and finally, we're going to take up the issue of naming rights which we've talked about as a Board in the past.

Chair Butler recognized the University Advisory Council Representatives Greg Long and Deborah Haliczr and asked if they had any comments at this time. Greg Long commented on his interest in the committee from the standpoint of shared governance among faculty and staff and the challenge right now because of budget concerns. It's a challenging time for people working here. From a faculty standpoint we have, over the last three years, seen a ten percent reduction in tenure track faculty members as shown by the reapportionment data for University Council. So we've got fewer tenure track faculty members, we also have a greater number of committees and certainly the Program Prioritization Task Force, which we support but that has also drawn a number of our very best and most committed faculty members to serve. So a challenge we have with shared governance from our faculty and staff perspective is getting enough people who have time and availability to commit to some of this work. Plus there's an issue of knowledge about the process, we tend to think of it as it exists locally and not necessarily the bigger picture of how the Faculty Senate operates and the structure, how University Council operates and the structure, so we've been trying to use some of our meeting to share that information such that the members have a better sense of how bodies are organized and then what their respective responsibilities are. We have a number of committees and we're doing our best to continue to provide input even though we're a little stressed in terms of time and workload of course.

Long continued, I plan to propose to this committee in the near future the University Council's constitution rule on voting procedures. In University Council, a 60 person body and requires two-thirds of the body to pass any sort of by-law. Our average attendance is 46, so two-thirds so is 40 and, when we only have 46 in attendance, it provides very little room for wiggle. This is one of the challenges that we're facing in University Council and I want to bring up a revision to that such that we can make University Council votes actually be meaningful and we can get things done. The three councils, as well as the Student Association were working together on things. From a shared governance standpoint the students are going to be sponsoring a rally on the 29th when Governor Rauner comes to campus and so we have shared information and we'll be helping the students with that. We've gotten information out to our various constituencies about lobbying. How things work so that we keep within our boundaries but we also have the right to exercise our free speech. We've been doing those things within our respective councils to help educate the members and bring them along with us because we see this is something that across our councils, we have to use shared governance to address a number of these issues.

UAC representative Deborah Haliczzer added two additional comments. Because of the numbers of SPS who have moved to operating staff positions, the numbers of people who left University and changes in administrative structure as relocating offices, changing divisions, etc., SPS Council will also reapportion members in preparation for our spring elections. Secondly, I will be emailing all of you with your ethics training documents and they are due back to us by the 13th of November.

Chair Butler thanked Professor Long and Ms. Haliczzer for their comments. I gather from those comments that it might be useful if we put on our future radar some knowledge building and capacity building in the area of understanding the structure of the university level leadership which I think would be a good thing for this group to do. I'm not exactly sure where the Board comes in with regard to an amendment of the University Constitution, but of course you know that we stand ready to do whatever it is that we have to do in response to the work that you're doing at that level of the university structure to become a more nimble institution and so that we can address the challenges that we're dealing with and make changes that are smart and make sense for our future.

6. PUBLIC COMMENT

Chair Butler indicated there was one individual, Mr. Derek Van Buer, who requested to speak to the Committee. He noted he had five minutes and should be seated at the table for recording purposes. Mr. Van Buer came to the table to address the Committee.

Speaker Derek Van Buer: Thank you for the opportunity to speak today. What I'm going to talk about today actually Chairman Butler spoke a little bit about, FOIA and Open Meeting Act. What I want to do, is very personal I guess, is to remind the Board that you are controlled by university law 110 ILCS 685. So that's the first thing you need to look at when you're doing bylaws that you abide by university law. Then you also have regulations and that's what I wanted to talk about. I was out looking for some FOIA information the other day and I came up that your regulations are in conflict with state law. And I will give this to Greg Brady and so here is your regulations published on your web. Here is the regulations on your FOIA and the one thing that caught my eye is that you use the word shall, shall be submitted to a specific address. That's against FOIA law. I can send requests to - an individual can send a request to anybody that he wants to that works for the university. So you should probably change the word shall to should. Then what happens is you go through and so you get the order this university law, bylaws, regulations, procedures. And procedures are in conflict with the regulations. So when you go into FOIA page and you look at where you're supposed to send FOIA requests, actually goes to, I should back up. So in the address and the regulations it says it has to go to the Office of University Legal Service. Then when you go into the FOIA page, it tells you your request has to go to department, when one it says University Marketing and the other says Division of Marketing Communications. So now your procedures are in conflict with your regulations which are in conflict with state law. So that's really all I wanted to do is to say because it's a governance committee here at the level distributed properly. That's really all I wanted to talk about and like I said I will go by these procedures and I could print them off today. The other thing that caught my ear when I was listening to a little bit about the previous committee with Chairman Strauss I think he is president of that committee was talking about. I don't know who watched the US Open tennis tournament. I did. One of the big advertisers during the US Open is IBM. And IBM had a whole bunch of ads running on their analytical program for universities. So if you want to maybe get an idea of what metrics might useful for major universities, you might want to contact IBM and sort of see what's in your analytical product line. Like I said, most nights during prime time they had these ads and they were actually focused on universities so again it might be something quite useful to you. And now the other comment I heard about they could change the bylaws on trustee's expenses. Trustee's expenses are actually specified in the university law. So again it might be useful to make sure what you are changing in your bylaws conform with what's defined in 110 ILCS 685. That's all I really have to say today.

Chair Butler thanked Mr. Van Buer for his comments.

BOARD GOVERNANCE DOCUMENTS PROPOSALS

Agenda Item 7.a. Hiring of Direct Reports of Senior Administrators

Chair Butler began, the first item concerns hiring of direct reports of senior administrators. On June 15th meeting of the Board we passed on this blue line document, but what we didn't pass on is on the first page under Subsection A, the Authority to Employ. There are two provisions that were introduced to the committee last time and we had some discussion on it. A number of questions were raised regarding these proposals and I want to reiterate some of those questions today and I want to make sure we have some clarity as to what the committee members are looking for. You'll know that the Board took action May 28, 2015 and expressed, among other objectives, a desire to modify existing policy concerning the hiring of employees who report directly to the President whose functions and compensation level regardless of formal title constitute cabinet level senior leadership of the kind that may warrant Board approval. The proposal drafted by the General Counsel's Office were amendments to Section 2 which called for two additions. First, prior Board approval for any personnel action that creates an obligation that has significant operational, financial, academic, and or reputational implications; second, an amendment to its provisions for major administrative appointments that would call on the Board's Executive Committee to approve "the hiring of employees with a salary of \$150,000 or more who report the President, a vice president, or a dean." Currently the regulations call for Board approval of employees appointed to vice president or dean. Concerning the first addition, the call for prior Board approval, Trustee Strauss argued at the meeting that such a standard would potentially cause one to be more cautious or conservative as the person responsible for the action. He was not especially uncomfortable with this standard. I expressed some concern over the difficulty of predicting whether a personnel action would have significant reputational implications, but I was mostly concerned with the standard prior Board approval, but I did not offer an alternative. Concerning the second addition, my reaction was that we had a workable salary threshold, but I thought we could capture the Board's interest in cabinet level personnel by limiting the provision to those employees who reported directly to the President as opposed to personnel at the salary level who reported to a vice president or dean. Trustee Strauss indicated that he hoped we would wind up with a definition for the types of items that come to the Board that truly warrant our particular attention. He noted that he did not personally intend to draw the line at those who were named members of the President's Cabinet, that there were some positions that just stand out as major administrative appointments that should be reviewed by the Board. He recommended that we gather some data to assemble a more precise picture of the types of administrative appointments we might consider to be major and in making this request he noted we might need to think more carefully about the salary threshold as well as to whom the applicant will report. I'm going to summarize what I think the three major concerns raised about this proposal. The first is might Executive Committee approval slow the pace of an offer and cause the university to lose preferred candidates. Second, might Executive Committee approval limit the Provost or a dean from responding in a timely manner to a temporary gap in a college administrative position if filling that gap requires an offer of additional pay that pushes the employee past the \$150,000 threshold; and third might adding subject to the appointment of the Board of Trustees or something similar into offer letters for an associate level dean or vice provost blur the distinction between hiring and appointing and subject that process to uncertainty that does not currently exist. I believe the premise of the final concern seems to me to be that Board approval now is generally viewed as a formality whereas at this deeper level it would be viewed as part of a multi-tier process that would be required for the appointment. So we discussed how complicated such an inventory might become when we consider faculty who are provided an administrative supplement for example chairing a department or joining temporarily a college office staff. Trustee Strauss' information request was to learn how many employees we have earning \$150,000 or more and to whom they report, and further clarification that the salary distribution may be of interest as is the frequency of hiring at the \$150,000 threshold. Trustee Strauss agreed. Chair Butler asked Provost Freeman to provide further information.

Provost Freeman began, I have most of the information that you requested and if I don't have a sufficient level of granularity, certainly Mike Mann and I will try to get that to you as soon as possible. In looking at the \$150,000 threshold, if you consider employees with base salary at \$150,000 or greater, we

have 60 employees who fall into that category. If you consider administrative supplements for additional pay for assuming extra duties, we have 83 employees that fall into that category. I can't break down the difference between an administrative supplement such as that given to a department chair and the additional pay given for extra duties. What I can tell you is our current fiscally ambiguous situation and our desire to be prudent with budget funds has driven us when we don't refill positions to do temporarily increase extra duties for employees who are here as we have two people doing the jobs that used to be done by three or in some cases four. In looking at the employees with base pay over \$150,000, we have approximately 12 of them who report directly to the President, members of the Cabinet, the Police Chief, and the Athletic Director. We have 9 Deans who report to the Provost, the 7 Academic Deans and the Dean of the Library and the Dean of the Graduate School. We have 4 Associate Deans who report to Deans and the highest paid Associated Deans are in professional colleges like engineering and business. We have 10 Chairs who report to Deans. We have 6 Professors and Associate Professors who report to Chairs. We have three Coaches who report to the Athletic Director and then we have 16 direct reports of Vice Presidents and senior administrators. I know that Trustee Strauss was interested in sort of the flow of the hiring of these types of individuals so that we could figure out what type of burden Executive Committee approval might confer. Although academic appointments tend to start July 1st, the hiring process actually runs throughout the year. For example, when I was hired as the Vice President for Research, my negotiations were done over a 48 hour period during the week of December 18th although I didn't start until July of the following year. For administrative appointments outside of academia, both the start dates and the negotiations occur throughout the year. Many times we are negotiating with excellent candidates for leadership positions who have other offers in hand. We are usually working to create compensation packages in the case of academic appointments not just salary and benefits, but startup, etc. that are competitive and we often have short windows to respond working through an executive search firm or working directly with the candidate. I think if we were to look at a strategy for making the Board aware of the salaries of our executive appointments, it might be more workable to adopt something other than the \$150,000 salary threshold and perhaps something like a percentage over the medium CUPA salary reported in that category. CUPA is the HR database for all our higher education. I hope I've given you the type of data that you wanted. If there is additional granularity that you would be interested in, I'm certainly happy to supply that.

Trustee Strauss asked, approximately how many new hires do we have in a year that would fit the criteria that we're talking about? So a number of these people have presumably been here for a while.

Provost Freeman responded, I think you know there are not that many of these people at the university, and so the turnover is unpredictable. Last year we did not hire any deans, this year we will be hiring four.

Trustee Strauss clarified, what I'm trying to get a gage of is the Dean hires we already get anyway under the current regulation and I want to be practical about this because we still have to gather a quorum even of the Executive Committee, so if the net result is that we have to have a meeting every week, then the discussion that we need to have would be if we're interested in meeting to be able to consider them. It makes a difference as I'm thinking about it whether we have a total of six people a year or sixty, and there's no precise answer to this I understand, but is there sort of a ballpark over the last so many years?

Provost Freeman responded, if we have 60 of these people and you consider a very high rate of turnover which in these times let's say we might have 20% of 60 would be 12. I want to ask for some clarification, I'm having a little bit of difficulty reconciling what you just said with Chair Butler's introduction regarding the Board of Trustees approving a Dean versus a Board of Trustees approving a salary offer extended to a Dean during the negotiation phase. It's not clear to me what we are discussing.

Trustee Strauss agreed, I don't believe that it's clear to us at this point either. I think that's a topic that has arisen as we've talked about this as well. We understand the difference, I don't think we're headed in any particular direction as this point, but I think that it is highlighted that it's not clear in the regulation what it is that's intended. That is something that I think it would be good for us to clarify whichever direction it is that we go. I don't know everybody else's feeling on those issues, but that's my reaction to

it. I think it's a good question that you ask. I do believe that we have to be mindful that those two are not necessarily the same thing.

President Baker asked to comment, I haven't seen Board's approve deans in a substantive way in other places. Typically deans are hired through a rigorous review process that has committees that have faculty and staff and students on it, external stakeholders, fully vetted, often a search firm, open hearings, long discussions and the market tends to drive salaries for these kinds of positions. So in terms of approval, I don't anticipate that once the vetting process, and the committee and Provost agree on a decision, the Board would not approve. I wouldn't anticipate you would do that.

Trustee Strauss responded, the reality is that we haven't during the time that I've been on the Board. However, we also haven't rejected a fully vetted request for tenure, but the question is whether or not the Board should ultimately retain control over both types of appointments and we hadn't focused until now on whether there's a difference between having previously approved a salary level for that position as opposed to qualifications. We've been very respectful of the process that has been designed and for the hiring for all of the deans, senior level administrators, and for granting of tenure for that matter. I'm not proposing any radical departure in our approach for any of those, but there is obviously a measure of public interest in the nature of the hiring for people at a substantial salary. I think we have an obligation to make sure that there is some level of scrutiny that occurs at the Board level with regard to those hires and for me, the issues are what's the appropriate level and what is it that we're evaluating? How should we go about doing that at the Board level? I don't believe our regulations speak clearly to those issues now and my hope is that we'll have some conversation about how to be able to reconcile those.

Trustee Strauss continued, I did have a second question raised by the information that we received and that relates to the CUPA salary. I'm interested in, not related to this particular question that's before us, about whether we have a guideline about whether there is a salary band for a typical job offer and if so what that might be.

Provost Freeman responded, so whether we're doing an executive level hire or we're doing a faculty level hire, we always are informed by the hiring unit of what they think is appropriate based on their interpretation of the market. We then compare that to national data bases. The CUPA database is the sort of national standard for benchmarking salaries. The salaries are broken down at a very granular level by the title of the position and by the type of institution; medians and ranges are given for community colleges, for doctoral universities, and for an average of all institutions. We have access to other databases from different professional societies, and when we're in a discussion with a department about where they even want to target a listing of a position, we will start to have these conversations to define a range. Very often the conversation is as intense at the time that we hire an assistant professor as it is when we hire a more senior administrator because salary compression occurs over time and we're constantly working with our available resources and with the hiring units to try to be equitable and also competitive and those are difficult things to balance sometimes. We will also have a conversation with the search firm that's assisting us about what's being negotiated at the end with other institutions who are our peers, our aspirational peers and maybe even a tier below to see what's going on in the market, how many searches are there. And we'll have a very frank discussion with them about where we think we can reach and where we can't so that we eliminate a priority from a search pool, people that we frankly just can't afford. From there it goes through the search process, acceptable candidates identified, salaries are always open to negotiation until the end. So there's a range put out at the time we post the position. That range is based on a very informed process. Sometimes it's necessary to hire the best candidate, the preferred candidate, being the only acceptable candidate to push the top of that range or to look at alternative benefits that we can provide to get the best candidate to become a Huskie.

Trustee Struthers asked, are you trying to get to an action item today to get the language?

Chair Butler responded, no this is an information item. I wanted to provide an opportunity for Trustee Strauss to clarify his data request and to be fulfilled that request, which I think it was, and then I think at this point our role is to discuss where we want to go from here. Do we want to try a re-draft of this?

What's the appetite of the committee? When we met last I was favoring something that was more limited that dealt with cabinet level senior administrative appointments that may not be captured under the title vice president and dean. I was not necessarily whetted to a number, but I didn't have a problem with \$150,000. That's my comfort level and that's what I think the Board was requesting this committee to consider. Trustee Strauss was interested in learning more about the larger scope if we were to widen it to senior administrative appointments that report to vice presidents and deans if we were to refer to them in that category. This is an open discussion. I can already tell you that I was uncomfortable also with the notion in the first change the phrase "prior Board approval shall be required" and I think this gets into that ambiguity of what that means. Would that mean that the Board would have to meet? I think it does, but when you read the rest of the sentence it seems to me that it would be a judgment call on the part of the administration to determine whether they believed that the personnel action created an obligation that has significant operational, financial, academic, or reputational concerns. And particularly reputational concerns seems to me that would be difficult to predict. I would push us more toward language such as the President shall advise the Board or the President shall advise the Board through its chair and vice chair and then we could talk about what that means. We could even clarify somewhere what that means. For example, that could mean then that the chair and vice chair report to the trustees the intended personnel action and if there are any concerns expressed by Board members then that's reported back to the administration and perhaps in that particular case we bring a matter to the Board. You can see how complex this is.

Trustee Strauss added, without presuming what the result of our conversation is going to be, language similar to the language that you have cited in Section 2A was part of what we recommended and adopted in the third paragraph of Section 1 of Article 7 where we specified that it was a duty and a responsibility of the President to exercise sound management of the operational, financial, academic, and reputational aspects of the university. So the concept is not completely alien. I agree that there's a material issue as to whether prior full Board approval is required and I think that we've also got the issue that we're aware of at this point as to whether we're talking about approval prior to negotiation of some salary or prior to an appointment. Some redrafting will be required. I'm not certain what the feeling of other people is and I'm not sure I've fully made up my mind at this point, but I think that the statistics were helpful in showing that this is a fairly large number of people. There would be a burden and we have to figure out where to draw the line between trust and verify. That may not be susceptible to some formula. It is also clear though listening to the data that we have some people that the public would be interested in. Again I'm not trying to pick on any particular person or class of people, but the coaches that report to the athletic director are not included in the draft language that we had, yet some of those salaries might be substantial and be something for which there would be potential reputational implications depending on how you define reputation. I think we've got a number of issues that are in front of us.

Provost Freeman added, I omitted from my previous comments but as the Board thinks about language to draft, we've only been discussing initial hires negotiations, I wouldn't want the Board to neglect retention, important administrators, deans, faculty members and chairs. It's very easy for other institutions to come knocking with lucrative packages and we try very hard both proactively, and in response to an offer, to make counter offers that retain the best and the brightest at this university. Whatever language is ultimately drafted I would want to consider the latitude in that case that's needed as well as the latitude to compete in the marketplace with an initial hire.

Trustee Strauss commented, I think we have started to address that because it didn't talk about hiring anymore, it talked about any personnel action. Again I don't believe we've necessarily got the right language, but I think we were interested in considering the situation where somebody would have been hired but there would be a substantial boost in salary and that might rise to a threshold where again the Board might want to take a look at it and without knowing where that line would be drawn or exactly which personnel actions would be involved.

Trustee Struthers asked, getting to the question of prior approval, procedurally what is the notification requirements for the Board to meet and therefore vote? What kind of notice requirements are there?

General Counsel Blakemore responded, under the Illinois Open Meetings act, you have a 48 hour notice that must be provided to the public, that notice must include an agenda. If there are action items that are part of the anticipated for that meeting, then those action items need to be part of the notice. If there is an emergency, and I don't think anything that has been discussed would rise to that level, then you must provide notice as soon as practical, but basically you've got a 48 hour notice requirement under the Illinois Open Meetings Act.

Trustee Strauss asked, is it the same if it's the Executive Committee as it would be for the Board?

General Counsel Blakemore responded, absolutely, any meeting of the public body which includes committees of that body.

Trustee Struthers added, it's the idea for this to have any teeth approval it is important right? I make the analogy of a loan or an investment it's one thing to approve, another thing to talk about what I did and I think they are two very different things so I think the approval is important, but it's not unreasonable with respect to timing. As to the levels, it seems to me, that at the Board level we would be most interested in the public or the public would be most interested in the hires that the President would make as the highest officer of the entity right? So those reporting directly to him and or cabinet members might be our purview that would be most important although your topic of a coach is interesting. It could be a high level, very public hire, that does not go through a vetting process such as the deans and academic hires, but who would be a new hire as an officer of X, Y or Z department that's going to report directly to the President, I'd surely like to have the opportunity to weigh in on that with a vote provided if it doesn't absolutely tie someone's hands.

Chair Butler added, let's keep in mind the status quo is that the Board to give prior approval on all hires at the vice presidential level and the dean level. Prior approval would be defined as it's likely before the matter comes before the Board that the offer has been made but that there's been consultation with the Board members prior to that offer.

Provost Freeman added, we would never bring candidates to campus at that level without offering Board members an opportunity to meet with them. The Board is consulted at multiple levels beyond what we're discussing here today.

Chair Butler responded, yes, these are processes that the Board is intimately involved in working with the President and Provost prior to the point at which it becomes an action item. At a meeting, nobody is surprised at that point when the item is there. I think here the question becomes is there an expectation on the part of the public, the people we serve as trustees, that we are involved in decisions at a particular level of hiring and the Board express an interest in policy making in the instance in which somebody is hired at the cabinet level, reporting to the President who may not be titled vice president or dean. I can think of some ways that this might be reconfigured, but I was interested in learning more from the trustees what their interest was.

Trustee Chavez asked, is the question whether this process would take longer and thus make these candidates leave? I'm assuming that's the thought process going into this, but how long realistically is this process going to take?

Chair Butler responded, we've had trouble assembling the Board quickly and even assembling its Executive Committee quickly. A reconfiguration of this nature would require that there be a reconfiguration of the processes at the university level so that things could be lined up properly and offers could be made in a timely manner with the Board basically on deck ready to act. Obviously the disadvantage that's been introduced to us that we have to contend with is that we could slow down the process, potentially lose a candidate, in addition to that, we could send I think a message that we don't respect the shared governance process that produced the candidate.

Trustee Chaves added, I feel like it falls on us to respond and get things going. There is a level of responsibility that needs to be taken on our behalf in order to make this happen if that is what we need to do so the community would not see us in a horrible light. That's just my opinion.

Chair Butler asked for other comments from the trustees because my intention, this is an information item, not only the trustees but others sitting at the table.

Trustee Boey responded, my memory is that the trustees are consulted by a telephone conversation on the subject and asked to giving an opinion or a vote on the specifics. That doesn't usually take too much time to reach five of the seven trustees or five of the eight trustees.

Chair Butler clarified, obviously the Board can't act unless it's at a meeting, but if we have language that says the President will advise the Board that provides some room then for the Board to indicate its interest in having a public discussion of the matter or a closed session personnel discussion of the matter. That would be a different threshold and would obligate the President in a different manner. We have that standard on page three in relation to Board approval for financial matters. So it's not as though we don't have that standard already. But I gather from your comments Trustee Boey that you are in favor of more of the status quo and less of an advancement of a new standard that requires Executive Committee to meet. Trustee Boey agreed.

Chair Butler asked, any other comments from the trustees because what I'll do then is I'll take these comments, I'll continue the conversation with you, we'll determine whether we've got something that we can present to the committee as an action item at the next meeting informed by this discussion.

Trustee Marshall added his concern regarding oversight, I think it is one of our responsibilities and I think as it's written we may need to make a couple of changes that show that the Board is actually engaged in oversight.

Chair Butler responded, so we can see there's a range of opinions. I think Trustee Chavez, Trustee Marshall, Trustee Strauss, myself, favor something. I think we've got some hesitation as to how deep we want to go and I think we share the practicality concern. So it's a question of where's common ground. Let's see if we can't spend some time on that going forward. I think this discussion was useful. I'd like to move to the next item which is considered an action item. I'm going to turn the floor over to General Counsel Blakemore to present on this item.

7.b. Proposed Disclosure of Interest Policy (Conflict of Interest)

General Counsel Blakemore began his presentation. The Office of General Counsel has drafted a proposed disclosure of interest of policy. Often times we refer to this as a conflict of interest policy, but one of our recommendations is for us to broaden the scope of the policy so that we are actually requiring disclosures when there is not actual conflict of interest. The trend in this area is to do that. There are many reasons for it, not the least of which is greater transparency. Every conflict of interest does not mean that you have to recuse yourself, there are ways to manage it, and every potential disclosure is not necessarily a conflict of interest. We want to start the discussion with the Association of Governing Boards and a statement that they made. I quote is "we believe the AGB 12 principles merit Board attention in light of the current pressures associated with the overwhelming responsibilities of the Board. While financial conflicts tend to dominate Board conflict of interest discussions, the subject of political gain, unmerited preferences in hiring, student admissions decisions and other conflicts can compromise the integrity that Board should hold in trust." In fact, their President in April of 2013 released twelve principles to guide the Board. I have provided for you the AGB document which lays out those 12 principles I am going to highlight. That quote is helpful in terms of the background that we here have. Right now the conflict of interest policy of NIU has not been changed since 1996. That policy is focused almost exclusively on financial interests. So what AGB just referred to is not actually considered in our policy. There have been significant changes in the law in Illinois in particular where the Illinois officers and employees ethics act was passed. There are conflict of interest provisions there as well as other

statutes, so our policy is antiquated and we need to update it. This is not the first time you've heard me say this because this issue was raised to be candid and the memo that you have in front of you is not that different than what was proposed more than three years ago. There have also been changes at the federal level particularly on the research side. This Board, and then under the leadership of Executive Vice President and Provost, they updated the conflict of interest policies on the federal side with respect to research a couple of years ago. This Board was advised of that by Dr. Freeman at that point.

Mr. Blakemore continued, current policy has not changed since 1996. Here's the statutes that there have been changes in and there is a much more focus on transparency, accountability, and enforcement. Although I do not make reference here, Sarbanes Oxley which is a federal law particularly relevant to the private sector. Many of its best practices are now being practiced by not-for-profits including many institutions of higher education. Right now what I want to do is show you our current policy. I've made reference to the interests, it's financial. There are a couple issues that I want to present for the Board's consideration, for the committee's consideration. One is right now the policy requires that if there is a conflict of interest, the individual Board member is responsible for determining that there is a conflict and then bringing it to the attention of the Ethics Officer. Our current policy does not provide other options for either a determination to be made that there is a conflict or the disclosure of that conflict to anyone other than the Ethics Officer. The General Counsel's Office has looked at this issue and consistent with best practices believe that one, ultimately the determination of what a conflict is has to be the Board, not any individual of the Board, and therefore some mechanism to make that determination which includes decision making on the part of the Board and not an individual of the Board, needs to be established. Two, we recommend and this is the compliance portion, that you expand the number of people who that particular Board member can disclose that to who then would have the responsibility of following up and making certain that what would be required if its recusal takes place or what would be required if it requires mirrored disclosure takes place. The current regulations we have now is a b-law that affects this issue and then we have regulations that also affect this issue. One of our requirements, and this is a requirement for all Board members, and it's also a requirement for persons who have annual salaries above a certain amount to annually submit a form to the Secretary of State's Office. Each year, either the Board liaison or myself, track down members of the Board to make certain that those are all filled out. One of our recommendations is that we consolidate this into one bylaw as opposed to having various regulations related to all of the disclosure requirements. This is an example of a disclosure requirement that is not a conflict, but it's merely an economic disclosure. So that's what we had proposed to do. The next section, sort of lays out what our current bylaws do, avoid conflicts of interest between personal affairs and the duties and responsibilities of the university, and the standard that is being used there is financial interests. That's why we talk in terms of contracts, transactions, etc. What our bylaws do not do or our regulations, is establish a standard for review of what constitutes a conflict of interest. Our proposal is that it go beyond financial interests of course, direct or indirect financial interests, and that it be that you are responsible for avoiding the appearance of impropriety. It's a much more subjective term. There are now some case law with respect to that, but it is a broader standard and it's one that captures more of what I believe is intended particularly in these times as to what is and what's not a conflict.

Mr. Blakemore added, what I want to do now is what our office did, and that is we looked at the other public universities here in Illinois and we looked at the MAC schools to see what they had in terms of conflict of interest policies, and starting with the Illinois publics here's what we found. Four of the nine have bylaws pertaining to Board conflict of interests. Two have Board policies pertaining to Board conflict of interest. When I say Board, it's Board and the university, or just the Board. Three have general policies. Two of the nine have adopted the higher standard similar to avoiding the appearance of impropriety. Three require reporting of potential conflicts to the actual Board, not an Ethics Officer as we do, and all require some type of reporting to an individual primarily the University's General Council. The MAC schools are similar in terms of what they require, although here we find that two have conflict of interest policies. The remaining ones have the more general policies and they usually make reference to comply with state law, etc. Recently both the City of Chicago and the County of Cook, within the past year and a half, updated their conflict of interest policies.

Here are twelve principles and AGB believes any Board or every Board should consider when it is adopting what they refer to as conflict of interest policy and we would refer to as disclosure of interest policy. One, they clearly make the point that it is the Board and not the staff that is ultimately responsible for establishing and enforcing that policy. Part of the reason for this is that you cannot really expect the staff or employees of the Board to be enforcing the Board on what its obligations are, and therefore having a committee of the Board or someone on the Board and those reports going to members of the Board, and in most situations the general council or others as well, is probably the best way to assure that it has real teeth and that you don't put your employees in compromising positions.

Two, they also agree that a standard that goes beyond financial interests is what is not only necessary but required under the current environment. They make reference and they provide in number two their standard that's a little bit different than the appearance of impropriety but pretty much the same. They have what is referred to as a compelling interest standard that basically says, no Board member should even be in the meeting when an issue is discussed where there is an apparent or an actual conflict unless there is a compelling interest. That compelling interest standard is narrowly drawn and virtually impossible to reach in most circumstances, but it tells you how strong of a belief that they have in establishing a standard and having that Board enforce that standard. If you look at numbers three and four and a number of the other areas of their principles, five as well as five and six, it really talks about the disclosure sort of minimum requirements. One of which is that disclosure should be made at least annually. Who that disclosure would be made to would be up to the Board, but every year members of the Board would be required to disclose any material interests that they have that might be either actual or assumed or perceived to be in conflict. Every new member of the Board would complete a new trustee orientation by the General Counsel's Office, where we literally do go through what are the interests so that our office, in conjunction with the Finance and Administration, as contracts come through can make certain that we alert, we do the appropriate things by alerting members of the Board or the member of their responsibilities to either disclose or recuse themselves. The other point that they make is that whatever policy and whatever standard is actually adopted by the Board, that it is clear that the policy and that standard applies to members of that members household as well. So family members who are in the household, so it could be partner, spouse, children, and that under their proposal they're required to actually annually submit disclosure of any potential interests as well. The final principle that whatever policy or procedure, regulation or bylaw that is adopted has to be consistent with, although it could be broader than, what is required by state law. The Board could not adopt something that is minimized or that is inconsistent with what is required under state law, whether that's the state officials employees ethics act, or the government officials act or any other regulation. When can we put this as an action item, the General Counsel's Office can draft for the Board proposals that reflect the consensus of the Board going forward. We can prepare a redline document that would actually cross out what it is in place now; we would provide specific language if you adopt the standard as an example, or if there were another standard that you wanted and then we would have that for a first reading for this committee and we can move forward.

Chair Butler called for a motion to have the General Counsel's Office consolidate the current conflict of interest, propose a conflict of interest policy that consolidates the current conflict of interest related to statements into the Board bylaws and eliminate any reference in the regulations. In addition, expand the policy to include, avoiding the appearance of impropriety standard, and also define financial interest more broadly, than direct or indirect of any economic interest substantially distinguishable from that of the general public. Also, that the conflict of interest policy reporting requirements be expanded to include the Chair, the Vice Chair, the President, General Counsel, or the Board liaison, and that we develop procedures for identifying, reporting and managing conflict of interest consistent with the 12 principles in the AGB document.

General Counsel Blakemore added, the only other suggestion that I would make is that it should be called the Disclosure of Interest Policy as opposed to conflict of interest. I said that at the beginning it's not specifically there, but I think that's important because it goes to what we are trying to do. The university already has requirements regarding disclosure of other consulting circumstances, etc. so disclosure is appropriate.

Chair Butler responded, I would be supportive of that, so I would amend what I just said to have the first recommendation be that we consolidate the current conflict of interest related statements into the Board bylaws, refer to it as a disclosure of interest policy and eliminate and references in the regulations and then the other four recommendations. Can I have a motion to that effect?

Trustee Marshall moved the motion for discussion purposes and Trustee Chavez seconded.

Mr. Brady added, in this consolidation, there are bylaws, regulations and a policy that are all going to be consolidated. For the committee's information, the bylaws apply to all employees of the institution, not just the Board of Trustees. The policy applies to the Board of Trustees certain designated cabinet level or AVP type of positions but then serves as guidance to the remainder of the employees to the institution. I would just like any feedback on your current expectations as far as the applicability of such a policy. Is this to be applied to the Board, cabinet, all employees, for these types of standards?

General Counsel Blakemore gave a recommendation, since this is a Board committee and has not been a part of the shared governance process, I would not say all employees. I definitely think those direct reports to the Board, but I would start with the Board and then decide if you should go further. I certainly think your General Counsel has to comply with the same rules as the Board so I'm including that. I would not go much further without guidance. I think that's the best approach and is the next step.

Chair Butler asked, since there are employees at several levels who are involved in procurement decisions, would this policy apply to them?

General Counsel Blakemore responded, that's really your determination. Right now I have focused on the Board and persons like myself since other employee groups are covered in the state employees ethics act. There is another level below the Board and I'm including myself in that, that you may want to consider as well.

Trustee Struthers asked if the fact that this would be tucked into the bylaws would it cover all employees.

General Counsel Blakemore responded, no these are Board of Trustee bylaws and do not necessarily cover all of the university.

Chair Butler responded, I'm comfortable with the recommendation that applies to the Board, the President and the Cabinet. However, when we receive the recommendation, I'd be interested in any candid input from members of the Cabinet as to whether the conflict of interest policy is too broad or would present a risk to a member.

Trustee Chavez asked if this policy was a complete revamping to what is there now.

Chair Butler responded, yes this would replace the conflict of interest policy that was written in 1996 when the Board was formed.

General Counsel Blakemore added, we would come back to you with the exact language suggested for approval. The new bylaw would include the current information about direct and indirect financial interests but would be much broader. The proposed bylaw will come to this committee first before going to the full Board for approval.

Chair Butler called the motion that the committee will receive a draft of revised disclosure of interest policy. The motion carried.

Agenda Item 7.c. Presidential and Board Performance, Assessment/Audit

To be discussed at a later meeting.

Agenda Item 7.d. Presidential Purchasing Authority – Review of Administrative Approval of Purchases (Regulations of the BOT, Section V. Subsection B.2.a.)

Chair Butler began, you will see that in terms of purchases there are four requirements related to purchases. The requirement we are familiar with is when there's an obligation of \$250,000 or more, the Board then receives the information. However, there are exceptions to the \$250,000 requirement.

Trustee Strauss added, an example of this actually occurred at the end of the last fiscal year. There was a large amount of computer equipment that was purchased as a commodity. I had no idea whether there was a definition of commodity or if this would apply, however, the sources cited in this case correspond to the use of the word commodity in our regulation. I think it's appropriate that we figure out what it is that we intended. It may be our intent that they are actually a commodity and there appears to be some background to even define it that way.

President Baker responded, we've had a workgroup in IT this year working on standardization of computing to see if there's a way to get lower costs for commodity purchases. For example, both purchases of a standard laptop as well as software packages in bulk so we can get reduced cost. We have been working through the process and have an RFP out for that kind of purchase.

Chair Butler asked, is there a protocol you want to follow with this interest? Are you satisfied with the information that we received or do we want to ask that there be a more thorough presentation at our next meeting about these exceptions and what they mean?

Trustee Strauss replied, I would prefer the latter to make sure that we understand what is contemplated by this. When we looked at this last and we talked about commodities, we referred to Kleenex, toilet paper, pens and pencils and not computers, so we ought to take a look and make sure that we all understand what that language implies.

Chair Butler responded, so may I ask then that we prepare this for our next meeting, in addition to the disclosure of interest policy revision. Also an information presentation on the meaning of these three exception categories and any additional information that the university wishes to provide on the meaning of number four as well.

President Baker excused himself for another commitment.

Chair Butler continued, we've discussed in past meetings the prospect of doing a performance audit. This would be an assessment of the Board and its structure, its current level of participation and activity; its standing committees, ad hoc committees, etc. its relationship with the administration; its obligations under its bylaws, etc. We have done some work on this but we put it on the side. The proposal would be that we would contract with the Association of Governing Boards, the AGB, at a cost of between \$15,000 and \$18,000 for an assessment of the Board's performance. It would involve a comprehensive survey that would be presented to all of the members of the Board. Followed the survey, there would be an option of providing an opportunity for the AGB to interview select stakeholders who work directly with the Board, in this case it would be liaisons to the Board's committees, and possibly some other stakeholders such as members of the Foundation Board and the Alumni Association. Data would then be compiled in the form of a report that would be presented to the Board in a workshop. I am interested in any feedback from the committee at this point about doing this and if we should move forward with this process.

Trustee Struthers responded, we have such big priorities and multiple elements with governance and enrollment, state economic issues, our own economic issues and we're having a hard time getting through these agendas and getting to action items, to throw the idea of one more thing on top of that. I can't hardly weigh in to say if a Board self-assessment, etc. is necessary or not, but my only lens

is priorities and we've got a lot of headwinds coming at us. It seems like in the interest of time and money this might not be the right time.

Chair Butler added, the actual survey itself would probably take a couple hours for each trustee to complete. The timing of the engagements with the other stakeholders would depend on their schedule. I would expect the whole process to happen over the period of about three months. This would provide us with an assessment of performance and structure. It would be moving us toward, and possibly would cause us to create, a statement of expectations for the Board, for the Board members, and we would receive feedback that we possibly aren't receiving through this open process. The data would be consolidated by a leading expert in higher education governance who would then provide us feedback as to whether or not our structure is right for this size of the university; whether we've got the right committee structure in their view, in the view of the trustees based on the feedback of the surveys.

Trustee Chavez asked if those findings would be made available to the public.

Chair Butler responded, all of it would be public. The process would involve an anonymous survey but the results would be public. It would be my intention that we would bring this to the Board and we would vote on it even though it is well underneath the financial threshold that requires Board approval. I would only do this if all the trustees wanted to do it. I would not support this unless we all were committed.

Trustee Marshall added I think after the problems that one of our area community colleges had at a Board level, would you say that we would come out of it as learners?

Chair Butler responded, well it's interesting you say that because the incoming new chair of the College of DuPage Board said the first thing that she would do is do a Board performance audit. So it is something that tends to be an exercise of Boards that are interested in making certain that they're operating at their optimal level. I think it would be a learning opportunity for us. I will be completely honest with you, this was one of the original reasons for the formation of the Governance Ad Hoc Committee. We want to engage in a process where there is dialog between the President and the Chair and the Vice Chair in an effort to see if we could make ourselves better while we were simultaneously asking that the university focus on fiscal responsibility and recruitment and retention. Let me table this for now and if the committee members have an interest in this, talk to me. We can bring it back to the table and continue the discussion.

Trustee Marshall asked if the agency could give us a little information on how some of their prior work has benefited their clients.

Chair Butler added, I know that there's a lot of knowledge on the Board and Trustees have formed their own personal opinions about the Board structure and the Board's relationship to the administration and whether or not the information flow is proper and the meeting schedule is proper; whether we're producing the right information in a timely manner prior to the meetings and this would give us a chance to consolidate all of that information and then have it reviewed and assessed by a third party that would help us produce an agenda that could improve our performance. I will provide more information to the committee so that you can learn more about it, but I wanted to gauge interest if there was a strong interest.

Agenda Item 7.e. Establish/Clarify Administrative Leave Policy

Agenda Item 7.f. Reform of all Standing Committee Charter/Charges (to include purpose, powers, duties, and the establishment of Committee benchmarks and other measures).

Agenda Item 7.g. Orientation and Continuing Professional Development

Agenda Item 7.h. Review of Criteria and Establish/Clarify Appeal Rights for Appeals to the Board

Agenda items 7.e. through 7.f. will be addressed at a later time.

Trustee Strauss asked about a draft item for 7.e. in particular. Chair Butler asked General Counsel Blakemore to prioritize the list according to staff time and commitment and return information to the committee when available.

Agenda Item 7.i. Naming Rights

General Counsel Blakemore responded, yes, however, some of the items are beyond the scope of the General Counsel's Office such as naming rights. President Baker currently has a group looking at naming rights and information will be shared later.

General Counsel Blakemore continued, we have something ready on Item 7.h. review of criteria established to clarify appeals rights, and, I believe that due process requirements typically involve appeals to a higher authority but there should be some limitations in terms of what a Board actually has in terms of its scope. We can certainly lay that out for you. As an update, Board orientation is now a lot more comprehensive following discussions with members of the Board. Action has already taken place in the form of an amendment of its travel expenses and regulations to allow people to choose professional development opportunities. Again, if there's further direction from the Board on that, we would be able to comply with that direction. I think the major issue is direction for us and how you want your committees, particularly as they relate to establishing benchmarks and the like. When the CARL Committee was created, as an example, it was formatted differently than the other committees and then there was discussion as to whether you would have all of your standing committees follow the same format. Again, we can put that on the table for discussion and if you want us to draft something that makes sense we can do that for the next meeting.

Trustee Strauss responded, I would rather see it and then react to it instead of having a general conversation about any of these. I think that's a way to advance our agenda here.

Chair Butler asked, can I get a sense of where the naming rights process is and will it ultimately come through this committee at some point?

General Counsel Blakemore responded, it certainly is in the purview of the committee. Naming rights has been on the agenda since day one. I think ultimately whatever recommendation or proposal will have to come to the Board for approval, this would be the committee of jurisdiction.

Catherine Squires added, President Baker has convened a group of us. We've been talking about this for a few weeks now. The Foundation has a very robust policy that includes our specifications and the regulations regarding naming. The Board of Trustees has two items that appear on your website are fairly broad. Our goal is to complement our policies to what should be under the purview of the Board of Trustees for the kinds of naming opportunities that are mentioned in your bylaws and our internal workgroup will make recommendations in a unified voice about how they would complement one another. We're somewhere along that line, not finished yet, however, if you provided us with a deadline, I'm sure we would meet it.

Chair Butler responded with the date of December 17th when the next meetings of both ad hoc committees is scheduled.

UAC Representative Greg Long asked, as 7.f. the reform of all standing committee charter charges moves forward can we potentially include a discussion of the role of the University Advisory Committee.

Chair Butler agreed.

Greg Long asked for a clarification on item 7.e. establish/clarify administrative leave policy.

General Counsel Blakemore responded, one of the issues that the committee wanted to look is whether there was a policy in place that established the entire scope of administrative leave on the administrative

side. Because the university is looking at leave policies generally, the thought was you shouldn't isolate administrative and since that's an ongoing process let's see what that is.

Chair Butler added, I would urge the committee to take some time to look at the bylaws and in particular the description and the mandate of the CARL standing committee and then compare that to the description of the other standing committees because that's what's behind item 7.f. The idea is to expand the description of the other standing committees in our bylaws to that format, to that more expansive format, which could also include more direct guidance in the role of the UAC representatives.

NEXT STEPS

Chair Butler added, that sums up our next steps.

OTHER MATTERS

No other matters were discussed.

NEXT MEETING DATE

The next meeting of the Ad Hoc on Governance Committee will be Thursday, December 17 from 3-5 p.m.

ADJOURNMENT

Chair Butler asked for a motion to adjourn. Trustee Strauss so moved and Trustee Boey seconded. The motion was approved. Meeting adjourned at 5:08 p.m.

Respectfully submitted,

Kathy Carey
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.