

**SPECIAL MEETING**  
**BOARD OF REGENTS**  
**NEVADA SYSTEM OF HIGHER EDUCATION**

System Administration, Las Vegas  
4300 South Maryland Parkway, Board Room

Thursday, February 17, 2022

Video Conference Connection from the Meeting Site to:  
System Administration, Reno  
2601 Enterprise Road, Conference Room  
and  
Great Basin College, Elko  
1500 College Parkway, Berg Hall Conference Room

Members Present:

Mrs. Carol Del Carlo, Chair Pro Tem  
Ms. Amy J. Carvalho, Vice Chair Pro Tem  
Mr. Joseph C. Arrascada  
Mr. Patrick J. Boylan  
Mr. Byron Brooks  
Dr. Patrick R. Carter  
Dr. Mark W. Doubrava  
Dr. Jason Geddes  
Mrs. Cathy McAdoo  
Mr. Donald Sylvantee McMichael Sr.  
Mr. John T. Moran  
Ms. Laura E. Perkins  
Dr. Lois Tarkanian

Others Present:

Dr. Melody Rose, Chancellor  
Ms. Crystal Abba, Vice Chancellor, Academic and Student Affairs and  
Community Colleges  
Dr. Constance Brooks, Vice Chancellor, Public Affairs and Advancement  
Mr. Caleb Cage, Vice Chancellor, Workforce Development  
Mr. Andrew Clinger, Chief Financial Officer  
Ms. Yvonne Nevarez-Goodson, Deputy General Counsel  
Ms. Keri Nikolajewski, Interim Chief of Staff to the Board  
Dr. Federico Zaragoza, President, CSN  
Dr. Kumud Acharya, President, DRI  
Ms. Joyce M. Helens, President, GBC  
Dr. DeRionne Pollard, President, NSC  
Dr. Karin M. Hilgersom, President, TMCC  
Dr. Keith E. Whitfield, President, UNLV  
Dr. J. Kyle Dalpe, Officer in Charge, WNC

Faculty senate chairs in attendance were: Ms. Shannon Sumpter, UNLV; and Dr. Amy Pason, UNR. Student body presidents in attendance were: Ms. Caren Yap, CSUN President, UNLV; Ms. Nicole Thomas, GPSA Vice President, UNLV; and Mr. Austin Brown, ASUN President, UNR.

Deputy Attorney General Rosalie M. Bordelove was also in attendance.

Chair Pro Tem Del Carlo called the meeting to order at 9:00 a.m. with all members present. Regent Brooks led the Pledge of Allegiance, and Chair Pro Tem Del Carlo provided the Land Acknowledgement.

1. Information Only – Public Comment

The Nevada Faculty Alliance provided a Petition to Reinstate NSHE Masking Requirements signed by faculty, staff, students, and family members of the Nevada System of Higher Education. (*PetitionToReinstateNSHEMasking02.17.22 on file in the Board Office.*)

The following individuals provided written public comment or spoke in support of reinstating the mask mandate:

- Emily Bird
- Natascha Boers
- Greta de Jong (*deJong.Greta02.17.22 on file in the Board Office.*)
- Katherine Keller (*Keller.Katherine02.17.22 on file in the Board Office.*)
- Dr. Amy Pason
- Todd Ruecker
- Erin Stiles (*Stiles.Erin02.17.22 on file in the Board Office.*)
- Shannon Sumpter
- Caren Yap

The following individual spoke in opposition to reinstating the mask mandate:

- Jace McNaught

The following individuals provided written public comment or spoke in opposition to a change in Board leadership:

- Alan Cruz (*Cruz.Alan02.17.22 on file in the Board Office.*)
- Lisa Levine
- Paul Moradkhan

The following individual provided written public comment in support of Regent McAdoo:

- Billie Crapo (*Crapo.Billie02.17.22 on file in the Board Office.*)

1. Information Only – Public Comment – (Continued)

The following individuals provided written public comment or spoke regarding their concerns related to actions and/or statements of racism, sexism, or intimidation made by certain Board members:

- Magdalena Callejas (*Callejas.Magdalena02.17.22 on file in the Board Office.*)
- Cassie Charles
- Laura Martin (*Martin.Laura02.17.22 on file in the Board Office.*)

Kent Ervin requested three Regents propose a new business agenda item requesting:

1. NSHE to follow recommendations of the CDC for institutions of higher education regarding non-pharmaceutical interventions against COVID-19.
2. Require each institution to implement the CDC recommendations as minimum requirements.
3. Recognize the authority for departments and instructors to go beyond the minimum requirements based on circumstances in their courses.

Jennifer Hostetler, Counsel for Chancellor Melody Rose, Lewis Roca Rothgerber Christie LLP, stated her disappointment in the investigation report. She believed the investigator should thoroughly vet employee complaints with each material allegation investigated and addressed. However, the investigation focused on gender discrimination and determining whether it occurred. It did not thoroughly vet the Chancellor's other claims, including violations of the Board of Regents *Handbook* and the Chancellor's contract. Notably, while the investigation revealed potential ethics violations, those violations have not been investigated and driven to a conclusion. If Chancellor Rose is retaliated against for filing the complaint and bringing forward her concerns and potential violations by Board members, she anticipated significant legal consequences. Chancellor Rose wants to be able to do her job and remains committed to focusing on Nevada students and taking steps to improve transparency, accountability, and student outcomes.

The following individuals encouraged the Board to improve its behavior, examine how it interacts with Chancellor Rose and the message this is sending to various communities:

- Amy Ayoub
- Kris Engelstad
- Beverly Rogers
- Maureen Schafer
- Lindy Schumacher
- Shannon Sumpter
- Caren Yap

2. Action Taken – Conclusion of Internal Complaint Investigation – The Board acknowledged the conclusion of the internal complaint investigation to effectuate the action taken by the Board at its November 12, 2021, meeting and to return Regent Cathy McAdoo and Regent Patrick R. Carter to their respective positions as Chair and Vice Chair of the Board.

2. Action Taken – Conclusion of Internal Complaint Investigation – (Continued)

Pursuant to Title 1, Article V, Section 3 of the Bylaws of the Board of Regents, a Special Meeting of the Board of Regents has been called at the request of Regent Joseph C. Arrascada, Regent Patrick J. Boylan, Regent Byron Brooks, Regent Patrick R. Carter, Regent Cathy McAdoo, and Regent Laura E. Perkins.

Chair Pro Tem Del Carlo stated the meeting relates to a confidential personnel investigation, and as such, the Board will not discuss the character or confidence of any Regent or the Chancellor. The agenda item requests whether the Board will acknowledge the conclusion of the investigation to effectuate the Board's action at its November special meeting to elect temporary Board officers. The Board's determination in favor of concluding the investigation would return Regents McAdoo and Carter to their respective positions as Chair and Vice Chair.

Chair Pro Tem Del Carlo asked if there were any Regents with disclosures or abstentions.

Regent Geddes (*requested verbatim comments*): I would like to announce that I was named in one of the addendums that we didn't see until January regarding the November 12<sup>th</sup> meeting, but I do not think there is any reason to abstain today, and I will elaborate on that later. So, I'm disclosing but I'm not abstaining.

Deputy Attorney General Rosalie M. Bordelove stated the Open Meeting Law requires agendas to include a clear and complete statement of the topics scheduled to be considered. In addition, the law requires written notice to be served on a person whose character, alleged misconduct, professional competence, or physical or mental health may be discussed. Because of these requirements, Deputy Attorney General Bordelove advised the Board to refrain from discussing the report details and considering the character of the Chancellor, the individual Regents, or any other individuals involved in the investigation. She also advised that action be limited to determining whether to consider the internal complaint and investigation concluded to return the Chair and Vice Chair to their respective leadership positions. Any further action regarding the investigation and report should be saved for a future meeting.

Deputy Attorney General Bordelove stated Nevada Revised Statutes require, as an elected body, a majority of all members must vote in favor of a motion for it to pass. Abstentions, on the advice of Counsel, may be removed from the quorum and voting requirements.

Vice Chair Pro Tem Carvalho stated the agenda item is filled with issues that she could not support. The item asks for acknowledgment of the investigation's conclusion but ties the return of previous leadership to that conclusion. There is no discussion, remediation, or indication of how the Board will move forward, which implies the Board will return to the previous environment. The Board has been the focus of scrutiny from many constituents. Most instances of bad behavior have been swept under the rug. Issues have not been addressed or resolved transparently. This does not foster a culture of continuous improvement. This motion appears to be the same treatment, and she cannot continue to

2. Action Taken – Conclusion of Internal Complaint Investigation – (Continued)

stand by and allow this to occur. The Board cannot continue to ignore the public's voice, including the philanthropic and business leaders in southern Nevada who have asked for an external investigation into ethics violations. Governor Sisolak has implored this Board to work collaboratively with Chancellor Rose, not the adversarial approach that many on the Board have taken. The students, employees, and constituents deserve better.

Regent Geddes (*requested verbatim comments*): Thank you, Chair Pro Tem, and I cannot disagree with Regent Carvalho any more, but I just want to state a few items, and I would move approval of item, agenda item two. But I just want to say a few things. There is...nothing in today's action says anything positive or negative about the Chancellor. We got a complaint, we had an investigation, per our policy we hired an outside firm to perform the investigation, and that investigation from the outside firm is complete. There were issues as many in public comment stated about possible ethical violations, but there were no confirmed ethical violations. And those possible violations are referred to the Ethics Commission, and honestly, if every governing agency in the state of Nevada had to stop its business because of possible ethical violations that are reported to the State Ethics Commission, city governments, school districts, Board of Regents would shut down because they happen all the time. So there has been a complaint filed, and that complaint will be investigated by the Ethics Commission, and if they rule, at that point in time, we take action. We don't get paralyzed by complaints and allegations. And as I said when the first complaint came out in October, and again I mentioned earlier that I didn't know about the subsequent complaints until way after we asked the attorney, but allegations are not fact, and if we go through the independent investigator's report regarding Title VII there were no findings of fact that could be supported. So, I mean, I am here, and I have been here for many years now and too many years that I will mention, but the reason I serve is for the students, the staff, the faculty, and no action today in accepting this report impacts anybody other than we accept the report, and we restore the leadership that we approved and voted on back in June. And again, I appreciate you and Regent Carvalho stepping up and acting as Pro Tem and getting us through this period of time, but I think it is responsible for us to go back to votes that we have taken, and if we need to make changes, we have votes coming up in June, and those changes will occur in June. So, I mean, when I look at the November 12<sup>th</sup> agenda, the Deputy Attorney General Bordelove and our Deputy General Counsel Nevarez-Goodson crafted the agenda item, and the way that agenda item was written was once the complaint was resolved, that Regents McAdoo and Carter would be reinstated to their positions, and then we would go forward. Since we got the complaint, we all received the complaint, and very unfortunately, with so many of our attorney-client documents that go out, they have been leaked to the press. So, I am not very happy with that all the way along, and I would hope that my colleagues and our staff would not release that information since it is attorney-client privileged, but it is out there, and it's in the public, and so everybody has seen it, and we saw that there was no actual violations per the independent third-party report where our staff recused themselves from anything. So, there may be ethical issues that they'll have to look into, but those don't impact what we are doing today, and anything we do today again does not impact Chancellor Rose in any way other than accepting this report. I mentioned allegations are not facts, and if you go through that report and you look at it, a lot of the allegations were not substantiated, and

2. Action Taken – Conclusion of Internal Complaint Investigation – (Continued)

we can't consider those facts in which we have to take action on it. And the one thing I want to point out and it's kind of a question, the advice we got yesterday from our Deputy General Counsel that seven of us would have to abstain because we are named in the complaint, I just find incredible. I don't know if you can just name people in complaints, and then they are no longer allowed to vote on issues without there being any fact or definition of what is going on there. And with that, I do want to ask a question of our Deputy Counsel because she stated in that memo that did get leaked and shouldn't have gotten leaked, but it did, that the seven of us couldn't vote today, but when I go down to Nevada Revised Statutes 281A.420 discussion disclosure they, the Legislature and the law says that as publicly elected officials, we have to vote unless there is a firm conflict that keeps us from voting. And each one of us, the seven of us who were told that we had to abstain...I mean, I represent more than 230,000 citizens of Nevada...and if you tell seven of us we have to abstain, you are talking about 2.2-2.3 million citizens of Nevada that aren't represented in today's debate and discussion. And I just find that...it's unsatisfactory to me that we would just exclude representation from everybody based on that opinion. And the question for Deputy Counsel, and then I'll wrap up Madam Chair, was when I go down to NRS 281A.420, again it says we have to vote and the only reason to abstain from voting is that: a) the public officer's acceptance of a gift or loan; b) the public officer's significant pecuniary interest; or c) the public officer's commitments in a private capacity to the interests of another person. And nowhere in the complaint or in the opinion, and in my personal case, I can't speak for the other six that were listed, there is nothing that I have done that violates any of those three provisions, and that's why I am not abstaining, and I am going to vote, and with that, I would move approval of agenda item number two.

Regent Geddes moved approval to acknowledge the conclusion of the internal complaint investigation to effectuate the action taken by the Board at its November 12, 2021, meeting and to return Regent Cathy McAdoo and Regent Patrick R. Carter to their respective positions as Chair and Vice Chair of the Board. Regent Boylan seconded.

Regent Brooks stated he would not abstain from the vote for the reasons already explained by Regent Geddes. He said is unaware of anything that needs to be added to the investigation concerning the complaint, nor is he aware of any items in the complaint that haven't been addressed. He acknowledged that outside System Counsel Scott Abbott hired Fenmore Craig to investigate the claims. Mr. Abbott pointed to a recommendation from the Attorney General's Office that an agenda item be framed calling the Board to action to declare the internal investigation concluded and restore prior leadership in accordance with the action taken at the November 12, 2021, special meeting. Additionally, Fenmore Craig uses the language concluded in the report several times and specifically titled a section as "conclusion."

2. Action Taken – Conclusion of Internal Complaint Investigation – (Continued)

Regent Geddes (*requested verbatim comments*): I just would like to request that all of my remarks are included verbatim into the minutes to fully disclose why I'm not abstaining today and my reasoning, so I would like that to be included there. But I just want to circle back because it was actually a question for Deputy Counsel was when I looked at NRS 281A.420, 3a, b, and c, the three reasons we should abstain, I cannot find any of those three reasons in the complaint or why any of us would abstain. And I would just like Deputy Counsel Nevarez-Goodson to say on the record why, without any of those three conditions, why any of us should abstain cause, as I did email her yesterday and told her I was gonna complain about this, but I see no reason for us to abstain, so I know she's had time to do more homework and kick me because I am a chemist and not a lawyer, but I would just like her to address that issue before we get to a vote. Thank you.

Deputy General Counsel Nevarez-Goodson stated abstention and disclosure should be tied to a conflict of interest which the ethics law defines as a pecuniary interest, a commitment in a private capacity to the interest of others, or the acceptance of a gift or a loan. Her advice for disclosure and abstention was based upon the issues and the nature of the agenda item that when a person is named in an investigation and subsequently investigated, it affects their personal and pecuniary interests. Specifically, she noted that a regent has a pecuniary interest in the position they hold as a regent as well as any potential liability that may result as a matter of such an investigation. The nature of the agenda item is whether the Board feels the investigation should be concluded, so it would be self-serving to vote to conclude an investigation in which one is personally named. Regent Geddes is correct that the ethics law calls out a provision where it does want to encourage and not require public officials to vote, so they do not divest their constituents of their representative voice in government. But the law is clear that such encouragement to vote is only true where there is no conflict of interest. To avoid a possible ethics complaint, she recommended that the Regents named and subsequently investigated disclose and abstain because she did not want the perception that voting to conclude the investigation would affect their interest. She also pointed out that ethics statutes must be read together in unison, and there are multiple other ethics statutes set forth in NRS 281A.400 that reference personal interests not specifically tied to pecuniary interests where regents must not act in an official capacity to affect their personal interests.

Regent Perkins agreed with Regent Geddes' comments. She will not abstain from the vote because she did not violate any of the issues mentioned in the statute.

In response to questions from Regent Moran related to disclosure and abstention, Deputy General Counsel Nevarez-Goodson confirmed that her advice was to recommend disclosure and abstention for those Regents named and investigated in the internal complaint. Her advice also included information regarding the Safe Harbor provisions of the Ethics Law, which protect regents from findings of willful violations of the law if they comply with the advice of legal counsel.

Regent Moran agreed with the legal analysis and recommendations and believed it is unfortunate that some will not follow the advice.

2. Action Taken – Conclusion of Internal Complaint Investigation – (Continued)

Regent Moran also agreed with Vice Chair Pro Tem Carvalho's comments. Unfortunately, the Board is now in a position where its time is being taken up by things that do not move the System forward. In addition, there is a communication gap between the Board, Chancellor Rose, and the Chancellor's Cabinet. Therefore, Regent Moran stated he could not support the motion and was disappointed in his colleagues.

Regent Boylan noted he was also named in the investigation. He takes the advice of Counsel seriously, but he will vote on the matter.

Regent Brooks left the meeting.

Chair Pro Tem Del Carlo commented that she was uncomfortable concluding the report with the possible ethics violations noted in the report. Leadership is being restored before a plan is crafted to move forward. This action precludes the Board from deciding whether any additional investigation is needed. Stakeholders are watching the Board, especially the students, staff, and faculty. The whole reason the Board is elected is to advance higher education and research in Nevada. There is an opportunity to come together as a Board. She is disappointed that her colleagues are not taking the advice of Counsel. She will not support the motion.

Regent Brooks entered the meeting.

Regent Moran left the meeting.

Motion carried via a roll call vote. Regents Arrascada, Boylan, Brooks, Carter, Doubrava, Geddes, McAdoo, Perkins, and Tarkanian voted yes. Chair Pro Tem Del Carlo, Vice Chair Pro Tem Carvalho, and Regent McMichael voted no. Regent Moran was absent.

3. Information Only – New Business

Regent Geddes said he appreciated the work of Chair Pro Tem Del Carlo and Vice Chair Pro Tem Carvalho and hoped they would work with Board leadership and the Chancellor to address many of the issues.

Regent Geddes requested that Board leadership hire temporary outside legal counsel for the Board until the Chief of Staff and Special Counsel to the Board Search is complete.

Regent Geddes requested that vaccine and mask mandates be revisited. In addition, he asked that the Task Force design policy standards based on CDC recommendations related to mandatory vaccine and mask mandates.

Vice Chair Pro Tem Carvalho requested a discussion to create a governance committee. She also asked for a discussion related to the possible violations of the Board bylaws.



3. Information Only – New Business – (Continued)

Regent Brooks appreciated that authorization was given to conceal carry in the System office after substantial threat assessments were recognized by the Southern Command. As a Veteran, he took an oath to protect and defend the constitution and the public, including fellow Regents, staff, and the Chancellor. Regent Brooks asked that an agenda item be brought forward in support of the Board of Regents waiving privilege regarding the closed meeting on December 30, 2021, to release the video to the public.

Regent McMichael requested a reinstatement of the mask mandate.

Chair Pro Tem Del Carlo asked that the Board discuss ways to curtail confidential information leaks.

4. Information Only – Public Comment

Nicole Thomas stated students, faculty and staff are exhausted and not being paid enough, but here is another meeting where some Regents have maintained lower ethical standards than the student governments. If she belongs to a club or organization that benefits in any way from an action or a vote, she abstains. She understands it as a clear directive to not participate in anything that she may benefit from in the fear that she may commit an ethics violation. She is concerned that some Regents feel no concern to vote to install themselves in leadership positions while there is an active call for an ethics investigation. She is frustrated with the lack of inaction.

Regent Carter left the meeting.

Caren Yap stated she was shocked by the Board's bias and clickiness. If there is a conflict of interest or the vote benefits you, you do not vote. She is baffled that this does not translate to this governing body. She can respect some Regents' refusal to abstain even when there is clear bias, but Regents McAdoo and Carter not doing so when the vote benefits them is a disservice to the constituents.

Lisa Levine observed that several Regents had not followed legal advice to recuse themselves.

Chair Pro Tem Del Carlo pledged to do everything she could to move the Board forward, work with all her colleagues and find a collegial way to move forward.

The meeting adjourned at 10:20 a.m.

Prepared by:

Angela R. Palmer  
Special Assistant and Coordinator  
to the Board of Regents

Submitted for approval by:

Keri D. Nikolajewski  
Interim Chief of Staff  
to the Board of Regents

*Approved by the Board of Regents at its April 22, 2022, meeting.*