

SPECIAL MEETING
BOARD OF REGENTS
NEVADA SYSTEM OF HIGHER EDUCATION

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

Thursday, June 30, 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. Cathy McAadoo, Chair
Dr. Patrick R. Carter, Vice Chair
Mr. Joseph C. Arrascada
Mr. Patrick J. Boylan
Mr. Byron Brooks
Ms. Amy J. Carvalho
Dr. Mark W. Doubrava
Dr. Jason Geddes
Mr. Donald Sylvantee McMichael Sr.
Mr. John T. Moran
Ms. Laura E. Perkins
Dr. Lois Tarkanian

Members Absent:

Mrs. Carol Del Carlo

Others Present:

Ms. Crystal Abba, Officer in Charge
Mr. Andrew Clinger, Chief Financial Officer
Ms. Renee Davis, Acting Vice Chancellor, Academic and Student Affairs
and Community Colleges
Mr. James J. Martines, Interim Chief General Counsel
Ms. Keri Nikolajewski, Interim Chief of Staff to the Board
Ms. Sherry Olson, Director of Human Resources
Ms. Tina Russom, Deputy General Counsel
Dr. Federico Zaragoza, President, CSN
Dr. Vic Etyemezian (*sitting in for 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

Others Present: *(Continued)*
Dr. Jeff Thompson *(sitting in for Mr. Brian Sandoval, President, UNR)*
Dr. J. Kyle Dalpe, Interim President, WNC

Faculty senate chairs in attendance were: Dr. Samantha Jewell, NSC; Dr. Virginia Irintcheva, TMCC; and Dr. Amy Pason, UNR. Student body president in attendance was: Ms. Dionne Stanfill, ASUN President, UNR.

Chair McAdoo called the meeting to order at 1:00 p.m. with all members present except Regents Del Carlo, Doubrava, Perkins, and Tarkanian. Regent Arrascada led the Pledge of Allegiance and Chair McAdoo provided the Land Acknowledgement.

1. Information Only – Public Comment

Regent Tarkanian entered the meeting.

The following individuals provided written Public Comment or spoke in support of a full repeal of the NSHE Code (Title 2, Chapter 12) which sets forth policies and procedures regarding the COVID-19 vaccine requirement for all NSHE employees:

- Angela Ash *(Ash.Angela06.30.22 on file in the Board Office.)*
- Jon Carpineta *(Carpineta.Jon06.30.22 on file in the Board Office.)*
- Terresa Mettler *(Mettler.Terresa06.30.22 on file in the Board Office.)*
- Gloria Sharlein

The following individuals provided written Public Comment in opposition to the appointment of Richard Hinckley as Chief of Staff and Special Counsel to the Board:

- Glynda White *(White.Glynda06.30.22 on file in the Board Office.)*

Regent Doubrava entered the meeting.

Regent Boylan stated he agreed with the written public comment by Sondra Cosgrove (On file in the Board Office for June 29, 2022, ad hoc Chief of Staff and Special Counsel to the Board Search). He believed the search was not properly conducted and requested advice on how to proceed. Interim Chief General Counsel Martines stated that this discussion would be more appropriate under New Business.

2. Approved – Appointment, Chief of Staff and Special Counsel to the Board of Regents – The Board approved the appointment of Robert G. Kilroy as Chief of Staff and Special Counsel to the Board of Regents consistent with the terms outlined in the offer letter. *(Ref. BOR-2b and Supplemental Material on file in the Board Office. Other references on file in the Board Office include Refs. BOR-2a and BOR-2c.)*

Committee Chair Moran stated that the ad hoc Chief of Staff and Special Counsel to the Board Search Committee interviewed three highly qualified candidates for the Chief of Staff and Special Counsel to the Board of Regents position. The Committee unanimously selected Robert G. Kilroy to be presented to the full Board for consideration.

2. Approved – Appointment, Chief of Staff and Special Counsel to the Board of Regents – (Continued)

Regent Moran moved approval of the appointment of Robert G. Kilroy as Chief of Staff and Special Counsel to the Board of Regents consistent with the terms outlined in the offer letter. Regent McMichael seconded.

In response to a question from Regent Boylan about his options to not vote on the motion, Interim Chief General Counsel Martines stated that a Regent has a duty to vote on matters that come before the Board. The only time a Regent would not vote is if the Regent chose to disclose and abstain on the record or if the Regent were absent.

Regent Boylan stated he would abstain because he did not think the search was ethical.

Regent Moran stated that all Regents received the Supplemental Material and that the posted salary is \$208,942, with a 12-month timeframe for the engagement.

Regent Brooks asked whether this was a term of service or a contract. Interim Chief General Counsel Martines responded that this is an A contract, standard faculty 12-month position. Therefore, there is a contract of employment, but the main terms of the agreement are outlined in the NSHE Code. Anything outside of the Code will require an addendum to the contract.

Regent Perkins entered the meeting.

Interim Chief General Counsel Martines clarified the Open Meeting Law Manual published by the Attorney General's Office states, "The Legislature encourages appointed or elected members of public bodies to vote – not abstain. NRS 281A.420(4)(b) states: "Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs the provisions of NRS 281A.420 are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, the public officer's pecuniary interest, or the public officer's commitment in a private capacity to the interests of others."

Interim Chief General Counsel Martines stated that if any Regent feels their situation in that context would be permissible for an abstention, then an abstention would be appropriate; otherwise, a no vote would be more appropriate.

Interim Chief General Counsel Martines recommended that Regents vote yes or no on the item, but Regents must make their own decision.

2. Approved – Appointment, Chief of Staff and Special Counsel to the Board of Regents – (Continued)

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

Mr. Kilroy expressed his gratitude to the Committee and extended his appreciation to the Board of Regents for trusting the process.

3. Approved – Procedures and Guidelines Manual Revision, Residence Hall and Food Service Rates, UNR at Lake Tahoe – The Board approved a revision to the *Procedures and Guidelines Manual* (Chapter 7, Section 14) to include residence hall and food service rates for academic year 2022-2023 at the University of Nevada, Reno at Lake Tahoe location. (Ref. BOR-3 on file in the Board Office.)

UNR Vice President of Administration and Finance Vic Redding presented a revision to the *Procedures and Guidelines Manual* (Chapter 7, Section 14) to include residence hall and food service rates for academic year 2022-2023 at the University of Nevada, Reno at Lake Tahoe location.

Regent Geddes moved approval of a revision to the *Procedures and Guidelines Manual* (Chapter 7, Section 14) to include residence hall and food service rates for academic year 2022-2023 at the University of Nevada, Reno at Lake Tahoe location. Regent Arrascada seconded.

In response to a question from Regent Arrascada related to rate comparisons between the primary UNR campus and the Lake Tahoe campus, Vice President Redding stated the Lake Tahoe rates are slightly higher due to the smaller scale of the facility.

Regent Carvalho asked for clarification related to the declining balance per year. Vice President Redding said the statement is related to the existing rates at the UNR main campus and not the Lake Tahoe facility. But to clarify, as part of a purchased meal plan, students can use several alternate dining options on the main campus.

Motion carried. Regent Del Carlo was absent.

4. Approved – Handbook Revisions, Finance and Administration Charter and Financial Policies: Operating Budgets – The Board approved revisions to the Finance and Administration Charter (*Handbook*, Title 4, Chapter 9, Section B) and the Financial Policies: Operating Budgets (*Handbook*, Title 4, Chapter 9, Section C) to define the purpose, roles and responsibilities of the Business Officers Council. (Ref. BOR-4 on file in the Board Office.)

4. Approved – Handbook Revisions, Finance and Administration Charter and Financial Policies: Operating Budgets – (Continued)

Chief Financial Officer Andrew Clinger, on behalf of the NSHE Business Officers Council, presented revisions to the Finance and Administration Charter (*Handbook*, Title 4, Chapter 9, Section B) and the Financial Policies: Operating Budgets (*Handbook*, Title 4, Chapter 9, Section C) to define the purpose, roles and responsibilities of the Business Officers Council.

Regent McMichael moved approval of revisions to the Finance and Administration Charter (*Handbook*, Title 4, Chapter 9, Section B) and the Financial Policies: Operating Budgets (*Handbook*, Title 4, Chapter 9, Section C) to define the purpose, roles and responsibilities of the Business Officers Council. Regent Boylan seconded.

In response to a question from Regent Perkins related to how they will make sure the Council is doing what it is supposed to do, Chief Financial Officer Clinger stated the reason to codify the revision is to create accountability to ensure the Business Officers Council is accomplishing the things outlined in the Charter.

Motion carried. Regent Del Carlo was absent.

5. Approved – Handbook Revision, NSHE Capital Improvement Budget Process – The Board approved a revision to the NSHE Capital Improvement Budget Process (*Handbook*, Title 4, Chapter 10, Section 26(6)) to include the review and recommendation of a system-wide capital improvement project request by the Business Officers Council and elimination of the life-cycle cost analysis. (Ref. BOR-5 on file in the Board Office.)

Chief Financial Officer Clinger presented a revision to the NSHE Capital Improvement Budget Process (*Handbook*, Title 4, Chapter 10, Section 26(6)) to include the review and recommendation of a system-wide capital improvement project request by the Business Officers Council and elimination of the life-cycle cost analysis.

In response to a question from Vice Chair Carter about “Regents’ priority areas” mentioned in Section 6c, Chief Financial Officer Clinger said the statement is a part of the space analysis that is brought to the Regents every two years.

Regent Geddes asked if there was a way to make an analysis and report on new facilities or retrofits that lists the life-cycles of significant systems to ensure that NSHE is not looking for low-cost, first-cost. Chief Financial Officer Clinger stated NSHE is bound by the State Public Works Board’s policy, but an amendment could be made to this policy to address Regent Geddes’ concerns.

5. Approved – Handbook Revision, NSHE Capital Improvement Budget Process – (Continued)

Regent McMichael moved approval of revisions to the Finance and Administration Charter (*Handbook*, Title 4, Chapter 9, Section B) and the Financial Policies: Operating Budgets (*Handbook*, Title 4, Chapter 9, Section C) to define the purpose, roles and responsibilities of the Business Officers Council. Regent Tarkanian seconded. Motion carried. Regent Del Carlo was absent.

6. Action Taken – Code Revision, Emergency COVID-19 Vaccination Policy, and Resolution Relating to Coronavirus Safety Measures – The Board repealed NSHE Code (Title 2, Chapter 12) which sets forth policies and procedures regarding the COVID-19 vaccine requirement for all NSHE employees and approved the Resolution as revised and read into the record by Interim Chief General Counsel Martines. (Refs. BOR-6a and BOR-6b on file in the Board Office.)

Officer in Charge Crystal Abba and Interim Chief General Counsel Jimmy Martines presented a recommendation to repeal NSHE Code (Title 2, Chapter 12) which sets forth policies and procedures regarding the COVID-19 vaccine requirement for all NSHE employees. The proposed Code revision was presented for initial discussion at the May 25, 2022, special Board meeting. They also recommended a Resolution that 1) restates NSHE’s commitment adhering to any and all state directives and regulatory mandates regarding the coronavirus; 2) encourages students, faculty and staff to stay up to date on vaccines and to use masks when appropriate; and 3) acknowledges that it is within the purview of the President of each institution to assess the need for utilization of masks on campus based on guidance from the CDC, State Board of Health and local health districts, and implement one or more campus mask mandates when the President determines that doing so is in the best interest of the health and safety of the institution’s students, faculty and staff.

Regent Geddes believed the mandate was necessary for the safety of faculty, staff, and students and that NSHE needed to ask the State Board of Health and Governor to expand vaccine requirements to include any health precautions that the President determines necessary based on the community, county, or state health risks.

Officer in Charge Abba stated it is possible to make easy revisions to the Resolution. Interim Chief General Counsel Martines crafted an additional statement within the “WHEREAS” statement that would broaden that reference to the campus mask mandates. With permission, they can move in that direction.

6. Action Taken – Code Revision, Emergency COVID-19 Vaccination Policy, and Resolution Relating to Coronavirus Safety Measures – (Continued)

Interim Chief General Counsel Martines suggested the following:

RESOLVED, that each institution President may, based on the aforementioned assessment based on regional health data, implement ~~one or more campus mask mandates~~ **appropriate measures to ensure successful institutional operations** when the President determines that doing so is in the best interest of the health and safety of the institution's students, faculty and staff;

Regent Geddes pointed out another mention of mask mandates on page two and wanted to ensure the two were consistent.

Interim Chief General Counsel Martines suggested the following:

RESOLVED, that it is within the purview of the President of each institution to assess the need for ~~utilization of masks~~ **appropriate measures** on campus based on guidance from the CDC, State Board of Health and local health districts;

Chair McAdoo requested a break to allow Officer in Charge Abba and Interim Chief General Counsel Martines to confer.

The meeting recessed at 1:59 p.m. and reconvened at 2:05 p.m. with all members present except Regent Del Carlo.

Officer in Charge Abba explained the *Handbook* references the President's role and responsibility to ensure a safe environment for students, faculty, and staff. This Resolution asserts that and calls out the specific example of the mask mandate because as it was developed, they felt it was a reasonable middle ground. However, hearing from Regent Geddes and the faculty, it is important to understand that many circumstances cannot be anticipated. Even if the Resolution is not approved, there is nothing to preclude an institution from putting safety measures in place. In the way the Resolution is crafted, it is expected that the decision will be based on the CDC data.

Interim Chief General Counsel Martines read into the record:

RESOLVED, that it is within the purview of the President of each institution to assess the need for ~~utilization of masks~~ **appropriate measures** on campus based on guidance from the CDC, State Board of Health and local health districts;

RESOLVED, that each institution President may, based on the aforementioned assessment based on regional health data, implement ~~one or more campus mask mandates~~ **appropriate measures to ensure successful institutional operations** when the President determines that doing so is in the best interest of the health and safety of the institution's students, faculty and staff;

6. Action Taken – Code Revision, Emergency COVID-19 Vaccination Policy, and Resolution Relating to Coronavirus Safety Measures – (Continued)

Interim Chief General Counsel Martines clarified that there are no mask mandates or vaccine requirements in Nevada. If the State Board of Health or the Governor's Office provided directives, everyone would have to comply.

Regent Boylan clarified there is a difference between mandates and Resolutions. Interim Chief General Counsel Martines stated this is a Resolution for the Board to express its position. It does not create any new authority. Instead, it provides the Board's position and the current authority that rests with the Presidents pursuant to the *Handbook*.

Regent Brooks stated he is in favor of anything that needs to be done to repeal the outdated policy that NSHE currently has. However, in terms of the Resolution, why would an institution provide more guidance or mandate than the state requires? Additionally, while the Presidents must have the authority to implement best practice measures for their campuses, why would there be more at an individual campus than in Nevada? Interim Chief General Counsel Martines stated it is essential to acknowledge that certain things can happen on a campus that could require a President to use their authority to ensure a safe and successful campus operation.

Regent Doubrava thanked Officer in Charge Abba, the Presidents, and Interim Chief General Counsel Martines for their hard work. As a physician, he believes the vaccine mandate should be kept in place.

Regent Moran stated that the Presidents already have the discretion and authority to make choices for their institutions.

Regent Brooks left the meeting.

Regent Carvalho stated she is in favor of the Code repeal. She believed the Office of the Governor should be added to the RESOLVED statement on page two. Interim Chief General Counsel Martines stated they had not included the Governor's Office because they wanted to make clear that the Presidents make decisions on the recommendation of the subject matter experts.

Regent Brooks entered the meeting.

Regent Arrascada asked if this Resolution allows the Presidents to require on-campus faculty to remain on campus to teach classes. Interim Chief General Counsel Martines stated that this does not provide additional authorization. It just points out the authority that already exists. Officer in Charge Abba responded that a President could not simply change how a class is taught.

6. Action Taken – Code Revision, Emergency COVID-19 Vaccination Policy, and Resolution Relating to Coronavirus Safety Measures – (Continued)

Regent Carvalho requested that “health and safety” be added to the following RESOLVED:

RESOLVED, that each institution’s President may, based on the aforementioned assessment based on regional health data, implement ~~one or more campus mask mandates~~ **appropriate health and safety measures to ensure successful institutional operations** when the President determines that doing so is in the best interest of the health and safety of the institution’s students, faculty and staff;

Interim Chief General Counsel Martines stated that the decisions are not health and safety decisions. They are decisions by the President that affect the successful operation of the institution. Health and safety are a part, but it is not a strict health and safety determination.

Regent McMichael moved approval to repeal NSHE Code (Title 2, Chapter 12) which sets forth policies and procedures regarding the COVID-19 vaccine requirement for all NSHE employees, and approval of the Resolution as revised and read into the record by Interim Chief General Counsel Martines. Regent Brooks seconded.

(For purposes of the record:

RESOLVED, that it is within the purview of the President of each institution to assess the need for ~~utilization of masks~~ **appropriate measures** on campus based on guidance from the CDC, State Board of Health and local health districts;

RESOLVED, that each institution President may, based on the aforementioned assessment based on regional health data, implement ~~one or more campus mask mandates~~ **appropriate measures to ensure successful institutional operations** when the President determines that doing so is in the best interest of the health and safety of the institution’s students, faculty and staff;)

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

7. Approved – ad hoc Committee to Review the Roles and Responsibilities of the Chancellor – The Board approved establishing the ad hoc Committee to Review the Roles and Responsibilities of the Chancellor and its charge. (Ref. BOR-7 on file in the Board Office.)

Under *Title I, Article VI, Section 4*, the Board considered establishing the ad hoc Committee to Review the Roles and Responsibilities of the Chancellor and establishing its charge. The Chancellor is the chief executive officer and ex-officio treasurer of the Nevada System of Higher Education and is responsible to the Board of Regents for the administration of the Nevada System of Higher Education, the implementation of Board policies and directives, and the financial management of the Nevada System of Higher Education. Before beginning the search for a permanent NSHE Chancellor, the Board may establish a special committee charged with reviewing the roles and responsibilities of the Chancellor.

Regent Boylan moved approval to establish the ad hoc Committee to Review the Roles and Responsibilities of the Chancellor and its charge. Regent Geddes seconded.

Regent Geddes believed it was an excellent time to review the roles and responsibilities.

Regent Doubrava left the meeting.

Motion carried. Regents Del Carlo and Doubrava were absent.

Chari McAdoo stated that today is Officer in Charge Abba's last day serving as Chancellor. She has done an incredible job.

8. Information Only – New Business

Regent Geddes requested the Chief General Counsel investigate the Board's constitutional authority to determine vaccine mandates on campus.

Vice Chair Carter requested: 1) a salary schedule policy revision; and 2) establishing a Board of Regents Executive Committee to revise policies that allow the Chancellor and Board leadership to operate in a vacuum.

Regent Moran requested: 1) a process to establish Regent reviews; and 2) creating an ad hoc Committee to visit the roles, responsibilities, and obligations of Board membership.

Regent Carvalho requested: 1) a revision to the Business, Finance and Facilities Committee charge to include a strengthened relationship between the Business Officers Council and the Business, Finance and Facilities Committee; and 2) a review of the Code regarding purchasing specific to contracts.

8. Information Only – New Business – (Continued)

Regent Arrascada requested a review of Title 2, Chapter 5, Section 5.5.1 provisions of the periodic four-year review of the NSHE salary schedules, including the process currently in place for evaluating salary schedules used for hiring purposes to ensure they are market competitive.

Regent Boylan requested the Chief General Counsel investigate the process of the recent hiring of the Chief of Staff and Special Counsel to the Board.

9. Information Only – Public Comment – None.

The meeting adjourned at 2:51 p.m.

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

Submitted for approval by: Robert G. Kilroy
Chief of Staff & Special Counsel
to the Board of Regents

Approved by the Board of Regents at its October 14, 2022, meeting.