

SPECIAL MEETING
BOARD OF REGENTS
NEVADA SYSTEM OF HIGHER EDUCATION

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

Thursday, January 12, 2023
Friday, January 13, 2023

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:

Mr. Byron Brooks, Chair
Mr. Joseph C. Arrascada, Vice Chair
Mr. Patrick J. Boylan
Mrs. Susan Brager
Ms. Heather Brown
Mrs. Amy J. Carvalho
Mrs. Michelee Cruz-Crawford
Mrs. Carol Del Carlo
Mr. Jeffrey S. Downs
Ms. Stephanie Goodman
Mr. Donald Sylvantee McMichael Sr.
Ms. Laura E. Perkins
Dr. Lois Tarkanian

Others Present:

Mr. Dale A.R. Erquiaga, Acting Chancellor
Mr. Andrew Clinger, Chief Financial Officer
Ms. Renee Davis, Interim Vice Chancellor, Academic and Student Affairs
and Community Colleges
Ms. Lynda P. King, Associate General Counsel
Mr. James J. Martines, Chief General Counsel
Ms. Keri Nikolajewski, Interim Chief of Staff to the Board
Mr. Alejandro Rodriguez, Director of Government Relations
Mr. Joe Sunbury, Chief Internal Auditor
Mr. Michael B. Wixom, Special Counsel for Real Property
Dr. Kumud Acharya, President, DRI
Ms. Joyce M. Helens, President, GBC
Dr. DeRionne Pollard, President, NSC

Faculty senate chairs in attendance were Ms. Tracy Sherman, CSN (*Chair, Council of Faculty Senate Chairs*), and Dr. Brittany Kruger, DRI.

Nevada Chief Deputy Attorney General Rosalie Bordelove and Deputy Attorney General Joel Bekker were also in attendance.

Chair Brooks called the meeting to order at 1:00 p.m. on January 12, 2023, with all members present. Regent Goodman led the Pledge of Allegiance, and Vice Chair Arrascada provided the Land Acknowledgement.

1. Information Only – Public Comment

The following individual provided written public comment congratulating and welcoming the new Regents:

- Jon Carpineta (*Carpineta.Jon0123 on file in the Board Office.*)

The following individual provided written public comment calling on the Board to change the UNLV nickname/mascot:

- Burke Scot Beu (*Beu.BurkeScot0123 on file in the Board Office.*)

The following individual provided in-person and written public comment giving a brief explanation of academic freedom and shared governance:

- Kent Ervin (*Ervin.Kent0123 on file in the Board Office.*)

The following individual provided written public comment providing notice that multiple NSHE institutions are actively engaged in violations of NPRA and the cover-up of violent campus crimes:

- Neal O’Flaherty (*O’Flaherty.Neal0123 on file in the Board Office and attached to these minutes, as requested.*)

The following individual provided in-person public comment giving a background of the Inclusion, Diversity, Equity and Access Council, offering suggestions, and welcoming the new Regents:

- Dana Trimble
- Marcela Rodriguez-Campo

2. Information Only – Regent Orientation: Part I – A Regent orientation was conducted to provide the necessary framework for new members of the Board of Regents to begin their work on the Board. The orientation also provided a refresher course for continuing members of the Board. Presentations were made on major areas of responsibility, including Board governance, the roles of the Regents and Chancellor, and fiduciary and public trust duties.

- 2a. Welcome and Opening Remarks – Chair Byron Brooks welcomed participants to the meeting and offered opening remarks.

2. Information Only – Regent Orientation: Part I – (Continued)

- 2b. Board Governance and the Roles of Regent and Chancellor – Chair Byron Brooks and Acting Chancellor Dale A.R. Erquiaga led a discussion on the role of the Board as the governing body of the Nevada System of Higher Education (NSHE), the role of a Regent in furthering the mission and goals of the NSHE and its institutions, and the role of the Chancellor as the Chief Executive Officer of the NSHE. (Ref. BOR-2b on file in the Board Office.)

In response to a question from Regent Perkins regarding ad hoc committees, Acting Chancellor Erquiaga responded ad hoc committees are created by the Board, governed by the Bylaws, and appointed by the Chair of the Board.

Regent Del Carlo believed committees needed to be reviewed and modified as necessary. Acting Chancellor Erquiaga agreed and encouraged the Regents to examine the standing committees and determine their continued viability and necessity.

Regent Del Carlo stated that due to the pandemic, committees now meet consecutively. She felt it was essential to continue the practice because all Regents should know what is happening in the committees.

In response to Regent Brown's question about where Cabinet members reside, Acting Chancellor Erquiaga responded that three live in Reno and one in Las Vegas. All work in both offices, but he would not say that their time is split evenly between the offices. Acting Chancellor Erquiaga stated he does have a residence in Las Vegas and does split his time evenly between Reno and Las Vegas.

Regent Perkins asked where the Director of Government Relations was located. Acting Chancellor Erquiaga stated the Director of Government Relations is in Las Vegas and reports directly to the Chief Financial Officer.

Regent Carvalho asked Acting Chancellor Erquiaga to elaborate on the difference between regular and real estate contracts. Acting Chancellor Erquiaga stated real estate transactions come to the Chancellor and the Board of Regents. The Board will receive a report of NSHE's real property in March and to what institution they are assigned. Real estate transactions are complex.

Regent Boylan requested to know where real estate transaction money has gone. Acting Chancellor Erquiaga stated he had answered the question in the cover memorandum that was provided. Any money from a real estate transaction returns to the institution which held the asset. It was his understanding that Regent Boylan had a subsequent conversation with

2. Information Only – Regent Orientation: Part I – (Continued)

2b. Board Governance and the Roles of Regent and Chancellor – (Continued)

Chief Financial Officer Clinger who has offered to show Regent Boylan the transactions that occurred in 2022 and are reflected in the report. He will ask the eight institutions on your behalf where the money resides.

Regent Brown asked if the reviews of the Presidents were done annually based on hire date or all at the same time. Acting Chancellor Erquiaga stated annual reviews are done on an academic calendar. He just completed several reviews for Academic Year 2021-22 and then filed the evaluations by the end of the year. Regent Brown asked how it works for the Chancellor since he started in June. Acting Chancellor Erquiaga stated his evaluation would be done after June 30 by the Chair of the Board.

Regent Downs asked for clarification on how many Presidents will have a periodic evaluation in the next year. Acting Chancellor Erquiaga stated six Presidents hit their four-year mark, so a periodic review is needed in the 12 months before their contract ends.

Regent Del Carlo stated it is vital that the evaluations are done. There have been times in the past that Chairs did not do the evaluations of their employees. She challenged the Board to go back to basics.

Regent Boylan voiced his confusion about hiring a Public Information Officer (PIO). Acting Chancellor Erquiaga stated two things happened this week. First, he hired a Director of Community Engagement, Equity and Inclusion. Last year, he initiated a search for the PIO, but it failed. He then decided to hire a firm on contract. The Chancellor is to collaborate with the Board Chair for official communication on behalf of the Board of Regents. To be transparent, the Chair communicated to the Board that he would assist in identifying a firm. The Chancellor contracts the firm, and the contract will include a standard termination clause. The hiring process has proven difficult.

Chair Brooks stated there was probably a better way to communicate regarding the hiring of a firm. He added that he has been vocal that someone must handle NSHE's communications and public relations. In collaboration with the Chancellor, it is now moving forward. He believes it will serve the entire Board by highlighting the positive things the Board does in shaping and supporting higher education in Nevada.

Regent Del Carlo appreciated the openness and transparency but asked why a Request for Proposal (RFP) was not sent out.

2. Information Only – Regent Orientation: Part I – (Continued)

2b. Board Governance and the Roles of Regent and Chancellor – (Continued)

Deputy Attorney General Bekker advised the Board would be better served to place this discussion on an agenda for a future meeting.

Chair Brooks noted that the Chancellor demonstrated an urgency for this position to be filled. In consideration that the Board has not been in a place to have the opportunity of someone supporting effective and positive messaging, he believed it was essential to move forward.

Regent Goodman stated it was important for the Board to control its narrative, especially with the upcoming legislative session.

Regent Goodman asked if the Chief of Staff and Special Counsel is two positions, as she believed the Board has an incredible Chief of Staff in Ms. Nikolajewski. Chair Brooks stated the Board voted to hire Ms. Nikolajewski as Interim Chief of Staff because the Board has legal representation with the Chief General Counsel and the Attorney General's Office.

In response to a question from Regent Boylan related to positions the Board is responsible for, Acting Chancellor Erquiaga stated the *Bylaws* create a Chief of Staff and Special Counsel position. However, when the job has been vacant twice in the last two years, the Board has appointed only an Interim Chief of Staff.

Regent Brager requested the Board move back to the agenda.

Regent Boylan requested the Chancellor send *Handbook* citations for the policies on Regent requests, new business requests, and Regent requests for investigations/audits.

Regent Perkins noted that three Regents could request something be placed on an agenda. Acting Chancellor Erquiaga responded he did not cover the parts of the *Bylaws* about the operation of the Board. Still, she is correct that three Regents can request an agenda item, and the Chair must place it on an agenda.

The meeting recessed at 2:15 p.m. and reconvened at 2:24 p.m.

2c. Fiduciary Duties and Public Trust – Former Regent Michael B. Wixom provided an overview of the Board's fiduciary and public trust duties in relation to governance and oversight of the Nevada System of Higher Education. (*Ref. BOR-2c on file in the Board Office.*)

2. Information Only – Regent Orientation: Part I – (Continued)

2c. Fiduciary Duties and Public Trust – (Continued)

Regent Boylan asked how you stop Regents from disappearing when it is time to vote and what the punishment is. Special Counsel Wixom responded it is unenforceable because it is a matter of individual responsibility and conduct.

Regent Boylan asked what Special Counsel Wixom meant when he mentioned obedience. Special Counsel Wixom stated in the context of the law, Regents have a duty of obedience or responsibility to comply with statute and Board policies. Deputy Attorney General Bekker said execution of fiduciary duties might be a better term.

Regent Del Carlo asked who has jurisdiction at the meetings when the Board doesn't have its own counsel. Special Counsel Wixom stated the Deputy Attorney General is here to enforce the Open Meeting Law. The NSHE Chief General Counsel is the Board's counsel. Safe Harbor lies with the Chief General Counsel. The Board is well-represented at all levels. Deputy Attorney General Bekker added that if something is substantive about the Board, it should be referred to the Chief General Counsel. If it is procedural or Open Meeting Law (NRS 241), then it would be the representative of the Attorney General's office.

Regent Brown asked for clarification on General Counsel and personal counsel. Special Counsel Wixom stated that the Regent relies on General Counsel if it is a System or Board issue. However, if it relates to the person individually, they seek personal counsel.

Special Counsel Wixom hoped that if a Regent follows the guidelines, it will allow for their service on the Board to be productive and positive.

Regent Del Carlo asked if a Regent can be sued if they give up the right to Safe Harbor by not taking Counsel's advice. Special Counsel Wixom responded yes, if a Regent does not follow Counsel's advice, they can be penalized.

1. Information Only – Public Comment – (Continued)

None.

The meeting recessed at 3:09 p.m. and reconvened on Friday, January 13, 2023, at 9:00 a.m. with all members present. Regent McMichael led the Pledge of Allegiance

3. Information Only – Oath of Office – Nevada Supreme Court Justice Ron D. Parraguirre conducted a ceremonial swearing-in of the newly elected Regents.
 - Mrs. Susan Brager
 - Ms. Heather Brown
 - Mrs. Michele Cruz-Crawford
 - Mr. Jeffrey S. Downs
 - Ms. Stephanie Goodman

The meeting recessed at 9:04 a.m. and reconvened at 9:20 a.m. with all members present

4. Information Only – Regent Orientation: Part II – A Regent orientation was conducted to provide the necessary framework for new members of the Board of Regents to begin their work on the Board. The orientation also provided a refresher course for continuing members of the Board. In addition, presentations were made on the Nevada Open Meeting Law, parliamentary procedure and Robert’s Rules of Order, and System Administration areas of responsibility.

- 4a. Nevada Open Meeting Law – Nevada Chief Deputy Attorney General Rosalie Bordelove provided an overview of the Nevada Open Meeting Law and related issues. (*Ref. BOR-4a on file in the Board Office.*)

Regent Boylan asked the meaning of “Electronic communication between a quorum of members can constitute a meeting.” Chief Deputy Attorney General Bordelove stated it can if it rises to the point of deliberation between a quorum. For example, in “reply all,” she recommends that when staff sends an email to all members, it be sent using bcc, so members cannot click reply all and give comments, which can constitute a quorum.

Regent Cruz-Crawford asked if working on interpersonal relationships in a social setting was allowed. Chief Deputy Attorney General Bordelove responded yes, as long as the members do not discuss agenda items. The problem arises when there is cross-communication among all the members.

Regent Brown asked for clarification regarding discussion of an agenda item and discussion of something that is within the jurisdiction of the Board. Chief Deputy Attorney General Bordelove stated there is a line between discussion and deliberation. Deliberation encompasses anything within your jurisdiction and control, not just something on the published agenda.

In response to a question from Vice Chair Arrascada about requirements for public comment and continuing a meeting, Chief Deputy Attorney General Bordelove responded that as long as the agenda sets each meeting date and when it will continue to provide clear notice when the public opportunities are to speak it will satisfy the legal requirements.

4. Information Only – Regent Orientation: Part II – (Continued)

4a. Nevada Open Meeting Law – (Continued)

Regent Boylan asked if written public comments are supposed to be read. Chief Deputy Attorney General Bordelove noted there is no requirement in the law that written public comments be accepted. However, there is a requirement that if a speaker asks that their prepared written remarks be included in the minutes, they need to be attached to the minutes.

In response to a question from Regent Boylan related to new business, Chief Deputy Attorney General Bordelove stated a member should not deliberate on any item brought up under new business because the public has not been noticed, but a small discussion can occur.

Regent Del Carlo asked if something read into the record violates the law. Chief Deputy Attorney General Bordelove stated there is a requirement that if supporting material is provided, then the public must also have access. If something is read into the record, the public has access to the same thing provided to the Board.

The meeting recessed at 10:21 a.m. and reconvened at 10:31 p.m. with all members present except Regents Boylan and Perkins.

4b. Parliamentary Procedure and Robert’s Rules of Order – Connie M. Deford, Professional Registered Parliamentarian, led a training on parliamentary procedure and Robert’s Rules of Order. (*Refs. BOR-4b1 and BOR-4b2 on file in the Board Office.*)

Regents Perkins and Boylan entered the meeting.

Regent Perkins asked if the absence of a quorum applies to information items, and Ms. Deford responded it applies to action items.

Regent Del Carlo stated that this Board has not been good about restating the motion before the vote and believes it is an area where they could improve. Ms. Deford noted it is one of the duties of the Chair to make sure members know what is being discussed and voted on.

Regent Del Carlo asked for clarification between an amendment and a friendly amendment. Ms. Deford stated an amendment is to change a motion that has already been stated by the Chair, and a friendly amendment is done before the motion is stated by the Chair.

4. Information Only – Regent Orientation: Part II – (Continued)

4b. Parliamentary Procedure and Robert’s Rules of Order – (Continued)

Regent Del Carlo clarified that reconsider is used at the same meeting, with Ms. Deford responding yes, but when a motion is made and disposed of and comes to another meeting for consideration, it is a renewal.

The meeting recessed at 11:38 a.m. and reconvened at 11:56 a.m. with all members present except Regent Brown.

4c. System Administration Areas of Responsibility – NSHE System Administration representatives provided information on their areas of responsibility, including an overview of programs and data that assist the Board in furthering the mission and goals of the NSHE.

- Renée Davis, Interim Vice Chancellor for Academic and Student Affairs and Community Colleges (*Ref. BOR-4c1 on file in the Board Office.*)

Regent Brown entered the meeting.

- Andrew Clinger, Chief Financial Officer (*Ref. BOR-4c2 on file in the Board Office.*)

Regent Brown asked Chief Financial Officer Clinger to provide a high-level budget creation timeline.

Regent Boylan asked who sets the budget for the Board of Regents. Chief Financial Officer Clinger stated the System Administration budget establishes budgets for each area, including the Board, and ultimately the Board of Regents approves.

- James Martines, Vice Chancellor for Legal Affairs and Chief General Counsel (*Ref. BOR-4c3 on file in the Board Office.*)

Regent Boylan asked for clarification on the waiver of privilege.

- Joe Sunbury, Chief Internal Auditor (*Ref. BOR-4c4 on file in the Board Office.*)

In response to a question from Regent Perkins about why reporting lines changed, Chief Internal Auditor Sunbury responded to leave no doubt of Internal Audit’s independence.

4. Information Only – Regent Orientation: Part II – (Continued)

4c. System Administration Areas of Responsibility – (Continued)

- Dr. Anne Milkovich, Chief Information Officer (*Ref. BOR-4c5 on file in the Board Office.*)

Regent Brown appreciated the presentation on how many areas SCS touches. Regent Brown asked if SCS's hiring of employees is saving NSHE money by providing these services to other entities. Chief Information Officer Milkovich stated an information system is enormous to run. SCS working with the state is saving millions of dollars.

In response to a question from Regent Brown asking whether there is a second system in the state providing Nevada government with services, Chief Information Officer Milkovich stated other organizations are running their networks, but SCS is running the wiring network, which is the backbone through Nevada.

Regent McMichael asked if NSHE is taking advantage of federal government awards to expand the northern broadband. Chief Information Officer Milkovich stated that federal money is awarded to the state and will be distributed to entities based on contribution and participation.

Regents Arrascada, Del Carlo, and Downs left the meeting.

Regent Perkins stated that Regents should be out telling people about the services that SCS provides to the state.

- Keri D. Nikolajewski, Interim Chief of Staff to the Board (*Ref. BOR-4c6 on file in the Board Office.*)

Regent McMichael thanked the staff for all they do.

Regent Brown asked for a list of tasks and points of contact.

Acting Chancellor Erquiaga stated the people the Board just heard from are the backbone of the System Administration that manages the entity. There are approximately 150 people in System Administration and System Computing Services. This presentation was an overview to help understand the apparatus that most immediately serves the Board. Over a year, the Board will see metrics reports, data, budgets, and policies, but there are so many other people within the organizations that serve NSHE and the students. The Board is well served by this team, and the team has the Board's best interest at heart. The continuity of an organization is about the people you just saw, so thank them on your way out, and remember they are just the front piece of the organization.

5. Approved – Minutes – The Board approved the following meeting minutes:
- September 23, 2022, ad hoc Committee to Review the Roles and Responsibilities of the Chancellor (*Ref. BOR-5a on file in the Board Office.*)
 - October 14, 2022, Board of Regents special meeting (*Ref. BOR-5b on file in the Board Office.*)
 - October 14, 2022, ad hoc Committee to Review the Roles and Responsibilities of the Chancellor (*Ref. BOR-5c on file in the Board Office.*)
 - November 18, 2022, ad hoc Strategic Planning Committee (*Ref. BOR-5d on file in the Board Office.*)

Regent Perkins moved approval of the meeting minutes listed. Regent McMichael seconded.

Regent Brager asked if the new Regents should vote on the minutes, with Chief General Counsel Martines responding yes. Regent Brager stated she would be doing a blind vote on the minutes, but to have a successful vote because of those that have left, she will vote.

Regent Goodman stated she was not comfortable voting on the minutes.

Chair Brooks called for a voice vote; however, it was unclear from the responses if the motion passed.

Chief Deputy Attorney General Bordelove stated for the purpose of approving minutes, Regents may still vote even if they were not present because what you are voting on is to make these your official minutes.

Motion carried via a roll call vote. Chair Brooks and Regents Boylan, Brager, Brown, Carvalho, Cruz-Crawford, Goodman, McMichael, Perkins, and Tarkanian voted yes. Vice Chair Arrascada and Regents Del Carlo and Downs were absent.

6. Information Only – New Business

Regent Carvalho presented a New Business item from Regent Del Carlo requesting the establishment of a Board of Regents Governance Committee and clarification as to whether the Attorney General representative or NSHE General Counsel has the authority to guide the Board.

Regents Perkins and Boylan requested the start of the Chief of Staff and Special Counsel to the Board of Regents recruitment.

Regent Brown was concerned with the upcoming audit report on the January 18, 2023, meeting agenda and asked that the item be included for possible action.

7. Information Only – Public Comment

Kent Ervin welcomed the new Regents to the Board. The Legislative audit raises serious concerns about expenditure transfers between state and nonstate accounts, reporting, and insufficient oversight by the Board. Holding institutions accountable is the Board's fiduciary duty. Unfortunately, the January 18, 2023, meeting is now agendaized for information only. It will prevent the Board from taking official action to address the issues and show intent for policy changes and action.

Regent Goodman thanked everyone for today's presentation. She learned so much and is looking forward to working with such professionals.

Regent Brager stated it was a wonderful afternoon and helped put things into perspective.

The meeting adjourned at 2:05 p.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 21, 2023, meeting.