

Minutes of the
NIU Board of Trustees
LEGISLATION, AUDIT AND EXTERNAL AFFAIRS
COMMITTEE MEETING
November 11, 2010

CALL TO ORDER

The meeting was called to order by Chair Cheryl Murer at 10:16 a.m. in the Board of Trustees Room, 315 Altgeld Hall. Recording Secretary Sharon Banks-Wilkins conducted a roll call of Trustees. Members present were Trustees John Butler, Barbara Giorgi Vella, Student Trustee Robert Sorsby, Chair Cheryl Murer and BOT Chair Marc Strauss. Trustee Manuel Sanchez joined the meeting in progress via teleconference. Not present was Trustee Myron Siegel. Also present were Trustee Robert Boey, President John Peters, Committee Liaison Kathryn Buettner and Board Parliamentarian Kenneth Davidson.

VERIFICATION OF APPROPRIATE NOTICE OF PUBLIC MEETING

Confirmation of Open Meetings Act public notice compliance was given by Parliamentarian Kenneth Davidson.

MEETING AGENDA APPROVAL

Trustee Strauss made a motion to approve the agenda. The motion was seconded by Trustee Vella. The motion was approved.

REVIEW AND APPROVAL OF MINUTES

It was moved by Trustee Strauss and seconded by Trustee Butler to approve the minutes of the August 26, 2010 meeting. The motion was approved.

CHAIR'S COMMENTS

Chair Murer welcomed University Advisory Committee representatives Jay Monteiro, President of the Operating Staff Council, and Todd Latham, President of the Supportive Professional Staff Council, and thanked them for attending.

As I started to think about my comments this morning, I was taken by the earlier comment that we are not challenged beyond our capacity. Yet it seems that this university, in the past few years has undergone such challenges. We mourn the loss of one of our students because we are a family, and that family has such strong leadership, as all good families do. So, again, I have to turn to President Peters and thank him for his ever-present compassion. That passion is at the core of the culture of Northern Illinois University and the extraordinary dedication of its staff. We were challenged again, and we have come through it; but that sadness is always tucked in a special place in our hearts.

On a more positive note, I am thrilled about what is going on here with Coach Kill and our sports activities. Michael and I will be at the MAC championship along with everyone else on December 3. So, looking at all of our strengths and focused on our agenda for a new direction in this coming decade, we continue to move forward.

PUBLIC COMMENT

The Chair asked Board Parliamentarian Kenneth Davidson if any members of the public had registered a written request to address the Board in accordance with state law and Board of Trustees *Bylaws*. Mr. Davidson noted that he had received no timely requests.

UNIVERSITY REPORT

Agenda Item 7.a. – Potential Amendments to Regulations of the Board of Trustees of Northern Illinois University - Matters Related to Employment Benefits for Employees and Their Families

We have been addressing a very complex issue in this committee over the past year related to the inclusion of domestic partners with greater specificity in our Rules and Regulations, Chair Murer said, and, in particular, related to tuition waivers. There is no doubt that equality is at the cornerstone of our democracy. But we also maintain financial fiduciary responsibility as members of this Board of Trustees, and in that regard, I asked Dr. Cunningham at our last meeting to prepare an algorithm related to fiscal estimates of what this means to the university if we move in a more aggressive manner related to this issue. I say more aggressive because, as we have seen in other presentations, NIU has been at the forefront of addressing issues of domestic partnerships, which relate to both homosexual and heterosexual relationships. Mr. Davidson has put in a great amount of time on this effort in response to our request, and we will see today a first draft of potential Board *Regulations* to reflect some of the discussion points we have considered over this past year. We have to move cautiously and responsibly in the inclusion of language as we modify our official documents.

You have before you two pieces of information, Dr. Cunningham said. The first is the reference point of Board *Regulations* that Ken Davidson has been working on. The second is a summary of domestic partner program benefits that is on our Human Resources web site, and it is a good reference guide on the status of benefits for domestic partners. In our previous reports, we reviewed the comparative status of policies at NIU compared to other public universities in Illinois and in other peer groups. We also reviewed the relevant status of actual benefits for which domestic partners are eligible in peer groups and throughout the state of Illinois. We reviewed the history of policymaking action and review of this topic at Northern Illinois University. Specifically, we discussed the activities of the Presidential Commission on Sexual Orientation and a landmark report that commission produced in April 2000 that analyzed domestic partner benefits and Board *Regulations*. In summary, we determined that Northern was very consistent with peer institutions in both policies and practices for State provided benefits as being the health insurance, life insurance, survivor benefits under SURS, medical care and dependent care assistance plans. Moving into the more internally governed benefits, the first one we discussed was tuition waivers. There we found more variance across the universities. We also are very consistent with the other universities statewide in regard to internal benefits such as bereavement leave and family leave and the way Family Medical Leave Act provisions are implemented for domestic partners as well as for those employees specified in the Act

For cost and implications, it might be useful to use Mr. Davidson's document as sort of a guideline. You have before you a preliminary draft of regulation updates to the Board *Regulations* involving faculty, administrative employees, civil service employees and students. These updates show what the implications would be with the Board *Regulations*. This particular draft is consistent, for the most part, with the recommendations of the commission in 2000. The first update involves the Equal Opportunity and Affirmative Action Policy. All of these sections of the Board *Regulations* are the same for all employees – administrative and faculty and civil service, and we will combine those sections for our discussion. The first update is a cost neutral change. It reflects the fact that sexual orientation is now covered in state law as opposed to simply being covered in internal policy. The family relationship builds in a specific reference to domestic partnerships. As we have discussed previously, NIU's definition of immediate family already incorporated domestic partnerships, so this reference has no change in practice, cost or policy.

Employees at Northern Illinois are eligible for CMS benefits as provided by the group health insurance program. About five years ago, the state program was amended to incorporate domestic partner

coverage for same sex domestic partners. There is an affidavit process employees must go through to apply for that program. Currently about ten employees at Northern are participating in that aspect of the CMS program. To the extent that this regulation would continue the practice of our employees being eligible for this benefit as provided by the group insurance program, it is cost neutral. The next section is Family and Medical Leave. Northern, for many years, has incorporated domestic partners in its FMLA provisions in exactly the same way as other employees who would otherwise be eligible pursuant to the federal legislation. That, too, is cost neutral.

The educational benefits section is where we begin to have some cost implications. The first change is under survivors of deceased employees. This change would have the affect of including domestic partnerships in the same category as marriages with respect to deceased employee tuition waiver benefits. Basically, a surviving spouse or legally dependent child or children of a deceased employee, an employee who dies while in service, is eligible for a tuition and fee waiver. We have two people currently who have applied for this benefit and are using it, so this benefit is almost cost neutral.

The main section, which we have discussed previously, is the tuition waiver program for employee children. From our previous presentations, we know that SIU, ISU and WIU have an affidavit and application process for children of domestic partners. They qualify those students for participation in the tuition waiver program for dependent children in the same way as other children and legal dependents who are qualified pursuant to state statute. In those cases, the universities use their discretionary waivers to cover those because they are not statutorily granted, so an increased waiver load is created there. At Northern, we have 425 students who qualify for the 50 percent tuition waiver benefit for employee children. Of those, 267 are children of NIU employees, and the remainder is employees coming into the campus from the other public universities. The in-state, per semester tuition value is about \$3,975 per student. If, for example, ten students participated, that would have a cost factor of \$39,750 per academic year. This is not a fee waiver. Because of the statute, whether the student is a child of an NIU employee or a child of an employee at another public university, it is added into our tuition waiver summaries. Since it is authorized by statute, it does not count against our discretionary waivers, but it represents forfeited income because we have waived the tuition. Of the changes we are contemplating, this probably has the highest cost. Three universities already do it, and the remaining universities, including Northern, follow the statute very precisely. There is an application documentation process to apply for this benefit every semester.

To clarify, Mr. Davidson said, we are talking about NIU employees only; we are not talking about employees at other universities having a new benefit. It would take an act of law to enable the Board to make that a broader kind of benefit. The Board has discretion under Supreme Court decisions in Illinois to add to benefits beyond what has been created by the legislature, but you can broaden benefits for our own employees only, not for those beyond the limits of employment relationship.

Mr. Cunningham reiterated that all of the benefits being discussed are related to Northern Illinois University employees only. It was noted by Trustee Butler that in latter parts of this document, the classification of residency status for students is involved, so that would not be an employee benefit. Mr. Cunningham pointed out that the sections currently under discussion are all specifically related to NIU employees.

One of the complicating factors we are dealing with is that we do not have a legal definition of domestic partners, Chair Murer stated. She asked if we are using more of a common law definition of domestic partner that is dependent upon an honor system of self-reporting. Mr. Davidson stated that the way domestic partnership relationships have historically evolved at NIU has been through Human Resource Services establishing administrative practices, and one of those practices requires an affidavit of the relationship. In answer to a question about penalties for violation of a signed affidavit, Mr. Davidson said that false statements could be prosecuted.

Mr. Cunningham confirmed that violation of a signed affidavit could mean prosecution and/or be subject to discipline. In many cases, we rely on the signatures and the testimony of employees to qualify for several benefits, he said. For example, the tuition waiver benefits for employee children are signed by both the employee and the student. There is an application process that incorporates an affidavit of domestic partnership, and that asks a series of questions about shared accounts, residencies and so

forth. The employee signs that and affirmatively testifies that they fit that definition. Were we to move into other more or less cost neutral benefits such as the tuition waiver for employee children, the practices at the other universities vary somewhat, but normally an affidavit of some type is required to confirm the domestic partnership to because of violations. It is not as well defined in statutes as marriage is. There is an obligation to report any changes in the status of the initial affidavit. There is also a recertification process, especially for the dependent, for tuition waiver benefits and dependent health insurance coverage, to verify that the dependents still fall within the qualifying conditions. This is done annually for medical insurance and on a per semester basis for tuition waivers.

Mr. Cunningham verified that the procedure for domestic partnership applies only to same sex couples in the health insurance domain. Trustee Straus then inquired whether we have an opinion on the legality of continuing to define domestic partnership only as same sex as opposed to both same and opposite sex. Trustee Murer then asked if it was not discriminatory to define this only for same sex and should not it be assumed that it also would incorporate heterosexual as well as homosexual relationships.

As a partial answer, Mr. Davidson said, the employer has the prerogative to define that more broadly and make it inclusive of all categories so there is no risk of discrimination of claims. At this point, it is not legally tested in this state in any court of final jurisdiction that I am aware of whether or not heterosexual couples who are living without benefit of marriage, who cohabit without long-term commitments, can qualify. For there to be comparative cases, you would have to establish the commitment, and that has not been attempted, to my knowledge, in the CMS insurance plan.

The limitation of same-sex only qualification applies only to the group insurance program, Mr. Cunningham said. All the other benefits we are discussing, the dependent tuition waiver benefits or other family medical leave benefits and so on, are applied both for same and opposite sex at NIU. Some of the universities continue the same-sex only standard because they are mirroring what CMS does; but at NIU, we look at it independent of the type of relationship. The CMS program was implemented with an amendment to the group insurance act which, therefore, has some statutory basis. Pursuant to our Board *Regulations*, we provide that program to our employees as provided by the group insurance program and the public act that authorizes it.

I would like to have some assurance, if we were going to go forward, that we were not going to commit an illegal act, Trustee Strauss stated. Also, I would want assurance that we were able to legally establish this with respect to just the CMS insurance program on a basis that only impacted same-sex couples as opposed to same- and opposite-sex couples. Further, we would have to take a look at whether the CMS program is restricted, then we would have an additional cost if we were to expand the coverage to include opposite-sex couples that were not currently covered and take a look at what that expense would be. Also, some time ago, we received communication from a number of people who were interested in having the Board take a look at gender discrimination in addition to sex-based discrimination. In this draft, we have not addressed that. Actually, Mr. Davidson put in, sexual orientation is a broader umbrella term that embraces that; it just does not include the use of that terminology separately. So that is included with no need for further definition in the draft.

On the issue of sexual orientation and gender, Trustee Butler said, the interested parties who came to the Board would argue against that interpretation. There is a good deal of support for the idea that sexual orientation does not include gender identity and expression because of the way sexual orientation is defined as actual or perceived homosexuality, which is not the same as one's gender identity and expression which has nothing to do with sexuality, unless there is a definition of sexual orientation in these regulations that is inclusive, then we have the answer to that issue. On the issue of how a domestic partnership is defined, I am looking at the domestic partnership affidavit for ISU, and it mirrors very similarly the draft affidavits I have from January 2004 that were created for what was then a proposed reimbursement policy. The important issue for the President's Commission on Sexual Orientation and Gender Identity has always been the issue of residency status, Trustee Butler continued. The CMS policy requires that the partners cohabit and have done so for at least a year. That is a highly objectionable standard to the President's Commission, particularly with respect to members of the professoriate, because there are oftentimes marriages where one lives in DeKalb and one lives in Madison, so there was a real effort to move away from that as a standard. We all know that one can become married and then not live in the same household.

This morning we have had more forthright discussion about these issues than we have ever had, Chair Murer said, and what we are all witnessing is that the proverbial Pandora's Box has been opened. My personal concern as chair of this committee is that we do not squander this opportunity, which is precedent setting, and that we really take the necessary time to continue this open dialogue, but to also be very cautious in terms of what it is we are doing, because we are now starting to discuss setting standards. My concerns have always been the fact that we do not have clean definitions as one does in marriage. I am also concerned that we not get into a situation where we inadvertently discriminate through something we are trying to do to show nondiscrimination. At this juncture in the conversations I do not understand how we can define domestic partner to be only homosexual.

Your point is very well taken, Trustee Butler, in terms of what the standards are, the Chair continued, because we do not want to set a standard such as residency in the state of Illinois. People move around in today's society, so residency is not a good standard. But simply saying we have a joint lease is not enough, because many people share apartments and have a joint lease and that does not mean they should be able to enure benefits intentioned for someone in a longstanding relationship. So I want to talk about issues that relate to the potential for abuse. We need to proceed in a very methodical manner as we begin to open this issue to greater extent. The fact that we have draft *Regulations* is major movement in a very positive direction. But now that we have this draft, we have to tread cautiously.

For clarification, Trustee Vella said, we need to have the definition of the domestic partner. Also, we need to know if it applies to same sex or opposite sex relationships and where it falls in the state of Illinois statutes.

If I do not have the opportunity later, Trustee Butler commented, I just want to say that this is exactly the kind of conversation I have been hoping we would have. There are some other kinds of things I would like us to think about as well. If I understand what Trustee Strauss was asking for, and it would be my preference as well, I would like to see us try to envision also attempting to manage the concerns of the students who came in front of us about gender identity and expression. If the easy way is to define sexual orientation to be inclusive of gender identity and expression, there are alternative methods to doing it such as replacing the word sex with the word gender and defining gender inclusive of sex and also gender identity and expression. This raises the question whether we define these terms at all presently.

When we talk about gender identification related to these documents, and especially if the answer comes to the application of domestic partnership to be equal, heterosexual, homosexual, Chair Murer said, I do not understand the focus on gender identification because it is one or the other. But if the answer comes that this is not limited to just homosexual relationships, which will be hard to define as such, then the gender identification does not appear at this point to have much relevance in this document. Help me understand that, if it is homosexual or heterosexual, or if you are identifying as male or female. Mr. Butler stated that it does not have any specific reference. It is just about tackling two related issues simultaneously, and it is the Board's prerogative whether it wishes to do that. Adding protection from discrimination explicitly on the basis of gender identity expression is a cost neutral effort. It would be changing the terms and adding or defining the terms that are part of our nondiscrimination policy and commitments.

I will be retiring at the end of the year, Mr. Davidson said, so this will be my last meeting with this committee. I will be developing key issues to provide to my successor, and I will give him, or her, something that will relate to a need to develop a domestic partnership definition that would not discriminate on the basis of gender, gender identification or sexual orientation for the Board's further consideration. Chair Murer thanked Mr. Davidson for his work with this committee.

To clear up confusion, Trustee Vella said, I need to know what gender identity and gender expression is, and whether we are going to develop a definition of sexual orientation. From what I am hearing, The Parliamentarian has one way of looking at it and Board Chair has another way of looking at it. I just want it to be clear because we are opening up a huge area that I did not realize had so many parts, so we need to understand what that means.

We simply want to make sure that when this committee votes, we have full understanding of what it is we are voting upon, Trustee Murer said.

Agenda Item 7.b. – 96th General Assembly Report

Mr. Zehnder noted that we successfully complied with legislative directives from last year to conduct an early registration and early voting session on campus. We worked with the DeKalb County Clerk in setting that up, and it was a successful and a good cooperative effort. The election itself brought major changes. We now have bipartisanship within the constitutional offices, the treasurer and comptroller being Republican. In the House, Speaker Madigan currently has a margin 70 to 48, a margin of 22 in the next year's session; his margin is reduced to 64 to 54, a 10 vote margin. Some of the NIU connections in the elections included former Student Trustee Joe Sosnowski, from Rockford, who was elected to Ron Waite's seat. Rep. Waite ran for a judicial seat and lost in the primary. NIU alumni who won reelection include Roger Eddy, Sandy Pihos, Franco Coladipietro and Annazette Collins. Locally, Rep. Pritchard won uncontested, and faculty member Mike Fortner won his second term. Senate President Cullerton maintained his majority, reduced by two. So he has a count now of 35 to 24. The only major changes in the House education committees were that the chair of the House Higher Education Committee did not run for reelection; he made an unsuccessful bid for a constitutional office. And David Miller, who serves on the Higher Education Appropriation Committee, also ran for statewide office, so appointments to the higher education committees could change.

The Illinois State Senate considered the pension borrowing issue a couple of weeks ago. That was not successful, but will be an agenda item when they come back. We received notice yesterday that Veto Session starts next week. Speaker Madigan also released a schedule for the beginning of the new year showing that the current General Assembly will reconvene on January 3 and will be in session until the swearing in of the new General Assembly on the January 12. In addition to pension borrowing, on the agenda is also university borrowing. A draft is being prepared to replicate but also expand the provisions of the university borrowing provisions from last year. It would attempt to cover more than one fiscal year in the payback period. Debt collection was also an issue that impacted us due to legislation passed last year. We are going to be working with the Senate sponsor of the bill to address some concerns about losing our ability to adjust and work with students who have debt with the university. The bills have passed and taken that out of our hands, so we are trying to make adjustments there.

There are some major issues with procurement. Dr. Steve Cunningham and Dr. Williams have been involved in a work group to try to address some of the issues imposed due to Senate Bill 51. That is a major impact to the university. There are going to be major costs involved for the statewide university system. That was a Speaker Madigan initiative and is going to be a difficult issue. Also, there are a number of other mandates that House Resolution 918 is trying to address. Trustee Strauss participated in that commission. The results are not finalized, but there are a number of items for which they are going to try to reduce the administrative burdens on the universities. President Peters and Dr. Matt Streb have been attending the Higher Education Funding Commission to look at performance based funding issues and tracking mechanisms on how that could be accomplished. That report will be finalized and should be out by the end of the year.

Another major issue that will impact the legislature this next session is redistricting. There is a June 30 deadline for coming up with a plan. If accommodation of reaching a plan is not met, it could extend into October. It has usually taken that long in past redistricting years. That will be underlying many of the substantive issues. We will be tracking some initiatives looking at MAP and a bonding initiative that ISAC is looking at.

Today is Veteran's Day, Mr. Zehnder said in conclusion, and last month we received the Governor's Award for Excellence in Veterans' Education. Service to veterans is the best way that we can honor their commitments.

Agenda Item 7.c. – Congressional Report

The good news is that the midterm elections were over November 2; the bad news is that the 2012 presidential election has already started. There also was a huge change in Washington. They are talking about the Republican wave that has swept the country. Basically, this is the largest change we have

seen in Washington since 1994. And in the House of Representatives, it is the largest change since 1948. The Republicans captured more than the 60 votes required to have the majority, so it looks like John Boehner from Ohio is going to be the new Speaker of the House when the 112th Congress is installed. What does that mean to us? It means many different things. But it means that a good number of the incumbent Democrats and the committee leaders of many of the committees we rely on and go to for appropriations are going to change. There be meetings within the next couple of weeks to talk about some agreement to committee leader changes, but the actual appointments are going to be ongoing and probably will not be finalized until mid or late January. Also, over half of the blue dog Democrats were beat. The blue dogs tend to be the more moderate Democrats and much of the time will side with Republicans. So there is more of a division in Congress on both the extreme right and the extreme left. Speculation is that the blue dogs will take after Nancy Pelosi during the upcoming lame duck session because they feel that her liberal agenda helped result in their defeat. We are looking at how that may translate in legislation that might come through over the next couple of months. Nancy Pelosi surprised everyone in announcing that she will run for minority leader. That has resulted in a lot of scrambling for the number two position in the minority side of the House.

In Illinois, we have three incumbent Democrats who were defeated. Our own Bill Foster was defeated by Randy Hultgren. It has been a pleasure over the past two years to work with Congressman Foster. In the 11th District, Debbie Halvorson was defeated by Adam Kinzinger. One of John Boehner's pledges is to start incorporating more of the 84 freshmen into transition and committee assignments. Adam Kinzinger from Illinois has been appointed to the republican transition team. Quite unexpectedly, in the 17th District, Phil Hare was defeated by Bobby Schilling. The race for Melissa Bean has not been decided yet. Currently she is down approximately 349 votes, but they are still counting those votes. The final factor in the Illinois delegation is that Congressman Danny Davis, who has been a big friend of NIU, has announced that he is running for Mayor of Chicago, so we are not sure quite what that will mean. In the U.S. Senate, the Roland Burris seat was up for election, and Mark Kirk won over Alexi Giannoulas. So Mark Kirk will be our new Senator.

Lisa Freeman and I are going to Washington next week. We are hoping to meet with members of Congress to get their thoughts on the lame duck session. As you will recall, in order to keep government working during the election, Congress passed a continuing resolution basically to keep paying the bills. However, they have not passed the appropriations bills that will allow us to go on beyond December 3. They are talking about doing an omnibus bill to do that.

Senator Durbin is still very highly respected and will continue in the number two position in the Senate. In the U.S. Senate, there were six seats lost in the majority to Republicans. While they are not anticipating a change in leadership, they are anticipating far more deadlock in the Senate. The House promises to be far more active with legislation this next session, and the number one thing they are trying to do is to make the Republican presence known and to cut budgets and address the deficit. They have said that they want to first and foremost appeal "Obamacare." They may not have the votes on the floor to do that, so we look for them to start using the appropriation process to do that. The Obama administration is looking to reinforce that through the regulatory process. The key element that affects us is the ability to have up to 26-year-olds on parents' insurance.

Agenda Item 7.d. – Internal Audit Update

Chair Murer asked Danielle Schultz, Director of Internal Audit, to address the committee today. The last time I addressed the committee, Ms. Schultz said, some information about internal audit, the state statute requiring NIU to have an internal audit department or function, and the standards under which we operate, as well as providing you with an FY09 activity recap. One of those standards requires that I report to the Board and confirm the independence of our department. I would like to take the opportunity today to assure you that we are free from university operation responsibilities; therefore, we can preserve our independence to do our jobs as charged.

Ms. Schultz then gave a brief overview of the department's FY10 activities. We began Fiscal Year 2010 short one staff member, Ms. Schultz reported, but finished the last half of the year with a full staff. Two positions in the department are currently vacant. I am in the process of interviewing for those two positions and plan to have a full staff at the beginning of the calendar year.

Our 2010 audit plan originally contained 17 audits. Three of those audits were moved to the FY11 plan, two because they were projects that were delayed by the university. The third audit was moved to FY11 due to our staffing shortage the first half of the year. One audit that was begun just before the end of FY10 was put on hold and subsequently moved to the FY11 plan because there was not adequate coverage before the end of the year. We had a total of 14 audits that we worked on during FY10, and 13 of those were completed. Some of these audits could cross over into multiple categories; however I tried to categorize them in my annual report to the university in what each primary category would be. We had seven fraud detection and prevention audits, two financial, two compliance, one operational and one information systems audit.

NEXT MEETING DATE

The next meeting of the LAEA Committee is scheduled for Thursday, March 3, 2011, at 11:00 a.m. in DeKalb.

ADJOURNMENT

Chair Murer asked for a motion to adjourn. Trustee Strauss so moved, seconded by Student Trustee Sorsby. The meeting was adjourned at 11:22 a.m.

Respectfully submitted,

Sharon M. Banks-Wilkins
Recording Secretary