

Minutes of the
NIU Board of Trustees
of Northern Illinois University
Ad Hoc Committee on Governance
October 20, 2016

1. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 12:32 p.m. by Committee Chair John Butler in the Board of Trustees Room, 315 Altgeld Hall. Recording Secretary Kathleen Carey conducted a roll call. Committee Members present were Trustee Robert Boey, Wheeler Coleman, Matthew Holmes, Robert Marshall, Marc Strauss, Tim Struthers, and Committee Chair John Butler. Also present were Trustee Cherilyn Murer. General Counsel Jerry Blakemore, Board Liaison Mike Mann, President Doug Baker, Executive Vice President and Provost Lisa Freeman, Vice President Al Phillips, Greg Brady, Murali Krishnamurthi, and UAC Representatives Greg Long and Holly Nicholson.

2. VERIFICATION OF QUORUM AND APPROPRIATE NOTICE OF PUBLIC MEETING

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

3. APPROVAL OF PROPOSED MEETING AGENDA

Chair Butler asked for a motion to approve the meeting agenda. Trustee Strauss so moved and Trustee Boey seconded. Chair Butler asked that Item 10 be removed from today's agenda and moved to the next meeting. Trustee Strauss so moved to amend the agenda and Trustee Boey seconded. The motion to amend the agenda was approved and the motion to approve the agenda passed.

4. REVIEW AND APPROVAL OF MINUTES OF JULY 21, 2016

Chair Butler asked for a motion to approve the minutes of July 21, 2016. Trustee Strauss so moved and Trustee Boey seconded. The minutes were approved.

5. CHAIR'S COMMENTS/ANNOUNCEMENTS

Chair Butler added he had no comments and welcomed the representatives of the University Advisory Council, Greg Long and Holly Nicholson.

Holly Nicholson commented, at the risk of sounding like a broken record and I may be caught repeating this at a later meeting as well, but since I've stepped in the role of Operating Staff Council President, I've been impressed with the value places on shared governance by the administration and while we can always do better, and Greg and I have received to that effect of course, I did want to express my appreciation for the inclusive practices and discussions and as we continue to progress through the constitution and bylaw revision and we begin to codify the process by which we create and maintain policy, it's my hope and expectation that shared governance will have a role in policy approval because it is important to be inclusive and consider the input of all constituencies when discussing NIU policy.

6. PUBLIC COMMENT

No Public Comment.

7. APPOINTMENTS-FACULTY AND ADMINISTRATIVE EMPLOYEES

Executive Vice President and Provost began with calling on Vice Provost Krishnamurthi to discuss the item of appointments – faculty and administrative employees.

Vice Provost Murali Krishnamurthi began, these are some simple requests to refine the Board of Trustees regulations regarding the language related to appointments. The first one is (related to) visiting faculty appointments. These are individuals hired temporarily to cover for tenure track faculty duties. If they go on leave or if there is a search going on, it takes the whole year, sometimes longer. The current regulation says that appointment is limited to a year so the request today is to extend it for two years. The rationale is that CMS allows faculty to go on leave for two years. There are such cases right now. So it is inefficient for us to hire somebody as visiting for a year and train them and they do teaching and research and then you let them go and hire someone else for the second year, it's not efficient. The second reason is if someone leaves or retires from the tenure track, it takes a whole year to do a search. If you hire someone to fill in as visiting, and at the end of that time period if the next faculty also leaves and you cannot retain that individual you hired as temporary to fill in the role for visiting resulting in letting that individual go and hire someone else new. This happened in Department of Engineering last year. Lastly, in some disciplines it's harder to recruit faculty and we're experiencing this more and more in Nursing, Music Education, and other areas. So it is attractive to hire doctoral candidates who are in the last stage of their dissertation to give them a whole year so they can complete their dissertation work, however, at times it takes longer so it spills over to the second year.

Trustee Strauss asked, in if the terms and conditions of employment in some cases that would imply to have implications for collective bargaining and are we free to alter our regulations outside of the collective bargaining process?

Vice Provost Krishnamurthi responded, that the subsequent recommendations were actually discussed with the union while in the negotiations stages. Secondly, these changes also are consistent with the collective bargaining agreements. Laura Alexander, Senior Associate Vice President for Human Resources, also assisted with updating definitions relative to the rest of the state universities. Speaking of the classification of visiting professor, for this year there's 19 visiting faculty.

Chair Butler noted, are you going to move through the three classifications?

Vice Provost Krishnamurthi responded, the next classification is temporary appointment. This is also a request that came from the UPI, and the management side concurs. The Board of Trustees regulation on this are from the 1990's and it says they can be appointed for one leave ever five years for consecutive appointments. After that, there needs to be a special approval from the president or the designee. The request is to remove this limit for the simple reason by definition these are temporary appointments annually renewed. Also, the collective bargaining agreements take care of the appointments and the duration, so renewing these appointments and going through the process, takes a lot of transactions involved. Lastly, from the union side, the seniority is important for them but you cannot have someone work for five years and say you let them go and then rehire them a year later, so the seniority roster is important. Some of the instructors have been here ten years, fifteen years, and they do a great service for NIU. This is really a transactional recommendation from the union as well as from us.

Trustee Murer asked, I am concerned about taking a time limitation off of something that's called temporary. It's one or the other, either it's temporary and if so I think that we require some type of specificity as to what does that mean. Or if they're not temporary and they're permanent, then why are we still using that language?

Vice Provost Krishnamurthi responded, exactly and let me respond to the temporary matter. It's actually all these union instructors' contracts are annually renewed.

Trustee Murer commented, I'm having a difficulty with language. I have difficulty with the terminology temporary which has a meaning that is not permanent and if we take any time limitation off of it then it's an infinitum. I might be missing something here but I'm just having a language issue of using terminology called temporary and not having specificity of what does temporary mean.

Provost Freeman responded, I almost think in this context temporary was probably introduced to signify non-tenured which it's probably not the most appropriate use of the word temporary.

Trustee Murer noted, I'm a big fan of language and precision of language. We should say what we mean and if it's non-tenured, then non-tenured track, maybe that's what you need to call it. But if we have the opportunity to continue to rectify any discrepancies that we have, let's take that opportunity.

Vice Provost Krishnamurthi responded, absolutely and just as you were saying, I was recognizing the language issue, maybe it's easy to say just instructors and this is their classification, this is their type of appointment.

Provost Freeman added, because that definitely carries with it the non-tenure line meaning and then it's one work instead of a lot of extra words.

Trustee Murer added, that would be fine with me.

Senior Associate Vice President Alexander agreed.

Chair Butler added, so this is a committee and this is an action item, we can recommend that the Board approve these amendments, but at the same time we can recommend that you take another look at the title. I think the recommendation from Trustee Murer is to retitle this section and the appropriate sentences inside it to change it to instructor appointments.

Provost Freeman noted, we will bring back through AASAPC with new wording for that section. Would anybody object to us bringing them back through the Academic Affairs, Student Affairs and Personnel Committee since these are personnel items and we have a meeting coming up on November 17th?

Chair Butler agreed, I think that's appropriate. My question would be is the concept of automatic tenure still an issue, still a matter of concern that might affect this issue?

Provost Freeman noted, the composition of the non-tenure track faculty workforce nationally has really changed. I'm very proud that we're an institution that does not rely in majority on contingent faculty who are not long term employees. The best practice nationally for instructors, meaning non-tenure line faculty who don't have research expectations and who teach the 4/4 teaching load is actually moving towards rolling contracts, opportunities for advancement, because it's best for our students when they're part of this. I think the concern you might be raising might no longer, in the current environment, be one that's raised very often. If I'm understanding it was an implied tenure.

Chair Butler agreed. I was just curious if that legal concept or principle was still hanging out there that could affect this distinction.

Provost Freeman replied, we'll certainly have a better answer for you on November 17th.

Vice Provost Krishnamurthi added, the third one was more of a language and consistency issue. The current definition of adjunct at NIU is when non-employees occasionally teach specialized courses and they're not compensated, they're volunteers. This is again, not the national definition or even a statewide definition so the recommendation is to define them as adjunct, employees of NIU, hired for less than 50% of time to

teach and I'll explain that, and they could be eligible to receive compensation. I say less than 50% because the collective bargaining agreement says for instructors, if somebody is teaching 50% or more, they have to be in the collective bargaining unit. If somebody is less than 50%, and some examples are those who teach non-credit course for the Community School of the Art like piano and all those things for kids and adults, motorcycle safety, and some of those non-credit which are less than 50% and occasionally some specialized courses where you can bring in the industry expert to teach something in business or law, for example for 25% and they should and they deserve to receive compensation. If somebody teaches voluntarily, they can do that too. Some of you may recall last year that Associate Vice President of Human Resources, Celeste Latham, came and shared information about elimination of this affiliates category. The affiliate's category was used before for accommodating all those outside of tenure, tenure-track faculty and collective bargaining instructors. Whoever was left over, were affiliates. So the adjunct faculty by definition right now is they should be volunteers. The national definition and the state definition in other schools is these are adjunct faculty. So this is also an issue for us. So for those who teach non-credit and less than 50% of the time, for consistency we are making this is recommended for your consideration.

Trustee Strauss noted, the only issue I have is with the proposed addition. Adjunct appointments for teaching credit courses shall be less than 50% but it doesn't say 50% of what. I think it would be advisable if simply the language was clarified. I don't have a problem with the concept.

Trustee Murer added, I'm just concerned with making sure that we're clear on the methodology of compensation, please explain if an adjunct must go through the same rigors as being an employee.

Provost Freeman responded, actually if an adjunct is going to teach they have to meet the HLC requirements for faculty qualifications and in our graduate school where we occasionally really would like people from the outside to serve on graduate committees and generally that's done uncompensated, we still put them through a special review process.

Trustee Murer noted, I didn't mean the same rigors in terms of academic qualification, I meant in terms of HR processes. Maybe I'm wrong on that. I just want to make sure that as we start to take a categorization of adjunct appointments that in the past had not received compensation, and put them in a category of compensation, then what methodology are we going to use through the HR process to determine that level of compensation.

Vice Provost Krishnamurthi replied, two things here; number one in terms of screening those employees, background check, and the paperwork and approvals, they will be the same as any other employee. Number two, the compensation is really dictated by the discipline and the market rate. A lot of times that drives that.

Provost Freeman added, we have those processes in place for these employees now. It's just that these employees have been called affiliates and with the elimination of the affiliates category we're going to call them adjuncts and adjuncts previously were by definition uncompensated. We are comfortable with the methodology.

Chair Butler noted, the recommendation is that we forward this to the Academic Affairs, Student Affairs, and Personnel Committee with the changes that we have discussed here today with respect to changing temporary employments to instructors and the appropriate changes inside the body of that section and that there be some clarification as to what 50% of what is?

Chair Butler called for a motion. Trustee Strauss so moved. Trustee Coleman second. Motion passed.

8. APPEARANCES BEFORE THE BOARD AND RECORDING OF MEETINGS

Chair Butler began, we're now considering a motion to amend the bylaws to create conditions for making

public comments at our meetings. Let's begin with some background from Mr. Blakemore or someone from your office.

General Counsel Blakemore began, Mr. Chair, Members of the Board, this is actually a follow-up to action that the board has already taken with respect to the governance of its meetings. The board took action within the last year or so based in part on an attorney general's opinion wherein we did not have a written policy related to whether in fact one was required to provide specific information in order to make a presentation to the board. There as an attorney general's opinion that indicated that you could not require personal information like the home address, telephone number, etc. That was not a practice that the board did, but we clarified that by eliminating that in terms of the form that the public needs to fill out in order to make its presentations to the board. Because of that, the Office of General Counsel took a more comprehensive review of what our policies and quite frankly what our practices were and felt that it was important to do two things. One, we wanted to make certain that we were compliant with other attorney general finding opinions with respect to this issue. And then two, and more importantly, we wanted to clarify the roles, responsibilities and expectations. What we have proposed here is a more comprehensive appearance before the board section I provided you what we call red line, it's actually highlighted in yellow, statement for your information and review and what I'm going to do is summarize the major provisions of that proposal. One, we are requesting that the board make a statement in support of open discussion and observation of the public related to the business of the board and so there's a comprehensive statement that is part of now Section IV of appearances before the board. We specifically lay out the obligation of the board to provide opportunity for the public to observe the meeting, that you will from time to time stream the meetings. Streaming of the meetings, and that is especially true when you choose to meet in other locations within the university. We wanted to make certain that if in the event that we're done, you would still have the opportunity here in DeKalb to have the meeting. That has been the practice of the board. We wanted to memorialize that. We also wanted to make certain that there was an opportunity for the board, as it's required by law, to record the meetings in the event that they wanted to. This morning was an example of the board fulfilling that legal obligation, but we wanted to be a little bit clearer about the parameters of that and therefore you have pretty detailed procedures related to that as part of the policy. The other thing that we have done here is the board has had a practice but never had it in writing with respect to the amount of time that it would provide for public comment. Typically, institutions will want to provide the public notice and you would want to have notice for yourself in terms of how you manage your meetings. We have taken what has been your practice which is about ten minutes before that you've provided. We've provided specific authority of the board chair to extend that for another five minutes. The board could always extend that public time itself, but we are very specific about the ten minutes plus the extension of time on the part of the chair within the discretion of the chair. We also, and this does not change our current practice at all, we now have a practice of allowing anyone from the public up to the time of the beginning of the meeting to actually register to actually speak. What we have done here though is expanded that by providing different options so you don't have to come and necessarily, we provide a website, we provide a telephone number and so what we have done here is made registration a little easier for the public. And we have also provided opportunities for those persons who are disabled and we have for your consideration in this, you would provide upon a two-day notice, more access if a person were disabled. And so that is not something that is in the board's sort of policy or practice now, we wanted to make clear to the public that we would be doing that for sort of obvious reasons. We have a section and I'll go right to that where we indicate that the public obviously has a right to have discussions or to make their thoughts known to the board about those issues that are within the jurisdiction of the board as opposed to issues that may not be within the jurisdiction of the board. As a second step however we have indicated and this is by means of a notice to the public that there's certain personnel and sort of related issues that the board will not engage in conversations with the public although the public would still have the right to sort of raise those issues. We just had a discussion for example about collective bargaining and how that might entail. Typically, a collective bargaining discussion is done in closed session although the board has to act in public session on those. We have laid out and these are the exemptions that are actually part of the Open Meetings Act wherein effect the public knows that although you are listening to them, you may not be discussion the issue with them not because you don't have necessarily opinions on it, but

because those are more the subject of confidential discussions up to the point that you're making a decision. We're looking to in effect provide a more comprehensive section that deals with public appearances before the board, being clear about what the expectations are, and also providing some pretty specific details about what can and cannot be discussed and what you will engage in.

Trustee Murer began, I think this is really very important and one of the comments you made in terms of giving the public the parameters of our response, in light of discussion that have gone on over the past couple of years, I think that's really important. Sometimes the board doesn't respond when the public makes a comment and in the past we've been criticized that we haven't been engaging enough, but many times that's because either it's litigation or it's not within the scope of what we can discuss in public at that particular time because of the evolution or where we are and I think this is very timely for us to be much more articulate as to how a board responds when a public has absolute right to make comment, but it doesn't mean the board has an obligation to be immediately responsive to those comments in a dialog. I think this is really, for me, a very important issue to be very clear and I think this is the time to do it.

General Counsel Blakemore added, I very much appreciate your comments and that was the intent behind that particular section and an overall notice to the public about what is expected in terms of the public and what they can expect quite frankly from the board.

Chair Butler asked, I want to make sure that we're clear when we make reference to the chair that we're referring to.

General Counsel Blakemore responded, the language that we use is committee chair or presiding officer.

Chair Butler continued, that's in some places, it's not throughout. Sometimes it just says chair. The sub point D, the new D, it says members of the public are allowed to register, I think it needs to indicate there with whom they are to register.

General Counsel Blakemore responded, the board liaison's office would be where registration would take place.

Chair Butler asked, if we could just put that there because that's where someone would want to know who they are speaking to. I know it comes later that the recording secretary shall confer with the registered speakers.

Trustee Strauss added, registration, second sentence, registration should be made with the board liaison.

Chair Butler agreed and added, if we could just have that up there where it first says register with. In addition to that, I have some questions. What is a material disruption?

General Counsel Blakemore responded, during the past several months we have gone through extensive consultation on the freedom of expression policy. Part of what we wanted to do on, quite frankly constitutional law, basically indicated you cannot in a sense infringe upon constitutional rights unless there is a material instruction. We do not give that definition here. It is hard to really determine. We can make clear here that that can be determined by the board chair or the board fully, but it's going to be a fact based sort of circumstance. What we wanted to do, and using this morning as an example, what we didn't want any interruption, a slight interruption should not prevent the public from having an opportunity to speak. And so we wanted to have a high enough standard that if someone is a little bit over or whatever, they would still have that opportunity. But we don't define it here, but it's a standard that I think can be applied based on the particular circumstances.

Chair Butler added, I only ask that question because prior to that term there's a number of action verbs defining disruptive behavior, make false statements, and then that term then appears and I'm trying to

figure out. I mean I think there's often times where people speak to us that we think the statements are false. That's not a material disruption?

General Counsel Blakemore responded, no, in fact those are two separate type issues. One has to do with what your actual statements are and everyone has a right fact of cause of action for defamation. What we're talking about here is when you're really interrupting as opposed to I would say mere statements. Again, we call for in the policy consistent with what we expect of our students in terms of the Huskie Pact, what we expect of our employees in terms of an academic institution with robust discussion but in a civil and respectful many. We're very clear about those. So again, we establish a standard here of how that communication could occur. But I don't think that someone making what they believe to be in good faith a truthful statement which ultimately may turn out not to be. That's not a material interruption.

Board Liaison Mann asked, Mr. Chair can I ask a quick question please? Since I missed the meeting, I'd like to ask for a little clarification. In section D where it says that the members of the public are allowed to register up to the time posted and then in the second short paragraph it says advanced registration closes one hour prior to the scheduled start of the meeting. Is that a conflicting statement there?

General Counsel Blakemore replied, what we're trying to do there is that we assume that you have to be in preparation for the meeting so people could still come within that hour and actually register, but having someone responsible for taking those sort of ends to the hour before to the meeting, but they still have the option of registering at the meeting.

Board Liaison Mann noted, so the distinction is the advanced registration as opposed to on-site?

General Counsel Blakemore replied, yes.

Chair Butler clarified, and as a practical matter that would come into play if there were multiple people wishing to speak and the chair of the meeting wished to limit the speaking.

General Counsel Blakemore added, that is correct. That's why the provisions that are before you have a section that talks about how best and it provides the chair the authority to manage several speakers on the same topic. Right now it's first come, first serve, but if the public wants to speak on enrollment as opposed to any other major, you can actually do that.

Chair Butler noted, this isn't unusual, if anyone's ever testified in Springfield you know that the chair of the committee will say we'll have speaker on the pro side, one speaker on the con side, they'll exercise that level of authority. As a practical matter as long as I've been on the board, we have never had to do that. This is more of a prospective change. I think I've got this. We can empower our general counsel with his notes as I continue. It indicates in H that sign language interpretation is available upon request without prior notice. One, it's in a bracket. Would that bracket be removed? And two, can we actually make this promise?

General Counsel Blakemore responded, I actually had it in brackets because I really wanted to have some discussion on that very issue. Can we do this? I believe that there's an obligation on our part to do it. I think it's the right thing to do, but I didn't want to assume. This wasn't a decision of the General Counsel's Office as much as an issue that if we make this representation, we need to be certain that we will be able to comply with this representation.

Trustee Murer asked, what does the ADA require?

Deputy General Counsel Brady responded, we do have an obligation in our program and services to provide reasonable accommodations to individuals who have disabilities and maintain requests for such accommodation. I believe that's the intent of the statement. It really is no different than what we have in

employee situation in those contents but I do believe we will have to, if it's not the specifics of the proposed language here, the university does have an obligation to provide reasonable accommodations to disabled individuals who request them.

Trustee Murer added, it's not so much the issue of our obligation which we all understand, I think what the question is what the sense of immediacy is. Can we require notice for the accommodation? We have no doubt the accommodation must be made, but it's the language of that sense of immediately.

Deputy General Counsel Brady responded, yes, we can require notice because that goes to the reasonableness of us being able to accommodate an individual. If an individual just shows up and says I can't hear, I would like an interpreter and we don't have one available, the reasonableness there is we're going to just say I'm sorry that is not reasonable at this point. So asking for advanced notice like two days or whatever is appropriate.

Trustee Murer asked, do we think two days is too much though? Do we need two days for something like that?

Trustee Coleman asked, do we staff or do we hire this service?

President Baker responded, we have staff.

Chair Butler added, there's the issue of when an agenda item is announced to the public, which is 48 hours, so I think you need at least a day to notice the change, so maybe 24 hours.

Greg Long added, one thing that I would mention, it isn't realistic to have someone come to the meeting and request an interpreter as far as our staffing goes. We do have some interpreters on staff certainly, but they are most often times assigned to work with students in specific classes and so I don't think we could say alright we could provide someone because we may then have to take someone from a classroom setting to bring here and I think that's certainly not what we want to do. The other thing too if you're thinking about hearing loss as an issue, I don't know that I would say I always have an interpreter here because if you want to hit the broader nature of things, captioning would be far better. We use this in our University Council and Faculty Senate meetings such that you've got the TV up there and it's just like the evening news where the captioning is getting everything that's said and it's being presented because there are a lot of people who are deaf or hard of hearing who don't use sign language. While we might think an interpreter would be something to bring in, I would argue that you'll probably be more inclusive if you are captioning what is said.

Deputy General Counsel Brady added, can I suggest then to cut the conversation that we move to language that we request that individuals who may need reasonable accommodations to participate in the meeting give us advance notice within two days, some language like that. This would also go beyond a specific to a type of disability when there are other types of disabilities that we may need to consider from time to time.

Trustee Strauss responded, I would propose we get rid of the bracketed language in the paragraph immediately preceding and just change two business days to one business day and that is a more general statement with regard to disability not a particular disability and it allows for the notice to be posted.

Trustee Boey questioned the two-day notice requirement.

Chair Butler responded because you can announce an agenda item 48 hours in advance of the meeting, it's not really enough time for someone to maybe catch the change and so if you had two business days advanced notice somebody might miss that. So I think one day is better. It would potentially require us to move more quickly but it's our obligation.

Deputy General Counsel Brady clarified, this is part of the reasonable, and we will have to engage with the person on a can we accomplish this. We are not required to give exactly what they ask for. We have to engage in an interactive process where we determine can we provide reasonably what is being requested or come up with some other reasonable alternative.

General Counsel Blakemore continued, I can certainly support the 24 hour versus the 48. I think the critical issue is noticing the public of access to this meeting and providing that. We can be flexible. We want to encourage people to do it as soon as practical. One of the things that the board does is that you publish your meetings by law in December for the entire calendar year, coming calendar year. So at least of terms of your regular meetings there is notice to the public and it would be helpful to encourage people to give us as much advance notice as possible so we can accommodate that. So I'm fine with the change.

Trustee Murer added, I just have one thought. When we talked about the material disruption, I don't know if I'm using the same words but basically the same thing, have we had any discussions and pre-thought what our response might be if there is material disruption and I'm thinking about under what circumstances do we call in the campus police and I want to at least have us think about, maybe not necessarily come to an answer today, but to preempt this so that we don't have any overreaction or under reaction on the effective use of law enforcement. Whether it's campus police or outside the campus police, but I think when we use that terminology and it's a broad term which well it should be and we have the provisions that are civil in terms of response from a chair, but I want us to at least think about and again so that there's no overreaction or under reaction to that and from your perspective or anyone's perspective have we had these conversations in the past?

Chair Butler responded, not as a committee we haven't and I think it's a worth one to have. I mean I think there's a point at which making an appearance before the board, that's one thing, but then there's protest and what happens and my next question is about hand held posters and place cards. I'm not quite sure that would be consistent with our free speech policy but we can get to that in a moment. But if we do have a situation where we have protests what are the options that are available to us?

Board Liaison Mann added, one thing I'd like to mention is that we always do have a plain clothed officer in the board room at all times. In fact, we have one here with us today.

Trustee Murer added, I think, again especially in light of societal issues that we're facing, I would like us to at least engage in the thought process and I want to continue to use that language of under response or over response.

General Counsel Blakemore added, Trustee Murer let me share with you and I don't want to put the provost on the spot, but she and I have been engaged in the past two, three weeks in exactly these types of discussions. So I will share with you and Dr. Freeman may want to add a little bit to this. As we develop the policy on freedom of expression, we had conversations that included the Department of Public Safety and Student Affairs, Facilities, the Provost, the Provost's Office, my office and we actually established a protocol, I won't go through the details of that, that in effect helped us determine when we would call in the police, what action would be taken before hand and who would be responsible for taking that action. We developed a protocol that respected the public, provided notice that you're now in violation of the policy, provided them an opportunity to comply with the policy. We made a conscious decision not to have the Department of Police and Public Safety making those interactions, but that it would be Student Affairs or the appropriate individuals. It was actually instituted this week, my days are mixed up, last week where we avoided I believe what could have been a challenging violent situation because of the matter in which it was handled. We had people who understood the policy, who were told about the policy, but clearly having the Public Safety Department with the authority in the event there was imminent danger being able to take the appropriate action. So we have engaged in that. I think it will be helpful to sort of share that particularly with the board chairs and committee chairs and we can sort of do that and I don't know if the

president or the provost wanted to add to that.

Provost Freeman added, I would just say that the policy was developed based on a practice shared with us by Public Safety and the first time we discussed it as a leadership team was actually not in the context of the freedom of expression policy and civil activism but actually disruption of commencement in the Convocation Center so it's a de-escalation protocol that has multiple uses and we feel very comfortable with it.

Trustee Strauss asked, can I just add that in Section 4.G., the second paragraph, reads speaker registration much be made during the advance registration period by the individual who will make the presentation. That's inconsistent with what we talked about in D with regard to the time. I don't know whether it's advisable to require the person who wants to speak to make the registration but the time element conflicts internally.

General Counsel Blakemore responded, we can eliminate that.

Chair Butler continued, my next question was on K, the last sentence, regarding the hand held posters and place cards or placards are not allowed in the board room during board meetings. I find it hard to believe that's consistent with freedom of speech provisions and we have had this in the past.

General Counsel Blakemore responded, two points, one is one's expression of freedom of expression in this room is a specific provision that has been provided for the university community. This is a place where except when you are in meetings and it is being used for other purposes, the freedom of expression and the placards, etc. it is open. In fact, it's encouraged, it's a specific part of the expression policy and procedure. With respect to the meetings, placards which disrupt, which make it impossible or material disrupt the ability of other individuals to observe your meeting, those types of placards could be prohibited and that's what we're talking about. So in the course of your meeting, no different than in the course of someone faculty member teaching, a faculty member in the lab, the athletic events, we're still saying there is no right there to have that type of protest. We're saying the same thing here. The second thing is, I think the determination of whether it's disruptive again, ultimately is going to be that of the board's and we would look to the board chair to do that but we are trying to protect the interests of the public whether they are protesting or not, their right to observe and in some situations participate in your meeting.

Chair Butler added, so this provides then the option for the enforcement of this provision if the presiding officer of the meeting determines that the postcard or placard is offensive, constitutes a material disruption, and prevents people from being able to participate in some manner.

General Counsel Blakemore noted, I don't believe that just because something is offensive that you would be able to prohibit that. I do think that if there is a material disruption. What we have advised, for example, faculty on this issue is a student that is protesting who comes to a class, and they come in their hoodie as an example or they have an armband on, that's perfectly acceptable as incidental, not disruptive in that classroom. I would say the same rule would apply here. But if it gets to be disruptive or it interferes with other person's rights to be here to observe and participate, then it can be prohibited.

Trustee Coleman asked, recording the meetings and I know there's an Illinois law that provides that recordings are allowed. However, I didn't know we were going to be live on a radio show this morning and that our meeting was going to be broadcasting the full intent to rebroadcast not only locally but possible nationwide. Is there anything we can do about limiting the amount of or the types of broadcasting that can occur?

Deputy General Counsel Brady responded, there is a difference between recording and broadcasting. The law speaks only to recording, so let's start with that premise. So the allowing of broadcasting directly from your meetings is something within your control. Something to consider. The reuse of a recording by the

public is an area of the law that is actually complicated. The intent behind the law is to allow the public to record public meetings. We do separately record at the same time and because of that actually retain intellectual property rights in the recordings of the Board of Trustees meetings. This is a complicated area to where there could be control over the commercial use of that, however fair use principles of copyrighted materials would come into play where a person could take the recording, go out and do such things as parody or commentary or well. Those are the two primary, parody or commentary about the board meeting and they're going to be allowed to do that because of the fair use principle under copyright law. There are some things that can be allowed, and in fact I believe the commercial use of the recordings is something that was addressed in the draft. I don't believe, but I could be wrong, that broadcasting was addressed in the draft.

General Counsel Blakemore responded, we do not specifically address the issue of broadcast, but I would agree with Greg's sort of assessment here. Here's the bottom line, you can probably broadcast, the law though it doesn't speak specifically to broadcast. I think courts, one the Attorney General's interpretation because this is an Open Meetings Act requirement it's more likely than not going to be that the recording or broadcasting or use of and there's going to be few limitations on what could be done. One is you cannot use it for commercial purposes. That's generally what we do with vendors now. They don't have a right quite frankly to come and advertise here, etc. What we did try to do in the provisions, in the policy, was to indicate that they could not manipulate the recording in such a way as to being misleading, etc. So there's clear language there. We were not; at least I was not, aware that there was going to be a live broadcast either. This is an issue that, to be candid, we will probably need to go back and look because that type of notice is more than reasonable. There is no obligation on the part of the board in the event it really interferes with the continuity of the meeting to allow that. But I don't think that we could prohibit the broadcasting.

General Counsel Blakemore added, you cannot eliminate the recording. It can be recorded and I think again courts are probably going to look at recording in a broader sense than if you can record it then you ought to be able to use it as part of what is being heard and understand what has been said, etc.

Trustee Murer asked, am I correct in Illinois, specific to Illinois, you can't record someone unless they know that they're being recorded?

Deputy General Attorney Brady replied, that's an eavesdropping law. It only applies to private conversations not public meetings of a public body.

Trustee Murer added, so that was my question, so would a person have to divulge if they were recording at an open meeting and the answer is no. They can just put it in their pocket and do it.

General Counsel Blakemore added, in fact with the use of cell phones it happens all the time.

Trustee Boey added, my reaction to this morning was Mr. Mason was using NIU to broadcast to his listeners. We were being used in that respect that he's getting the attention of people who are listening to his program. It just enhances his participation of listeners and he did it purposely and I was surprised that he was allowed to do it quite frankly.

Trustee Coleman asked, so what if every month he wants to broadcast live from the NIU Board? I'm also going to tell you I don't know what kind of show it is and I don't know what his political agenda is although it looks like it's beginning to come out. I think we strongly need to look at the live broadcasting. I don't want that to be a regular event and I don't think I want to be part of that.

General Counsel Blakemore replied, we will research this in more detail. This was not an issue that we were aware was going to happen and in the fashion in which it was. We were asked whether in fact he had the right to record, the Open Meetings Act is clear on that provision. We added the commercial provision, the

commercial prohibition provision consistent with what we do across the university. But we will look at this in particular because again, for commercial purposes, someone wanting to do it every month or whatever, I think we'd have an issue with other institutions or entities but we will take a look at that.

Trustee Marshall added, I think the question for me would be his statement on admission that he did have a vested interest which leads to the question on does it make it commercial?

General Counsel Blakemore responded, he has a commercial interest, usually with respect to issues of conflict of interest you're really talking about disclosure as opposed to prohibitions. His right and any other person's right to speak on issues notwithstanding the fact that they may have some direct interest in them would be preserved and you couldn't prohibit that.

Trustee Strauss added, two things, first I hope we can simply allow some further study regarding these issues on recording and broadcasting. I don't think it's productive to speculate anymore about that today, but I do believe that we need some further input. When I first asked for recognition, I wanted to speak to the posters and placards issue that was raised with regard to 4 K. So the summary that we had about material disruption, discretion of the chair is not contained in this draft. So to the extent that those are concepts that we want incorporated means we need to have modifications before this comes back again.

Chair Butler responded, I'm still not convinced that that's a prohibition we should have in this policy. We've seen before people come to our meetings with signs. It's not a disruption. I certainly will tell you in the world that I operate in when I'm not here, in the labor world signs are very important and a regular part of peaceful, free speech. So I personally would prefer that not be in here.

Trustee Strauss added, I'm sensitive that you can have a sign and its free speech as well. I also understand that you could have somebody that had an 8ft x 10ft sign that they brought in and nobody else in the room could see through them. So I just think this needs a little more work to try to be able to separate the two out. I'm not in favor of saying people can't bring any written material either. It has happened in the past, it wasn't disruptive. We have no problem if it continued in that vein. My problem is if you have somebody who causes a material disruption however it is that you define that. So if we could just let people reflect on that and come back to us with another recommendation.

Chair Butler asked, do the members of the committee feel they have sufficiently expressed their views and observations about this policy? In this case can we recommend that this come before the board in an amended fashion and I will, as the chair of this committee, continue to have dialog with Mr. Blakemore so that we can have a first reading of this? Again, this will come before the board in December as a first reading. So we'll have plenty of time to talk about its contents.

Trustee Strauss noted, I'll make a motion to advance this on first reading to the full board with modifications consistent with our discussion today and further research.

Trustee Marshall seconded the motion. There was no additional discussion and the motion passed.

9. CONSTITUTIONAL REFORM PROCESS UPDATE

Chair Butler indicated that last item on our agenda is an information item. It's a constitutional reform process update which this committee has been discussing since its formation and Greg Long will present the item to the committee.

Greg Long began, I would like to thank you for the opportunity to give you this update. As Jerry mentioned this is something we have been working on for quite a while and I know as listed in the agenda it's constitutional reform process update and as identified on my slide up here it's one thing lead to another, inception of a policy library and really that's done intentionally to show quite how closely aligned these two

projects are. Also with this, my presentation was going to be kind of a lead up for Jerry to talk about the policy on policies. I will do my best to wrap the discussion around and close it up, but it will be something that certainly needs further elaboration and discussion as it moves forward. In looking at this, what I want to talk a little bit about is why we're interested in this, what we've done and where we're suspecting it should go from here. Within shared governance, about a year ago when I had just entered this role, spent a lot of time looking at the constitution and bylaws and our other governance documents and saw that with those documents there are some significant issues, particularly in terms of their specificity and breadth. The threshold required to change bylaws was set unrealistically high compared to many other universities. For example, to change a bylaw we require two-thirds of the membership of 60 people to change a bylaw required than 40 people and our average attendance for the previous five years has run about 43 people. So you can image that when we took votes that one or two people if they just vote no can in fact influence votes. In thinking about this then we thought about we want to revise the constitutional. We presented this information to the president's cabinet a couple of weeks ago, we also presented it to the Rules, Governance, and Elections Committee last week and in preparation with sending it here, but that particular slide was simply to emphasize that over the past three years within University Council, we've had a number of votes that if you look at in terms of popular vote, what does the majority of the body want who's present, we had as you'll notice on this 80%, 95%, we had a large percentage of the people present wanting to have things endorsed or changed, but because our attendance was low, we would miss votes by one or two and that was problematic. On the plus side, I will tell you that we have made a change, our bylaws threshold was amended back in April and just this past month we had a meeting of the University Council where the Athletic Board had proposed a bylaw change in terms of its structure and operation, I mean minor things, but basically updating. If we had not changed the bylaws, we had used the same threshold that has been in place for the past 30 years, the vote would have failed by one, however, with our current threshold, it passed by 6 votes. Recognizing that this was a particular concern for us, we thought about this idea of revising the constitution and bylaws but one of the problems we have with it is what do we do with the policies, if you will, that are codified as bylaws and where would they go? So that was the discussion that led to the idea that we need some sort of policy library, a place to put the constitution and bylaws which is more easily identified and accessible with the creation of a policy library.

Mr. Long continued, I have two slides here just to show you. At the University of Arizona, it's essentially a web portal where policies across the university are organized so you can do a quick search. They have it both as far as categories as well as an A to Z search index. On this particular one they also have at the bottom of that page what's the status of policies, what's in revision, what's being looked at. For anyone who is interested in that information they just go to the website, it's there, it's handy. We have nothing similar at this point at NIU. Purdue same thing, same idea, just giving you those as examples. Just so you know from an overall standpoint, we have looked at over 30 different institutions at this point in terms of their policy libraries and approach and have summarized a lot of that data and shared with the Office of General Counsel. I would reiterate, we have had a very close working relationship particularly over the last 8 to 10 months as we've talked at this because shared governance leadership wants to see this happen and, I think larger picture, administratively and functioning of the university we need to have this happen. So it has been a very collaborative process so far. This is, from our standpoint, a very grass roots kind of an effort on our part in collaboration with upper administration and Office of General Counsel. So as we mentioned at this point if you look at university and divisional levels, so higher level policies, they exist in a lot of different places. They exist in the Constitutional Bylaws, your Board of Trustees Regulations and Bylaws, the Academic Policy and Procedure Manual and across those different documents there's redundant information. Sometimes there's information that's in conflict. We have, for example, multiple ways of describing how you do administrative evaluations depending upon where you look. That's not a particularly helpful approach. Recognizing that we want to have something that would allow easier access to policies and have them be organized and consistent in how they're presented, that's again where the concept of a policy library comes in. But to do that it's not just the web portal, it's not just the here are the categories, but you have to have the guidelines for it and that's when Jerry talks about the policy on policies, we like to talk about it as policy management, but it's that idea of who creates a policy, who owns it, how is it reviewed, so on and so forth. Those are the discussion points that are included in the draft memo that we

would have talked about had time allowed us today, but does certainly need further discussion. If we look at this it's not only that we need the guidelines, but there's the bigger picture of we talked about enterprise risk management, the compliance and risk features that exist and if we have policies that are in a number of places doesn't that put us at some level of risk for being non-compliant and otherwise not functioning the way that's efficient and appropriate. Those were reasons for it and, thus far from our standpoint as I mentioned, our policies are largely, many of them I should say, are largely codified in our bylaws. Our bylaws are significantly more detailed and have more breadth in them than any I've looked at. I've spent the last six/eight months looking at this and ours are pretty unique in terms of how they are organized and they were also designed at a time to be very resistant to change. So the political atmosphere 30 years ago was different than what we have now. What they set up 30 years ago has basically presented some serious roadblock to for moving forward. In terms of what we've done thus far; I'm in this role, it's a one-year term, I have the possibility of serving two years and so when I began this I looked at it as a two-year commitment. Last fall we were talking very specifically about the constitution and bylaws and what we needed to do and we needed to change that voting threshold, and we did. We changed the voting threshold for bylaws and then over the spring semester and summer we've reviewed the core governance documents in excruciating detail. Again the Constitution and Bylaws, the BOT documents as well as the Academic Policies and Procedure Manual. We've got lots of notes, lots of guidance on those. We also have shared it with the Rules, Governance, and Elections Committee who have even crafted a draft of what a revised Constitution and Bylaws might look like, where it takes out all the things that are currently policies or how we would define policies, so what might that look like and that draft has been again shared with the Rules, Governance and Elections Committee, but we're waiting to go further on it because again in taking the things out of the bylaws, where would they go? Our initial thought would be we would put them in the Academic Policies and Procedures Manual, but again as board members I don't know that you've had any direct experience with that but that's a document that is 80 some separate policies not searchable and not well organized and fairly out of date in certain policies and so that was the thought that if we were just to put the bylaws and put them in the APPM that that wouldn't be successful, that the faculty who were going to vote on this would say we don't trust you, and if I were in there position I would have hesitation too which is why then the policy library and the management guidelines become so important because until those policy guidelines, the policy on policy gets established, further work on the constitution and bylaw revision really is on hold. We've done all the work for the constitution and bylaws to present it, we're just now waiting on the policy on policies to be put in place and create the structure to support that. Currently, as I said, we have done this at the University Council level, we have looked very carefully at all the organic governance documents for the university. We are working with Al Phillips and Lavonne Neal to gather policies from other divisions on campus. Our focus is more on the academic and the issues that we can directly address. There's lots of policies that exist elsewhere that we have no direct interest or desire to do further. The eight questions are the ones that are listed on the draft you have from General Counsel. What we did with those eight questions is we looked at a number of different universities, we benchmarked NIUs Constitution and Bylaws, we also benchmarked our policy library or lack of one against others, and when we did that, we identified 14 institutions that we thought did a pretty good job of how they organized a policy library. The grad students and I took those 8 questions and answered them as they related to each of those separate institutions and also shared with Office of General Counsel. We've tried to provide as much background as we can on this to get the faculty and staff behind this because it not only needs to be a good idea but we need to show our work. We need to show how we arrived at the decisions and so that's where we've been going on that. The other thing that we've done on this is in the process of gathered examples of what a policy template might look like. Right now, if we had time, we'd look at a freedom of expression policy. It misses a lot of the answers of the questions in terms of where's it from, how is it reviewed, how long does it stay in places, etc. etc. Those things aren't there. Other universities who have policy libraries have a very clear template for how one goes about submitting a policy and how it works. We've gathered some examples of that to share as well. Finally, to make sure that this works, you know it's going to be web based and so we have included Brett Coryell. At our last meeting of the Rules, Governance, and Elections Committee, Brett had one of his representatives, Dan Ihm attend. Dan's going to continue to meet with us so that we understand how to best structure this from a web standpoint that's searchable and so forth. As I said, right now we at the University Council and governance level have

gathered and reviewed the governance documents. There are many, many others that are out there. I've met with Lavonne Neal, met with Al Phillips, talked about how to go about gathering those additional policies and the division of labor because they have access and the ability to review and compile information on facilities, on safety, on a number of things that aren't within our purview. We're also need to, once we have this set, go back to University Council and introduce the change to the Constitution and Bylaws. As part of this, also work with the APPM Committee because the policy library will necessarily have to take things out of the APPM and put it where they belong within the policy library. Again, this is an on-going process. So, long term success, we have to let people know about this. We have to pull it off. We have to create a structure that maintains the library. That's one of my major concerns on this. This is a lot of effort that's being directed right now to organize, review, compile this information, but then how does it go forward in a sustainable fashion. Long run, when we think about the idea of having a policy template such that policies are submitted in a consistent fashion, they ought to be written in a way that people can read them. Right now many of our policies are written, but with a lot of legalize such that our sentences run 30/40 words per sentence and end up being at the 15th, 16th, 17th grade level. If our policies are harder to read than the Wall Street Journal, we have a problem. Part of this is, long run, thinking about can we create, you know once we do the reorganization because that's the first step following the policy library implementation and the guidelines, can you go back and look at policies and create them in a way that makes sense to people so they can read it. At this point, I would have turned it over to my esteemed colleague and we would have talked more about the draft on the policy on policies. Trustee Butler and I and General Counsel Blakemore did talk a little bit before this meeting about the idea of having some ongoing discussion on this prior to the next time we meet because from our standpoint within shared governance, I really would like to see this set up by the end of the semester if at all possible because we have four meetings in the spring semester and much like you, we have to have a first reading and then and action, and if we're talking about really significant changes to the Constitution and Bylaws which you know at first glance it would appear that's what we're doing; they're reasonable, they make sense, they're logical, but we need to have time to figure out how to roll that out, how to make sure that that happens because my term ends at the end of this academic year and while I certainly hope whoever follows me wants to maintain this. There's some time limitations here. My encouragement to you as the Board would be to please continue to act on this and let's shoot for by the time we get in the December meeting potentially have something ready to talk about in much more detail because I really cannot take it back to University Council. I can't take it back to the faculty until we have something that I can point to.

Chair Butler added, thank you very much for the summary. The reference that Greg is making is to the memorandum dated October 20th that we have in our materials that was put together by Mr. Blakemore and Mr. Long. If we could take some time on our own and review this. Contact me if you have concerns or things you'd like added to the conversation. If need be, we can take this up as a formal item in one of the committees that meets in November. That concludes our agenda.

10. PROPOSED DECISION POINTS RELATED TO POLICY ON POLICIES

- a. BOT Process for Determination of Policy Exclusive to Board of Trustees
- b. BOT Process for Determination of Authority
- c. BOT Process for Proposed Definition of Policy

Deferred to the next meeting due to timing.

11. NEXT STEPS

Addressed earlier in discussion.

12. OTHER MATTERS

No other matters were discussed.

13. NEXT MEETING DATE

The next meeting date of the Ad Hoc Committee on Governance will be determined at a later date.

12. ADJOURNMENT

Chair Butler asked for a motion to adjourn. Trustee Strauss so moved and Trustee Holmes seconded. The motion was approved. Meeting adjourned at 2:01 p.m.

Respectfully submitted,

Kathleen Carey

Recording Secretary

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