Governance & Policy Committee

October 2019

October 11, 2019
9:15 a.m.

Boardroom, McNamara Alumni Center
1. 2019-20 Committee Work Plan
   Docket Item Summary - Page 3
   Draft Work Plan - Page 4

2. Discussion of Open Policy Issues Related to Board Conduct
   Docket Item Summary - Page 6
   Presentation Materials - Page 11

3. Plan for Advancing Revisions to Namings Policy
   Docket Item Summary - Page 27
AGENDA ITEM: 2019-20 Committee Work Plan

☐ Review  ☐ Review + Action  ☐ Action  ☒ Discussion

☐ This is a report required by Board policy.

PRESENTERS: Regent Janie Mayeron
Brian Steeves, Executive Director & Corporate Secretary

PURPOSE & KEY POINTS

The purpose of this item is to review and discuss the 2019-20 committee work plan.

BACKGROUND INFORMATION

Board of Regents Policy: Board Operations and Agenda Guidelines describes the role of the Governance & Policy Committee as follows:

The Governance & Policy Committee (GOV) oversees and makes recommendations to the Board related to policy and processes that seek to ensure the integrity and high performance of the Board. The committee supports effective governance by guiding the Board to: articulate a clear vision for the University and its major components; clarify reserved and delegated authorities; establish institutional benchmarks and performance measures; and thoughtfully considers risks that may impact the performance of the institution.

Specifically, this committee recommends to the Board:

- amendments to the Bylaws and changes to the structure and function of the Board;
- amendments to Board policies not routed through one of the other standing committees; and
- consideration of other University policy matters referred to the committee by the Board chair.

This committee provides oversight to:

- evaluate the effectiveness of the Board through periodic self-assessment;
- ensure that Regents are fully oriented and receive ongoing education; and
- identify best practices in governance for possible implementation.
# Governance & Policy Committee
## 2019-20 Work Plan

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<th>Date</th>
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<td>2019</td>
<td>· <strong>2019-20 Committee Work Plan</strong></td>
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<td>October 10-11</td>
<td>· <strong>Discussion of Open Policy Issues Related to Board Conduct</strong></td>
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<td>December 12-13</td>
<td>· <strong>Plan for Advancing Revisions to Namings Policy</strong></td>
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<td>to recommend revisions to Board of Regents Policy: <em>Namings</em> that</td>
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<td>establish clear principles and procedures to guide future renamings.</td>
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<td>President Gabel will outline her plan for accomplishing this work.</td>
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<td>· <strong>Policy Framework for Renaming Buildings</strong></td>
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<td>adoption of a renamings policy framework. The committee will have an</td>
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| **Board of Regents Policy: Namings – Action**  
**[Board of Regents Policy: American Indian Advisory Boards – Action]**  
**[Board of Regents Policy: Student Representatives to the Board of Regents – Action]**  
**2020 Board Policy Report**  
The committee will discuss the 2020 Board Policy Report. The report includes two sections – a summary of policy work performed over the current year, and the upcoming year’s policy work plan.  
**Framework for Board of Regents Self-Assessment**  
The committee is charged with oversight of periodic self-assessments aimed at evaluating the effectiveness of the Board. This discussion will seek input on a framework for how self-assessment of the Board should be structured. The materials will provide examples from peer institutions and recommended best practices. |
AGENDA ITEM: Discussion of Open Policy Issues Related to Board Conduct

☐ Review ☐ Review + Action ☐ Action ☒ Discussion

☐ This is a report required by Board policy.

PRESENTERS: Brian Steeves, Executive Director & Corporate Secretary

PURPOSE & KEY POINTS

In October 2018, the Governance & Policy Committee embarked on a comprehensive review of three policies related to Board conduct: Code of Ethics for Members of the Board of Regents; Responsibilities of the Board and Individual Regents; and provisions directly related to Regents within Gifts Received and Given by Regents and University Officials. The committee took up discussions related to this comprehensive review over three meetings during the 2018-19 year.

The purpose of this item is to review areas of consensus, and to discuss open policy issues. Feedback from the committee will inform the comprehensive review of Board of Regents Policy: Code of Ethics for Members of the Board of Regents, including the development of specific policy language for review in December 2019 and potential action in February 2020.

Areas of Consensus

Board staff is working with the General Counsel to craft policy language reflecting areas of committee consensus. Specifically, this language will:

- Consolidate the elements of the three policies into a single, comprehensive policy that will help Regents better understand their responsibilities and requirements.
- Retain and reorganize information on paramount interest and public trust, conflict of interest, financial disclosure, expense reimbursements, gifts, and annual review of policy, and retain but streamline key concepts from Responsibilities of the Board and Individual Regents.
- Clearly define fiduciary duties, which current Board policy does not explicitly articulate.

Open Policy Issues

During the committee’s June 2019 meeting, five areas requiring further discussion and guidance were identified. They are:

1. Communicating with the media
2. Remedies for breaches
3. Information requests
4. Running for partisan elective office
5. Conflict of interest related to a Regent’s family member

These five areas are outlined below for the committee’s discussion.

1. **Communicating with the Media** – Board policy states that Regents are “to recognize that the president is the primary spokesperson for the University, and the chair of the Board is the only other person authorized to speak for the Board.” There are varying interpretations of current Board policy among Regents, and lack of a clear best practice nationally. Current policy also states that Regents have a responsibility “to speak forthrightly at Board meetings and to support Board decisions when determined.” This suggests that public comments before Board deliberations or after the Board acts may be viewed differently than when an issue is actively before the Board for consideration.

   The questions before the Board are:
   
   - Should policy address communicating with the media, and if so, how?
   - How do fiduciary responsibilities, such as the duty of loyalty, intersect with First Amendment rights?
   - Does the timing of a Regent's public comments matter?

   Policy language from Big Ten peer institutions is included in the docket.

2. **Remedies for Breaches** – Current Board policy is silent on the topic of remedies for breaches of the Board’s code of conduct. However, the Bylaws of the Board of Regents designate *Robert's Rules of Order* to guide the business of the Board. If a breach were to occur today, the Board could use the provisions contained within *Robert’s Rules* to address behaviors that are inconsistent with the standards set by the group and follow a process for adjudicating and imposing remedies for those behaviors, including censure and removal.

   The question before the Board is:
   
   - Should Board policy establish greater clarity around what constitutes a breach and what remedies may be imposed?

3. **Information Requests** – Except for policy language encouraging Regents “to seek to be fully informed about the University and its role in the state and in higher education and to be responsive to the changing environments that affect it,” no language addresses individual requests for information.

   Two relevant examples of universities that have attempted to address this topic in policy are the University of Nebraska and the University of Texas systems. Both the Nebraska and Texas examples appear aimed at addressing the tension between a board member's desire for information and the time it takes an administration to fulfill such requests.

   Given the expectation that Regents should seek to be fully informed, and the expansive reach of the Minnesota Government Data Practices Act, the question before the Board is:
   
   - Does the Board need policy language around information requests?

   Policy language from the University of Nebraska and from the University of Texas are included in the docket.
4. **Running for Partisan Elective Office** – Current Board policy states, “A Regent shall resign from the Board upon officially announcing candidacy for any partisan elective public office.” This language was likely intended to shield the University and the Board from becoming entangled in partisan issues, but some Regents have questioned whether this provision is needed or advisable.

The questions before the Board are:

- Should policy require resignation upon announcing candidacy for partisan elective office, or should conflict of interest provisions govern in this situation?
- If conflict of interest provisions govern, should resignation be required upon election to a partisan elective office?

5. **Conflict of Interest Related to a Regent’s Family Member** – Current Board policy establishes that a conflict of interest arises when a family member of a Regent has a financial interest in matters before the Board. When this occurs, the Regent must consult with the General Counsel to identify a plan to mitigate the conflict. This is usually accomplished through recusal from voting on the matter in question.

Some Regents have suggested that University employment by a family member should also constitute a conflict requiring mitigation. (Elsewhere in policy, family member is defined as, “a spouse, parent, sibling, child, domestic partner, or any person residing in the Regent’s household.”)

The question before the Board is:

- Should Board policy extend conflict of interest provisions to include family member employment at the University?

**BACKGROUND**

The committee discussed this topic and related matters at the following meetings:

- October 2018, *Ethics and Responsibilities of the Board and Regents*
- December 2018, *Ethics and Responsibilities of the Board and Regents, Part 2*

During these meetings, the committee considered the role of a code of ethics and how it interacts with the role and responsibilities of the Board and individual Regents.

- June 2019, *Update on Potential Changes to Board of Regents Policy: Code of Ethics for Members of the Board of Regents*

At this meeting, the committee – newly constituted with the four Regents elected in May – built on its previous discussions and focused on the additional topics raised in October and December.

At the conclusion of the meeting, it was decided that the Office of the Board of Regents would survey committee members on their preferences regarding each open issue. Those preferences were to be used to draft redline policy language for review and action in fall 2019. In consultation with committee leadership, it was determined that the committee would instead address the open issues at its October 2019 meeting, with review of policy language in December 2019 and action anticipated for February 2020.
Big Ten Media Policy Language

University of Illinois Board of Trustees - Bylaws, Article IV, Section 1:

_The Chair of the Board shall be considered the spokesperson for the board._

University of Maryland Board of Regents – Bylaws, Article III, Section 1:

_The Chairperson is authorized to represent the Board before all public bodies, ..._

University of Michigan Board of Regents – Bylaws, Sec. 1.06, B, 2:

_The chair will...; act as spokesperson and convener of the board where appropriate;_

Pennsylvania State University Board of Trustees – Standing Orders, Order VIII, 1, d, v & xi

(v) _Speak openly, freely and candidly within the Board, while being mindful that any public dissent from Board decisions must be done in the context of being trusted stewards of a public institution. Because a University is a free marketplace of competing ideas and opinions, its governance mandates open communication as well as principled, civil and respectful debate. At the same time, trustees must always protect and act in the best interest of the University, being cognizant that the tone and substance of their words reflect on the University that they are dedicated to serve and have consequences on its overall wellbeing._

(xi) _Advocate the University’s interests, but speak for the Board or the University only when authorized to do so by the Board or the Chair; it being recognized and understood that it is important for the Board of Trustees to convey a consistent message and that the Chair of the Board of Trustees or his or her designee serves as the spokesperson for the Board;_

Purdue University Board of Trustees – Bylaws, Appendix A, 7:

_The Chairman shall serve as the spokesperson for the Board. Other Trustees shall avoid acting as spokesperson for the Board unless specifically authorized to do so._

University of Wisconsin Board of Regents – Bylaws, Chapter 2, Section 3:

_The President of the Board shall, with the President of the UW System, present budget requests to the Governor and the Legislature and shall act as spokesperson for the Board before the Governor and before all legislative groups in matters of educational program planning, the use of existing facilities and personnel, budgetary issues, and building priorities._
Information Request Policy Language

University of Nebraska

Requests for studies by individual Regents that are going to take considerable staff time must be approved by the Executive Committee of the Board.

University of Texas

5.4 Requests by Members of the Board of Regents and Chancellor.

5.4.1 This process is not intended nor will it be implemented to prevent a member of the Board of Regents or the Chancellor from access to information or data that the Board member or Chancellor deems is necessary to fulfill his or her official duties and responsibilities.

5.4.2 Except for a request processed under Subsection 5.4.4, requests by an individual Regent for information shall be submitted to the Chancellor in writing by the requesting Regent, with a copy to the Board Chairman and General Counsel to the Board. An individual Regent’s written request for information shall identify, with specificity, the need for the information requested and shall provide a requested deadline for response if the request is time-sensitive.

5.4.3 Information requests from or on behalf of an individual member of the Board of Regents seeking the compilation of significant quantities of information or data from a U. T. System institution will be reviewed by the Chairman of the Board and the Chancellor and, if necessary, discussed with the requesting Regent to determine the appropriate scope of the request and timing of the response to avoid inefficiencies and duplication of effort but shall also ensure that requests are fulfilled in a timely manner consistent with applicable law and policy.

5.4.4 Smaller requests for existing information or data that do not appear to require significant time or effort may be processed through the Office of the Board of Regents and the Chancellor’s Office.

5.4.5 Within 5 business days of the receipt of a Regent’s information request, the Chancellor’s Office will provide the requesting Regent with an estimated date for delivery or production. The Board requires all U. T. System Administration and U. T. System institutional employees to respond thoroughly and appropriately to requests for information from a member of the Board or the Chancellor, without undue delay. In the rare circumstance when the Chairman or the Chancellor has concerns about a Regent’s request, the matter will be discussed with the Regent within 5 business days of receipt of the request. If concerns about a request for information or data are unresolved following discussion with the Regent, the matter will be presented to the Board as quickly as possible, but in no event later than the next regular Board meeting following the date of the receipt of the request. For the purpose of a Board vote on this issue, the vote of a majority of the members of the Board in support of the request is sufficient to direct that the request will be filled without delay.

5.4.6 After consultation with the Chairman of the Board, the Chancellor may adopt reasonable procedures with regard to the timing, copying, and process for review of records by a Regent, including prohibiting the copying of any confidential material. In addition, the Chancellor, in consultation with the U. T. System General Counsel, shall determine whether State or federal law restricts compliance with the request. Accordingly, the Chancellor, in consultation with the U. T. System General Counsel, shall determine whether a Regent may review information that is protected by the Family Educational Rights and Privacy Act (20 U.S.C. §1232g; 34 CFR Part 99), by constitutional privacy, or by other State or federal law.
Discussion of Open Policy Issues Related to Board Conduct

Brian Steeves
Executive Director & Corporate Secretary

October 11, 2019
Overview

• Under comprehensive review – Board of Regents Policy: *Code of Ethics for Members of the Board of Regents*

• Committee reached significant consensus during 2018-19

• Additional feedback needed on a few areas; will inform potential changes to the policy
Areas of Consensus

- **Consolidate policies** – Consolidate parts of three policies into one comprehensive policy to clarify Regent responsibilities.

- **Reorganize and reduce redundancy** – Retain and reorganize language on paramount interest and public trust, conflict of interest, financial disclosure, expense reimbursements, gifts, and annual review of policy, and retain but streamline key concepts from *Responsibilities of the Board and Individual Regents*.

- **Add language on fiduciary duties** – Clearly define fiduciary duties, which current Board policy does not explicitly articulate.
Open Areas for Discussion

1. Communicating with the media
2. Remedies for breaches
3. Information requests
4. Running for partisan elective office
5. Conflict of interest related to a Regent’s family member
Communicating with Media

Current policy:

- Creates expectation that president is primary spokesperson for University, and Chair is only person authorized to speak for the Board.

- States that Regents have responsibility “to speak forthrightly at Board meetings and to support Board decisions when determined.”
Communicating with Media

Questions before the Board:

• Should policy address communicating with the media, and if so, how?

• How do fiduciary responsibilities, such as duty of loyalty, intersect with First Amendment rights?

• Does the timing of a Regent’s public comments matter?
Communicating with Media

Potential language:

The president is the primary spokesperson for the University. When necessary, the chair of the Board or delegate will speak for the Board. While all Regents have the right to share their personal views on University matters, as sworn fiduciaries Regents should be aware that the tone and substance of their words reflect on the University and could have consequences on its standing. Regents should speak forthrightly at Board meetings and support Board decisions when determined.
Breaches of the *Code of Ethics*

- Current policy:
  - Silent on remedies for breaches of Board’s code of conduct.

- *Bylaws of the Board of Regents* designates *Robert’s Rules of Order* to guide the Board’s business. Board could use its provisions to address breaches today.
Breaches of the *Code of Ethics*

Options include:

• Remain silent. Continue to rely on *Robert’s Rules of Order*.

• Or, consider establishing in policy a trigger and a process without outlining specific remedies. That language might look like this:

> If five Regents sign a written complaint alleging a significant breach of fiduciary responsibilities by another member of the Board, the chair must call a special meeting within 45 days for the Board to hear the complaint. The Regent in question will have the right to address the Board. If necessary, the Board may take action to impose whatever sanctions it deems appropriate.
Information Requests

• Current policy:
  - Silent except for language encouraging Regents “to seek to be fully informed about the University and its role in the state and in higher education and to be responsive to the changing environments that affect it.”

• Two examples of universities that have attempted to address this in policy are University of Nebraska and University of Texas system.
Information Requests

Question before the Board:

• Should a process be established in policy that sets clear expectations for how Regents request University information, and how the administration handles those requests?
Partisan Political Activity

• Current policy:
  – Requires a Regent to resign upon officially announcing candidacy for any partisan elective public office.

• Question before the Board:
  – Should policy be amended to allow Regents to run for elective public office with partisan endorsement, while providing guidance to Regents on how their candidacy could impact the University?
Partisan Political Activity

If the Board desires additional language, one option is to use disclosure and existing conflict of interest language to manage the situation. For example, it could state:

Before becoming a candidate for partisan elective office, a Regent shall inform the Board and consult with the General Counsel to evaluate whether any conflicts of interest may arise from candidacy. If elected to a partisan office, a Regent shall resign from the Board.
Conflict of Interest re: Regent’s Family

• Current policy:
  – Establishes that a conflict of interest arises when a family member of a Regent has a financial interest in matters before the Board.

• Should the policy also contain guidance related to a conflict of interest if a Regent’s family member is a University employee?
Conflict of Interest re: Regent’s Family

• This could be accomplished by amending existing policy language as follows [new language is underlined]:

> An employment-related conflict of interest exists whenever a Regent’s employment relationships, or those of a family member, may impair independence of judgment.
AGENDA ITEM: Plan for Advancing Revisions to Namings Policy

☐ Review  ☐ Review + Action  ☐ Action  ☒ Discussion

☐ This is a report required by Board policy.

PRESENTERS: President Joan T.A. Gabel

PURPOSE & KEY POINTS

The purpose of this item is to provide an update on the Board of Regents Policy: Namings. The Board will hear an overview of next steps in recommending revisions to the policy.

BACKGROUND INFORMATION

On April 26, 2019, the Board of Regents adopted a resolution that directed the President to recommend revisions to the Board of Regents Policy: Namings that establish clear principles and procedures to guide future renamings discussions.