

SOUTH DAKOTA BOARD OF REGENTS

Planning, Governance and Resource Development

AGENDA ITEM: 5 – H
DATE: March 27-29, 2018

SUBJECT:

BOR Policy 1:6 – Appointment, Authority, and Responsibilities of Presidents and Superintendents Revisions (Second Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 1:6 - Appointment, Authority, and Responsibilities of Presidents and Superintendents](#)
[BOR Policy 4:49 – Multi-year Employment Contracts](#)
[BOR Policy 4:10 – Tenure and Continuing Appointments](#)

BACKGROUND / DISCUSSION

The first reading of BOR Policy 1:6 occurred at the December 2017 BOR meeting, no changes have been added since the first reading. BOR Policy 1:6 governs the appointment, authority and responsibilities of the university presidents and the special school superintendent(s). The policy language currently prohibits presidents from receiving, or retaining, a tenured faculty appointments. In order to remain competitive in the labor market for university presidents, it is important for the Board to have the ability to negotiate tenure in the appointment contract with presidential candidates. According to the 2017 American College President Study by the American Council on Education, 81.4% of presidents at doctoral institutions, and 77% at master’s institutions hold tenure.

In addition, BOR Policy 1:6 currently refers to annual contract renewals for presidents, however, with the implementation of BOR Policy 4:49 at the [March 2016](#) BOR meeting, presidents are now eligible for multi-year contracts. The removal of the “annual” reference will align this policy with BOR Policy 4:49, in the event the Board negotiates a multi-year contract with a current or future president, it will be in compliance with all BOR policies.

Lastly, Section 7 of the policy is an obsolete reference that should have been deleted when [BOR Policy 5:3](#) was amended at the [December 2013 BOR meeting](#). Policy 5:3 previously required research and development grants and contracts to be approved by the executive

(Continued)

DRAFT MOTION 20180327_5-H:

I move to approve the second and final reading of BOR Policy 1:6 – Appointment, Authority, and Responsibilities of Presidents and Superintendents.

BOR Policy 1:6 Revisions – Appointment, Authority, and Responsibilities of Presidents and Superintendents (Second Reading)

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director; however, that requirement was removed when the policy was amended in December of 2013, leaving the discretion to accept research and development grants at the presidential level. As such, the provision in section 7 that grants the presidents and superintendents authorization to accept supplements of up to \$10,000 on current grants to continue previously approved grant activities is unnecessary because they already have the authority to accept research and development grants and contracts in general.

IMPACT AND RECOMMENDATIONS

The recommended changes to the policy can be found in Attachment I, and are the substantive changes are summarized below:

1. Removal of the prohibition on tenure for university presidents, allowing the Board the flexibility to negotiate tenure terms in presidential appointment contracts without being required to waive this provision of BOR Policy 1.6;
2. Removal of the reference to annual renewals to ensure alignment with BOR Policy 4:49;
3. Removal of Section 7. Due to the changes made in BOR Policy 5:3 in 2013, this is no longer needed;
4. Addition of a definitions section to the policy.

These changes will align BOR policies, and ensure that the Board has policies in place that provide them the ability to negotiate effectively in a highly competitive labor market.

ATTACHMENTS

Attachment I - BOR Policy 1.6 Proposed Revisions

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Appointment, Authority, and Responsibilities of Presidents and Superintendents

NUMBER: 1.6

A. PURPOSE

To determine how a president or superintendent is appointed, and to define the primary responsibilities and the authority granted to a President or Superintendent by the Board of Regents.

B. DEFINITIONS

1. **Institution:** Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind & Visually Impaired, South Dakota School for the Deaf, and the University of South Dakota.

2. **President:** The chief executive officer of a SD Board of Regents university.

3. **Superintendent:** The chief executive officer of a SD Board of Regents Special School.

C. POLICY

1. **Appointment**

The presidents and superintendents shall be appointed by the Board of Regents. The Board may conduct a nationwide search by utilizing a search and screen committee consistent with Board bylaws. The president or superintendent ~~is the chief executive officer of the institution and~~ shall serve on the basis of contracts subject to ~~annual~~ renewal based on the terms of the employment contract and BOR Policy. ~~No president or superintendent who assumes those responsibilities after July 1, 1990, shall receive or retain a tenured faculty appointment. Those individuals who were appointed to presidencies prior to July 1, 1990, and who were granted or allowed to retain tenured faculty rank, shall continue to enjoy such tenure rights, subject to the terms and conditions provided in their annual appointment notices.~~

2. **Responsibilities**

The president or superintendent of each institution shall be responsible for the administration of the ~~university or special school~~ institution and the respective component entities. He or she shall have the following specific responsibilities:

2.1. Maintain an effective communications link between the ~~campus~~ institution and the Board, the Executive Director, other System ~~campuses~~ institutions, and all constituencies

- at the ~~campus~~-[institutional](#) level~~s~~ including faculty, students, administrators, ~~CSA~~ employees, alumni, and community.
- 2.2. Provide academic leadership and promote academic excellence at the ~~campus~~ [institution](#) and formulate educational policies and academic standards consistent with Board policy.
 - 2.3. Maintain institutional expenditures within the budgetary authorizations and limitations of the Board of Regents and the Legislature.
 - 2.4. Recommend budget allocation and apportion funds within allocations.
 - 2.5. Assign specific responsibility for coordinating institutional oversight of compliance with pertinent federal, state and Board constitutional rights and limitations, statutes, regulations and policies, including development of implementing institutional policy statements and practices, and including routine training and periodic compliance audits, and generally assure enforcement of policies of the Board of Regents, and the constitutions, statutes and regulations of the State of South Dakota and the United States of America.
 - 2.6. Present all official business of the institution to the Board of Regents.
 - 2.7. Recommend for appointment, tenure, and dismissal all members of academic and non-academic staff in accordance with Board policy and procedures.
 - 2.8. Determine the overall administrative organization of the institution and annually present to the Board an outline of the structure noting any recommended changes.
 - 2.9. Attend all regular meetings of the Board unless excused by the ~~President of the Board~~ [Executive Director of the SD Board of Regents](#)
 - 2.10. Perform such other duties as the Board may from time to time specify.

3. Executive Powers

The executive powers delegated through this section remain subject to such substantive or procedural limitations as may otherwise be established by law or policy. The presidents and superintendents shall have all powers necessary to carry out their executive responsibilities, including, but not limited to, the following:

- 3.1. Organize a structure of academic governance and provide for the establishment, review and assessment of curricula and instruction, of research and scholarly programs and of public service activities.
- 3.2. Provide for the governance of students and for the establishment of programs to address their educational, social, cultural and ethical development within available resources.
- 3.3. Establish regular or special consultative bodies as deemed useful or necessary.
- 3.4. Determine and manage institutional budgets.
- 3.5. Expend monies and enter into contracts.

- 3.6. Acquire, preserve, register, manage, lease, license or assign institutional properties, including intellectual properties, within the limits of state law and Board policy; and provide assurance of right or of title or make such similar undertakings as may be customarily incidental to the diligent management of such properties.
- 3.7. Recommend the hiring, promotion and termination of employees.
- 3.8. Assign, transfer, evaluate and discipline employees and investigate and adjust ~~their~~ grievances.
- 3.9. Participate on behalf of the institution in the activities of affiliated organizations.
- 3.10. Determine and present official institutional positions, policies and practices.
- 3.11. Preside at all general faculty meetings or delegate that function to another member of the administration or faculty.

4. Provisional Delegation of Authority in Matters Relating to Governance, Discipline and Grievances

The South Dakota Supreme Court, in *Worzella v. Board of Regents of Education*, 77 S.D. 447, 93 N.W.2d 411 (S.D. 1958), held that the South Dakota Constitution limits the Board's power of delegation. The Board may only delegate provisional authority to its subordinates. The court has decided that the Board can neither authorize nor adopt policies that create procedural bars to Board consideration of a matter. Nor can the Board vest a delegatee with the power to prevent the Board from taking up a matter that it deems of public interest.

The court has also held that the legislature may limit the Board's power over certain aspects of certain employment relations. It upheld the Civil Service Act and the Public Employees' Unions Act as legitimate exercises of legislative power, notwithstanding the fact that the acts remove certain employment decisions from final Board action. *South Dakota Board of Regents v. Meister*, 309 N.W.2d 121 (S.D. 1981); *South Dakota Board of Regents v. Meierhenry*, 351 N.W.2d 450 (S.D. 1984).

- 4.1. In order to give effect to the constitutional limitations described in *Worzella*, the delegation of authority provided in this policy shall be understood to be provisional in the following sense.
 - 4.1.1. The authority vested in chief executive officers must, at all times, be exercised in a manner that is consistent with Board policy.
 - 4.1.2. Except as provided in section ~~4.1.34(A)(3)~~, below, the authority to take binding action without specific prior Board approval is subject to the condition that the Board may require that a matter be forwarded to it for review.
 - 4.1.2.1. Such a review shall not ordinarily result in a modification of an action that has created third party rights, but the Board may direct that such responsive measures be taken as it deems necessary.

- 4.1.3. Where the action in question relates to the implementation of Board policy involving governance, discipline or grievances, the Board may reconsider the matter.
 - 4.1.3.1. In the context of a disciplinary action or a grievance, the Board may:
 - 4.1.3.1.1. Accept the factual findings that were reached below, but modify the conclusions drawn from those facts or the action taken on their basis; or
 - 4.1.3.1.2. Reject the factual findings that were reached below and hold new hearings, upon due notice, to reconsider the matter in its entirety.
 - 4.1.4. Nothing herein shall be interpreted to modify the procedural requirements of regulations or agreements duly adopted pursuant to the Civil Service Act or the Public Employees' Unions Act.
- 4.2. ~~Chief executive officers~~ Presidents or superintendents may delegate provisionally to their subordinates or to such administrative or consultative bodies as they may establish from time to time the authority that the Board has delegated to them.
 - 4.2.1. A provisional delegation of authority by a ~~chief executive officer~~ president or superintendent shall be understood to authorize only actions that are consistent with Board policy and with institutional policies previously approved by the chief executive officer.
 - 4.2.2. The authority to take binding action without specific prior approval by the ~~chief executive officer~~ president or superintendent approval is subject to the condition that the ~~chief executive officer~~ president or superintendent may require that a matter be forwarded for review.
 - 4.2.3. Where the action undertaken with delegated authority involves the implementation of Board or institutional policy involving governance, discipline or grievances, the ~~chief executive officer~~ president or superintendent may reconsider the matter anew.
 - 4.2.3.1. In the context of a disciplinary action or a grievance, the ~~chief executive officer~~ president or superintendent may:
 - 4.2.3.1.1. Accept the factual findings that were reached below, but modify the conclusions drawn from those facts or the action taken on their basis; or
 - 4.2.3.1.2. Reject the factual findings that were reached below, and hold new hearings, upon due notice, to re-examine the matter in its entirety.
 - 4.2.4. Nothing herein shall be interpreted to modify the procedural requirements of regulations or agreements duly adopted pursuant to the Civil Service Act or the Public Employees' Unions Act.

5. Acting ~~Chief Executive Officer~~ President or Superintendent

Each ~~president~~ president and ~~superintendent~~ superintendent shall designate a staff member to act in his or her place when he or she is outside the state, otherwise not reasonably accessible or subject to temporary illness or disability. Each president and superintendent shall provide the Executive Director an updated succession plan on an annual basis. ~~provide the Executive Director a current list of persons so designated.~~

6. Evaluation

Presidents and superintendents shall be evaluated annually by the Board in a format and setting determined by the Board.

~~7. Acceptance of Grant Supplements~~

~~Presidents and superintendents are authorized to receive supplements of existing approved grants that continue previously approved grant activities when the value of the supplement does not exceed \$10,000. The president or superintendent shall notify the Executive Director when this approval authority is exercised.~~

SOURCE:

~~SDCL 12-49-10; BOR~~ April 1981; ~~BOR~~ January 1996