

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 9 – A (1)

DATE: October 6-7, 2021

SUBJECT

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

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 1:5](#) – Executive Director

[BOR Policy 1:6](#) – Appointment, Authority, and Responsibilities of Presidents and Superintendents

BACKGROUND / DISCUSSION

At its August meeting, the Board directed staff to propose revisions to BOR Policy 1:6 to address issues related to the delegation of authority for employment actions that currently require Board approval. Specifically, Board members are concerned that many of the salary changes and/or appointments that they are asked to approve have already occurred due to the timing of Board meetings.

To address this issue and not put unnecessary delays on employment actions at the institutional level, the policy revisions modify the approval process so that many of the items the Board currently approves would be delegated to the executive director. The proposed policy changes also require that institutions have approval for applicable employment actions **prior** to taking action at the institutional level. The Board would be informed of any approved actions at its next regularly scheduled meeting.

The proposed changes will delegate authority to the executive director, or their delegate, for approval on the following employment actions:

1. Any mid-year, permanent compensation adjustments, that are five percent (5%) or greater, or that results in a total permanent compensation adjustment of five percent (5%) or greater in any fiscal year, for benefit eligible non-faculty exempt employees and faculty members;
2. The appointment of any employee who reports directly to the president or superintendent;

(Continued)

DRAFT MOTION 20211006_9-A(1):

I move to approve the first reading of the proposed revisions to BOR Policy 1:6, as outlined in Attachment I.

3. The appointment of an employee to any position with salary that is greater than or equal to seventy-five percent (75%) of the salary of the applicable president or superintendent;
4. The appointment, or contract renewal, of any coach or athletic director with a contract term greater than one year;
5. The establishment of any new position(s) reporting to the superintendent, with the approval obtained prior to the position being recruited or filled.
 - a. The restructuring of the Special Schools has resulted in the superintendents having faculty and outreach consultants as direct reports, so the staff recommends that the executive director be able to approve new positions instead of waiting on Board approval.

In addition, Section 2.7 of the policy has been slightly modified to remove the annual requirement that the presidents report their organizational structures to the Board. To clarify the policy expectations for organizational structure changes, Section 4.2.1 was added to require Board approval prior to establishing or recruiting any new positions that report directly to the president.

IMPACT AND RECOMMENDATION

The staff recommends that the Board approve the first reading of BOR Policy 1:6 as outlined in Attachment I.

ATTACHMENTS

Attachment I – Revisions to BOR Policy 1:6

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

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

NUMBER: 1:6

A. PURPOSE

To address the appointment of a president or superintendent, and to define the primary responsibilities and the authority granted to a president or superintendent by the Board of Regents.

B. DEFINITIONS

- 1. Executive Director:** The chief executive officer of the SD Board of Regents.
- 2. 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 and the Visually Impaired, State School for the Deaf, and the University of South Dakota.
- 3. President:** The chief executive officer of a SD Board of Regents higher education institution.
- 4. 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 nation-wide search by utilizing a search and screen committee consistent with Board bylaws. The president or superintendent shall serve on the basis of an employment contract. The presidents and superintendents shall report to the Board of Regents through the executive director.

2. Responsibilities

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

- 2.1.** Maintain an effective communications link between the institution and the Board, the Executive Director, other System institutions, and all constituencies at the institutional level, including faculty, students, administrators, employees, alumni, and community.
- 2.2.** Provide academic leadership and promote academic excellence at the 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. Recommend for appointment, tenure, and dismissal all members of academic and non-academic staff in accordance with Board policy and procedures.
- 2.7. Determine the overall administrative organization of the institution and ~~annually~~ present [any requested structural change requiring Board approval pursuant to Section 4 of this policy](#) ~~to the Board an outline of the structure noting any recommended changes.~~
- 2.8. Attend all Council of Presidents and Superintendents meetings unless excused by the Executive Director.
- 2.9. Attend all regular meetings of the Board unless excused by the Executive Director.
- 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 to the Board, pursuant to Section C(4) of this policy.

- 3.8. Assign, transfer, evaluate and discipline employees and investigate and adjust 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. Delegation of Authority in Employment Actions

Except where exclusively reserved, the Board delegates authority for personnel appointments, terminations, and compensation management to the presidents and superintendent as described below. In fulfilling this responsibility, the presidents and superintendents shall exercise their authority consistent with Board policies and procedures, the South Dakota Civil Service Act and its implementing regulations, and the collective bargaining agreement between the Board and the Council of Higher Education (for the South Dakota School for the Deaf and the South Dakota School for the Blind and Visually Impaired). Notwithstanding this delegation, the Board retains full authority regarding personnel appointments, terminations, and compensation management consistent with the Board's constitutional duty to control the institutions under its governance. The provisions of Section C(4) of this policy will supersede any other inconsistent policy requirements in the Board of Regents policy manual relating to employment actions.

4.1. Delegation to Presidents and Superintendents

Except as provided in Sections C (4.2) [and C \(4.3\)](#), the president or superintendent shall have the authority, subject to this section, to appoint, terminate, manage, supervise, control and determine compensation for the personnel of the institution.

4.2. Authority Exclusively Reserved to the Board

Board approval is required for [the following personnel actions](#):

~~4.2.1. The initial appointment of any employee who reports directly to the president or superintendent;~~

~~4.2.2. The initial appointment of an employee to any position with salary that is greater than or equal to seventy five percent (75%) of the salary of the applicable president or superintendent;~~

~~4.2.3. The appointment of any coach or athletic director that has a term greater than one year;~~

~~4.2.4. Any mid-year, permanent compensation adjustments that are five percent (5%), or greater, for benefit eligible non-faculty exempt employees and faculty members;~~

[4.2.1. The establishment of any new position\(s\) reporting to the President, with the approval obtained prior to the position being recruited or filled;](#)

~~4.2.5.~~[4.2.2.](#) Annual salary policy increases that are greater than the Board approved salary policy pool by five percent (5%), or more; ~~and~~

- ~~4.2.6.~~4.2.3. Any employment action that requires Board action or approval pursuant to the South Dakota School for the Deaf and the South Dakota School for the Blind and Visually Impaired collective bargaining agreement;
- ~~4.2.7.~~4.2.4. The awarding of promotion and tenure, approving prior service credit, sabbatical, faculty member improvement and career redirection leave;
- ~~4.2.8.~~4.2.5. Extending the maximum periods of time allowed for progress towards promotion to associate professor and the award of tenure;
- ~~4.2.9.~~4.2.6. Granting exceptions to minimum rank qualifications and promotion eligibility criteria; and
- 4.2.7. The granting of professional development leave for non-faculty exempt employees.

4.3. Delegation of Authority to the Executive Director and CEO

The Board delegates authority to the Executive Director and CEO, or their delegate, for the actions outlined below. The approved actions will be reported to the Board at the next regularly scheduled Board meeting. Presidents and Superintendents are required to seek approval for the following actions prior to initiating, offering or negotiating the personnel action:

- 4.3.1. Any mid-year, permanent compensation adjustments, that are five percent (5%), or greater, or that results in a total permanent compensation adjustment of five percent (5%) or greater in any fiscal year, for benefit eligible non-faculty exempt employees and faculty members;
- 4.3.2. The appointment of any employee who reports directly to the president or superintendent;
- 4.3.3. The appointment of an employee to any position with salary that is greater than or equal to seventy-five percent (75%) of the salary of the applicable president or superintendent;
- 4.3.4. The appointment, or contract renewal, of any coach or athletic director with a contract term greater than one year.
- 4.3.5. The establishment of any new position(s) reporting to the Superintendent, with the approval obtained prior to the position being recruited or filled.

5. 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).

- 5.1. 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.
 - 5.1.1. The authority vested in chief executive officers must, at all times, be exercised in a manner that is consistent with Board policy.
 - 5.1.2. Except as provided in section 5.1.3 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.
 - 5.1.2.1. 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.
 - 5.1.2.2. Where the action in question relates to the implementation of Board policy involving governance, discipline or grievances, the Board may reconsider the matter. Ordinarily, the Board's review of the final decision reached by the president or superintendent pursuant to this policy will be limited to determining whether (i) any material decisions lack substantial support in the record, and (ii) any procedural errors materially impact the integrity of the decision. In the context of a disciplinary action or a grievance, the Board may:
 - 5.1.2.2.1. Accept the factual findings that were reached below and accept the conclusions drawn from those facts and the action taken on their basis; or
 - 5.1.2.2.2. Accept the factual findings that were reached below, but modify the conclusions drawn from those facts or the action taken on their basis; or
 - 5.1.2.2.3. Reject the factual findings that were reached below and hold new hearings, upon due notice, to reconsider the matter in its entirety.
 - 5.1.3. 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.
- 5.2. 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.

- 5.2.1. A provisional delegation of authority by a president or superintendent shall be understood to authorize only actions that are consistent with Board policy and with institutional policies previously approved by the president or superintendent.
- 5.2.2. The authority to take binding action without specific prior approval by the president or superintendent approval is subject to the condition that the president or superintendent may require that a matter be forwarded for his/her review.
- 5.2.3. Where the action undertaken with delegated authority involves the implementation of Board or institutional policy involving governance, discipline or grievances, the president or superintendent may reconsider the matter anew.
 - 5.2.3.1. In the context of a disciplinary action or a grievance, the president or superintendent may:
 - 5.2.3.1.1. Accept the factual findings that were reached below and accept the conclusions drawn from those facts and the action taken on their basis; or
 - 5.2.3.1.2. Accept the factual findings that were reached below, but modify the conclusions drawn from those facts or the action taken on their basis; or
 - 5.2.3.1.3. Reject the factual findings that were reached below, and hold new hearings, upon due notice, to re-examine the matter in its entirety.
- 5.2.4. 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.

6. Acting President or Superintendent

Each president and 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.

7. Evaluation

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

FORMS / APPENDICES:

None

SOURCE:

BOR June 1974; BOR August 1979; BOR April 1992; BOR March 1993; BOR January 1996; BOR June 2015, BOR March 2018; BOR June 2018; BOR December 2020.