

**BOARD OF REGENTS  
MINUTES OF THE MEETING  
July 22, 2020**

The South Dakota Board of Regents met on July 22 via Zoom teleconference at 1:00 p.m. Central Time with the following members in attendance:

ROLL CALL:

Brock Brown – PRESENT  
Pam Roberts, Secretary – PRESENT  
Randy Schaefer – PRESENT  
Kevin Schieffer – PRESENT  
Barb Stork – PRESENT  
Jim Thares – PRESENT  
Joan Wink – PRESENT  
Jim Morgan, Vice President – PRESENT  
John Bastian, President – PRESENT

Also present during all or part of the meeting were Dr. Brian Maher, Executive Director and CEO; Jay Perry, System Vice President of Academic Affairs; Nathan Lukkes, Board of Regents General Counsel; Kayla Bastian, System Director of Human Resources; Heather Forney, System Vice President of Finance & Administration; Dr. Janelle Toman, System Director of Communications; Molly Weisgram; Executive Assistant to the CEO and Board; Barry Dunn, SDSU President; José-Marie Griffiths, DSU President; Laurie Nichols, BHSU President; Jim Rankin, SDSM&T President; Tim Downs, NSU President; Sheila Gestring, USD President; Dan Trefz, SDSBVI Superintendent; Kim Wadsworth, SDSD Superintendent; and other members of the Regental system, public and media.

**WEDNESDAY, JULY 22, 2020**

Regent Bastian declared a quorum present and called the meeting to order at 1:00 p.m.

**1-A Approval of the Agenda**

IT WAS MOVED by Regent Morgan, seconded by Regent Stork, to approve the agenda as published.

**ROLL CALL:**

Brown – AYE  
Roberts – AYE  
Schaefer – AYE  
Schieffer – AYE  
Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.

**1-B Declaration of Conflicts**

Regent Brown noted that he submitted a disclosure and request for waiver regarding his student employment at SDSU.

IT WAS MOVED by Regent Schieffer, seconded by Regent Stork, to approve the request for authorization pertaining to Regent Brown's student employment at SDSU.

**ROLL CALL:**

Brown – ABSTAIN  
Roberts – AYE  
Schaefer – AYE  
Schieffer – AYE  
Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.

IT WAS MOVED by Regent Roberts, seconded by Regent Thares, that the Board dissolve into executive session at 1:06 p.m. on July 22, 2020, to consult with legal counsel and discuss personnel and contractual matters, and that it rise from Executive Session at 3:30 p.m. and reconvene in public session to resume the regular order of business and report its deliberations in executive session and take any action it deems prudent as a result thereof.

ROLL CALL:

Brown – AYE  
Roberts – AYE  
Schaefer – AYE  
Schieffer – AYE  
Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.

The Board dissolved into executive session.

The Board reassembled in public session at 3:30 p.m.

**3-A Report and Actions of Executive Session**

Regent Roberts said the Board dissolved into Executive Session at 1:06 p.m. on Wednesday, July 22 to consult with legal counsel and discuss personnel matters, pending and prospective litigation, and marketing or price strategies by a board of a business owned by the State when public discussion may be harmful to the competitive position of the business, before rising from Executive Session at 3:30 p.m. and reconvening to resume the regular order of business.

She said while in Executive Session, the Board discussed the matters just described, which included certain recommended actions as set forth in the Secretary's Report and other matters permitted by law.

IT WAS MOVED by Regent Roberts, seconded by Regent Morgan, to approve the recommended actions as set forth in the Secretary's Report and that it publish said Report and official actions in the formal minutes of this meeting.

ROLL CALL:

Brown – AYE  
Roberts – AYE  
Schaefer – ABSENT  
Schieffer – ABSENT

Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.

A copy of the Secretary's Report can be found on pages \_\_\_\_ to \_\_\_\_ of the official minutes.

### **3-B SDBOR FY22 Budget Recommendations**

Heather Forney, System Vice President of Finance & Administration, provided a summary of the Executive Director's recommendation for FY22 General Fund, one-time funding requests as follows:

- BHSU – West River Health Sciences Center - \$90,000
- BHSU – Paraprofessional Education Program - \$276,000
- NSU – Center for Statewide E-Learning - \$468,850
- SDSMT – Mineral Industries Building - \$19,000,000
- SDSU – Precision Ag – Berg Agricultural Hall Remodel - \$2,000,000
- SDSU AES – Precision Ranching - \$453,200
- SDSU Extension – Rural Prosperity and Workforce Development - \$100,000
- USD – Upgrade Equipment in Animal Resource Center - \$355,000

She explained that a request for the use of the Governor's COVID-19 Relief Funds (CRF) for the NSU E-Learning project and the USD equipment upgrade has been forwarded to the Bureau of Finance and Management for consideration. A determination on funding those projects with CRF has not yet been made.

The Board endorsed these recommendations for a final budget to be submitted to the Governor's budget office by the end of August.

Regent Roberts acknowledged the good work of the presidents and staff for putting together different scenarios for enrollment and what those would mean for budget. She also thanked the Governor's office, and specifically the Governor, for the CARES Act money that it has distributed to the regental system. Additionally, Regent Roberts thanked Vice President Forney for her good effort throughout the process.

Per Regent Roberts' request, Vice President Forney provided an overview of the CARES Act funds received by the regental system.

Regent Schaefer said this year has been an anomaly due to COVID-19 for the typical budget recommendation process. He said it is important that in the future the informal budget hearing is done over a two-day process. He is comfortable with the typical June time frames for the informal

budget hearings, but he requests a two-day process in the future as it is critical to give a full look at the institutions' requests.

Regent Roberts agreed with the recommendation and noted that this year was most definitely an anomaly as the institutions were asked to advance projects that were tied to one-time money.

Regent Thares asked that in the future there be additional clarity on what truly are one-time funding projects in order to assist the campuses in developing their requests.

### **3-C COVID-19 Fall Semester Planning**

Nathan Lukkes, Board of Regents General Counsel, provided an overview of a proposed tiered approach to requiring face coverings due to COVID-19. He described the four tiers proposed and explained that this system would provide the universities the ability to move from tier to tier depending on community context. He clarified that this proposal is intended to apply to the universities and not special schools. The purpose of the tiered system involving face coverings is to ensure, to the extent possible, the health and safety of our constituents. He described the disciplinary process that would be implemented to enforce the requirements. Specifically, the discipline would apply only if the individual who is not in compliance refuses to comply with the informal correction.

Dr. Maher said he has had a considerable amount of conversation with the presidents. From these, he said there is a unanimous thought that the presidents want students on campus and that everything should be done to keep campuses open. From the discussion with presidents, he said it is clear that they would like to start with a Level 3 if the Board sees that as reasonable. From his perspective, that would be in conjunction with CDC guidelines as well as be in alignment with Governor's office priorities of personal responsibilities and public health. He said there isn't a lot of recourse if the pandemic gets out of control on the campuses, so he also recommends starting at Level 3.

In response to a question by Regent Stork, General Counsel Lukkes described the efforts of the universities to incorporate the necessary precautions and safeguards to support health and wellness as well as maintain continuity of operations.

Regent Schaefer noted that he recently took a tour of SDSU to see the enormous effort the institution is making to keep campus open in the fall. He said it is a monumental effort and the Board needs to determine the starting tier with the idea that we need to keep campus open.

Regent Morgan agreed and acknowledged all the unseen work such as scheduling efforts, outside of things that can be seen such as Plexiglas barriers.

Regent Schaefer acknowledged that the Board has received many letters from people on different ends of the spectrum on the issue of face coverings as well as in-person instruction. He said it is the Board's responsibility to consider the health of faculty in addition to students.

Regent Stork said the Governor's office representative she talked to has emphasized social responsibility and the CDC has suggested face coverings but has not required them.

Regent Bastian called on each president of the universities to describe the effort they have put forth to ready their institutions for the fall semester, what they think of the four tier system, and if so what tier they'd like to start the semester.

Regarding a question from Regent Schieffer about how the tiered system applies to sporting venues, General Counsel Lukkes said the wording of level 3 currently would cover all indoor areas on campus, including indoor sporting venues. Level 2 would require face coverings in indoor sporting venues only if distancing was not possible. Regent Schieffer asked for additional distinctions between Level 2 and 3. In response, General Counsel Lukkes provided information and said Level 3 would cover nonacademic buildings as well as hallways.

Within the presidents' reports, Regent Schaefer asked that the presidents comment on what potential problems they might anticipate at Level 2 versus Level 3. Regent Schieffer asked them to add why other measures wouldn't accommodate those potential problems.

President Dunn described the work done at SDSU to follow CDC and SD Department of Health guidelines, but more importantly, to allow students to finish the semester on campus. He said the students very much want the ability to finish the semester and, in the case of seniors, graduate. He asked for the Board's trust in the work and preparation of the institutions as it has been all-consuming. He said SDSU supports the tiered process, and said it would like to start at Level 3 by huge consensus. Given the dynamic nature of the virus and all we don't know, he explained that he believes this is the most prudent approach to getting the students to the end of the semester. He said from a clarity perspective, it is really important to make the requirement consistent across buildings.

President Gestrung said the work done at USD very much mirrors that described by President Dunn. She supports the four tier approach and likes the flexibility and possibility to respond locally. She described the High School Association's tiered approach, whereas they went with the most restrictive and pulled back as possible. She said starting at Level 3 gives us the best opportunity to keep students on campus for the duration of the fall. Additionally, she noted that the new students to campus will need consistency as they will be confused otherwise, and Level 3 will make it easier to understand.

Regent Schieffer asked if there is an objective trigger to move from Level 3 to Level 2. President Gestrung said the incubation period of 14 days is difficult because you cannot go backwards without overwhelming the isolation locations. She said after the first four weeks would seem to be a reasonable evaluation period.

Regent Thares asked about the anticipated student reaction to Level 2 versus Level 3. President Gestrung said student association wants Level 3. Regent Brown responded to the question by explaining that students are more than prepared to wear masks in academic areas versus the residence halls, which is why he leans to Level 2.

Regent Stork asked if there is a way to simplify Level 2. In response General Counsel described how Level 2 came to be in current form. Depending on what is trying to be accomplished, Level 2 can be modified. Regent Stork said she would like to incorporate more social responsibility and suggested the requirement in the classroom but social responsibility in the hallways.

President Nichols said BHSU put together a task force which has produced a 30-page document that steers implementation. Some work being done includes BHSU setting new room capacities for classrooms (i.e. COVID-capacity) as well as two new classrooms online. They are incorporating Plexiglas shields in every teaching station and all faculty are getting a COVID kit, which includes individual lapel microphones, and faculty training for things such as how to record class, etc. The residence halls will be using every single dorm rooms, creating as many single rooms as possible. In addition, the cleaning standards has been increased exponentially. She said she likes the tiered approach. She said at a minimum, Level 2 is necessary, but she recommends Level 3 for simplicity.

Because President Griffiths' speaker wasn't working, Provost Moran described the work of DSU to accommodate fall semester considering COVID-19. He noted that many of the DSU classrooms are small, so they are very interested in requiring face coverings, especially since 35% of their faculty are over age 55. DSU recommends Level 3.

President Downs provided a brief overview of the work done at NSU to prepare for the fall semester. He talked about COVID capacity as well as what NSU calls the High Flex approach to teaching, which provides options for how students can provide instruction through three different methods. He likes the tiered system and thinks minimally it should start at Level 3 but would much prefer Level 4.

President Rankin said SDSMT has many labs and has every intention of doing what it can to keep campus safely open throughout the fall semester. He acknowledged the risk of losing a faculty member for even a few weeks would be very difficult as faculty's areas of expertise are specialized and difficult to replace. He said the system hasn't investigated the trigger points to move back and forth from different levels yet. He encouraged starting at Level 3 and re-evaluating after three to four weeks. He described efforts implemented at SDSMT to prepare for the fall semester.

Regent Bastian asked the Board to consider whether it would like to adopt the four tier system for face coverings and, if so, determine the correct course of action if a campus would like to move from one tier to another.

The regents discussed whether Level 2 and Level 4 could be reconsidered for additional discussion at its August Board meeting. The group agreed that it would readdress the tier system at the August Board meeting, specifically to determine if there are ways to simplify Level 2 since it seems to cause confusion. The re-evaluation would also examine Level 4 which currently mandates coverings in all outdoor areas. Regent Brown explained that he hopes outdoor areas, and perhaps private residence hall rooms, where social distancing can be accomplished should be excluded from the mandate versus a blanket requirement.

IT WAS MOVED by Regent Morgan, seconded by Regent Wink, to adopt the four tier protocol for face coverings as presented and discussed.

ROLL CALL:

Brown – AYE  
Roberts – AYE  
Schaefer – AYE  
Schieffer – AYE  
Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.

Regarding the process of changing levels, Regent Bastian suggested the presidents should report to the executive director who can then affirm or deny, with defensible rationale, the movement from one tier to the other and then inform the Board.

Dr. Maher said the question of how that decision gets made needs to be ironed out. He said it's an evolving conversation and just recently it was suggested that the decision be made with the counsel of epidemiology, local health care capacity, etc. He said either way there will be criteria in place to either affirm or deny the request to change levels based on the circumstances of the particular locality. This change and its rationale would then be explained on our website.

IT WAS MOVED by Regent Schieffer, seconded by Regent Morgan, to approve the process of moving from one face covering level to another, which will include presidents' requests for local deviations in the protocol approved today based on local conditions and the executive director will have authority to affirm or deny any level change and then communicate that decision as soon as practical.

ROLL CALL:

Brown – AYE  
Roberts – AYE  
Schaefer – AYE  
Schieffer – AYE  
Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.



Regarding a starting semester tier, regents suggested a motion and debate. However, they questioned whether or not the starting level needed to be declared in this meeting. Presidents explained that they'd like an answer at this meeting for the sake of creating a sense of certainty on campus. Regents had additional discussion about when to incorporate a first review period.

IT WAS MOVED by Regent Schieffer, seconded by Regent Wink, to adopt a starting Level 3 with initial review to occur thirty days after the start of classes, at which time if circumstances warrant the necessary change would be implemented.

**ROLL CALL:**

Brown – AYE  
Roberts – AYE  
Schaefer – AYE  
Schieffer – AYE  
Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.

Regent Thares said developing social skills is a critical part of learning and therefore face-to-face instruction is critical. He said no matter what the level, it is important that everyone buys into that idea.

A copy of the COVID-19 Fall Semester Planning can be found on pages \_\_\_\_ to \_\_\_\_ of the official minutes.

**ADJOURNMENT**

IT WAS MOVED by Regent Schieffer, seconded by Regent Morgan, to adjourn the meeting.

**ROLL CALL:**

Brown – AYE  
Roberts – AYE  
Schaefer – AYE  
Schieffer – AYE  
Stork – AYE  
Thares – AYE  
Wink – AYE  
Morgan – AYE  
Bastian – AYE

Motion passed.

The meeting adjourned at 5:38 p.m.

DRAFT

*Secretary's Executive Session Report*

*The Board convened in Executive Session pursuant to the vote of the majority of the Board present and voting at its public meeting on Wednesday, July 22, 2020, in accordance with SDCL 1-25-2 to discuss matters authorized therein. Following executive session, the Board will meet in open session to discuss and take official action on the matters set forth below, all other matters discussed were consistent with the requirements of SDCL 1-25-2, but no official action on them is being proposed at this time.*

*Recommended Actions:*

*None*

DRAFT

**STATE OF SOUTH DAKOTA**

**BOARD OF REGENTS**

**REQUEST FOR STATE BOARD WAIVER  
PURSUANT TO SDCL CHAPTER 3-23**

**THIS IS A PUBLIC DOCUMENT**

Date: 7/16/2020

Name of Board Member or Former Board Member: Brock A. Brown

Name of Board, Authority or Commission: **South Dakota Board of Regents**

Brief explanation of contract for which a waiver is requested:

a) Parties to the contract:

Brock Brown and South Dakota State University (SDSU)- Office of Admissions

b) Board Member's role in the contract:

Student employee at SDSU- Office of Admissions. Title: Admissions Ambassador

c) Purpose and objective of the contract:

Brock Brown entered this position to build his resume, have a flexible on-campus employment, and better his public speaking skills. SDSU- Office of Admissions entered this contract to receive student insight into academics and the application process as well as have a student representative contacting prospective students.

d) Consideration or benefit conferred or agreed to be conferred upon each party:

Pay is minimum wage as defined by the state. Clothing is provided but ownership is maintained by the SDSU Office of Admissions and some meals are provided during admissions programming.

e) Duration of the contract:

August 17, 2020 to August 15, 2021

Signature of Requesting Party:

Date: 7/16/2020

