

MINUTES OF THE REGULAR MEETING

of the

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

Held at Gordon Dining and Event Center
770 W. Dayton Street
Madison, Wisconsin

Thursday, March 10, 2016
9:00 a.m.

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9:00 a.m.

-President Millner presiding-

PRESENT: Regents John Behling, Mark Bradley, José Delgado, Tony Evers, Margaret Farrow, Michael Grebe, Eve Hall, Nicolas Harsy, James Langnes, Edmund Manydeeds, Regina Millner, Janice Mueller, Drew Petersen, Charles Pruitt, Mark Tyler, and José Vásquez

UNABLE TO ATTEND: Regents Tim Higgins and Gerald Whitburn

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UPDATES AND INTRODUCTIONS

Meeting Overview

President Millner provided an overview of the day's meeting. The main order of business would be to consider, as a full Board, several new or revised Regent policies related to tenure, following up on proposals approved in the Education Committee in February. After the tenure discussion and vote, the Board would move into its regularly scheduled closed session and then reconvene for a Regent retreat, focused on system-level governance, to be led by Dr. William "Brit" Kirwan. Dr. Kirwan, a nationally recognized authority on critical issues shaping the higher education landscape, is the former Chancellor of the University System of Maryland, having stepped down in 2015, and is currently a consultant with the Association of Governing Boards.

Regent Appointments

In mid-February, Governor Walker announced the appointment of three new members of the Board of Regents – two citizen members and one nontraditional student member.

- Tracey Klein is the Chair of the Reinhart Health Care Practice. She provides legal counsel and support to hospitals and health systems across the state and the region.

- Bryan Steil currently serves as corporate counsel at Regal Beloit Corporation, a multinational manufacturing company with major facilities across Wisconsin.
- Lisa Erickson will be the new nontraditional student representative. The former owner of a private gourmet catering company, she is currently a student at UW-River Falls.

Subject to confirmation by the Senate, the new Regents would join at the Board table for the June meeting in Milwaukee. Promising to introduce them more formally at that time, President Millner welcomed the new appointees, who were present in the audience.

Campus Climate and Diversity Initiatives Preview

Looking ahead to the April meeting at UW-Green Bay, President Millner said that agenda topics will include a preliminary look-ahead to the next budget, as well as the presentation of Regent awards to recognize academic staff excellence. She thanked Chancellor Miller and his team in advance for the extra work this was creating for them, and added that the Regents were greatly looking forward to spending time on the UW-Green Bay campus and participating in its 50th anniversary celebrations.

At the April meeting, the Board also would be hearing a report presented by students on campus climate and diversity initiatives. President Millner said that at the Board's request, conversations had been taking place at campuses across the UW System over the past few months related to the vitally important issues of equity, diversity, and inclusivity. For example:

- The previous week, almost 200 students, faculty and staff gathered at UW-Eau Claire to discuss a report from the institution's Equity, Diversity and Inclusivity Implementation Team. Chancellor Schmidt had described the conversation as candid and very thoughtful, and many expressed support for efforts to eliminate opportunity gaps and equitably serve the student population, which includes 20 percent students of color.
- At UW-Madison, about 400 students came together in late February for an event called "Moving Forward: Conversations on Racial and Ethnic Diversity." Chancellor Blank noted the "enormous amount of energy in the room" and said that this topic was on many people's minds.
- More than 400 people also attended a recent event at UW-Whitewater called "Campus Culture: Moving Forward," where students, faculty and staff shared personal stories about their campus experiences. There was clear understanding, according to observers, that there is a shared responsibility for improving campus culture.
- At UW-River Falls, Chancellor Van Galen had meetings scheduled in March with the presidents of the Black Student Union and the Asian American Student Association.
- At UW-Stevens Point, students representing the International Club, Latino Student Alliance, Black Student Union, American Indians Reaching Out for Opportunities, Hmong and Southeast Asian American Club, Association of Nontraditional Students, and

the Student Government Association met with the chancellor and campus diversity officer. Chancellor Patterson reported that, “our eyes were opened wider to learn we have much room for improvement in our diversity and inclusivity efforts on campus.”

President Millner said that these kinds of intentional meetings were occurring across the UW System because Regents recognize that there is more work to do, and also know how vitally important it is that this work be accomplished. Paraphrasing something that Chancellor Blank recently posted in her blog, President Millner emphasized that in the UW System, everyone wants “a campus environment where we all can engage, create, discover and inquire.”

At the April meeting, the student presentation would be followed by a working lunch with Regents, where invited students would have an opportunity to directly interact with Regents and share their thoughts. It would also be an opportunity for the Regents to listen and hear firsthand about campus climate and student experiences at UW institutions.

From initiatives based on the campuses, to the systemwide Plan 2008, to Inclusive Excellence, the UW System and the Board of Regents had long been committed to equity, diversity and inclusivity. While President Millner said that there was still valid criticism about what has not yet been accomplished, she noted that there was also a lot that had been done and there was an eagerness to work together toward shared values.

Departure of David J. Ward, Interim Vice President for Academic and Student Affairs

President Millner turned to President Cross, who noted that this would be the final Board meeting for David J. Ward, Interim Vice President for Academic and Student Affairs, who would be officially stepping down as of March 16, 2016.

Having served in this role for almost two years, and with a career spanning multiple campuses in the UW System as well as his experience as CEO of NorthStar Consulting, Dr. Ward brought a deep knowledge of statewide needs related to both economic development, higher education, and how the two intersect. Stating that he was deeply appreciative of Dr. Ward’s willingness to serve, as well as for his calm demeanor, wise counsel, advice and friendship, President Cross wished him the best of luck.

President Millner added that Dr. Ward’s wise counsel had been very much appreciated by all members of the Board. Saying that he would be both missed and remembered, she thanked him for his service.

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REGENT POLICY DOCUMENTS ON TENURE

Introduction

President Millner noted that last year the legislature, as part of the 2015-17 state budget, made changes to tenure in Wisconsin. That budget removed the existing statutory language on tenure and added new language outlining procedures for layoff of tenured faculty. In response to those changes, the Board of Regents immediately imported the former statutory language on tenure as Board policy. By doing this, the Board guaranteed a seamless transition and kept tenure intact in the UW System. That action was taken at the June 2015 meeting; the Board also called for a final policy to be put in place by April 2016.

Then-President Michael Falbo and UW System President Ray Cross had appointed a Tenure Policy Task Force to review current tenure policy and make recommendations to the Board. Regent Vice President John Behling chaired that task force, and President Millner was also a member.

A key goal was to make sure that UW System tenure policy would remain comparable and competitive with peers' policies. System staff assembled information on tenure, layoff and post-tenure review policies at peer institutions, and the task force reviewed and discussed these policies at length.

The draft policies that were approved by the Education Committee at its February 5th meeting borrowed heavily from tenure policies at the University of Maryland, the University of Michigan, the University of Colorado, the University of Tennessee, the University System of Georgia, Iowa State University, Minnesota State Colleges and Universities, Utah State, and the California State University System. The task force also reviewed existing policies at each of the UW institutions and in many cases recommended that a new systemwide policy embrace some existing institutional practices. Furthermore, in an effort to secure as much input from UW institutions as possible, almost every UW institution was represented on the task force.

The task force also reached out to the American Association of University Professors (AAUP) to seek its guidance and review of several aspects of the Michigan tenure policy. Much of the AAUP's guidance was incorporated into the draft policies. The task force also regularly briefed systemwide shared governance groups and incorporated their input. The resulting work products were the three draft policies submitted to the Education Committee:

- Revisions to Regent Policy Document 20-23, "Faculty Tenure;"
- Regent Policy Document 20-9, relating to "Post-Tenure Review;" and
- A new policy entitled, "Procedures Related to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination."

President Millner extended her sincere thanks to the members of the task force, some of whom were present in the audience, as well as many others who contributed their time and insight to this very important task. She said she was proud of the work that had been done and was confident that the UW System would be in a strong position going forward.

Remarks on Behalf of UW Elected Faculty Representatives, by UW-Superior Professor Nicholas Sloboda, Chair of the Faculty Representatives, and Geoffrey Peterson, Senator Member of the Faculty Representatives

President Millner said that the Board would first hear some comments on behalf of the elected faculty representatives before beginning consideration of the tenure policies. She called on Dr. Nicholas Sloboda, chair of the UW System Faculty Representatives as well as a Faculty Senator at UW-Superior, to join the Regents at the table. Dr. Sloboda was accompanied by Geoff Peterson, a senator of the UW System Faculty Representatives and Professor of Political Science at UW-Eau Claire.

Speaking on behalf of the UW System Faculty Representatives, Dr. Sloboda expressed appreciation for the opportunity to speak to the Board of Regents. He explained that the Faculty Representatives had formed a committee and engaged in a comprehensive review of the proposed policies in order to provide commentary and possible revisions during the allocated feedback period. In addition, the Faculty Representatives, as campus governance leaders, sought input from and consulted with their faculty peers from each of the institutions on all of the proposed new policies. They also consulted with administration, chancellors, provosts, and an array of colleagues.

This extensive work over a short period of time was spearheaded by a Faculty Representative Committee chaired by two Faculty Representatives, Professor James Hartwick of UW-Whitewater and Professor Holly Hassel of UW-Marathon County. The committee conducted numerous teleconferences with the Faculty Representatives and collaboratively wrote the group's proposed revisions, which all of the Faculty Representatives had signed. Dr. Sloboda thanked the committee members for their efforts.

These proposed revisions had been put forward for the Board's review and possible consideration. Dr. Sloboda said that it was the intention of the Faculty Representatives that these revisions be used to enhance the Regents' deliberations, while recognizing that the Faculty Representatives and the Regents might not have total uniformity in their views on all aspects of the proposed new policy. Noting that a few years earlier one Regent had astutely observed, "if we all had the exact same view, we all don't have to be here," Dr. Sloboda said that it was in that spirit of open dialogue and consideration of alternative perspectives that the Faculty Representatives were gratefully presenting their proposed revisions to the Board. He added that his colleague, Geoff Peterson, was present to provide a brief overview of the Faculty Representatives' position and then answer any questions.

Concluding his own comments, Dr. Sloboda suggested that both the Faculty Representatives and the Board of Regents shared a deep respect for the principle of academic freedom; a desire to have the highest caliber of faculty in the State of Wisconsin in order to continue providing excellence in teaching, research, and service; a desire to have a fair tenure policy that puts an end to the national rumor mill warning faculty applicants not to come to Wisconsin; and the goal of not only recruiting top quality faculty from across the country and the world, but also of retaining those faculty. He said the Faculty Representatives were greatly appreciative of the opportunity to dialogue with the Regents in hopes of achieving the shared

goals of recruiting and retaining the highest quality faculty and continuing to provide a transformative educational experience and take the Wisconsin Idea into the 21st Century.

He then turned to Dr. Peterson, who observed that he could not recall any similar instance of the Faculty Representatives being invited to present to the Board of Regents. He expressed appreciation for the opportunity to provide information to help the Regents make an informed judgment about the proposals before them. Acknowledging that the Board had been faced with some immense challenges over the last year, Dr. Peterson said that the UW Faculty Representatives understood that the Board must simultaneously balance the requirements of the legislature with the mission of the UW System. On behalf of all of the Faculty Representatives, he thanked all of the Regents for their diligent efforts in attempting to find a solution.

Dr. Peterson indicated that it was possible to capture the essence of the Faculty Representatives' proposals in one sentence: "economic factors cannot and should not take precedence over academic considerations and academic freedom when making programmatic decisions." As such, the group's recommendations for amending the current policy proposals all derived from this fundamental belief.

He explained that the proposed changes provided to the Regents and recommended unanimously by the Faculty Representatives would strengthen the existing proposal in several ways: by providing reassurance to the faculty that program elimination will take place under the auspices of faculty governance; by prioritizing educational considerations when considering program discontinuance; by ensuring that every option will be thoroughly pursued prior to the layoff of tenured faculty; and, in the unfortunate event of a layoff or termination, by providing a guaranteed severance package similar to the UW System's peer institutions. Dr. Peterson said it was the belief of the Faculty Representatives that, taken together, these changes would allay many of their major concerns and help the UW System attract and attain the best and brightest faculty.

Dr. Peterson noted that the actions taken by the Board this day would have widespread repercussions. He observed that faculty throughout the UW System were deeply concerned that academic freedom had been wounded by the events of the past year; and news coverage throughout the United States and the world had raised the specter that tenure in Wisconsin had been dealt a nearly fatal blow. While these perceptions may or may not be accurate, decisive action was needed to restore faith in tenure in the UW System, not only for current faculty, but also for all the young brilliant minds that had yet to be recruited for the professoriate across the state.

Dr. Peterson concluded that the UW System owed it to its future students to do everything possible to guarantee access to the best and brightest faculty it can find, but it cannot achieve that goal without a clear and unequivocal statement from the Board of Regents supporting tenure and academic freedom. He repeated that the Faculty Representatives believed that their proposed changes would provide stronger protections for academic freedom, ensure that tenure policies for the UW System are comparable to those of its peers, help put to rest the concerns of both current and future members of the UW System faculty, and preserve the Wisconsin Idea for future generations of both students and professors.

Dr. Sloboda and Dr. Peterson then invited the Regents to ask any questions.

Regent Bradley recalled that written communication Regents received from the Faculty Representatives suggested that the recommended changes were supported unanimously by the Faculty Representatives, as well as by all or a majority of the faculty representatives on the Tenure Policy Task Force. He asked the presenters if this was accurate.

Dr. Sloboda explained that a Faculty Representative who was a member of the task force had been conveying the views of the task force to the rest of the Faculty Representatives, which helped guide the group's discussions. This person was their primary contact regarding the task force.

Dr. Peterson added that in addition to the Faculty Representatives, this proposal was discussed on almost all of the campuses through the faculty senates, and many of the faculty senators had been involved in the process.

Regent Bradley suggested that it was important to add to the context and history provided by President Millner in her opening comments. The Regents had received emails and letters from many people with suggestions for changing the proposed policies recommended by the Education Committee, including the chair of the Tenure Policy Task Force, Vice President Behling, who wrote to the Regents that he wanted to suggest some amendments after reflecting on numerous comments made by faculty members. The AAUP also recommended changes, and now so had the Faculty Representatives.

Regent Bradley highlighted that the Faculty Representatives are the elected representatives at all of the institutions. These were the people with the responsibility for the recruiting and retaining activities so important to maintaining the System's high quality faculty. He suggested that if the UW System were a big business organization, the Faculty Representatives would be the senior managers to whom the Board would listen; if the System were a law firm, they would be its partners and shareholders, who have a stake in the future of the organization. While he did not agree with all of the recommendations made by the group, Regent Bradley said it was important that the Board of Regents listen to them and respect that this was a group of people who were invested in the UW System institutions.

President Millner stated that this was why the Board had taken the unusual step of inviting members of the Faculty Representatives to present at its meeting. She also noted that the Board had been continuously listening, engaging, and responding to faculty since the Tenure Policy Task Force was first configured, one year before, in anticipation of having to make this change.

President Millner said that the Board of Regents had every interest in protecting academic freedom within the state and the System, and had every desire to make certain that its policies correspond with the System's peer institutions. Regent Bradley replied that he was in agreement.

Regent Delgado prefaced his question by stating that he had been on the receiving end of the educational system for a long time, but for the last two years he had been on the Board and so had a chance to try and understand the other side. He noted that the Faculty Representatives seemed to be very firm about economic or financial reasons not belonging in conversations about program curtailment, but added that this position was far from obvious to him. He suggested that without financial limitations, there would be no reason not to duplicate the university everywhere – if the System could afford it, he would bring everybody here for free.

He said that financial reasons are essential to maximizing the results of the UW System. For example, if the System had two law schools that were failing because it was difficult to fill both, it would make sense to shut one down. There would not be an academic reason, but there would be an obvious financial reason. He asked the presenters to address their objections to financial considerations so he could better understand their position.

Dr. Sloboda answered that they were not saying that economic reasons should never play a role in making program decisions. However academic reasons for program existence or program discontinuance must always be the first step in consideration of a program. He observed that the UW System is not in the business of higher education to make a profit, but rather to educate. Sometimes this could mean offering programs that may or may not generate revenue because they are valuable to the students and to the state; those choices should be made on an academic basis first.

Dr. Sloboda acknowledged that the System is in tight budget times, and that the Faculty Representatives would be remiss or in denial if they said that economic decisions do not have some effect on what happens with programs. However, they were asking that the policy language clearly state that academic priorities take precedence over those economic decisions, and that administrators consider the academic value of a program before considering its economic value.

Dr. Peterson also pointed out that the Faculty Representatives were aware of the fiscal realities and understood that the public in the State of Wisconsin wants the careful and prudent use of its funds. However, he said that there is less awareness of everything that already happens to address that concern; program duplication is taken seriously throughout the state, and the System does not necessarily set up identical programs on each campus.

President Millner observed that there would be other opportunities to continue this discussion, and thanked Dr. Sloboda and Dr. Peterson for taking this unique opportunity to present to the Board of Regents. She reiterated the Board's desires to protect academic freedom, keep the System comparable to its peers, and have a financially stable institution going forward. Finally, she expressed appreciation for the contributions and participation of not only the Faculty Representatives and the Tenure Policy Task Force members, but also the faculty from across the System.

Report of Actions Taken by the Education Committee at its February 5, 2016 Meeting

President Millner called upon Regent Petersen, Vice Chair of the Education Committee, to present the report of that committee's meeting on February 5th.

Regent Petersen reported that the Education Committee met on February 5th, with all Regents invited to attend. Chair of the Tenure Policy Task Force and Regent Vice President John Behling presented a report on the work of the Tenure Policy Task Force. Vice President Behling noted that the task force met five times between August and December, and spent considerable amounts of time discussing issues and editing multiple versions of draft policy documents. Task force members received significant input from the AAUP and other national organizations, and carefully studied policies from higher education institutions across the country.

Regent Petersen then expressed appreciation for the efforts of Vice President Behling; General Counsel Tom Stafford; Interim Vice President Ward; UW staff; all members of the task force; and the UW Faculty Representatives, who had just spoken to the Board. There was a round of applause.

Regent Petersen reported that the Education Committee had adopted three resolutions, resulting in three approved policies that the committee referred to the full Board for adoption. He explained that he would present each of these policies separately.

First, Resolution 10643 would revise Regent Policy Document 20-23, "Faculty Tenure," which defines who may be granted tenure, establishes conditions under which a faculty member having tenure may be dismissed, and requires UW institutions to develop procedures for dismissal notice and hearing. The Education Committee approved revisions to the policy that acknowledged new statutory language and removed obsolete statutory language. (This policy appeared in the original Education Committee materials as Appendix D.)

Regent Petersen moved adoption of Resolution 10643, and Regent Farrow seconded the motion.

President Millner asked if there were any questions about what the Education Committee recommended regarding RPD 20-23, noting that General Counsel Tom Stafford was present and could address questions.

Regent Vásquez stated that he would vote against this policy, as well as the other two. He explained that he was frustrated, having asked on several occasions what problem was being addressed, and not having received an answer to this question.

He shared his view that the Board had been placed in a very difficult position, not by the desire of the Regents but instead by external forces, which he found unfortunate. The Board was being forced to address tenure and faculty removal, even though the System already had policies

and procedures that were working, and he had not heard a chancellor say it was too difficult to get things done in the current system.

Regent Vásquez said he was disappointed and sad that the Regents had been placed in this situation, which had created an unhealthy climate where, rather than having a helpful dialogue between faculty, chancellors, and Regents, there was instead a dialogue of pain, anger, and lack of trust.

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President Millner called for a brief recess at 9:48 a.m. due to an interruption of the meeting by student protesters. Reconvening the meeting at 9:54 a.m., she asked Regent Petersen to continue a comment that he had started to make.

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Regent Petersen said that he shared Regent Vásquez's sentiments but noted that there was an intention to make multiple amendments to the proposed policies. Suggesting that the Regents were being responsive to the operational responsibility of the Board to address these three policies, and noting the sheer amount of work that had gone into this process, he encouraged Regent Vásquez to keep an open mind as the Board moved through the three policies.

President Millner also noted that this particular policy would move the former statutory language into Regent Policy, and without it there would not be tenure within the System.

Regent Bradley indicated that he was sympathetic to Regent Vásquez's discomfort about the situation the Board had been put into, but added that the Tenure Policy Task Force had done an excellent job. He urged his colleagues to vote in favor of the motion.

Regent Evers said he felt the same sadness that Regent Vásquez had expressed, but would support this policy because the System needed to have tenure. He indicated that he would be offering some amendments to the third policy, and observed that it would be impossible for him to offer those amendments in good faith if he were to vote "no" on this policy.

With no additional discussion, Resolution 10643 was adopted on a voice vote.

Revisions to Regent Policy Document 20-23, "Faculty Tenure"

Resolution 10643 That, upon the recommendation of the Chair of the University of Wisconsin System Tenure Policy Task Force and the President of the University of Wisconsin System, the Board of Regents adopts the proposed revisions to RPD 20-23, "Faculty Tenure."

President Millner asked Regent Petersen to continue the report of the Education Committee.

Regent Petersen introduced Resolution 10644, which would revise Regent Policy Document 20-9 and rename it “Periodic Post-Tenure Review in Support of Tenured Faculty Development.” The policy would differentiate periodic, post-tenure reviews governed by the proposed policy from other reviews of tenured faculty, and provide criteria for evaluating tenured faculty performance and procedures for addressing performance that does not meet expectations. The proposed policy would also require UW institutions to support professional development opportunities for faculty and provide a review process for faculty members who receive an unsatisfactory performance review. (This policy appeared in the left hand column of the Supplement to Agenda Item 3, Appendix A.)

Regent Petersen then moved adoption of Resolution 10644, and the motion was seconded by Regent Langnes.

President Millner called upon Vice President Behling to introduce amendments to the proposed RPD 20-9, which had been included in the Regents’ materials. Vice President Behling said that there were three amendments to the proposed policy on post-tenure review that he would recommend to the Board. He noted that these amendments, along with four others that he planned to introduce for the proposed new policy on faculty layoff and termination, had been made available to the public and the media on Monday, March 7.

First, Post-Tenure Amendment 1 would add the phrase “creative activity” as one of the criteria that are used to evaluate a faculty member’s performance. The other criteria are teaching, research, scholarship and service. Vice President Behling moved adoption of Post-Tenure Amendment 1 (located on page 5 of the Supplement to Agenda Item 3), and the motion was seconded by Regent Langnes.

President Millner opened the floor to discussion. Hearing none, she then asked if there were any objections to including Post-Tenure Amendment 1 in the draft Regent Policy Document 20-9. With no objections, the amendment was approved.

Vice President Behling moved on to Post-Tenure Amendment 2, which would delete unnecessary underlining in Section 11 of the policy. He moved adoption of this amendment (located on page 7 of the Supplement to Agenda Item 3), and the motion was seconded by Regent Bradley.

With no discussion or objections, Post-Tenure Amendment 2 was approved.

Vice President Behling introduced Post-Tenure Amendment 3, which was a response to a concern about the use of the word “policy.” This amendment would distinguish Regent policy from institutional policy, and would reaffirm the role of the faculty in the implementation of institutional policies. He then moved adoption of this amendment (located on page 9 of the Supplement to Agenda Item 3), and the motion was seconded by Regent Hall.

With no discussion or objections, Post-Tenure Amendment 3 was also approved.

President Millner asked if there were any additional amendments to RPD 20-9. Hearing none, she called for a vote to approve RPD 20-9, including the three amendments that were just agreed upon. Resolution 10644 was adopted on a voice vote.

Revisions to Regent Policy Document 20-9, “Periodic Post-Tenure Review in Support of Tenured Faculty Development”

Resolution 10644 That, upon the recommendation of the Chair of the University of Wisconsin System Tenure Policy Task Force and the President of the University of Wisconsin System, the Board of Regents adopts the proposed revisions to RPD 20-9 and renames the policy “Periodic Post-Tenure Review in Support of Tenured Faculty Development.”

Moving on to the third policy, President Millner asked Regent Petersen to continue his report. He introduced Resolution 10645, which would approve a new Regent Policy Document entitled, “Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination.”

This new policy would delineate when a faculty member can be laid off by the university and would provide the procedures for making a determination of financial emergency or program discontinuance which may result in faculty layoff. (This proposed policy was included in the Supplement to Agenda Item 3, Appendix B, beginning at page 11.) Regent Petersen then moved adoption of Resolution 10645, and the motion was seconded by Vice President Behling.

President Millner invited Vice President Behling to offer the recommended amendments to the proposed new policy.

Vice President Behling stated that he had four amendments to offer for this policy. The first was Layoff Amendment 1, which would ensure that the university staff shared governance groups were also given the chance to review a program discontinuation that could result in a layoff. This was the same opportunity offered to faculty and academic staff shared governance groups in the policy. He then moved adoption of Layoff Amendment 1 (located on page 17 of the Supplement to Agenda Item 3), and the motion was seconded by Regent Langnes.

With no discussion and no objections, the language of Layoff Amendment 1 was approved to be included as part of the new proposed Regent Policy Document on Financial Emergency or Program Discontinuance.

Vice President Behling next moved adoption of Layoff Amendment 2 (located on page 18 of the Supplement to Agenda Item 3), and the motion was seconded by Regent Hall. This amendment would provide some flexibility as to which faculty committee should review any proposal involving program discontinuance that may result in layoff.

Regent Farrow questioned how this amendment would better identify which committee should review program discontinuance proposals, and this was discussed briefly, with Mr. Stafford responding that this was language that responded to faculty concerns.

With no further discussion and no objections, Layoff Amendment 2 was approved to be included as part of the new Regent Policy Document on Financial Emergency or Program Discontinuance.

Next Vice President Behling moved adoption of Layoff Amendment 3 (located on page 19 of the Supplement to Agenda Item 3), and the motion was seconded by Regent Langnes. This amendment would provide an opportunity for both academic and university staff to review comments and recommendations on proposed program discontinuance, in addition to the faculty shared governance group.

Mr. Stafford explained that this amendment responded to the concerns of the academic and university staff, who might also be affected in these situations, by clarifying that these particular shared governance groups would also receive information and be part of the process.

With no further discussion and no objections, Layoff Amendment 3 was approved to be included as part of the new Regent Policy Document on Financial Emergency or Program Discontinuance.

Vice President Behling then introduced his final recommended amendment, Layoff Amendment 4, which was again in response to a concern regarding confusion over the use of the word “policy.” Like the Post-Tenure Amendment 3 approved earlier, this amendment would distinguish Regent policy from institutional policy. He moved adoption of the amendment (located on page 21 of the Supplement to Agenda Item 3), and the motion was seconded by Regent Langnes.

With no discussion and no objections, the language of Layoff Amendment 4 was approved as part of the new Regent Policy Document on Financial Emergency or Program Discontinuance.

President Millner asked if there were any other amendments to the proposed Regent Policy on Financial Emergency or Program Discontinuance.

Regent Evers announced his intention to introduce three additional amendments. (These amendments were included in Appendix C, which had been provided to the Regents.)

Regent Evers first stated that, with no disrespect to the Tenure Policy Task Force or its chair for their extraordinary hard work, it was his belief that these three amendments would make the proposed policy even stronger by clarifying the role of shared governance, prioritizing educational considerations while not setting aside the issue of financial considerations, and making sure that all legitimate options are taken into account before a layoff.

He read Layoff Amendment Number 5 (located in Appendix C, page 24 of the Supplement to Agenda Item 3), which would insert “pursued” in place of “considered;” the draft policy would therefore state that “faculty layoff will be invoked only in extraordinary circumstances and after all feasible alternatives have been pursued.”

Regent Evers explained that this was a very important point for faculty, as “pursued” would be a more active description that would align the UW System’s policy with peer institutions and provide reassurance to the faculty that other options would not only be considered but actively pursued. He then moved adoption of Amendment 5, and the motion was seconded by Regent Manydeeds.

President Millner opened the floor to discussion.

Vice President Behling recalled that in his introductory comments from the very beginning of the Tenure Policy Task Force, one of the ultimate goals was to empower chancellors and give them the flexibility to get through the tough times. He suggested that changing “considered” to “pursued” would water down the policy and reduce chancellors’ flexibility as, from a legal perspective, “pursued” would imply a weightier requirement.

Noting that the Education Committee had heard from multiple chancellors who were supportive of the policy as drafted, Vice President Behling concluded that after considering the amendment he did not think it was the right move. He then asked General Counsel Tom Stafford to further reflect on the distinction between “pursued” and “considered.”

Mr. Stafford indicated that Vice President Behling had accurately expressed the distinction; “pursued” was a stronger word. He suggested that this was the intention of the amendment, and Regent Evers agreed.

Regent Bradley stated that he supported Layoff Amendment Number 5. Before explaining his reasons, he emphasized his complete agreement with the goals of the tenure policies as expressed by Vice President Behling. He also pointed out that another goal mentioned in Vice President Behling’s written communication to the Board was to ensure that the UW System’s policy would remain comparable to and competitive with its peers.

Regent Bradley then explained that he preferred the word “pursued,” first, because it is stronger, which both he and the Faculty Representatives desired; second, because in all likelihood an institution trying to maintain its reputation in higher education as a good employer would act this way in any case; and third, because the wording would help the UW System remain competitive with its peers.

Regent Delgado said that he had been persuaded at first that a change like this would be good, but he then expressed concern about an endless process if “pursued” meant every significant, possible, or even remote probability. He indicated that the university needed a process that has a certain end, and suggested that the Board’s sense of reasonableness would insist that the alternatives be strong, and that a significant effort be made to consider those alternatives, without necessarily leaving room for an appeal.

Regent Vásquez said that he would be surprised if there were instances where decisions had to be made almost instantaneously, given the operation of the UW System and the nature of higher education, and that he would hope and expect that the System’s professional, dedicated,

and experienced chancellors were already anticipating needs and were not going to get caught by surprise.

He also said that he was in support of the concept of “pursued” because he believed that the chancellors, with the input of faculty staff, would know when to bring things to closure and would not wait indefinitely to make a decision, regardless of whether the policy says “pursued” or “considered.”

Regent Manydeeds asked Mr. Stafford if there was any caselaw that makes a distinction or places any greater legal requirement on a chancellor simply by changing the word “considered” to “pursued.”

Mr. Stafford replied that he was not aware of any case that specifically stated that.

Responding to a request from Regent Hall to repeat his explanation about why “considered” was sufficient for the draft policy, Vice President Behling reiterated that the goal of ensuring that chancellors have flexibility was better served with the use of “considered,” as “pursued” would be a higher standard for chancellors to meet.

Regent Petersen asked Vice President Behling about the chancellor representation on the Tenure Policy Task Force. Vice President Behling said that three chancellors were on the task force, and the Education Committee also heard from an additional three chancellors who had not served on the task force.

Regent Bradley, in response to Regent Hall’s question, said he thought it was wise for the Board to use “pursued,” which was the industry standard used all over the United States and recommended by the AAUP. He warned that changing “pursued” to “considered” would send a message to all of the UW faculty that the System is weakening its tenure policies. By approving this amendment and sticking with the industry standard, the Board would not be giving people an opportunity to claim that the Regents were weakening tenure.

President Millner called for a roll call vote on Layoff Amendment 5. The result was eight in favor and eight opposed, with Regents Bradley, Evers, Harsy, Manydeeds, Mueller, Pruitt, Tyler, and Vásquez voting in the affirmative, and Regents Behling, Delgado, Farrow, Grebe, Hall, Langnes, Millner, and Petersen voting in opposition. There were no abstentions. President Millner announced that the motion to adopt Layoff Amendment 5 had failed.

Taking the amendments slightly out of order, Regent Evers next moved adoption of Amendment 7 (located in Appendix C, pages 30-31 of the Supplement to Agenda Item 3), which would make two changes. First, it would require that the faculty committee designated to review proposals to discontinue a program which lead to faculty layoff be both distinct from the committee established under Section I of the policy, and focused primarily on educational considerations as determined by the faculty. Traditional governance structures would be relied upon to ensure that the committee is distinct from Section 1.

The amendment would also delete “current and predicted comparative cost analysis/ effectiveness of the program” from the list of considerations to be included in the committee’s review. Regent Evers explained that this consideration was not an educational analysis; also, because it did not detail any metrics, he suggested that the language to be removed was “a bit murky.” Regent Evers’ motion was seconded by Regent Bradley.

Regent Grebe asked Regent Evers to discuss the significance of having a different committee from the Section I committee for the layoff review and why that was important.

Regent Evers explained that the Section I committee would look at many different issues, including finances, and would be reviewing and evaluating programs for discontinuance that could lead to faculty layoff. The intention was to make sure that the review committee is different; even though the proposed policy made it permissive that the committee could be different, Layoff Amendment 7 would ensure that the review committee is distinct and focused on educational considerations.

President Millner asked Vice President Behling to discuss the amendment and its two elements. Vice President Behling reiterated that chancellors need flexibility when faced with program discontinuance, and said that this amendment would again limit that flexibility by requiring a chancellor to obtain yet another committee’s approval before even getting to the issue of how to proceed.

Speaking to the proposed requirement that the committee be focused primarily on educational considerations, Vice President Behling said that while he appreciated that view, at the end of the day the university needed to focus on the economics. Stating that over the course of the last seven months the task force had tried hard to create a policy in line with the university’s peers and which also empowers chancellors to get through tough economic times, he expressed his opposition to Layoff Amendment 7.

Regent Bradley observed that at a successful company, a boss who has the flexibility to make final decisions would likely listen to his employees when they explain the importance of having people with specific knowledge and expertise weigh-in on certain topics.

He also agreed that the cost analysis language should be stricken from the list of considerations, as it could pit programs against each other and create an unhealthy climate that undermines the ability of programs to work collaboratively. With all of the other considerations listed, he suggested that the Regents give up this one that could have the potential to cause a lot of disruption and competition among departments and could impede interdisciplinary efforts.

His final point was to address the suggestion made in the Regents’ written materials that including this cost analysis language would be in line with policies at peer institutions. He noted that it was actually in line with what one or two very low-ranked universities might be doing, but that the University of Michigan, for example, did not have any language suggesting the comparison of program value. Regent Bradley said he did not want anybody to think that this consideration was needed for the UW System to be like the University of Michigan. He said he supported the motion to remove that language.

President Millner asked President Cross to weigh in. President Cross said he would like to point out three things with respect to the proposed amendment.

First, he indicated that the Task Force had attempted to write the language in such a broad manner that it would allow each campus some flexibility to implement its own practices and procedures, which the faculty would be asked to develop. System staff had already been looking at the draft of UW-Madison's policy and thinking about how that would fit into the proposed Regent policy. Noting that Layoff Amendment 2 had changed the language to read "a designated faculty committee," giving the campus the flexibility to use the same committee or a different one, he suggested that it was already the intention to use established governance procedures, as that is standard procedure.

President Cross's second point was that the draft policy stated that "the committee's review and evaluation may be based on the following considerations." He noted that "may" made it a permissive statement, suggesting that cost analysis was just one of seven items that the committee could choose to consider.

His final comment with respect to the cost-analysis consideration was that while the language did not match the University of Michigan's policy, it was very close to that of Maryland's and a couple other institutions.

President Millner recognized Regent Farrow, who began her comments by expressing her deep respect for everybody involved in the process, including Regent Evers as the author of the amendment.

Referring to the example introduced by Regent Bradley of a successful company, she noted that if something is done in isolation in the private sector, it begs for more breadth of understanding. Extending the metaphor, she said that if a certain widget is really flying off the shelves, she would not want the widget-making company to form a committee to study whether more expenditures should be made to help further that side of its operations. Rather, she would like it to be done by people who know the situation, who share the information with others, but who ultimately say, "This is the way we have to go, and we don't have a lot of time to make a decision."

Regent Farrow indicated that she did not know what the time constraints would be on forming these institutional policies, but she agreed with President Cross that the campuses were already beginning to put their own versions of the policy together for the Board's approval. She observed that when the Board of Regents last touched these policies in 1978, life was very different than it is now, both outside the world of academia and in academia itself. There are pressures, problems, and issues that did not even have a name back then, and she said this organization had already been faced with unsought challenges.

Saying that she was very grateful to be able to read and agree with the end product of the Tenure Policy Task Force, Regent Farrow explained that it was her sense that these two changes would basically undo everything else that the Board was trying to do with this policy, and so she would not support the amendment.

Regent Tyler said he would put this issue into a private industry perspective, adding that this was clearly the most important issue he had looked at in his time with the Board of Regents. He explained that his company was currently going through a severe revenue reduction, and so was making some very difficult decisions. In private industry there are no guarantees, and the only assurance – for individuals or organizations – is performance. He acknowledged that sometimes the markets are cruel, and so flexibility is needed for a company to make those difficult decisions, endure hard times and come out the other end in a good position.

Looking at the UW System and the state’s future demographics, Regent Tyler noted that with 10,000 fewer students in the pipeline, a 15 percent reduction, it was important that the university develop a strategy that includes expanding its market beyond its traditional pipeline. He added that the university needs great faculty and staff or it will be in trouble, and so a huge issue is how to balance this flexibility against how to recruit and retain the best people that the System possibly can. He also noted that the UW System needs all of its students, or “customers,” to be successful, which means gaining knowledge that can lead to a career that allows someone to support a family and become a contributing member to society.

Speaking more broadly about the discussion around the amendment, Regent Tyler said he had been advocated by a number of people, both from the faculty and the public, whose views ranged everywhere from supporting “guaranteed lifetime employment” to “no guarantees whatsoever.” He called these views ridiculous on both sides, and indicated that the draft policy before the Regents was a strong balance of where the System needs to be. Saying that he did not support Layoff Amendment 7, Regent Tyler concluded that while economics did not have to be the first consideration, it would have to be part of the discussion.

Regent Vásquez commented that he was lost, and would have to find this System that others were describing where senior administrators are so restricted in what they can and cannot do that outsiders have to tell the Regents to give these senior administrators freedom and flexibility. He said he did not think it was the UW System being discussed, because he was convinced that the university has very competent, skilled and savvy individuals, despite the image being conveyed that they cannot do their jobs and need all of this flexibility. He said he also was not sure where to find this group of faculty who were supposedly entrenched and did not want to make any changes, and did not care about the economics.

Regent Vásquez expressed his belief that both administrators and faculty are very committed and understand the two things that are the lifeline of higher education: quality and students. Both also understand the fiscal reality, and Regent Vásquez said he did not think this amendment was imposing anything overly restrictive. He also noted that, having had the honor of working within a university system, he knew it was different from “making widgets.” He said that public higher education is a different type of environment from private industry, but that does not mean it is an environment that does not care about its quality, its students and its output.

Regent Vásquez concluded by stating that Layoff Amendment 7 was reasonable, and would remove language that was going to make it a challenge for the System to hire quality faculty.

Regent Evers indicated that Regent Vásquez had “absolutely hit the nail on the head.” He expressed concern that the argument against his proposed amendments was built around chancellor flexibility; this was supposed to be a tenure policy for faculty, not a tenure policy around chancellors. He said he loved the chancellors, but hoped that the Regents were not creating a System where faculty are minimized in their ability to continue performing well going forward.

President Millner indicated that while she typically preferred not to weigh in on discussions, she felt strongly about this amendment for several reasons.

First, she said she was at odds with some of her colleagues because she did not believe the academy was precisely like a business. She said she had spent much of her service life with nonprofits and stated that the System cannot have quality, serve its students, and keep quality faculty if it does not have a sound financial system.

President Millner said the System needs a reasonable balance that would enable it to protect that quality by making certain critical decisions, and the particular language in this provision provided that balance. Understanding the importance of educational considerations while looking at hard decisions, the university also cannot ignore the needs of the chancellors and the institutions for flexibility to make financial decisions. She pointed out that the chancellors were not always dealing with people who completely understand the needs of the institution for that financial stability.

While she said she would oppose the amendment, President Millner said she absolutely did not oppose the importance of weighing education in the decisions that might be made going forward; she also expressed certainty that any of her colleagues who would be voting against this amendment did consider the quality of the faculty and the quality of education as preeminent.

Regent Millner recognized Chancellor Joe Gow, who said that although he did not serve on the task force and had not commented in front of the Education Committee, the chancellors had a lot of discussion. Having listened to the dialogue, he suggested that the challenge was that education and finances had been tied together in language from the legislation and subsequent work that had been done.

Speaking about leadership in higher education management, Chancellor Gow said that as a chancellor he always defers to faculty. While he would feel comfortable weighing in as an expert in his own particular field, he would not have the expertise to make the same decisions in other areas. Having said that, from a management perspective, there are times when hard decisions needed to be made, and the most challenging is when there is low enrollment in a program.

While UW-La Crosse currently did not have any problems with low enrollment in programs, he said he had worked in leadership at other universities that did have that issue. He recalled one instance where he had encountered resistance to the idea of eliminating an unpopular major and redirecting those resources to where they were needed, including

compensation for the faculty. He shared that he regretted that the hard decision was not made, since that institution would have been better off if it had been.

Chancellor Gow added that it was uncomfortable to hear the faculty, administration, students and Regents described as being distinct and at odds with each other, since they are all in the UW System together and work hard to try and prevent that from happening. While he said he did not have a solution to offer on this amendment, he did affirm the need for the chancellors to have the ability to take action when enrollments are low.

With no further discussion, President Millner called for a roll call vote on the motion to adopt Layoff Amendment 7. The motion failed on a vote of five to eleven, with Regents Bradley, Evers, Manydeeds, Pruitt, and Vásquez voting in the affirmative, and Regents Behling, Delgado, Farrow, Grebe, Hall, Harsy, Langnes, Millner, Mueller, Petersen, and Tyler voting in opposition. There were no abstentions.

President Millner called upon Regent Evers to introduce his final amendment, Layoff Amendment 6 (located in Appendix C, page 29 of the Supplement to Agenda Item 3), which he said would address some of the same issues as the previous amendment by making it clear that while an analysis of financial resources is part of the equation, educational consideration should be a priority in the business of higher education. Regent Evers added that this particular amendment contained much of the language that is in the University of Michigan's policy document. Regent Evers' motion was seconded by Regent Pruitt.

President Millner invited Vice President Behling to comment, and he invited President Cross to speak first. President Cross reiterated that the goal of the Board's policy was to establish a framework for the institutions to establish their own policies and procedures. This framework would be stated as broadly as possible, with clear guidelines.

President Cross also said that, having been in this business for close to 30 years, he would observe that it is almost impossible to separate fiscal issues from educational considerations, both at the UW System and at other institutions. He shared his belief that educational considerations in and of themselves include financial issues; using Chancellor Gow's example, he questioned how declining enrollments could not be financial as well. However, he argued that most would look at the academic, educational considerations first.

Noting that the amendment could be read to mean that academic, educational considerations are more important and take priority, or that they simply must be reviewed first and financial considerations second, President Cross said he was not sure that it was possible to bifurcate the considerations. Instead, it was the duty of the chancellors and faculty on the committees to sort out the considerations, and the proposed policy would provide room for that to happen.

Vice President Behling thanked President Cross and reiterated the task force's goal of empowering chancellors with the flexibility to make economic considerations part of the discussion. He indicated that the proposed amendment would strike good language: "This includes the reallocation of resources to other programs with higher priority based on educational

considerations. Such long-range judgments generally will involve the analysis of financial resources and the needs of the program in any related college or school.” Stating that this was the best language for the System, he recommended that Regents vote against proposed Layoff Amendment 6.

Regent Pruitt followed-up on President Cross’s observations by stating that, like the other Regents, he had struggled with this issue and was appreciative of the efforts of Vice President Behling and the task force leadership, both on the Board level and the System level. He underscored President Cross’s point that there would be a second phase in this process, review of institutional policies, as he said he suspected this amendment would not be successful. Acknowledging that different Regents have different priorities, he added that those differences are always valued and should be cherished by the Board.

He recalled that Chancellor Blank had suggested at a previous meeting that faculty at UW-Madison and the other UW institutions would be asking the question, “Is the UW System going to remain a top university or do I need to go elsewhere?” He asked whether a rising academic star with a job offer from another university would find anything in this policy that would discourage them from choosing the University of Wisconsin over those other institutions. Looking to the second phase, Regent Pruitt said he would encourage that the institutional policies developed as a result of the Regent policy send a strong and clear signal to new applicants and existing faculty who have stayed on during some difficult times that the System is a place they want to be.

Regent Delgado noted that, even assuming that every program has exactly the same need and same value, it may be possible to have a program that is too big due to the shrinking population of the state. The University of Wisconsin System is for Wisconsin and by Wisconsin, and the needs of Wisconsin can change. He recalled that when he first joined the Board, he strongly felt that a certain amount of review of program offerings would be necessary. The System needed resources in order to be able to invest in salaries, for example, and he thought it was possible to better maintain resources based on the needs of Wisconsin.

He said he did not agree with taking away comparative analysis, because there may be competition between departments, universities, and professors. He said that while he was not naïve enough to think that anyone would be extremely gracious when his or her own job was being taken apart, the System still had to manage with more objective criteria.

Regent Delgado said that he was persuaded that the draft language was permissive and allowed an economic basis to be just one of many considerations. The good use of resources was important; a campus in need of resources, even if it has all perfect programs, will still have to make decisions to reduce some of them based on a variety of criteria. He indicated that he did not think the UW System was on the edge of falling apart; rather, it is tremendously strong. The Board of Regents owed the State of Wisconsin a very rational approach to the program offerings of the university, with a focus on the needs of the students and the needs of the state, and including consideration of economics.

Regent Hall shared that she had been struggling throughout the conversation. Noting that most of her career had been in education and nonprofit organizations, she said she was now for the first time working with small- and medium-sized businesses on a daily basis, and working consistently with business leaders in the community. She had opposed the first two amendments that Regent Evers had proposed, and said she would oppose Layoff Amendment 6 as well because she could see the need for a delicate balance between considering the importance of academics and the educational programs provided to students, and at the same time making sure the System has the money it needs to serve those students.

Regent Hall expressed confidence in the work of the Tenure Policy Task Force, its leadership and its stakeholders as represented by the task force members, who tried to balance faculty needs and academic considerations with the fiduciary responsibility of the Regents and the chancellors, who were responsible for the outcomes of the university. She concluded that, though it was difficult, these ongoing conversations were necessary to continue making the UW System the best in class.

Regent Mueller said she had also been struggling after hearing all sides of the issue. While she indicated that she could not support Layoff Amendment 6 as written, she asked if there would be interest in adding the words “value” or “quality” to the proposed policy language, as a way of addressing the more subjective matters in which chancellors and others had expressed an interest. She said she would not support Layoff Amendment 6, but would propose a compromise that would say, “Such long-range judgments generally will involve the analysis of financial resources and the needs, value and quality of the program in any related college or school.”

Regent Vásquez commented that it was frustrating to participate in this kind of discussion because it had been brought to the Regents by outside forces with a very interesting view of the UW System. He said that while it was clearly true that the university was facing a fiscal crisis, it was not a fiscal crisis that was internally created by tenure or by entrenched faculty who were unwilling to terminate programs. The choice is not between fiscal reality or academic freedom, he said. Saying that chancellors and faculty are fiscally and academically responsible, he expressed concern that the System was cannibalizing itself when the actual crisis was the lack of state support and the inability to raise tuition. He warned that approving these policies was not going to give the System the money it needs to operate at the quality it needs; he called for the faculty, chancellors and Regents to focus their attention together on the actual source of the crisis.

President Millner invited comments from any of the chancellors.

Chancellor Blank said she shared Chancellor Gow’s concern that the conversation had at times suggested that the interests of the chancellors were in opposition to the interests of the faculty, adding that the only way to move forward with any changes would be collaboratively. She indicated her support for the proposals of the Faculty Representatives and said her own preference for UW-Madison would have been to see them pass. However, moving forward, she expressed the hope that the Board would consider that the institutions in the UW System are different types of organizations. Rather than adopting the view that each institution must use

exactly the same language, she recognized that different schools did have different needs and that what might be appropriate for UW-Madison may be less appropriate for some others. By providing leeway and flexibility, each of the chancellors would be able to present policies tailored for their individual universities.

President Millner thanked Chancellor Blank and said that this was the intention.

Chancellor Patterson suggested that the language about reallocation of resources should be included in the policy because by discontinuing a program, resources would be reallocated to where they are most needed.

He expressed support for the idea of talking about educational considerations as primary and financial considerations as secondary to the program review, adding that it would not make a huge difference should a campus have to implement these policies. Having spent eight years at a private university where financial considerations were prominent, he noted that while its nationally-known music school did not pay for itself, the university supported the music school because it did not want business school students graduating without some knowledge of music and art. Chancellor Patterson said this example demonstrated that sometimes educational considerations should be primary and financial considerations secondary.

Chancellor Sandeen thanked the Board for so seriously taking into consideration the faculty's perspective and their proposed revisions, which was reflected in the amendments that the Regents were now considering. She observed that she and her colleagues would not be chancellors in the UW System if the System did not have shared governance, tenure, due process and academic freedom. She suggested that anything involving the layoff of tenured faculty would be a last resort for any chancellor, and that educational considerations would be primary. However she agreed that educational considerations also involved financial considerations, as the two are intertwined – without the resources to support a program, it cannot be a quality program.

Chancellor Sandeen indicated that the chancellors have a relationship with faculty that would allow for a thoughtful discussion about this issue, and again thanked the Regents for looking at this so thoroughly, regardless of the outcome.

With no further discussion, President Millner called for a roll call vote on the motion to adopt Layoff Amendment 6. The motion failed, five to eleven, with Regents Bradley, Evers, Manydeeds, Pruitt, and Vásquez voting in the affirmative, and Regents Behling, Delgado, Farrow, Grebe, Hall, Harsy, Langnes, Millner, Mueller, Petersen, and Tyler voting in opposition. There were no abstentions.

President Millner then recognized Regent Mueller, who moved adoption of an amendment that would add the words “value and quality” to the last line of Section II.B. of the draft layoff policy, which would then read: “Such long-range judgments generally will involve the analysis of financial resources and the needs, value and quality of the program and any related college or school.” The motion was seconded by Regent Hall.

President Millner suggested that the proposed language would address the example given by Chancellor Patterson. Regent Mueller agreed, adding that the drafted language included no modifier for “needs,” leading readers to assume this to be “financial” need. She said her proposal was an attempt to reach a compromise that would acknowledge a program’s “value” and “quality,” which were words drawn from the failed Layoff Amendment 6. Suggesting that this would lead to a clearer and better outcome, Regent Mueller expressed hope that her colleagues would support this change.

President Millner opened the floor to discussion.

Regent Bradley sought clarification of what Regent Mueller was proposing and then urged his colleagues to support Regent Mueller’s motion. Although it did not go as far as he thought the policy should go, Regent Mueller’s motion would go further than the drafted policy by introducing consideration of a program’s “value and quality” in addition to “needs.” He said both were reflected in the University of Michigan’s policy, which would address the goal of trying to appear competitive with peer institutions for faculty members looking at competing offers.

President Cross pointed out that “value and quality” were also included in Section II.D., among the seven possible criteria that may be used to evaluate a program. He stated that Regent Mueller’s amendment would reaffirm that language and he advised that it be adopted.

With no further discussion, the motion to include Regent Mueller’s amendment in the new Regent Policy Document on financial emergency or program discontinuance was approved on a voice vote.

After calling for any additional amendments and hearing none, President Millner next called for a vote on Resolution 10645, which would adopt the new policy entitled, “Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination,” including all approved amendments. The resolution was adopted on a voice vote.

Creation of a New Regent Policy Document, “Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination”

Resolution 10645 That, upon the recommendation of the Chair of the University of Wisconsin System Tenure Policy Task Force and the President of the University of Wisconsin System, the Board of Regents adopts the proposed new Regent Policy Document, to be called “Procedures Relating to Financial Emergency or Program Discontinuance Requiring Faculty Layoff and Termination.”

President Millner asked Regent Petersen if this concluded the report of the Education Committee, and he confirmed that it did.

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CLOSED SESSION

President Millner called upon Vice President Behling to present the resolution to move into closed session. The motion was seconded by Regent Langnes and adopted on a roll-call vote, with Regents Behling, Bradley, Delgado, Evers, Farrow, Grebe, Hall, Harsy, Langnes, Manydeeds, Millner, Mueller, Petersen, Pruitt, Tyler and Vásquez voting in the affirmative. There were no dissenting votes and no abstentions.

Closed Session Resolution

Resolution 10646 That the Board of Regents move into closed session to: (a) consider a UW-Stevens Point honorary degree nomination, as permitted by s. 19.85(1)(f), *Wis. Stats.*; (b) consider a student request for review of a UW-Madison decision, as permitted by s. 19.85(1)(a) and (g), *Wis. Stats.*; and (c) confer with legal counsel regarding pending or potential litigation, as permitted by s. 19.85(1)(g), *Wis. Stats.*

The following resolution was adopted during the closed session:

Student Request for Review of a UW-Madison Decision

Resolution 10647 That the Board of Regents adopts the attached Proposed Decision and Order as the Board's final Decision and Order in the matter of a student request for Regent review of a UW-Madison decision.

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BOARD OF REGENTS RETREAT: SYSTEM GOVERNANCE WORKSHOP, LED BY DR. WILLIAM "BRIT" KIRWAN, ASSOCIATION OF GOVERNING BOARDS

To begin the Regent-retreat portion of the meeting, Vice President John Behling introduced Dr. William "Brit" Kirwan, saying that the Board was delighted to have him present. A nationally-recognized authority on critical issues shaping the higher education landscape, Dr. Kirwan is the former chancellor of the University System of Maryland. Prior to his 13 years in Maryland, he served as president of Ohio State University for four years and president of the University of Maryland, College Park for ten years. He also was a member of the University of Maryland faculty for 24 years. Dr. Kirwan is a consultant with the Association of Governing Boards. In addition, he chairs the National Research Council Board of Higher Education and Workforce and co-chairs the Knight Commission on Intercollegiate Athletics.

Dr. Kirwan began his remarks by complimenting Board members for their handling of two difficult issues that morning. He said that allowing students to have their say during the student protest showed respect to the students, and the Board's discourse on tenure was thoughtful and respectful.

Best Practice Strategies

Dr. Kirwan noted that in his 52 years in higher education, there had never been an era with so many difficult issues facing higher education as in the last decade. Listing some of the challenges, such as tuition, student debt and changing demographics, Dr. Kirwan said that some university boards had been under fire on various fronts. As a result of the issues and events at universities, the Association of Governing Boards established a commission to look at what boards should be concerned about and at good governance. He spoke about the commission's seven recommendations in these areas.

He then focused in particular on fiduciaries and shared governance. A fiduciary holds assets in trust for another and is charged to act beneficially on behalf of the other in managing the asset. In the case of higher education, the asset is the college or university that the board governs. The board is holding the college or university in trust for the founders, sponsors, students and families, alumni, and public. Once an individual becomes a member of the board (a fiduciary), his or her sole obligation, legally and ethically, is protecting that asset. He described the duty of care, duty of loyalty, and duty of obedience of a fiduciary.

With respect to shared governance, Dr. Kirwan stated that shared governance can be a difficult concept for new board members. Nevertheless, shared governance is alive in higher education, and the best universities have a strong system of shared governance. He detailed some of the characteristics of shared governance.

Next, Dr. Kirwan concluded that good board practices can be characterized by three roles. An effective board needs to provide:

1. oversight – carrying out a fiduciary role by setting and refining missions, generating and allocating resources, ensuring integrity and compliance, and monitoring performance;
2. foresight – carrying out a strategic role by requiring and reviewing SWOT (strengths, weaknesses, opportunities, threats) analyses, probing and approving plans and strategies, and ensuring resources are aligned with priorities; and
3. insight – carrying out a generative role by raising problems and issues, identifying opportunities, and ensuring different perspectives are heard.

Differences in Oversight Responsibilities -- System vs. Single Institution Boards

Dr. Kirwan shared his experience working with both a system board and institution boards, and noted significant differences between the two. He described advantages of a system board and said he was convinced that this was the best model. He then engaged Regents in a conversation about ways to take full advantage of the benefits of a system board and ways to mitigate the challenges of a system board.

Goals and Challenges

As the third component of the retreat, Dr. Kirwan engaged Regents in a conversation about the greatest challenges facing the University of Wisconsin System and three important goals for the UW to achieve over the next five years. Regents worked in small groups and offered their observations in both areas.

Conclusions

Dr. Kirwan concluded the retreat with several closing thoughts: (1) the Board appears to exhibit best practices in the way it conducts its business; (2) Board members are conscious of realizing the advantages of being a system board, and there may be additional advantages to explore and develop; (3) the Board seems to have taken steps to mitigate many potential disadvantages of being a system-level board, and two areas that could be considered for additional attention would be developing strategies for greater connections with the comprehensive institutions and perhaps increasing interaction with shared governance at the system level.

Regents expressed their appreciation for a beneficial session.

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The meeting was adjourned at 3:00 p.m.

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Submitted by:

/s/ Jane S. Radue

Jane S. Radue, Executive Director and Corporate Secretary
Office of the Board of Regents
University of Wisconsin System