

# **NORTH DAKOTA UNIVERSITY SYSTEM**

## **TESTIMONY TO ADMINISTRATIVE RULES COMMITTEE**

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**September 13, 2007**

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Chairman Fischer and Members of the Administrative Rules Committee:

I am responding for North Dakota University System Chancellor Bill Goetz to a July 31, 2007 letter regarding the State Board of Higher Education (SBHE) exemption from the Administrative Agencies Practice Act, NDCC Chapter 28-32. The letter requests a written response to several questions. Chancellor Goetz has a meeting in Devils Lake on September 13, 2007 and is unable to attend your committee hearing.

The SBHE is created by and its powers are stated in the North Dakota Constitution. Article VIII, section 6, subsection 6 states the SBHE has "full authority over the institutions under its control" and may "do each and everything necessary and proper for the efficient and economic administration" of those institutions. Also, the SBHE may "delegate to its employees details of the administration of the institutions." Under this constitutional authority, the SBHE has adopted policies governing administration and operation of the NDUS. Substantial authority is delegated to the chancellor and institution presidents. Each institution has comprehensive policies and procedures, enacted or proposed by the institution's faculty senate or other institution legislative body and approved by the president.

SBHE and institution policies and procedures address system and institution governance, academic affairs (including admission requirements and program or degree authority), student affairs, employee affairs, financial matters (including NDUS purchasing policies) and other matters. There are personnel rules, including the NDUS classification system, and the SBHE has adopted a defined contribution retirement plan, in which close to one-half of NDUS employees eligible for retirement benefits participate, which is separate from the state plan administered by NDPERS.

As part of its personnel system, there are procedures for disciplinary actions and appeals relating to those actions. NDUS institutions conduct evidentiary hearings to resolve those appeals. The SBHE does not conduct any appeal or other hearing, except hearings regarding dismissal of a chancellor or institution president.

Regarding questions in the July 31, 2007 letter from John Walstad to Chancellor Goetz:

1. Does the State Board of Higher Education require exemption from the rulemaking provisions of NDCC Chapter 28-32, the adjudicative proceedings provisions to Chapter 28-32, or both? Please explain.

Yes, for both parts of the question. Application of current rulemaking or adjudicative proceedings provisions to the SBHE and its institutions is impractical. Such application would limit flexibility, add to costs and infringe on SBHE constitutional authority. It might even affect program accreditation reviews (accreditation teams examine institutional governance and are particularly interested in the faculty's role in governance, academic freedom and insulation from political or other outside interference in academic programs).

2. Does the State Board of Higher Education make any rules, for purposes other than internal management, which are of general statewide application and might affect rights or duties of persons outside your agency?

SBHE and NDUS institution policies and procedures are for internal management or they apply to NDUS employees, students or customers and they do not have general statewide application.

3. Does the State Board of Higher Education hold hearings to act on complaints, applications, or appeals? If so, what rules govern the conduct of the hearing and rights of the parties?

The SBHE conducts hearings in proceedings to dismiss a chancellor or institution president and NDUS institutions conduct hearings in employee dismissals or other proceedings involving employee discipline and student conduct proceedings. Rules governing the proceedings are consistent with federal and state constitutional and statutory requirements and are stated in SBHE and institution policies.

4. Do you believe the exemption for your agency under subsection 2 of NDCC Section 28-32-01 should be continued unchanged, modified, or eliminated?

The SBHE exemption under subsection 2 of NDCC Section 28-32-01 should be continued unchanged.

Thank you for this opportunity to address the committee regarding the SBHE exemption from the Administrative Agencies Practices Act. I will be pleased to respond to additional questions.