

ND STATE BOARD OF HIGHER EDUCATION

Minutes—July 20, 2006

Conference call

The State Board of Higher Education met July 20, 2006, via conference call. The Board president called the meeting to order at 9 a.m. CT. Members present:

Mr. John Q. Paulsen, President	Mr. Charles Murphy
Ms. Beverly Clayburgh, Vice President	Mr. Nicholas Rogers
Mr. Bruce I. Christianson	Mr. Richie Smith
Ms. Pam Kostelecky	

Members absent:

Ms. Sue Andrews	Dr. John Pederson, Faculty Advisor
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Presidents, campus deans, and campus representatives present:

Dr. Sharon Etemad, LRSC	Mr. Keith Bjerke, NDSU
Dr. Gary Hagen, MaSU	Dr. Bob Boyd, UND
Mr. Ron Dorn, MiSU	Dr. Joe McCann, WSC
Mr. Mike Renk, NDSCS	

Staff members present:

Dr. Robert L. Potts, Chancellor
Mr. Eddie Dunn, Vice Chancellor for Strategic Planning/Executive Director CTEC
Mr. H.P. Seaworth, General Counsel/Executive Secretary
Ms. Debra Anderson, Public Affairs Director
Ms. Sheila Tibke, SBHE Administrative Secretary/Financial Aid Assistant

Chairman Paulsen reported the Interim Chancellor Search Committee announced nine candidates for the interim chancellor position at their meeting on July 19. He said William Isaacson was inadvertently omitted from the list. Chairman Paulsen said the Committee will meet July 25, 2006, and will forward one or two names to the Board to consider at a special Board meeting on July 28, 2006. Since Dr. Vickers is one of the candidates, Dr. Chaffee will replace him on the Committee.

Agreement with Chancellor

Mr. Smith announced that he and Chancellor Potts have reached an agreement for Chancellor Potts' resignation. Mr. Seaworth said he reviewed the document and it is approved in terms of form and legal sufficiency.

It was moved by Christianson, seconded by Clayburgh, to accept the recommended agreement from Mr. Smith regarding Chancellor Potts' future contractual agreement with two changes: in item 1) I. Presidential evaluations be completed before July 31, 2006, and item 1) D. should read the P-16 Education Task Force. Christianson, Kostelecky, Murphy, Rogers, Smith, Clayburgh, and Paulsen voted aye. The motion carried. Exhibit A.

Other Business

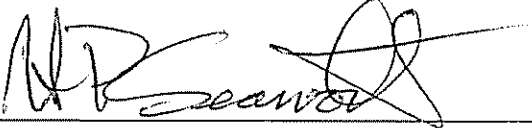
President Paulsen reported that Mr. Christianson has agreed to serve as chair of the Budget and Finance Committee.

President Paulsen discussed the search process for an interim chancellor. Vice President Clayburgh said she feels it is important for the Board to have an opportunity to visit with candidates on a face-to-face basis. It was the consensus of the Board to have a face-to-face meeting. President Paulsen announced the Board will meet July 28 at a time and location to be determined provided the Interim Chancellor Search Committee forwards one or two names after the July 25 meeting.


It was moved by Clayburgh, seconded by Smith, to thank Chancellor Potts, a man of integrity, a man with a vast amount of experience in higher education, a man who served the people of North Dakota and the SBHE well during the period of time that he was serving as our active chancellor. Christianson, Kostelecky, Murphy, Rogers, Smith, Clayburgh, and Paulsen voted aye. The motion carried.

Chancellor Potts thanked all the Board members, staff, presidents, and system. He said he and Irene agree these two years have been two of the best years of their lives. He said North Dakota is a great state and the NDUS is a great system and he is looking forward to working with everyone during the transition year.

The meeting adjourned at 9:30 a.m. CT.



Executive Secretary



President

August 17, 2006
Date

EMPLOYMENT CONTRACT MODIFICATION AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of July, 2006, between Robert L. Potts ("Potts") and the North Dakota State Board of Higher Education ("SBHE").

WHEREAS, on March 19, 2004, Potts entered into a contract of employment with the SBHE, to serve as chancellor of the North Dakota University System ("NDUS"); and

WHEREAS, in the contract of employment it was stated that job duties and responsibilities shall be those established by law and Board policy and otherwise defined by the Board; and

WHEREAS, while Potts was being recruited by the SBHE for the position, he was supplied with a Roles and Responsibilities statement that had recently been adopted by the SBHE in addition to SBHE policies, 304.1 and 304.2, that collectively provide that the chancellor is to be the chief executive officer of the university system and that the respective campus presidents report to and are responsible to the chancellor for all matters concerning the institution, and report to the SBHE through the chancellor; and

WHEREAS, Potts has performed his duties as chancellor in an exemplary manner for two years, and has been given excellent evaluations by the Board president for each of those years; and

WHEREAS, a difference of opinion has arisen between Potts and a majority of the SBHE members concerning the scope of his authority as chief executive officer to apply the SBHE policies and directives equally to all campuses; and

WHEREAS, Potts believes that it will be in the best interest of the parties if he resigns as chancellor of the NDUS effective July 31, 2006, and completes the balance of his contractual term as a consultant and advisor to the SBHE and the NDUS in lieu of his present position as chancellor, and the SBHE has indicated its intent to comply with this arrangement, and has authorized its president to sign this agreement on behalf of the SBHE.

NOW, THEREFORE, it is agreed:

- 1) **Contract Modification**- The March 19, 2004, employment contract between Potts and the SBHE, as amended on June 28, 2005, is further amended to provide that on July 31, 2006, Potts shall resign as chancellor and that for the period between August 1, 2006, and June 30, 2007, he shall serve as a consultant to the SBHE and the NDUS with the following duties to be exercised as requested by the interim or new chancellor or by the SBHE president:
 - A. Work with and advise presidential search committees at Bismarck State College and Mayville State University;
 - B. Work with and advise the interim presidents at Bismarck State College and Mayville State University pending successful completion of presidential searches at each campus;
 - C. Monitor progress and report to the chancellor and SBHE on implementation of the Mayville State University work group plan for financial stability approved by the SBHE for implementation on June 30, 2006;

- D. Advise the chancellor and the SBHE on future P-16 Task Force recommendations and the implementation thereof;
- E. Assist the chancellor and SBHE in preparing for and during the 2007 Legislative Session, by providing advice on strategy and by giving testimony to legislative committees;
- F. Provide advice and counsel on Connect ND management issues;
- G. Provide other mutually agreed assistance to the interim chancellor and the SBHE to foster a smooth transition to a new chancellor;
- H. Recommend a compensation package for the presidents of the North Dakota University System and present the same to the SBHE in the month of August 2006; and
- I. Complete the evaluations of the presidents of the university system pursuant to Board policy 604.1, before August 31, 2006.

2) **Present Responsibilities**- Potts shall continue to serve as chancellor and will fulfill all duties and responsibilities of that position until August 1, 2006. Further, it is understood that if an interim chancellor is not selected or able to assume duties on August 1, 2006, the SBHE may ask Potts to extend his term as chancellor beyond August 1, 2006, to a later date as agreed to in writing by the parties.

3) **Salary and Benefits**- The salary and benefits to be paid to Potts for the above consulting services shall be the same as currently exist under the contract of

employment, as amended, and shall be paid and provided in the same manner through June 30, 2007.

- 4) **Other Employment**- The parties agree that during the remaining term of this employment and consulting contract, after Potts ceases to be chancellor, Potts may accept other part or full-time employment, and may perform his consulting duties during leave or other non-work hours with other employment. The SBHE president shall provide Potts a positive generic reference letter to use in seeking other employment.
- 5) **Office Space**- Potts shall vacate the chancellor's office by July 31, 2006, or as soon as reasonably possible after he ceases to be chancellor. Potts shall remove all of his personal effects and files from the office, and may take with him files generated by Potts while serving as chancellor, with regard to matters such as speeches and/or travel files. Potts shall not remove files normally kept as NDUS office records, such as presidential evaluation files and search committee files, etc. Potts shall provide, at no cost to the NDUS, his own office space from which to serve as consultant.
- 6) **Consulting Expenses**- Potts shall assume and pay all consulting expenses under this contract, including travel expenses, to the extent that they do not exceed the annual vehicle allowance provided by the contract of employment. To the extent consulting expenses exceed the annual vehicle allowance, the SBHE shall reimburse Potts for such expenses, upon prior approval of the SBHE president of the expenses, and submission and approval of itemized statements.

7) **Release**- Potts, individually and on behalf of Potts' family, heirs, personal representatives and assigns, fully releases and discharges from all liability for damages, actions, causes of action, costs, attorney fees or other expenses of any kind, NDUS and its present or former officers, employees, agents, assigns, insurers and representatives, whether acting in their individual or official capacities. Potts agrees to give up any and all rights or claims Potts now has to any relief of any kind, whether or not Potts now knows about those rights, arising out of employment at NDUS or this resignation, including, but not limited to, claims for violation of the North Dakota Human Rights Act, N.D.C.C. ch. 14-02.4; Title VII of the Civil Rights Act, 42 U.S.C. section 2000e et seq.; the Age Discrimination in Employment Act, 29 U.S.C. section 621 et seq.; the Americans with Disabilities Act, 42 U.S.C. section 12101 et seq.; or any other federal or state law. Potts further understands that this release extends to claims for wrongful discharge, breach of contract, promissory estoppel or breach of an express or implied promise, misrepresentation or fraud, retaliation, infliction of emotional distress, defamation, or otherwise based on any theory, whether developed or undeveloped, arising from or related to employment or separation of employment with NDUS. It is further agreed that all rights Potts may possess under N.D.C.C. section 9-13-02 are expressly waived. N.D.C.C. section 9-13-02 provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the

debtor. Potts agrees to not institute, nor authorize any other person or party to institute, any claim or legal proceedings against the NDUS or its officers, executives, agents, assigns, insurers, or representatives. Although nothing in this Agreement shall be construed to prohibit Potts from filing a charge with the Equal Employment Opportunity Commission, this release shall extend to and prohibit Potts or Potts' family, heirs, personal representatives and assigns, from filing a court action or seeking individual remedies or damages in any action filed by the Equal Employment Opportunity Commission.

Acceptance Period. To the extent the Age Discrimination in Employment Act applies to this Agreement, Potts has the right to have the Agreement open for acceptance for a period of at least 21 days, during which time Potts may consider whether or not to accept this Agreement and seek counsel. Potts agrees that changes to this Agreement, whether material or immaterial, will not restart this acceptance period. Potts specifically waives this 21-day period.

Right to Rescind or Revoke. With respect to potential claims under the Age Discrimination in Employment Act, Potts has the right to revoke this Agreement within seven calendar days of execution. With respect to potential claims under the North Dakota Human Rights Act, Potts has the right to revoke within fifteen calendar days of execution. Potts may exercise these rights by delivering or mailing, within the applicable time, written notice of intent to revoke the Agreement to:

H. Patrick Seaworth, General Counsel
State Board of Higher Education
600 East Boulevard Avenue, Department 215
Bismarck, North Dakota 58505

If Potts exercises any right of rescission or revocation, the NDUS at its option may either nullify this Agreement in its entirety or keep it in effect as to all claims not rescinded or revoked in accordance with these rescission or revocation provisions. Likewise, if the SBHE fails after written notice to comply with its salary and benefit obligations to Potts under this agreement, the foregoing release shall be null and void.

To the extent permitted by law and subject to the provisions of Chapter 32-12.2 of the North Dakota Century Code, the SBHE, for itself and its present and former members, officers and employees, fully releases and discharges from all liability for damages, actions, causes of action, costs, attorney fees or other expenses of any kind, Potts and his family, heirs, agents and assigns.

Entire Agreement. This Agreement contains the entire agreement between the parties and they have no other written or oral agreements or understandings. This Agreement supersedes all prior agreements, whether written or oral, between the parties.

Governing Law. The laws of the state of North Dakota govern this Agreement. If any part of this Agreement is construed to be in violation of any law, such part shall be modified to achieve the objective of the parties to the fullest extent permitted and the balance of the Agreement shall remain in full force and effect.

POTTS HAS READ THE ENTIRE AGREEMENT AND ENTERS INTO THE AGREEMENT FREELY AND VOLUNTARILY, WHOLLY UPON HIS OWN JUDGMENT, BELIEF, AND KNOWLEDGE AS TO THE NATURE, EXTENT, EFFECT AND DURATION OF ANY CLAIMS HE MAY HAVE. POTTS AGREES THAT IN ENTERING INTO THIS AGREEMENT HE HAS NOT RELIED ON ANY STATEMENTS MADE BY NDUS OR ITS REPRESENTATIVES.

NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION:

By: _____ Date: _____
NDSBHE President

Attest: _____
NDSBHE Secretary

ROBERT L. POTTS:

_____ Date: _____