



**The University of New Mexico
Board of Regents**

Governance Committee

Special Meeting Minutes

February 28, 2022

3:00 p.m.

* * * Virtual Meeting * * *

THE UNIVERSITY OF NEW MEXICO BOARD OF REGENTS
GOVERNANCE COMMITTEE
February 28, 2022 – 3:00 p.m.

SUMMARY & MINUTES

Committee Members Present:

Regent Rob Schwartz, Chair
Regent Kim Sanchez Rael, Vice Chair
Regent Doug Brown

Members from Administration

Terry Babbitt, Chief of Staff, Office of the President
Loretta Martinez, University Counsel

Advisors in Attendance

Nathan Bush, Chief Government Relations Officer
Teresa Costantinidis, Senior Vice President for Finance & Administration
Randy Ko, Regent
Sidney Mason-Coon, Policy Officer
David Saavedra, GPSA President
Scott Sanchez, President, Staff Council
Ariadna Vazquez, Deputy University Counsel

Support Staff

Mallory Reviere
Brian Jones

I. Call to Order (3:04 p.m.)

The meeting was called to order by the Chair at 3:04 p.m. After a roll call, the presence of a quorum was noted.

The Chair suggested revising the proposed order of the draft agenda to consider Regents' Policy 1.6 first, followed by Regents' Policy 1.5, and to permit public comment during the consideration of each specific Agenda item.

Motion to Approve Revised Agenda: Chairman Schwartz
Second: Vice Chair Rael
Vote: Voice vote, unanimous in the affirmative
Motion: Approved

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II. Comments from Regents

Committee members had no additional comments and proceeded directly to consideration of the first agenda item.

III. Public Comments

Please see Agenda Item V, below, where the Chair yielded to Mr. Scott Sanchez during the discussion of Regents' Policy 1.5.

**IV. Discussion and Possible Recommendation—Revisions to Regents' Policy TAB A
1.6, "Special Recognition and Awards" (3:09 p.m.)**

The Chair noted that there are many awards presented by the University of New Mexico, but that this particular Regents' Policy deals *only* with the way the Regents select awards. Regent Brown suggested that a process needs to be articulated for nominations, and that a committee should be created to approve winners and to determine the appropriate venue for presenting any Regents' awards. There was general agreement that the process for soliciting and selecting honorary degrees was perhaps not as robust as it should be.

The Chair referred to Terry Babbitt's clarifying memo creating a *Regents Special Recognition and Awards Committee* (SRAC), tasked with overseeing these awards (*see TAB A*). The Chair queried the committee on exactly how much direction the Governance Committee should give to the SRAC in creating the formal process, or whether to have the SRAC create a process, which would then be submitted to the Governance Committee for formal approval. The consensus was that the SRAC should be given the flexibility to create the process for submission and approval.

The Chair suggested that the language be modified to add a "special commendation" for nominees who might miss the final cut for any award, but still deserve some kind of recognition. The Chair also suggested it be made clear that the formal process is organized by the President and the Chair of the Board of Regents.

Regent Brown suggested that the SRAC should include members from outside of the immediate UNM community. The Chair noted that the current language was flexible enough to permit a wide swath of members to be appointed, so no changes should be needed in the language suggested in the Babbitt memo.

Motion to Approve Amendments to Regents' Policy 1.6: Vice Chair Rael

Second: Regent Brown

Vote: Voice vote, unanimous in the affirmative

Motion: Approved

Discussion: Hiring of a Student Researcher (3:16 p.m.)

Following the vote, the Chair suggested that it would perhaps be useful to hire a student to research similar policies at other institutions to better advise the Committee on formal processes and the potential

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impact of any amendments. The Chair suggested that he be permitted to hire such a researcher, within the limitations of the budget. The Vice Chair supported this suggestion, and the Committee suggested taking this matter to the full Board for further discussion.

Regent Brown suggested that perhaps every committee could be “put under the glass” to review their activities, and recommended the Regents consider a periodic review of all standing committees. No formal action was taken.

Discussion: Committee Meeting Schedule (3:18 p.m.)

Counsel asked about setting a standing schedule for the Committee, suggesting that a quarterly meeting would be the most appropriate, pending any necessary business. The Chair suggested the Committee meet “as needed,” as there may be structural issues that take multiple meetings to resolve. Counsel advised the Committee set a few meeting dates in advance, to ensure adequate planning and coordination of calendars.

The Chair further suggested that the Committee consult with the Board to determine the most appropriate course of action for the Committee. Vice Chair Rael supported examining the defined scope of the Committee, and consulting with the Board to perhaps re-order the Committee’s priorities.

Counsel said she would examine the initial charge to the Committee and review prior minutes to advise the Committee on the most appropriate course of action, and potential schedule, moving forward.

**V. Discussion and Possible Recommendation—Revisions to Regents’ Policy TAB B
1.5, “Appeals to the Board of Regents” (3:23 p.m.)**

The Chair began the discussion by yielding to Scott Sanchez, President, UNM Staff Council, for comments. Mr. Sanchez noted that as the revised policy was in response to a lengthy appeals process, it was vital for stakeholders to continue to be a part of the conversation—and staff council had not yet had the opportunity to check in on the issue, and that a more formal proposal was needed for comment. The Chair reclaimed the floor and agreed that this was a reasonable suggestion.

Regent Brown expressed his concern that some appeals were being presented to the Regents without having been through the Office of the President first, as required by current policy, and that this was not only shortcutting the process, but was also unfair.

Counsel provided the Committee with the number of appeals that have gone before the President and then the Board:

- **2017 – 2021, Office of the President:** processed 69 appeals, the majority of which were appeals from students related to OEO or PEO complaints.
- **2014 – 2021, Board of Regents:** processed approximately 30 appeals, the majority of which were from students, largely related to OEO or PEO complaints. **It was noted by the Chair that none of these appeals had come before the Regents any time in the last three years.**

The Vice Chair asked how many cases appealed to the Regents had been remanded back to the President. Ms. Reviere responded there were only four cases acted upon.

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The Chair posited a number of questions he thought would need to be further clarified in any revised policy, including:

- What cases can be appealed?
- What kinds of cases are mandatory for the Regents hear?
- What is the process? Specifically—
 - When does the appeal have to be noted?
 - Is there a certain required waiting period or deadline?
 - What documents have to be filed?
 - Do the Regents sit as a seven-member court, or can they appoint a fact-finding committee to take care of this? If so, how big is the committee? Can the regents refer to a hearing officer who takes evidence and then makes a recommendation to the Regents?
- What is the role of the President/Regents in the appeals process under the new collective bargaining process?

General discussion ensued about what kinds of cases trigger a “mandatory review” by the Regents, including removal of tenure or imposition of long-term penalties through an administrative process. Regent Brown pointed out the process for those cases was already specific and arduous; the Chair reiterated that it was important to give employees a non-university-affiliated structure where they can plead their case.

The Vice Chair articulated that the current appeals process may not actually be broken, as the cases that have been presented to the Regents haven’t been overly burdensome, and have been given a thoughtful, thorough review by the Board.

The Chair was concerned that the Regents had not been as diligent in their role in the appeals process as he might have hoped. “I don’t think over the last three years we’ve taken our role as seriously as we should have,” he noted, as “it was seen as too complicated.”

Regent Brown pointed out that it was *not* the responsibility of the Regents to check every fact in any appeal, but rather do a thorough review of the process to ensure the required roadmap has been followed. There was consensus that the role of the Regents should be clarified to specify the Regents’ role in any appeal was to ensure a ‘procedurally-proper decision.’

Counsel reiterated that collective bargaining will lay out a firm process and what is covered under such a process, and that the entire institution, not just the Regents, will have to explore how collective bargaining may affect existing policies and what will need to be modified. Counsel noted that the current Regent policy in 1.5 was very broad, and perhaps the Regents should amend the language to ensure they were only involved in a “final” decision.

Regent Brown restated that it must be made clear that the process requires any appeal to go through the Office of the President before it is presented to the Board. No appeal can circumvent the process.

The Chair wanted to ensure that any policy does not “promise more than we can provide”; that is, it should not promise a substantive review of every issue. As Regent Brown noted, “we are not in the habit of calling witnesses or doing an independent investigation.”

Mr. Babbitt posited that the process was not broken, as appeals were being given a very thorough review, with the Office of the President examining countless of documents and artifacts for each appeal that has

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gone through its office. Mr. Babbitt said he would be supportive of the President having the option of delegating to another entity for a thorough documentary review, as the process was very time consuming.

The Chair agreed that the President's review was thorough and that the Regents, too, needed to ensure it approached appeals with this kind of rigor. The Chair asked how it might ensure it could ease the administrative burden on the president, based on the requirement that the Regents do not get involved until the President has heard the appeal? The Chair suggested that language might be added to specify appeals cannot come to the Regents until "final decision of the President or her designee." Mr. Babbitt said he would be supportive of this language, especially as the President currently reviews more than twenty appeals annually.

Counsel stated that she would put together a flow chart of the appeals process, so Regents will have a clear idea of how thorough the review appeals process has been by the time it gets to them.

The Chair recommended the language reflect that the Regents (1) maintain their authority to hear appeals only of "final decisions of the president or her designee"; (2) that all reviews by the Regents will be discretionary; (3) that there are certain cases that shall not be subject to further review. The real question was the process for those appeals that would be permitted.

Counsel encouraged the Committee to compress the time frame for appeals, as well as a solid end-date so appellants would be assured that the process *will* have an end result. The Chair suggested a ten-day window to appeal, with the Regents having 90 days to make their decision. Counsel also suggested language should clarify the standard for the appeal. Is it a violation of the *procedure* (i.e. due process)? Or something substantive that requires fact-finding?

Counsel promised to draft a revised policy for further review, perhaps in time for the March 22 Regents' meeting.

No action was taken, as no final policy was placed on the table for consideration.

VI. Other Discussion

Committee members had no other items for discussion.

VII. Adjournment (4:19 p.m.)

Move to Adjourn: Vice Chair Rael

Second: Regent Brown

Vote: Voice vote, unanimous in the affirmative

Motion: Approved.

The meeting was adjourned at 4:19 p.m.

TAB B

Regents' Policy Manual – Section 1.5

Regents' Policy Manual - Section 1.5: Appeals to the Board of Regents

Adopted Date: 09-12-1996

Applicability

This policy applies to appeals of administration, faculty, student government, or hearing board decisions to the Board of Regents.

Policy

Faculty, staff, or students affected by a decision of the administration, faculty, student government, or hearing board may appeal the decision to the Board of Regents. The Board has discretion to determine whether the appeal will be considered, except for those appeals from decisions of the Academic Freedom and Tenure Committee which the Board is required to hear. The Board may refer appeals to a committee of the Board for recommendation as to whether the appeal should be heard.

Implementation

A person wishing to appeal a decision to the Board must submit a written petition to the Board through the President of the University. The petition must be filed within thirty (30) days from the date the decision being appealed was rendered, unless expressly provided by University policy to the contrary. The petition must describe the decision being appealed and the basis for the appeal.

In considering whether to take a discretionary appeal and in considering the appeal itself, the Board (or a committee if one is appointed to consider whether an appeal should be heard) may request written briefs, oral arguments, or both.

The Board shall render its final decision within 90 days from the date the appeal was filed unless a delay is requested by one of the parties and approved by the President of the Board. If no decision is rendered within the deadline, the appeal shall be deemed denied.

References

Other documents and policies that specifically mention appeals to the Board of Regents include, but are not necessarily limited to: [***Faculty Handbook Section B***](#), [***UAP 3220 \("Ombuds Services and Dispute Resolution for Staff"\)***](#), [***Student Grievance Procedure***](#).