

REPORT TO THE NORTH IDAHO COLLEGE BOARD OF TRUSTEES ON PRESIDENTIAL CONTRACT FORMATION AND MODIFICATION

April 14, 2023

Arthur B. Macomber

Law Office of Arthur B. Macomber

Attorney for North Idaho College

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REPORT ERRATA -- April 20, 2023

1. Page 6, final paragraph in Section B, it states, “lack of information purposefully withheld by those **five** parties,” should be “lack of information purposefully withheld by those **seven** parties.”
2. Page 11, starting on the first line it states, “As stated in the Introduction to this Report, **five** people quashed subpoenas that may have led to a different conclusion.” It should state, “As stated in the Introduction to this Report, **three** people did not respond or file a motion to quash the subpoenas (Goedde, Wold, and Broschet), **three** people filed successful motions with the court to quash (Lyons, Howard, and Wood), and **one** person’s subpoena was withdrawn after the ruling on the motions to quash (Provert).”
3. Page 32 in the final paragraph; the date “**July 22, 2022**” appears, when it should have been “**June 22, 2022.**”

A. INTRODUCTION

In early December, 2022, and after being hired by the North Idaho College Board of Trustees, this author was made aware of allegations of impropriety and violations of Idaho's Open Meeting laws found in Idaho Code beginning at section 74-201. The allegations with which this Report is concerned have to do with the hiring and formation of the contractual relationship of Dominic ("Nick") Swayne for President of North Idaho College ("NIC") during 2022, and the subsequent modification to that contract in August of 2022. Peripheral issues are largely unaddressed, although some are raised for further consideration by the Board of Trustees.

On June 22, 2022, Dr. Swayne was hired by a three to two Board of Trustees vote, before which meeting no executive session was held. **Ex. A**, Agenda for NIC BOT, pp. 4-5 (Aug. 22, 2022) (with Minutes of June 22, 2022 Board Mtg.) There were five finalist presidential candidates prior to Dr. Condon dropping out of consideration for the position. Thus, on June 22, 2022 there were four potential candidates for the Presidential position. If an executive session had been held, the three appointed¹ and the two elected Trustees could have discussed the merits of the four candidates. That did not happen. Even so, the three Governor-appointed Trustees all chose Dr. Swayne at the meeting with little discussion on a 3-2 vote. *Id.* This raised concerns as to whether deliberations and/or pre-agreement existed before the meeting between those three appointed Trustees.

Dr. Swayne's contract was signed by him and thus made effective on July 15, 2022, but the modification of a material term was made and approved by the three appointed Trustees at the August 22, 2022 meeting. *Id.*, p. 15 (Tab 2 re Alleged Scrivener's Error: "In putting together the final draft to be signed, the attorney inadvertently replaced two words in section 12.1 about how the contract can be terminated that included the following language: 'by *either party* without cause.' This was intended to read 'by *the President* without cause.'") It is unknown why appointed Trustee Wold, the Trustee designated by the full Board to negotiate the President's contract felt such a provision would benefit North Idaho College. This author is unaware of any other employment contract used at North Idaho College that lacks an "at-will" provision in favor of the College.

In addition, Dr. Swayne's contract as negotiated by Trustee Wold required a super-majority four-to-one vote for the Board to terminate that President's contract, which binds the Board beyond its normal majority decision-making powers. I.C. § 33-2106(7) ("three (3) members of the board shall constitute a quorum for the transaction of official business"). Removing the "at-will" provision in favor of North Idaho College and requiring a super-majority vote for North Idaho College to terminate for cause did not appear to be exercises in fiduciary responsibility that would benefit the College, unless Trustee Wold had a desire to control the powers of the future Board after the November election and believed that restriction was good for the College.

¹ In this Report, the use of the word "appointed" to describe certain Trustees as compared to the use of the word "elected" to describe other Trustees recognizes that appointed Trustees have a different constituency than elected Trustees. Appointed NIC Trustees were put in that position by the Idaho State Board of Education, itself an appointed body, but the elected NIC Trustees were put in their positions by the voters of Kootenai County.

However, if this is true, his speculation about possible election results would serve to point out that his constituency in acting was not the voters of Kootenai County, but other unknown parties.

It was against Idaho law for the three appointed Trustees to include such a super-majority provision into the President's contract, calling into question whether the contract is even a legal, and thus an enforceable contract. I.C. § 33-2106(7), see **Section E** of this Report.

In this Report, the first two parts discuss the investigation and analysis of facts. The next section outlines the timing of actions under the Open Meeting Laws. Next, the legality of the super-majority requirement is reviewed, and other contract concerns are raised. A brief discussion of the differences between judicial decision-making and Trustee decision-making related to this Report's contents shows the active federalism required in our Idaho Republic. Then conclusions are reached, and recommendations are made to the Board of Trustees. There is no attempt to provide an executive summary, bullet points of the findings, or other shorthand method of characterizing the contents of this Report. The contents must be considered as a whole, and no characterization of a single part can adequately address the whole, see **Section G**.

The recipients of this Report are individual Trustees of the North Idaho College Board of Trustees. Each Trustee is a statutory officer under Chapter 21 of Title 33 of Idaho Code who each took the constitutional oath required in Title 59 ("constitutional oath takers"). I.C. § 33-2106(2). As elected Trustees, the Board has different functions and responsibilities than other constitutional oath takers such as court judges, and thus the Board's responses and actions taken based on this Report will likely differ and *should differ* than those of a constitutional oath taking judge. Distributions of power under the federalism structure of the Idaho Republic account for these differences in function and responsibility, see **Section G**.

Finally, as you read this Report, some of the jargon or symbols may be confusing. First of all, if I give a citation to Idaho case law, the case name will be *italicized*, followed by the volume number in the official Idaho Reports, the first page number of the case in those Reports, and the date of the case. For example, in the case of *Smith v. Jones*, 328 Idaho 142 (2007), the number 328 is the volume number, and the case begins on page 142 of that volume. Also, unless the words appear within a sentence, I will refer to the Idaho Code as "I.C.," and a section within that Code by its number preceded with the section symbol "§." Where I add or remove a word for clarity or change from uppercase to lowercase or vice versa within quoted material, those changes will be bracketed, such as "[and]." Also, when you see the notation "Id." it means "idem," which is Latin for "the same," and is meant to refer to the authority cited immediately previous. The abbreviation "Fn." or "fn." indicates a footnote. In some email exhibits, this author's email address shows in the upper left corner, as if the email came from his law office mailbox. The reason it shows there is because the College gave me Outlook.pst data files for several people, which were viewed, edited to add exhibit letters, and saved as complete exhibits. Upon viewing, my email address was added to the top of each email. At the time each such email exhibit was originally sent or received, the author of this Report was not a sender or recipient of it.

B. INVESTIGATION PROCESS

On November 25, 2022, Marc Lyons quit with no notice his position as the North Idaho College attorney after more than 20 years. Over the following 20 or so days, Mr. Lyons refused to give the new North Idaho College counsel his file on the College, forcing this author to start at ground zero. Due to Mr. Lyons' refusal to assist except upon request, which would make him the arbiter of information this author was allowed to receive for Lyons' former client North Idaho College, the next point of investigation became the North Idaho College computer servers.

On December 14, 2022, Lloyd Duman, a now reinstated North Idaho College Interim Provost of the Office of Instruction and at that time Co-Lead with VP Garcia over College operations following the placement of Dr. Swayne on administrative leave told this author he was blocking this author's access to North Idaho College servers, because he said it may be illegal to share internal documents with North Idaho College's new legal counsel. Upon this author's inquiry, Mr. Duman did not reply with any legal justification. It remains unknown why North Idaho College's legal counsel would be barred from reviewing materials on North Idaho College computer servers. Due to Mr. Duman's refusal to allow this author's investigation to move forward as directed by the Board of Trustees, this author was forced to consider other means of gaining the information.

On or about December 16, and unexpectedly, Dr. Swayne sued North Idaho College stating in his lawsuit that the Board of Trustees' only discretionary power to put him on administrative leave was as stated in his contract. The allegation was that no other discretionary power of the Board existed for administrative leave, which, if true, would mean *every* Board of Trustee power related to Dr. Swayne's contract would need to be included in that contract. Luckily, Dr. Swayne's suit opened the door to address the roadblock mandated by Mr. Duman.

On December 31, 2022, this author briefly appeared as counsel for North Idaho College in Dr. Swayne's lawsuit for the express purpose of filing fifteen (15) subpoenas to parties both internal and external to North Idaho College who would have documents that could assist the Board-mandated investigation. **Ex. B** (Subpoena Tracking Sheet). This method was required due to Mr. Duman's order blocking this author from the Board of Trustees-authorized investigation. Over the following month, most subpoena recipients at North Idaho College responded. Then, after some unaccountable delays, North Idaho College's new insurer assigned legal counsel for the litigation defense of North Idaho College and Bret Walther filed a Substitution of Counsel allowing this author to withdraw.

Even though served with lawful subpoenas, the three former appointed Trustees Goedde, Wold, and Broschet completely ignored and did not respond to the service of legal process upon them. Further, instead of voluntarily submitting to their subpoenas and thus clarifying information for the investigation, Mr. Lyons, North Idaho College's former attorney, and Ms. Provar, the presidential recruiter both hired counsel to quash the subpoenas. Former Trustees Ken Howard and Christie Wood also found an attorney to quash their subpoenas, even though former Trustee Howard was on the search committee at its inception, and Ms. Wood is well enough known in the

community to not only be on the Coeur d'Alene City Council but was recently voted by the three appointed Trustees to a Trustee Emeritus honor. These well-connected people would surely have had helpful information for the investigation, but they demurred, thus prolonging North Idaho College's costs and struggle to determine the truth of the matter.

On February 15, 2023, former Trustees Ken Howard and Christie Wood, and Mr. Lyons through his own office appeared at a hearing in Kootenai County First District Court on the *Swayne* matter (CV28-22-7712) to quash their three subpoenas. Judge Meyer determined that Dr. Swayne's lawsuit was only about *interpretation* of the *Swayne* contract, and that nothing regarding its formation would be a part of her Court's process, even though the Court mentioned North Idaho College's stated defense of the potential Open Meeting law violation and thus the potential invalidity of the alleged contract to be interpreted in that suit. The three subpoenas were quashed by the Court. Soon thereafter, the rest of the outstanding subpoenas were released by North Idaho College's insurance litigation counsel. No more evidence was forthcoming from the subpoenas to assist this Report.

Due to these events, this Report must work with the information available to this author. Any exculpatory or mitigating information that would have been available from the three appointed Trustees, North Idaho College's former attorney, Recruiter Provar, or from former Trustees Ken Howard and Christie Wood was denied to this author. North Idaho College cannot benefit from the withheld information, and it is not now available for analysis or consideration. Therefore, if any action taken by the Board of Trustees based upon this Report is found later to be in error due to a lack of information purposefully withheld by those five parties, the public should understand that the blame for needless costs and delays must lie at the feet of those persons.

C. ANALYSIS OF AVAILABLE FACTS

When Dr. Swayne was profiled in a Spokesman-Review article published in August 2022, the article stated, "[Dr. Swayne] first heard about the position around January [2022] from a recruiter he'd worked with in the past. Swayne didn't bother with it, he said, because he 'had a lot going on,' with not much time for a college president application."²

The Spokesman-Review article continued, "[Dr. Swayne] applied around a month later [in February] when the recruiter came calling again. 'What are my odds of actually becoming a finalist?' Swayne thought at the time. 'Apparently, better than I thought.'" Id.

On Tuesday, February 1, 2022, NICNow encouraged applicants for the presidential search committee to come forth, stating, in part, "The Pauly Group will host several open forums to discuss the challenges facing NIC and seek input on the skills and characteristics needed in the next president. A position profile will be developed based on input received from the open forums." **Ex. B-1.** The Presidential Search Profile Report was not created until March 17, 2022. **Ex. B-2.**

² <https://www.spokesman.com/stories/2022/aug/14/we-have-to-get-that-fixed-north-idaho-colleges-new/>; accessed April 11, 2023.

How could Dr. Swayne have heard “from a recruiter he’d worked with in the past” if the “skills and characteristics needed in the next president” would remain unknown until after the open fora were completed? **Exs. B-1, B-2.** Further, why would a recruiter put Dr. Swayne on any list for notice of the position since he had no experience running a college? This remains unknown.

In February 2022, the presidential search committee was just being formed, and it was important to Ms. Provar that “we know we are getting the right people.” **Ex. C.** Without reading the comment negatively or positively, it indicates the recruiter for the presidential position understood the importance of her process.

On March 22, 2022, former State Senator John Goedde, and a longtime director on the North Idaho College Foundation sent a letter to Matt Freeman at the Idaho State Board of Education in Boise. On April 7, 2022, then Interim President Sebaaly forwarded an email to Steve Kurtz, the Director of Planning, Strategy, and Effectiveness and the NORTH IDAHO COLLEGE Accreditation Liaison Officer with Goedde’s attached letter. **Ex. D** (Email Sebaaly to Kurtz with Attached Goedde Mar. 22 Letter to SBOE).

By June 10, 2022, Trustee Howard had been replaced by Trustee Broschet on the presidential search committee. Trustee Barnes had moved away. Trustees Howard and Wood had thereafter quit the Board to reduce the Board to two without a quorum as a plan to trigger appointment of new Trustees by the State Board of Education following the second sentence of Idaho Code section 33-2106(2).³

A call went out to the community for replacement Trustees, so it could do business, and nearly forty (40) people responded. Trustee Broschet was then one of the three North Idaho College Foundation, Inc.-affiliated Trustees (working for Tim Komberec at Empire Airlines, a Foundation Director) appointed by the State Board of Education. Messrs. Goedde and Wold had been Directors at the North Idaho College Foundation, Inc. for several years. Objectively, it appears these three State Board of Education appointments were designed to reconfigure the Board after the November 2020 election and the above-stated events to remove local control of North Idaho College from the voters. The odds of three people being appointed who were affiliated with the North Idaho College Foundation, Inc. out of nearly forty (40) candidates seems higher than pure chance.⁴ In this case, the appointed members of the State Board of Education appointed three new Trustees, and local voter control was gone in favor of another constituency. The elections of 2020 were successfully nullified by an unknown non-voter constituency.

On June 10, there were three emails between Trustees Goedde and Wold, and Counsel Lyons regarding an upcoming meeting, and how certain things at the meeting should be arranged. **Exs. E, F, & G.** In one at 11:53 a.m., Trustee Goedde writes to Counsel Lyons, “Mar - I am good with your suggestion. Will Pete make that motion? John.” **Ex. F.** The apparent reference is to Trustee

³ That second sentence states, “Vacancies on the board of trustees shall be filled by appointment by the remaining members, but if by reason of vacancies there remain on the board less than a majority of the required number of members, appointment to fill such vacancies shall be made by the state board of education.”

⁴ Spokane Public Radio Article dated 4/26/22: <https://www.spokanepublicradio.org/regional-news/2022-04-26/nearly-40-people-apply-to-fill-north-idaho-college-board-vacancies>; accessed Feb. 20, 2023.

Broschet, who was not included on the email, unless he was blind-carbon-copied. If not on the email, Trustee Broschet would need to be contacted so he could understand his part in the upcoming meeting. If Broschet was on the email, then the Board of Trustees could have had a quorum for an un-announced and illegal deliberation or meeting. Counsel Lyons states on the next email that he has spoken to Trustee Broschet, telling Goedde and Wold that he “did talk to Pete and he is ok with canceling the dinners.” **Ex. G.** It appears that North Idaho College Counsel Lyons facilitated a plan for cancelling dinner meetings with presidential candidates. Whether canceling such dinner meetings with presidential candidates was the formulation of public policy outside of a public meeting is not addressed by this Report, but Lyons’ coordination is clear.

On June 15, 2022, Counsel Lyons laid out for Trustee Wold a proposed approach and process for the June 22 Board of Trustees’ meeting choice for the next North Idaho College President with an attachment stating a proposed Tab for the agenda. **Ex. H.**

The next day on June 16, Recruiter Provart emailed Trustee Wold and Counsel Lyons stating, “I would like to get the process for the 22nd ironed out.” **Ex. I.** A telephone conference was set for Monday, June 20 at 2:00 p.m. Id. This author does not know whether that call was made or, if it was made what was discussed. This author notes that instead of committing certain things to writing as in the use of email, the Idaho Public Records Act at Idaho Code section 74-101, et seq. can be avoided by simply picking up the phone.⁵ There are numerous instances in this Report where telephone calls were apparently suggested if not used at critical decision-making points where timeliness by the use of the telephone was not required by the circumstances.

On June 21, 2022, Recruiter Provart emailed Counsel Lyons and Trustee Wold with a proposed public statement, but for unknown reasons the North Idaho College Communications Officer Rumpler was not included in that email. The statement used the language, “We had four outstanding candidates to consider and our decision was a tough one.” **Ex. J.** The statement is ambiguous, because it could be a proposed public statement for release after the decision was made, or it could be a misstep indicating a decision had already been made. Later, we learn it was more than likely the former. The proposed statement was later forwarded to Communications Officer Rumpler.

Later on June 21, North Idaho College Communications Officer Rumpler and Recruiter Provart shared an email thread wherein Provart attempts to share a proposed press release for the eventual hiree, but the wrong file is sent: “Actually when I [Rumpler] opened it you may have sent me [the] wrong attachment. This announces 4 finalists, not final selection.” **Ex. K.** Again, the wording is ambiguous, but it appears to refer to a separate example of a press release for a final candidate, and not a press release example for a single pre-determined candidate.

⁵ I.C. § 74-101 (16) “‘Writing’ includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.” *Why write when one can have a telephone call and leave no records?*

On June 22, 2022, the date set for the Board of Trustees meeting, Trustee Goedde sent an email to Trustee Wold at 8:37 a.m. stating, in part, "Please call when you get a chance." **Ex. K-1**. This author is unaware of whether the call was made, and if so, what was discussed. This author found no confirming email or other writing related to the discussion or agreements that may have occurred on such a telephone call.

On June 22, 2022 at 9:03 a.m., North Idaho College Communications Officer Rumpler sent an email to Counsel Lyons, Recruiter Provart, and Trustee Wold with four draft press releases for each of the four finalist candidates for North Idaho College President. The email also contains a proposed statement for Trustee Wold to make during the meeting or afterward "if there is any noise tonight or later this week regarding complaints about the process." **Ex. L**. This email at 9:03 a.m. requests:

If there are two of the four candidates that are rising to the top, can you give me an indication so I can best prep, knowing that we won't know the final outcome until the board takes action tonight? I'd really like to narrow down our work and strategy if possible. And of course, everything remains confidential and protected under attorney/ client.

Id.

Upon review of North Idaho College Communications Officer Rumpler's Outlook.PST email data file, this author found eight emails between Ms. Rumpler and the final candidates asking for and receiving edits to their proposed press releases. **Exs. M through M-7**. The difficulty in lining up the emails in date order is the time zone differences between senders and recipients. Also, Microsoft Outlook allows users to set their own time zones. Finally, when this author opened the emails in his Outlook program, some of the times appear to reflect Pacific Time where this author is located.

Even so, the emails generally show that the four candidates were emailed by Ms. Rumpler late in the morning of June 22, and three replied before 1:45 p.m. Pacific Time. The **Exhibit M-7** email exchange between Ms. Rumpler and Dr. Swayne concluded at 4:55 p.m. Pacific Time. At some point in the afternoon, only Ms. Rumpler and Dr. Swayne were communicating. Why?

The answer is that at 10:22 a.m. Pacific Time on June 22, Ms. Rumpler received a text from Angela Provart, the Recruiter stating, "Give me a quick call when u can[.]" **Ex. M-8**. Ms. Rumpler replies, "Tag you're it. Call me back." Id. According to Ms. Rumpler, the two connected over the telephone in the afternoon, and Ms. Provart told Ms. Rumpler that "I am going to lessen your workload, Swayne is the choice."

As noted elsewhere, telephone conversations are difficult to verify, but the facts show Ms. Rumpler concluded her email exchanges with Dr. Taylor, Dr. Brand, and Dr. Crumbaker early in the afternoon, while her exchange with Dr. Swayne continued late in the afternoon. Further evidence confirming the pre-meeting notice to Ms. Rumpler of the final decision to pick Dr. Swayne is found in later emails discussed below, where the motion to hire Dr. Swayne was not

even made yet, but emails show senders and recipients before and during the meeting indicate the final choice of Dr. Swayne was already known.

At 6:29 p.m., Ms. Rumpler then emailed her employee Ms. Snodgrass with that Swayne-approved draft stating:

Will you review and make any edits and send back to me? Then start formatting for how you usually send out a news release.

While Dr. Swayne is one of our stronger candidates, I just chose his news release for us to work with. No candidate has been names (sic) yet.

Ex. N. Note Dr. Swayne’s recommended language change is present in this 6:29 p.m. email to Ms. Snodgrass: “There’s competition in the region, he said, and North Idaho College should stand out as a valued destination for students as they embark upon or return to their educational journey.” Id.

On June 22, 2022 at 6:36 p.m. after the Board meeting began, Ms. Rumpler sent Ms. Snodgrass a final email in one email thread. In that thread at 6:23 p.m., Ms. Rumpler instructs Ms. Snodgrass, “Then Megan, **please get ready to edit my draft news release and prep to go out to the media.**” **Ex. O** (Emphasis added). Ms. Snodgrass (Megan) replies, “Yep, can do! **Got your other email with the draft.** I’ll edit and prep a news release. In terms of timing, assuming we put the word out ASAP after they decide/officially take the vote?” Id. (emphasis added). Ms. Rumpler replies, “Yes – I will give you both a green light.” Id. Note Ms. Rumpler states “**my draft press release,**” singular, **not four press releases.** Id. Also note Ms. Snodgrass replies, “**Got your other email with the draft,**” not the drafts plural for four candidates. Id. By this time, it is only Swayne’s draft that was being worked on.

The “other email with the draft” was sent by Ms. Rumpler to Ms. Snodgrass at 6:29 p.m. **Ex. N-1.** Ms. Snodgrass’ response with the draft press release for Dr. Swayne attached was sent to Ms. Rumpler at 7:01 p.m. **Ex. N-1.** No other candidate draft press releases were found after 6:29 p.m. **Ex. N.**

On June 22, 2022 at 7:18 p.m., the final email in a thread is made. **Ex. P.** In that thread, at 7:13 p.m., Ms. Snodgrass asks Ms. Rumpler, “Can you send his headshot please? I don’t think I have a copy.” Id. Four minutes later, Ms. Rumpler replies, “Can you get his headshot from Shawn off the website? I don’t have his headshot.” Id. “**His headshot,**” in context, means Dr. Swayne’s headshot. One minute later, Ms. Snodgrass replies to Ms. Rumpler, “Yep, will get it from Shawn (:” Id.

Mr. Goedde’s motion to hire Dr. Swayne did not occur until about 7:46 p.m., but at 7:13 p.m. Ms. Rumpler’s employee Snodgrass asked for Dr. Swayne’s headshot, confirming that Ms. Rumpler and her team had special knowledge of a pre-meeting choice by some Trustees that the final choice would be Dr. Swayne. These email exchanges confirm what Ms. Rumpler shared with this author about the Provart telephone call that occurred the afternoon of June 22. The final choice of Dr. Swayne was made outside and prior to the public meeting that occurred the night of June 22, 2022. The Open Meetings Law was violated, Ms. Provart knew the choice was made and told

Ms. Rumpler. As stated in the Introduction to this Report, five people quashed subpoenas that may have led to a different conclusion.

Then, at 7:25 p.m., before the motion to hire or the vote, an unknown sender emailed Ms. Rumpler a Dr. Swayne press release announcing he is the choice for the presidency. **Ex. Q.** This author believes it was likely a test email, to see how the system operated before the final press release was sent. This author found no records indicating the other three candidates' proposed press releases were worked on, tested, edited, or otherwise used in prior planning to verify systems could be "GO!" on any of them except for Dr. Swayne. Since about 11:50 a.m., when Ms. Rumpler began her email thread with Dr. Swayne, the available evidence is all pointing to Dr. Swayne, because Ms. Rumpler knew the Board's final choice of Dr. Swayne early. It is likely that Ms. Rumpler was not the only administration leader with such knowledge.

On June 22, 2022 at 7:22 p.m., Ms. Snodgrass asks Ms. Rumpler, "**Is that doc going to be the final draft?** Can I send to Shawn to start prepping the website?" **Ex. R** (Emphasis added). Ms. Snodgrass is referring to the Swayne press release. At 7:32 p.m., Ms. Rumpler replies, "**Yes, it is.** And if you are watching the meeting It looks like it might be Dr. Swayne." Id. (Emphasis added). At 7:35 p.m., Ms. Snodgrass replies to Ms. Rumpler, "Yep watching, yep wow. Looks like it !" Id.

The YouTube video library for North Idaho College carries all the monthly regular and special meetings of the Board of Trustees. There is a link on the College Board of Trustees' webpage to the YouTube video archive.⁶ The Board of Trustees' meeting for June 22, 2022 is in that archive.⁷ The YouTube video of the June 22, 2022 meeting shows Trustee Goedde made a motion to hire Dr. Swayne at about 7:46 p.m. (1:46 hours into the video).

If the meeting started at about 6:00 p.m. as scheduled, and there is no reason to doubt that it did not, then Trustee Goedde did not even make the motion to hire Dr. Swayne until 7:46 p.m. Due to contention over various amendments to that motion, the vote to hire Dr. Swayne did not occur until 8:01 p.m. (2:01 hours into the video). The evidence shown earlier in this Report argues for a conclusion that Ms. Rumpler and her team had knowledge that a choice had been made sometime after noon on June 22, 2022 due to the revelation from Ms. Provart on the telephone call between Ms. Provart and Ms. Rumpler. Is this conclusion buttressed by more evidence?

At 7:37 p.m., **nine minutes prior to Trustee Goedde making his motion to hire Dr. Swayne**, Ms. Snodgrass sent an email to Ms. Rumpler stating:

Ok here's the final draft of the news release and headshot.

I have the news release prepped to go out via email to the media and ready to post on the NIC Newsroom.

⁶ <https://nic.edu/board/>, accessed Feb. 20, 2023.

⁷ https://www.youtube.com/watch?v=EbnCaRATHqg&list=PLY-GWxISH_qn-SE7SnfPhdR3UqK-XBNea&index=10, accessed Feb. 20, 2023.

Standing by for the green light from Laura!

Ex. S. Note, the email states, “**the [singular] news release**” twice. The header to that email stated:

From: Megan Snodgrass
Subject: RE: Prep news release & webpage for announcement
Date: June 22, 2022 at 7:37:27 PM PDT
To: Laura Rumpler <lrumpler@nic.edu> , Shawn Harrington <sdharrington@nic.edu>
Attachments: Headshot Nick Swayne May 22.jpg (118.0 KB), 062222 BOT selects Swayne as 11th president.docx (63.2 KB).

Id. (Emphasis in orig.) This shows the decision to hire Dr. Swayne was known before the motion was made to hire him at the Board meeting. No other emails were found that gave this same treatment and preparation for the other three candidates.

Fifteen minutes later at 7:52 p.m., Ms. Rumpler sent an email to seven North Idaho College employees stating, “Megan and Shawn get ready. It looks like the board will be selecting Dr. Swayne as our next president within the next few minutes.” **Ex. T.** By this time, Trustee Goedde’s motion had been on the table and under discussion subject to amendments for about six (6) minutes. Fn. 6.

At 8:01 p.m., the vote on Trustee Goedde’s motion was finalized with a call for the question. Id. Dr. Swayne was voted in by a 3-2 vote with appointed Trustees Wold, Goedde, and Broschet voting FOR the hiring and elected Trustees Banducci and McKenzie voting AGAINST the hiring. Id. Trustee Wold then called for a recess. Id.

Ms. Rumpler sent an email at 8:03 p.m. to her seven team members stating, “No green light yet. Recess is for chair Wold to go call dr Swayne to make certain he accepts[.]” **Ex. U.** This author found no email stating the hiring process would include a telephone call from Chair Wold to the successful candidate after the vote. That does not mean such a procedure was not agreed upon earlier, just that no evidence was found of it.

However, at no time before the recess did Trustee Wold say he needed to call Dr. Swayne to verify he would accept the job. See video at 2:01 hours (8:01 p.m.)⁸ After going back into active session, Trustee Wold did not state he had spoken to Dr. Swayne while on recess. See video at 2:16 hours (8:16 p.m.)⁹ Even if Dr. Swayne was watching the meeting on Zoom, he would more than likely have contacted a Trustee, North Idaho College Counsel Lyons, or Recruiter Provar to convey his thanks and acceptance of the position. This author has no information about what Dr. Swayne did in reaction to the news, or whether he even watched the proceedings on Zoom. At

⁸ https://www.youtube.com/watch?v=EbnCaRATHgg&list=PLY-GWxISH_qn-SE7SnfPhdR3UqK-XBNea&index=10, accessed Feb. 20, 2023.

⁹ Id. at 2:16 hours.

the end of the meeting, Chair Wold stated he had spoken to Dr. Swayne without saying when, and then Chair Wold read Recruiter Provart's public message cited earlier in this Report. **Ex. J.**

The next day, on June 23, 2022 at 3:22 p.m., Counsel Lyons sent an email to Trustee Goedde with an attached contract for Dr. Swayne asking Trustee Goedde:

John,

Attached is a draft contract form for the president. I did send this form to Nick Swayne to have him review and point out any areas of concern. I also discussed some of it on the phone with him. Housing is still an issue that is being reviewed.

Please call me at your convenience to discuss.

Marc.

Ex. V. The attached draft contract was listed in the header: "**Attachments:** Pres. Contract 6.22.22 draft.docx (37.8 KB)." Id. **Exhibit V** shows that attached draft contract. Id. A Microsoft Word copy of the draft contract was found in Trustee Goedde's North Idaho College email, and that Word document had Properties stating it was created by Megan O'Dowd on June 22, 2022 at 11:27 a.m.

Ex. W. The Properties dialog box shows the file was last saved at 3:13 p.m. on June 23, so sending it to Trustee Goedde nine minutes later gave Counsel Lyons the time to edit it to make it Swayne-specific. Evidence as to whether Mr. Lyons edited the draft contract on June 22 before the meeting to add Dr. Swayne's name, or whether he edited it the following day after the vote is inconclusive. Since the Lyons subpoena was quashed and North Idaho College was denied access to Mr. Lyons' email and other documents, this author can reach no conclusions on when the draft contract was first sent to Dr. Swayne or when edits were made to add Dr. Swayne's name to it.

On Counsel Lyons' July Invoice, the date June 21, 2022 shows his work included "review language for draft employment agreement." **Ex. X.** There is no identification of the employee. On that July Invoice for June 22, 2022 the entry for Counsel Lyons shows 7.30 hours billed and explained as:

(Marc Lyons) Correspondence from admin reps; Representation telephone conf with M Sebaaly; review issues for board meeting; **draft contract form**; prepare for and attend board meeting.

Id. (Emphasis added). The June 22, 2022 Board Meeting was 3 hours and 23 minutes long. So, Counsel Lyons spent about 4 hours on the other items, including the "**draft contract form.**"

On that same July Invoice, Counsel Lyons' entry for June 23, 2022 shows 3.90 hours billed:

(Marc Lyons) Review and revise employment contract draft; correspondence and telephone conference with candidate; communicate with trustee; response and telephone conference with HR; correspondence with S Goodrich; Communication with S Garcia.

Id. With Lyons' block billing, it is difficult to assign a time for each email, telephone call, contract draft, or other task. Here, this author cannot determine for how long and when Counsel Lyons worked on the draft Swayne contract, and the quashed subpoena prevents further review or conclusion.

On June 29, 2022, Ms. Goodrich and Ms. Ward emailed about having Dr. Swayne meet with officers of the North Idaho College Foundation, Inc. **Ex. Y.** Ms. Ward shared in that email:

Also, Rayelle asked that I mention that the **NIC Foundation officers are poised to provide an orientation.** If Dr. Swayne would like to that with that group before the Foundation Board meeting, please let us know when he can be available. If he prefers after the meeting, we will work with you to coordinate that as well.

Id. (Emphasis added). Ms. Goodrich stated it may be better to wait until Dr. Swayne was in town for that orientation. Id. Rayelle Anderson's title is "Development Director, Foundation Executive Director Development/NIC Foundation."

On June 30, 2022, Counsel Lyons sent an email to Trustee Wold with a new draft contract with a file name dated 6-30-22. **Ex. AA.** The email stated:

David,

See below. I sent this to Nick Swayne as the employment agreement. Note that I removed the termination without cause and added a 4 out of 5 trustees to the termination for cause provision. Call me if you have any questions.

Marc

Id. This draft by Mr. Lyons had the restriction that if the North Idaho College Board of Trustees wanted to terminate Dr. Swayne, it would only be able to do it with a 4-1 vote, and only for cause. Id. However, the Section 12.1 still carried the language that "This Agreement may be terminated by mutual agreement of the parties, **by either party without cause**, or by the Board for cause." Id. (Emphasis added). After about eight (8) days of drafting time and exchanges between various recipients, this "at-will" provision survived.

The only other instance where a five-member board is required to make a 4-1 vote is on a vote to have an executive session, because the statute states, "An executive session shall be authorized by a two-thirds (2/3) vote of the governing body." I.C. § 74-206(1). The statute was created because there is a predominance in Idaho of three member boards of county commissioners, but with a five-member board the restriction is suspect. It is suspect because a college Board of Trustees carries out its fiduciary duties as a five-member Board by majority vote of three Trustees in all other circumstances. A 3-2 vote should suffice to terminate the President's contract, but this time it was specifically carved out to bind a new post-election Board to an illegal super-majority contract provision, see **Section E.** I.C. § 33-2106(7).

It appears that after the 2021 *MacLennan* lawsuit, which was the outcome of an “at-will” contract, that the “intent of the parties,” or at least the intent of appointed Trustee Wold as the designated negotiator for the Swayne contract wanted to avoid an “at-will” provision. However, given the then upcoming November 2022 elections it appears removing the “at-will” provision and requiring the Board to make a “for cause” 4-1 vote to terminate the Swayne contract was an illegal failsafe to retain Swayne in the position regardless of the 2022 election outcome.

At the July 14, 2022 Board Meeting, Counsel Lyons stated:

Also, I want to point out that **the termination section in this agreement does not include a termination without cause.** And for the termination for cause, **it requires four out of five votes. Chairman Wold and I believe that this is an improvement to prior contracts.** Termination of a president should not be done lightly. And to ensure that such action would be appropriately considered, a supermajority of the board should agree.

Ex. AA-1, p. 1 (Trans. Jul. 14, 2022 Board Meeting) (emphasis added).

At that meeting, Trustee Banducci protested the proposed terms in Dr. Swayne’s contract, including the super-majority provision, when he stated:

[Dr. Swayne’s] never been a president. We don't know if the staff and faculty are going to like him. We have no probationary period built in.

We're giving him all this money, and we're giving him the keys to the house. I mean, he had email accounts before he showed up. In fact, they had to try to do non-employee forms, I guess, because it was prior to his onboarding, so he shouldn't have even had an email account. We've rushed to try to introduce him to the donors and the stakeholders and the foundation and the SBOE. I don't know about the NWCCU or not.

It's interesting. All this money up front, sort of like-- I look at it like athletes. If you have a veteran and you're on his second or third contract, then he's performed, and you give him a certain contract based on that. **But most of the rookie contracts are outrageous because you've got someone that's never proven themselves yet.**

And this is what I liken this to is that we're throwing all this money up front, and yet we haven't had him work for us for one day. I can't believe we-- **and then trying to tie the hands of the future boards with these votes. I've never heard of such a thing in a contract. How can you dictate what a future vote is?**

There's five people on a board, and it's by majority. That's how decisions are made. I don't know legally how you can try to say that we have to

have more than a simple majority for any decision that this board makes.

I guess contract law would have to be reviewed on that.

Ex. AA-1, p. 3 (Trans. Jul. 14, 2022 Board Meeting) (emphasis added). Presumably, Counsel Lyons checked Idaho law for the legality of the super-majority requirement and disregarded the applicability of the Idaho State Supreme Court's *Safe Air for Everyone* and *Gowey* precedents, see **Section E**.

Further, the "for cause" provision in Dr. Swayne's contract states terms that are vague:

This Agreement may be terminated for cause, if a super-majority of the Board (defined as 4 or more Trustees) in its sole and **reasonable discretion**, determines that: (1) the President has **significantly failed** or refused to act in accordance with a material provision of this Agreement or any directive or order of the Board; (2) the President has exhibited **gross misconduct or dishonesty** in regard to his employment; (3) the President is (or has been) convicted of **a crime involving dishonesty, breach of trust, or physical or emotional harm** to any person; (4) the President is unable to perform the **essential** functions of the position; or (5) the President has acted in **bad faith to the detriment of NIC**.

Ex. AA at § 12.3 (Emphasis added). The vague terms are in **bold** font. None are defined in the contract; thus, a court or mediator is required, likely at great expense to the parties.

At 8:01 a.m. on July 15, 2022, Counsel Lyons sent an email to one Trustee and five administrators:

From: Marc Lyons <marc@lyonsodowd.com>

Sent: Friday, July 15, 2022 8:01 AM

To: Shannon Goodrich; Karen Hubbard; Sarah Garcia; Laura Rumpler; Mike Sebaaly

Cc: David Wold

Subject: Executed Swayne Employment Agreement

Attachments: Signed NIC Contract.pdf

Ex. BB. This signed contract retained the Section 12.1 language: "This Agreement may be terminated by mutual agreement of the parties, **by either party without cause**, or by the Board for cause." *Id.* (Emphasis added). If this contract had been edited properly, the "scrivener's error" requiring correction at the August Board of Trustees' meeting would not have occurred.

However, the correction was not a scrivener's error. Black's Law Dictionary describes a scrivener's error as a *clerical error*:

. . . an error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination; especially, a drafter's or typist's technical error that can be rectified without serious doubts about the correct reading. Among the numberless possible examples of clerical errors are omitting an appendix from a document; typing an incorrect number; omitting an obviously needed word; and failing to log a call.

Black's Law Dict., 11th Ed., Garner, Bryan, Ed., p. 683 (2019). Section 12.1 was no clerical error.

In Idaho, the 1922 *Barnhardt* case gave the law related to a true scrivener's error:

The rule is well established that where a deed is drawn with the intent to carry out a prior agreement to convey property, but by mistake of the scrivener does not fulfill such intention, equity will correct such error by reforming the instrument to conform to the intention of the parties. (*Christensen v. Hollingsworth*, 6 Idaho 87, 96 Am. St. 256, 53 P. 211; *Collins v. Brown*, 19 Idaho 360, 114 P. 671; 34 Cyc. 910).

Barnhardt v. Hansen, 211 P. 438, 36 Idaho 419 (1922); see *Bowers v. Bennett*, 30 Idaho 188, 164 P. 93 (1917).

The decision to remove the "at-will" provision from the Swayne contract was apparently the intent of the parties Swayne and Wold to that contract, however this error was not a minor clerical error, but instead a poor editing job that failed to remove an apparently negotiated material term. If a contract can be terminated "at-will" by a party, such a term goes to the core of the contract and the agreement between the parties. If it did not go to the core of the contract and the parties' intent, then there would have been little need to correct it at the August meeting, because the parties could have overlooked a minor clerical error. This was not a minor error, and thus could not be classified as a scrivener's error or a clerical error.

Section 15 of the Swayne contract only speaks to amendments, which technically are provisions that are added on top of existing contract provisions, as opposed to modifications which modify existing provisions:

This Agreement may be amended by mutual agreement of the parties. Such amendments must be in writing signed by the President and the Board Chair, following the approval by a majority of the Board.

Ex. BB. Rather than argue over the technical differences between amendments and modifications, we can simply look at what actually occurred. Trustee Wold signed the contract on July 14, Dr. Swayne signed it on July 15. At that point there was alleged to be a written contract in effect, and the only way to alter it was by a modification to the existing language.¹⁰

On August 11, 2022, and in preparation for the upcoming August 22 meeting of the Board of Trustees, Counsel Lyons sent an email with a Tab to be added to the Agenda materials for that meeting. **Ex. CC.** The attachment to that email had a Discussion section stating:

In putting together the final draft to be signed, the attorney inadvertently replaced two words in section 12.1 about how the contract can be terminated that included the following language: "by either party without cause." This was intended to read "by the President without cause."

¹⁰ In this discussion, this author for the sake of argument removes the June 22 Open Meetings Law violation from *the analysis of the alleged scrivener's error*, but that violation still applies to the overall analysis and findings of this Report.

The agreement section 12.1 needs to be corrected to read as follows:

This Agreement may be terminated by mutual agreement of the parties, by ~~either party~~ *the President* without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

This modification reflects the agreed language consistent with what the attorney represented at the last meeting and eliminates an inconsistency.

Id. And, that modification was done and got signed by the President and the Board Chair as required by Section 15, as if there could be no argument as to the difference between an amendment and a modification. **Ex. DD** (signed modification). The modification was procedurally effective, because it followed the required process and form of a modification. However, the contract itself cannot survive, because it was the product of a violation of Idaho's Open Meetings Law for the hiring of Dr. Swayne on June 22, 2022. I.C. § 74-201 (" . . . it is the policy of this [S]tate that the formation of public policy is public business and shall not be conducted in secret.")

D. TIMING FOR BOARD RECOGNITION OF AN OPEN MEETINGS LAW VIOLATION

On page 7 of the Court's *Memorandum Decision And Order Granting Plaintiff's Motion For Preliminary Injunction* filed March 3, 2023, footnote two stated:

Idaho Code § 74-208 addresses the enforcement mechanisms and remedies available when there has been a violation of the Open Meeting Law. Pursuant to § 74-208(6):

Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(Emphasis added).

The question arises whether the Board can act upon this Report if the Report indicates a violation of the Open Meetings Law that occurred more than 30 or 180 days ago.

When interpreting the Idaho Code, the Idaho State Supreme Court stated:

As we have often said, '[t]he interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a

whole.’ *Breckenridge Prop. Fund 2016, LLC v. Wally Enterprises, Inc.*, 170 Idaho 649, ___, 516 P.3d 73, 81 (2022) (quoting *Verska v. Saint Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011)). Moreover, ‘[i]f the statute is not ambiguous, this Court does not construe it, but simply follows the law as written. We have consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.’ *Id.* (quoting *Verska*, 151 Idaho at 893, 265 P.3d at 506). Importantly, ‘[a]mbiguity is not established merely because the parties present differing interpretations to the court.’ *Grace at Twin Falls, LLC v. Jeppesen*, No. 49067, 2022 WL 16641906, at *5 (Idaho Nov. 3, 2022) (citing *Nelsen v. Nelsen*, 170 Idaho 102, ___, 508 P.3d 301, 334 (2022)); see also *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 312, 109 P.3d 161, 166 (2005); *Ada Cnty. Prosecuting Att’y v. 2007 Legendary Motorcycle*, 154 Idaho 351, 354, 298 P.3d 245, 248 (2013) (‘[A] statute is not ambiguous merely because an astute mind can devise more than one interpretation of it.’).

State, Dep’t. of Health & Welfare v. Doe (In re Doe), No. 49971 at 4 (Idaho 2023).

The plain language of Idaho Code section 74-208 reads:

74-208. VIOLATIONS. (1) If an action, or any deliberation or decision-making that leads to an action, **occurs at any meeting which fails to comply with the provisions of this chapter, such action shall be null and void.**

(2) Any member of the governing body governed by the provisions of this chapter, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250).

(3) Any member of a governing body who knowingly violates the provisions of this chapter shall be subject to a civil penalty not to exceed one thousand five hundred dollars (\$1,500).

(4) Any member of a governing body who knowingly violates any provision of this chapter and who has previously admitted to committing or has been previously determined to have committed a violation pursuant to subsection (3) of this section within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500).

(5) The attorney general shall have the duty to enforce this chapter in relation to public agencies of state government, and the prosecuting

attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this chapter may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of this chapter. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7) (a) A violation may be cured by a public agency upon:

- (i) The agency's self-recognition of a violation; or
- (ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency

shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

I.C. § 74-208, added 2015, ch. 140, sec. 5, p. 372; am. 2015, ch. 345, sec. 1, p. 1301.

Subsection (1) of Idaho Code section 74-208, some of which is highlighted above, states that if a violation of the Open Meetings Law occurs, “at **any meeting** which fails to comply with the provisions of this chapter, **such action shall be null and void.**” Emphasis added. No time period is given, unless it is the thirty (30) day time period after an alleged violation as made in a third-party suit. I.C. § 74-208(6). This law at subsection (7) recognizes that multi-year contracts may be and frequently are entered into by public entities in Idaho, and no time period should apply as a matter of law in order to protect the public from contracts or other public policy decisions made in violation of the law by a public entity. I.C. § 74-201 (“The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created.”)

Subsections (2) and (3) have no time period after which “[a]ny member of the governing body governed by the provisions of this chapter, who conducts or participates in a meeting which violates the provisions of this act” cannot be subject to penalty. In short, there is no statute of limitations after which a member of a governing body can escape penalty. Subsection (2) states any member of a governing body, “who conducts or participates in a meeting which violates the provisions of this act,” will be subject to penalty. Note the penalty applies whether or not the member of the body has knowledge of the violation. Thus, an innocent misstep is perilous.

Subsection (4) starts with the same language as subsection (3), “[a]ny member of a governing body who knowingly violates . . .” Note that to be subject to the penalty, a member of a governing body *must still be a member of the governing body at the time of a subsequent violation,* and who has **previously admitted to committing or has been previously determined to have committed a violation** pursuant to subsection (3) of this section within the twelve (12) months preceding this subsequent violation . . .” Emphasis added. Note the penalty in subsection (4) requires a member of a governing body to have *knowledge* they are violating the Open Meetings Law when they violate it a second or subsequent time.

Subsection (5) gives the enforcement power to the Attorney General for State agency violations, while giving enforcement power to the local County Prosecutor for other than State agencies.

However, subsection (6) also allows “[a]ny person affected by a violation of the provisions of this chapter may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets,” but only “for the purpose of requiring compliance with provisions of this act.” This subsection recognizes that neither the Attorney General nor the local County Prosecutor can be everywhere at once, and thus it gives standing to “any person affected” the right to commence a civil action to require compliance with the Open Meetings Law. However, “[n]o private action brought . . . shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of this chapter.” Thus, “any person affected” can only bring a civil action to require compliance with the act. I.C. § 74-208(6).

A person affected by a violation could take their complaint to either the Attorney General in the case of a State agency or to the local County Prosecutor. In the case of a community college, a “person affected” would have a choice as to whether to complain to the local County Prosecutor or to initiate a civil action on their own behalf. It is more than likely that a person affected peripherally and not personally and directly would take their complaint to the local County Prosecutor. Someone personally experiencing specific damages related to a violation would likely sue on their own behalf, but they may expend an unknown amount of funds initiating a civil action with the result that a court may find they may lack standing to bring the lawsuit. Further, a private civil action could not result in the assessment of civil penalties against members of the public agency, nor could a private party claim money damages. A court ruling in a private civil action can only “require[e] compliance with provisions of” the Open Meetings Law. *Id.*

What if a person affected by a violation of the Open Meetings Law was a minority trustee? To avoid the financial penalties discussed above, a minority trustee in their exercise of fiduciary duty on behalf of the institution would more than likely attempt to use the provisions of subsection (7) prior to bringing a civil action under subsection (6). Pursuing the potential remedy found in Idaho Code section 74-208(7)(a)(i), a minority trustee could call for an executive session pursuant to Idaho Code section 74-206(1)(f), “[t]o communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.”

If unsuccessful in executive session, a minority trustee could then bring a civil action under subsection (6). It is expecting this path that the law includes the final sentence under subsection (6): “**Any other suit** brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.” However, if their concerns were supported by the facts, then a minority trustee would arguably have better success in executive session and then using subsection (7) than subsection (6). Why would subsection (7) be preferable?

Subsection (7) has no time period limiting actions that a public entity could take to self-recognize its own violation. Subsection (7)(a) gives two methods: “[a] violation may be cured by a public agency upon: (i) The agency’s self-recognition of a violation; or (ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation.” I.C. § 74-208(a)(i) & (ii).

Once a public entity receives “written notice” of an alleged violation, it then has 14 days to “respond publicly” and give notice that it has either decided to cure the violation or to deny that there was a violation. I.C. § 74-208(7)(a)(ii). However, a public governing body may act upon a self-recognition of a violation *at any time* after such violation. There is no time limit for such self-recognition in the statute. Given that multi-year contracts are frequently used in Idaho, this provision makes sense.

Also, if a public entity receives notice from a third party or a minority trustee about an alleged violation, the governing body must consider the allegation and respond publicly within fourteen (14) days, even if the notice came *two years after the violation*. Practically speaking, a third party limited by subsection (6) would probably give the governing board notice within the time limits given for the filing of third party or minority trustee civil suits in subsection (6), or else if the governing body did not respond or gave a denial, then the third party or minority trustee would be barred from bringing a civil action pursuant to subsection (6). I.C. § 74-208(6).

Therefore, if the Board of Trustees of North Idaho College wants to self-recognize its own violation of the Open Meetings Law that it may determine occurred in June of 2022, the use of this Report to substantiate such act would not be time-barred under the statute. I.C. § 74-208(a)(i).

E. LEGALITY OF A SUPER-MAJORITY REQUIREMENT IN THE PRESIDENT’S CONTRACT

As stated in the Introduction, it was against Idaho law for the three appointed Trustees to include a super-majority provision, calling into question whether the contract is a legal, and thus an enforceable contract. I.C. § 33-2106(7) (“Three (3) members of the board shall constitute a quorum for the transaction of official business.”)

The Idaho State Supreme Court stated in the *Safe Air for Everyone* case that “[t]he governing body of a public agency must consist of at least two members who have authority to make decisions for or recommendations to that agency. [fn. 1]. **In addition, a governing body must be required to make its decisions by majority vote at which a quorum is present.** [fn. 2].” *Safe Air for Everyone v. State Dept. of Ag.*, 177 P.3d 378, 145 Idaho 164 (Idaho 2008) (“Under the Open Meetings Act, the governing body is defined as *members* of a public agency, not *employees* of a public agency. That distinction is significant”) (emphasis added).¹¹ The *Safe Air for Everyone* Court did not insert the words “at least” in the sentence, *viz*, “In addition, a governing body must be required to make its decisions by [at least] majority vote at which a quorum is present.” *Id.*

¹¹ Footnote 1 in the 2008 *Safe Air for Everyone* case cited to then Idaho Code § 67-2341(5), now Idaho Code § 74-202(5), which states identically in both laws, “‘**Governing body**’ means the members of any public agency that consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.” Footnote 2 in that case cited to then Idaho Code § 67-2341(1), now Idaho Code § 74-202(1), which states identically in both laws, “‘**Decision**’ means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with . . .” the Open Meetings Law. *Safe Air for Everyone v. State Dept. of Ag.*, 177 P.3d 378, 382, fns. 1 & 2, 145 Idaho 164, ___ (Idaho 2008).

In the 1963 *Gowey* case, the Idaho Supreme Court was faced with a recalcitrant Chairman of the five-member Board of Village Trustees for the Village of Garden City in Ada County, Idaho. *Gowey v. Siggelkow*, 85 Idaho 574, 582, 382 P.2d 764, 769 (Idaho 1963). The facts were summed up by the Court:

In the complaint it is alleged that the village of Garden City was, at all times involved, a municipal corporation governed by a board of trustees; that the members of the board were Robert Lawrence, Evan Siggelkow, Dortha Bills, Harold Conn and Joe Gowey; that prior to June 4, 1962, defendant Siggelkow was the duly chosen and acting chairman of the board; that on June 4, 1962, at a regular meeting of the board, defendant was removed as chairman of the board; that on July 2, 1962, at a regular meeting of the board, plaintiff was duly chosen as chairman of the board; that the defendant has refused and continues to refuse to acknowledge his removal as chairman of the board, and continues to exercise the functions of chairman and to usurp and intrude himself into that office, to the exclusion of the plaintiff.

Gowey, 85 Idaho at 575, 382 P.2d at 764.

The Court evaluated the trial court's dismissal of Village Trustee Gowey's complaint:

In this case the facts alleged and those disclosed by the minutes of the trustees' meetings graphically portray the utter futility of the attempt of the majority of the trustees to conduct the business of the village government, or to discharge the duties of their office. Without the power to control the chairman they could do nothing contrary to his wishes. **With the collaboration of one member of the board, the chairman dictated the course of village government. The majority members were in effect shorn of their authority and ousted from office, in direct violation of the applicable statutes.** I.C. § 50-705 declares that the majority shall constitute a quorum to do business. I.C. § 73-112 declares that the authority given to the board of trustees is given to a majority of them. *Ackley v. Perrin*, 10 Idaho 531, 79 P. 192.

Gowey, 85 Idaho at 592, 382 P.2d at 776 (Trial court's dismissal of Gowey's case was error, "judgment is reversed and the cause is remanded with directions to reinstate the complaint and for further proceedings . . .") (emphasis added).

Similarities exist between the *Gowey* case and the circumstances at North Idaho College. One of the North Idaho College Board's primary duties is to select and hire a President for the College, then evaluate him or her and act upon what it finds. I.C. § 33-2109 ("The board of trustees shall elect a president of the college . . .")

There was no statutorily-defined minimum term for a Village Trustee in *Gowey*, and there is no statutorily-defined minimum term for a community college president in Idaho. As stated in *Gowey*, the “general principles involved are thus stated in 43 Am.Jur. Public Officers, §§ 183 and 184, where authorities are collected:

When the term or tenure of a public officer is not fixed by law, and the removal is not governed by constitutional or statutory provision, the general rule is that **the power of removal is incident to the power to appoint**. Inasmuch as the tenure has not been declared by law, **the office is held during the pleasure of the authority making the appointment, and no formal charges or hearings are required in the absence of some statute on the subject**. The foregoing rule applies although the appointing power attempts to fix a definite term. **This implied power to remove may not be contracted away so as to bind the appointing authority to retain a minor officer for a definite period.**

Gowey, 85 Idaho at 588, 382 P.2d at 774. A president of a community college is not a minor officer, but this author sees no difference in the principles involved. If three of five members of the Board of Trustees of North Idaho College are statutorily empowered, pursuant to Idaho Code section 33-2106 (7), to transact official business for the College, then a super-majority vote to act upon one of its primary duties is pursuant to *Gowey* an illegal contract provision. The appointed Trustees tried to bind the full post-election Board to a super-majority contract, which is in opposition to Idaho law as found in the *Safe Air for Everyone* and the *Gowey* cases.

Further, under normal circumstances as allowed by statute, if two Trustees were on vacation or otherwise unavailable, the remaining three members of the Board could meet, have a quorum to do official business, and thereafter transact all business within the power of the full Board of Trustees, including hiring or terminating the contract of a President. The super-majority contract provision in the President’s contract removed the lawful power of three members of the North Idaho College’s five-member Board of Trustees to act on its primary duties. The *Gowey* Court noted, “**implied power to remove may not be contracted away so as to bind the appointing authority to retain a minor officer for a definite period.**” *Gowey*, 85 Idaho at 588, 382 P.2d at 774. Also, by the super-majority requirement, “**the majority members [of the Board of Trustees of North Idaho College] were in effect shorn of their authority and ousted from office, in direct violation of the applicable statutes.**” *Id.*, 85 Idaho at 592, 782 P.2d at 776 (emphasis added).

In the 1984 *Baker* case, the Idaho State Supreme Court stated, “[it] has held that ‘it is axiomatic that extant law is written into and made a part of every contract.’ *Robinson v. Joint Sch. Dist. # 150*, 100 Idaho 263, 265, 596 P.2d 436, 438 (1979).” *Baker v. Independent School Dist. of Emmett, No. 221*, 691 P.2d 1223, 107 Idaho 608 (Idaho 1984). The super-majority provision is illegal, because Idaho Code section 33-2106(7) is written into and made a part of every contract, and the super-majority provision violates Idaho Code. *Id.* (“Three (3) members of the board shall constitute a quorum for the transaction of official business.”)

Last summer in 2022, the appointed Trustees of North Idaho College unlawfully attempted to bind the post-election Board. With the acquiescence of two Trustees, the President could effectively control the full Board, and the statutory power of the majority of Trustees would be destroyed. The Board would be unable to discharge the President as Idaho law allows.

In *Gowey*, the Court favorably cited the case of *Conwell*, in which:

The court then noted the plaintiff's contention that the statutory procedure for removal of civil officers ([then] I.C., Title 19, Chap. 41) applied and was the only remedy available to the village, and further said:

* * * We cannot agree with this contention. The remedy there prescribed is, at best, nothing more than a concurrent and cumulative remedy with that being pursued by the board of trustees. In other words, they may exercise incidentally the power of removal which accompanies the power of appointment, or they might pursue the remedy pointed out by statute. The contention that the statutory remedy is exclusive is out of harmony with both the spirit and purpose of the statute authorizing the incorporation of cities, towns, and villages. **We do not think it was ever intended by the Legislature that municipal authorities should go into a district court every time they want to discharge an appointive officer or employe [sic].**

Gowey, 85 Idaho at 586-87, 382 P.2d at 772-73; citing *Conwell v. Village of Culdesac*, 13 Idaho 575, 580, 92 P. 535, 536 (1907) (emphasis added).

In this case, the super-majority requirement in President Swayne's contract is illegal in Idaho, and the Board of Trustees should not have to go to court to take action on that contract as it sees fit for the benefit of North Idaho College, see **Section E**.

Section 19 of Dr. Swayne's contract states:

The unenforceability, invalidity, or illegality of any provision or clause of this Agreement shall not render any of its other provisions as unenforceable, invalid, or illegal, and such remaining provisions shall be construed in all respects as if the unenforceable, invalid, or illegal provision(s) were omitted.¹²

Thus, since the 4-1 super-majority requirement is illegal in Idaho, that requirement is null and void, and Dr. Swayne's termination is subject to a 3-2 vote of the Board, if the contract itself survives the initial Open Meeting Law violation. Without an Open Meeting Laws violation, and if

¹² See <https://www.nic.edu/websites/default.aspx?dpt=46&pageId=>, accessed Apr. 8, 2023.

only the super-majority provision is rendered void under Idaho law, then the Section 19 severability clause cited above controls, and the rest of the contract survives.

F. OTHER CONCERNS WITH THE PRESIDENT’S CONTRACT: THE NIC FOUNDATION

In the tradition of past North Idaho College presidents, Dr. Swayne is now the corporate Secretary for the North Idaho College Foundation, Inc. The Idaho Secretary of State’s office shows the Annual Report for the Foundation with a list of fiduciary Directors and Officers. **Ex. Z** (filed 10/12/2022). As an officer of both the College and the Foundation, it is hazardous to manage the conflicting fiduciary issues when juggling two paramount duties of loyalty and care to two separate organizations, one public and one private. The Board of Trustees may want to reevaluate those potential conflicts, especially if Dr. Swayne is enjoying a second paycheck or other remuneration from the Foundation in addition to his presumably primary paycheck as North Idaho College President. This author has no written evidence of monetary payment from the Foundation to Dr. Swayne.

In addition to its Articles of Incorporation filed October 9, 1977 in the Idaho Secretary of State’s office, there were four documents reviewed by this author that apparently govern the operation of the North Idaho College Foundation, Inc. There is (1) a 2013 *Whistleblower Policy for North Idaho Foundation, Inc.*; (2) the 2019 *Investment and Fiscal Policy for North Idaho College Foundation, Inc.*; (3) the 2008 *North Idaho College Foundation Conflict of Interest Policy*; and (4) the 2021 *Operating Agreement Between North Idaho College Foundation, Inc. and North Idaho College*. These documents either already are or should be available to the North Idaho College Board of Trustees, and so they are not included as exhibits here.

In this author’s view, the documents give no direct evidence of Dr. Swayne being directly compensated in his position as Secretary of the North Idaho College Foundation, Inc. There is language that shows an intertwining of interests, contracts, and remedies between the Foundation and the College itself causing one to wonder why the Foundation is a separate private entity, especially for such a small school.

Regardless of whether Dr. Swayne is compensated in his position as Secretary of the North Idaho College Foundation, Inc. there still remain conflicting fiduciary duties that he has to both organizations. The College Board of Trustees should reevaluate the College’s relationship to this private entity, especially given that Idaho statutes require the NIC Board of Trustees to be controlling financial matters that appear to have been taken over by or contracted away to the Foundation. I.C. §§ 33-2107(8) (“To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the granter”); 33-2107(10) (“To invest any funds of the district in such securities, and apply the interest or profits from such investment, as prescribed for the investment of the funds, and the application of the interest or profits, in the case of school district boards of trustees.” For the College’s Board of Trustees to contract away its statutory control over financial donations and gifts of land to North Idaho College supports a concern that the Board has been changed from a Board in statutory control to a rubber-stamp Board,

controlled by others and thus not subject to voter control through Board of Trustee elections. These concerns are not further addressed by this Report, but the Board and the voters of North Idaho should consider the delegation of statutory powers by contract to the North Idaho College foundation, Inc., a private non-profit corporation.

As Secretary of the Foundation, Dr. Swayne has a statutory duty of care and must act in good faith to further “the best interests of the corporation and its members.” I.C. § 30-30-623. It is unknown whether and when the best interests of North Idaho College and the North Idaho College Foundation, Inc. will present a conflict to Dr. Swayne.

Finally, and pertinent to this Report, sections 8 and 9 of President Swayne’s contract mandate North Idaho College will repay him for certain expenses.¹³ Section 10 of that contract states, in part, “The President agrees not to engage in any other employment, activity or enterprise, whether or not for remuneration, that is inconsistent, incompatible, in conflict with, or inimical to the President’s duties, responsibilities, functions or the policies of the College.” *Id.* Circumstances in which that provision would apply are numerous and highly dependent on evolving facts. For example, President Swayne sued North Idaho College. How does that lawsuit impact his exercise of fiduciary duties to the College and the Foundation? Analysis of these facts and potential issues are beyond the scope of this Report. Even so, questions on those issues should be addressed.

In President Swayne’s contract there is no mention of his undertaking of an officer position with the private non-profit North Idaho Foundation, Inc. These affiliations may appear to be innocent, and may actually be innocent, but the fact remains that the three appointed 2022 Trustees Wold, Goedde, and Broschet were Foundation-affiliated out of nearly forty (40) Trustee applicants, and Dr. Swayne now has fiduciary duties to both the public College as President and the private entity Foundation as Secretary at the same time. Dr. Swayne’s contract does not mention this potential conflict, or even mention it as a matter of fact. Thus, there may be no remedy for the College if Dr. Swayne violates his fiduciary duty to the College in preference to the Foundation, because Judge Meyer has already stated provisions not appearing in Dr. Swayne’s contract do not exist to give the College a remedy unless they are explicitly stated in that contract. *Memo. Dec. And Order Granting Plaintiff’s Motion For Preliminary Injunction, p. 27 (Mar. 3, 2023)* (“ the Agreement is a written and integrated contract and ‘therefore, the parties’ intent must be determined solely from the language of the agreement.’”)(citations omitted).

G. COURT VERSUS NIC TRUSTEE DECISION-MAKING PROCESS

The elected Board of North Idaho College took the same constitutional oath as the judges on the District Court. Within their respective arenas of power, the question is whether the Court’s static Order should prevail in the face of more rapidly moving facts facing the Board of Trustees.

The Idaho Constitution does not grant plenary power for final decision-making to the Courts. As to powers of government, the judiciary is not deemed to be supreme in our Constitution.

¹³ <https://www.nic.edu/websites/default.aspx?dpt=46&pageId=>, accessed Apr. 8, 2023.

Section 1 of Article II of the Idaho Constitution states, “The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.”

There is no reason to believe that the “powers of the government” as stated in this separation of powers provision only apply to the “three distinct departments” at the State level. It makes sense that the separation of powers principles of federalism apply vertically up and down the whole of State government, in order to better safeguard the Article 1 rights of the people of Idaho.

If at the State level the legislature is not allowed to exercise powers properly belonging to either the executive or the judicial departments, and likewise the judicial department is not allowed to exercise powers granted to the legislative or executive departments, how Constitutionally can a District Court effectively assume the statutory power of a Board of Trustees by using judicial power to force the reinstatement and retention of an employee *for an unknown term of litigation*?

In respect of the statutory power of the Board of Trustees, why did not the injunction set a short time, say thirty (30) days for reinstatement, after which the injunction would lapse with a Court trial set for the intervening time? I.R.C.P. (“Idaho Rules of Civil Procedure) 65(a)(2) (“Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing.”)

Further of concern is whether the Court’s Order is advisable under the civil rules and Idaho statutes. I.R.C.P. 65(g) (“These rules do not modify any statute of the state of Idaho relating to restraining orders or injunctions in actions affecting employer and employee in labor disputes.”) Unfortunately, at least pursuant to statute, the dispute between Dr. Swayne and the Board of Trustees is not, as defined by statute, a labor dispute. I.C. § 44-712 (“The term ‘labor dispute’ means any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives.” No collective bargaining unit is present here.

Even so, those statutes provide guidelines that while not *mandatory* for a court to follow, provide a view of the legislature’s opinion on a court’s issuance of injunctions in employment matters.

For example, Idaho Code section 44-703 states, in part and with emphasis added:

No court, nor any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction which in specific or general terms **prohibits any person or persons** from doing, whether singly or in concert any of the following acts: . . . (f) **Ceasing to patronize or employ any person or persons;**

The North Idaho College Board of Trustees was prohibited by the Court’s injunction from ceasing to employ Dr. Swayne for any reason during the pendency of his litigation. Thus, the Board

cannot cease to employ Dr. Swayne for an unknown amount of time. The statute is not binding on the Court, but the advisability of the broad terms of the injunction do not accord with the public policy of the statutes in employment-related cases.

In respect of principles of federalism, and by way of example, the Kootenai County Board of County Commissioners and the Board of Trustees at North Idaho College each have mixed executive and legislative powers, although in the case of the Board of Trustees at North Idaho College the Board has created as a matter of policy an executive function in the College president that conveys some of the statutory executive functions of the Board of Trustees to that president. Viewing the applicable statute, it would be difficult to argue that the Board of Trustees of North Idaho College does not have largely a mix of executive and legislative functions. I.C. § 33-2107 (General Powers of the Board Of Trustees).

The final word in the case of Dr. Swayne's contract at North Idaho College is a mixed executive and legislative function. The Idaho Constitution recognizes the mandated separation of powers found in Section 1 of Article II later in that document where it states, "The Supreme Court shall have original jurisdiction to hear claims against the state, **but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the legislature for its action.**" Idaho Const., Art. V § 10 (emphasis added). This provision indicates the legislature of the State must concur with the Supreme Court's decision in a particular case, and that the judiciary is not supreme over the legislature.

Following those Constitutional provisions, the Board of Trustees of North Idaho College would need to concur with the local District Court's decision in a particular case, here Dr. Swayne's contract. If a competent view of the separation of powers and principles of federalism apply here, it should be that a local District Court Judge will make recommendations to a Board of Trustees or a Board of County Commissioners, but that those separate Boards would see a judicial decision as *recommendatory*, especially where a judicial decision may supersede a Board's statutory power.

If we further analyze the processes and procedures used to gather and utilize information gained by the judiciary as opposed to the North Idaho College Board of Trustees, we will further understand why these separation of powers principles should apply at the local level as well as at the State level.

North Idaho College Board of Trustees has been taking advice from the Association of Community College Trustees ("ACCT"). This is to assist the Board in overcoming issues of governance that have been raised related to accreditation. The ACCT book entitled "*Trusteeship in Community Colleges*" highlights a significant difference between the Board of Trustees and the District Court:

. . . local governing boards exist to represent the public for whom they hold the college in trust. They are responsible for balancing and integrating a wide variety of interests and needs into policies that benefit the common good of their region and future of their institution . . . In order to fulfill this responsibility, board members should seek to learn as much as they can about the communities they serve. They can then use

what they learn to make decisions that respond to community interests, needs, and values. They gain this knowledge by studying information provided by college staff on regional demographic, economic, and social trends; by being aware of issues facing the community; and by talking with business and other community leaders as well as members of other boards.

ACCT, *Trusteeship in Community Colleges*, 2nd Ed., Eds. J.E. King and D. Conner, p. 27 (2020).

The first thing you'll notice is that being a Trustee at North Idaho College requires a continual collection and **aggregation of community knowledge**, and the blending of that knowledge into a coherent perspective which then requires the exercise of judgment about how to best serve the school and the community. This continual collection and aggregation of knowledge is expected to include written reports, such as this Report, internal reports from College administration, reports from economic development groups, other government entities, or private individuals and firms. Also, Trustees will encounter hearsay, conspiracy, half-truths, whispered schemes, untraceable and poorly recalled telephone calls, and other sources, many of these designed to lead them astray. Few if any of these sources are peer-reviewed or otherwise tested for truthfulness.

Pointedly, the District Court operates with significantly different procedures.

A District Court operates in a **disjunctive** manner, continually separating out information, breaking it down, and reducing it to its provable gist in the discretion of one trial judge or jury. Assisting in this deconstructive process of justice are primarily the rules of procedure and the rules of evidence, which can exclude both good and bad information. Information that is untimely is frequently thrown out of court. Information that is judged to be unreliable, such as hearsay is frequently thrown out of court.¹⁴ Parties before courts are required to take oaths promising to not commit perjury, which is sometimes a deterrent to even suing or appearing before a court, if only because people do not understand the boundaries for definitions of perjury in a particular case, and they want to stay out of trouble. The Court system ruthlessly winnows information, and thus misses valuable information that is and should be available to a college Board of Trustees.

In short, the justice system operates only upon substantive provable facts in order to guarantee the life, liberty, and property of individuals and entities that may appear before it. In criminal cases, the judicial process is designed to balance the government's vast and nearly unlimited power with the liberty rights of individuals by requiring individuals (1) be considered innocent until proven guilty by the judge or a jury, and for the government (2) to err on the side of individual liberty if the high standard of "beyond a reasonable doubt" cannot be met. In civil cases, the judicial process is designed to uphold private rights of persons (e.g., civil rights, torts) and rights of persons to property, real and personal, by forcing a disjunctive process that divides and further divides questions of law and distinguishes questions of fact coming before it to assure the integrity of imposed remedies in specific cases. The Court's process is not designed for administrative or ministerial decisions related to outside entities, which is one reason why

¹⁴ A court's discretion to winnow evidence is usually upheld on appeal giving wide latitude to a local court.

affirmative injunctions are rare. The judicial process becomes risky when it is asked to resolve issues that are either evolving and or require aggregative information-gathering and judgment, such as is required to run a corporation or a college. These reasons support the concern that affirmative injunctive relief¹⁵ in such circumstances is unwise; due to the inability of a court to timely respond to evolving circumstances of governance.

A final comparison between these types of oattakers is that question of time. The Board of Trustees of North Idaho College meets once a month but is allowed to hold special meetings on shorter notice. Meanwhile, it may take two weeks or longer for one to get a hearing before the District Court on the simplest of matters, and a civil judgment may frequently be a year to a year and a half in the future. This does not include appeal time to reach a written Supreme Court decision, which may take up to two years in Idaho today. See I.C. § 44-705(4) (“Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact [related to injunctions] unavailing in the particular case.”) The amount of damage that could be done to North Idaho College if the wrong President is in place, or even a President that the Board or the Cabinet Members cannot work with due to various reasons is incalculable, and this damage would reverberate throughout the North Idaho community. See I.C. § 44-705(3) (“Error in issuing the injunctive relief is usually irreparable to the opposing party.”) The decision-making processes and time-related constraints experienced by the Board of Trustees should be supreme over those used by a Court under circumstances where running a College is involved.

H. CONCLUSIONS AND RECOMMENDATIONS

This Report concludes the hiring of Dr. Swayne was the result of an agreement between the three North Idaho College Foundation-affiliated Trustees outside of and prior to a public meeting and was thus a violation of Idaho’s Open Meeting laws. Further, there was no executive session held prior to that June 22, 2022 public meeting. The good works done by the Presidential Search Team and the North Idaho community were jettisoned due to that pre-meeting violation. The evidence stated above and in the exhibits to this Report indicate the decision was made to hire Dr. Swayne sometime during the day of June 22, 2022 prior to the meeting. However, this Report lacks evidence due to the refusal of the three appointed former Trustees who are key parties affiliated with the North Idaho College Foundation to follow the law and obey the subpoenas. There is also a lack of evidence because former North Idaho College Counsel and two other former Trustees moved to quash subpoenas rather than respond with documents to lawful subpoenas issued and served upon them. Therefore, we cannot state the hiring decision was not made days or even weeks prior to June 22, 2022.

Whenever the decision was made, the evidence does not show that the final decision to hire Dr. Swayne was made at the July 22, 2022 Board of Trustees’ meeting in open public view after deliberation and consideration in executive session. We know there was no executive session prior to that meeting in which the candidacies of the four then remaining candidates could be

¹⁵ There exists affirmative (“mandatory”) and negative (prohibitory”) injunctive relief. A mandatory injunction requires a party to act, for example as here, to reinstate Dr. Swayne. A prohibitory injunction forbids or restrains an act. Black’s Law Dict., 11th Ed., Garner, Bryan, Ed., pp. 937-938 (2019).

discussed by the full Board. Therefore, an Open Meeting Law violation occurred and should be addressed by this Board within fourteen (14) days of the Trustees receiving a copy of this Report. I.C. § 74-208(7)(a)(i) (“The agency’s self-recognition of a violation”) and (ii) (“Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary.”)

This Report recommends the Board of Trustees cure that violation of Idaho’s Open Meeting law, which states, “If an action, or any deliberation or decision-making that leads to an action, occurs at any meeting which fails to comply with the provisions of this chapter, such action shall be null and void.” I.C. § 74-208(1). There is no need for a lawsuit as allowed by Idaho Code section 74-208(6), because the Board has the power to self-recognize the violation under Idaho Code section 74-208(7)(a)(i). The Board should recognize the *Swayne* contract is null and void. As such, the *Swayne* lawsuit may and likely should fail for lack of a valid contract to interpret.

Subsection (7) of Idaho Code section 74-208 is not worded well, because subsection (7)(a)(i) states, “A violation may be cured by a public agency upon: (i) The agency’s self-recognition of a violation; or (ii) . . .,” neither of which serve to cure a violation. However, a violation is only cured by subsection 7(a)(i) or 7(a)(ii) *combined with* subsection 7(b), which states:

Following the public agency’s acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

This Report recommends the Board of Trustees consider this matter in executive session, and then motion to self-recognize the violation in an open meeting and follow the law that states “the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.” I.C. § 74-208(7)(b). Dr. Swayne’s hiring was made in violation of Idaho law, and his contract resulted from that illegal hiring, thus a Board move to cure the violation will make the contract null and void. I.C. § 74-208(1) (“If an action, or any deliberation or decision-making that leads to an action, occurs at any meeting which fails to comply with the provisions of this chapter, such action shall be null and void.”)

The question arises whether the Board should or could take further action after recognizing that it’s now acting President Swayne is employed without a contract. The question begins with consideration of the Court’s *Memorandum Decision And Order Granting Plaintiff’s Motion For Preliminary Injunction* (“Memorandum Decision”) entered on March 3, 2023.

The first sentence of the Memorandum Decision indicates the entire decision is guided by the assumption that Dr. Swayne has a valid contract: “This case concerns the authority of a college board of trustees to place an acting president, under a negotiated contract authorizing termination only by a super-majority vote for cause, on paid, indefinite administrative leave

without cause.” Memo. Dec. at 1 (Mar. 3, 2023). The Memorandum Decision is not based on circumstances where there is no valid contract. It does not consider that circumstance.

Paragraphs 3 and 4 on page two of the Memorandum Decision state Dr. Swayne “has been employed as the President of NIC since July 2022,” and that on “July 15, 2022, Dr. Swayne signed an employment agreement with NIC to serve as President of North Idaho College.” Id.

Paragraph 28 on page 7 carries a footnote discussing in error Idaho Code section 74-208(6). It is in error, because Idaho Code subsection 74-208(6) only concerns third-party or minority trustee lawsuits, see **Section D** above. The thirty (30) day time limit is for “**any suit**,” and the one hundred and eighty (180) day time limit is for “**any other suit**.” However, the Board of a governing body does not have to sue itself to self-recognize a violation. Memo. Dec. at 37-38. Further, Idaho Code section 74-208(7) has no time limit within which a governing body can self-recognize a violation. Thus, this North Idaho College Board can today, or at any time within fourteen (14) days of receiving this Report self-recognize a violation. This Report recommends this Board self-recognize the June 22, 2022 violation that was the pre-meeting decision to hire Dr. Swayne.

On page 30, the Court continues to depend on the existence of a valid contract:

The analysis in this case is simple. The Agreement contains no provision permitting NIC to place Dr. Swayne on administrative leave, nor does the plain language permit the court to infer such provision. Therefore, as a matter of law, the court determines that NIC did not have the authority to place Dr. Swayne on administrative leave without cause under the plain language of the Agreement.

Memo. Dec. at 30.

On pages 31 and 32, the Court discusses the Board’s inherent power:

To begin, the court recognizes that the Board has the power to terminate a president’s contract. Because Idaho Code § 33-2107 grants authority to a College Board of Trustees to elect a president and prescribe the president’s duties, it would follow that the Board would likewise be able to terminate a president as an inherent power.

Memo. Dec. at 31, 32. The bar to the use of this inherent power is the Court’s injunction.

The Court’s singular directive to this Board is that “Defendant is ordered to immediately take Plaintiff off administrative leave and to reinstate Plaintiff as the active President of North Idaho College for the duration of this litigation.” Memo. Dec. at 41. By that broad Order, the Court has superseded the Board’s statutory power to hire and fire, regardless of matters that come before the Board. Thus, the Order is (1) based on a contract tainted by an Open Meetings Law violation in the initiation of the hiring of Dr. Swayne, (2) overbroad due to its sweep not accounting for Dr. Swayne’s acts as President, and (3) nullifying the Board’s statutory power to hire and its inherent power to fire for as long as the litigation is kept alive.

Therefore, if the Board self-recognizes and declares the hiring of Dr. Swayne was a violation of the Open Meetings Law and that he is thus a President without a contract, the question arises whether this Board can or should renegotiate his legal contract or terminate him.

The first thing to note is that the Court's Order to this Board was entirely based on the idea that Dr. Swayne had a valid contract that was not the result of an Open Meetings Law violation. If the Board finds that the hiring of Dr. Swayne was done as a result of a pre-public meeting decision to hire him by the three appointed Trustees, then is the Court's Order valid?

The Court's Order may be valid on the terms upon which it is based, but that is likely to be an issue in the litigation and probably on appeal. If the Board does not want a president of North Idaho College operating without a contract, it can do one of two things. It can renegotiate a contract with him, or it could discharge him, see choices below.

If the Board considers renegotiating a contract with Dr. Swayne, it should include North Idaho College's standard "at-will" provision and reduce the number of Trustees required to terminate his contract to what Idaho law requires, which is a majority vote of the Board.

If the Board considers terminating Dr. Swayne, it should consider pertinent separation of powers issues, see **Section G**.

Therefore, when one is confronted with the question of whether the Board of Trustees or the Court should be consulted about a decision to terminate Dr. Swayne's contract, the larger question is who among oath-takers in which organization is best equipped to make timely, aggregative decisions, especially with the accreditation threat hanging over the College?

The choices facing the Board of Trustees as a result of information in this Report are:

(1) If the Board of Trustees decides to recognize an Open Meetings Law violation due to the appointed Board's decision to hire Dr. Swayne being made prior to the June 22, 2022 Board Meeting, then Idaho law will consider the contract null and void and the Board will have three sub-choices:

(a) The Board may negotiate a new legal contract with Dr. Swayne; or

(b) The Board may decide to negotiate a termination of Dr. Swayne's employment, or

(c) The Board may terminate Dr. Swayne's employment without cause, because the entire contract will have been nullified by the Board's self-recognition of the Open Meetings Law violation pursuant to Idaho Code section 74-208(7); or the Board may choose (2);

(2) The Board may decide the proof of an Open Meetings Law violation is insufficient to render the whole contract null and void, and it may:

(a) Recognize the super-majority provision is illegal under Idaho law, and thereafter negotiate modifications to either add-in the "at-will" provision or the "3-2 majority" provision, or both;

(b) Terminate Dr. Swayne’s contract with cause as the contract requires, see page sixteen above for potential causes of termination found in the contract.

The danger of termination of Dr. Swayne’s contract is that the Court’s broad Order appears to prohibit it, and thus a decision to terminate Dr. Swayne’s contract may result in charges of contempt of Court under Rule 75: “Defendant is ordered to immediately take Plaintiff off administrative leave **and to reinstate Plaintiff as the active President of North Idaho College for the duration of this litigation.**” Memo. Dec. at 41 (emphasis added). Idaho Rule of Civil Procedure 75 governs contempt actions, see <https://isc.idaho.gov/ircp75-new>. A contempt action may or may not succeed in this case, but contempt actions are complex and significantly impacted by Idaho case law. The legal advice related to this possibility is outside the scope of this Report and can be discussed later.

The Court has effectively supplanted the statutory power of the elected officials of the Board of Trustees in favor of Dr. Swayne as long as his litigation remains open. There is no known precedent for such a broad Order effectively removing the voter’s 2022 choices from having an effect by not allowing the Board of Trustees to run the College as it is empowered by statute.

This Report cannot make a firm recommendation about the Board’s choices related to the handling of Dr. Swayne’s contract. Also, North Idaho College’s insurance defense counsel should be involved due to the issues in Dr. Swayne’s case. The judgment of the full Board must decide these matters. The oath takers on the North Idaho College Board of Trustees must decide what is in the best interests of the College and the community and then decide in accordance with their fiduciary duty.

--- END ---



Connect via Zoom: <https://nic.zoom.us/j/84003154804> or by phone: (669) 900-6833 Webinar ID: 840 0315 4804

***Mission statement:** North Idaho College meets the diverse educational needs of students, employers, and the northern Idaho communities it serves through a commitment to student success, educational excellence, community engagement, and lifelong learning.*

This meeting is a business meeting of the Board Trustees and the NIC Administration. The board will take comment on agenda items from members of the public in person at the meeting, and comment will be limited to 2 minutes per person. A sign-up sheet will be provided in the meeting room. Individuals interested in communicating with the board outside the meeting may send an email to board@nic.edu.

AGENDA

6:00 p.m. Lake Coeur d'Alene Room

Convene/Call to Order/Verification of Quorum	David Wold
Pledge of Allegiance	David Wold
Public Comment	David Wold
Celebrating Success: Dual Credit / IDeA Network of Biological Research Excellence (INBRE)	Kassie Silvas

CONSTITUENT REPORTS

ASNIC	Damian Maxwell
Faculty Assembly	Ben Tschida
Staff Assembly	Keri Simonet
Senate	Neil Doyle

PRESIDENT'S REPORT

Nick Swayne

NIC FOUNDATION REPORT

David Wold

CONSENT AGENDA

Action for Approval of Meeting Minutes for June 22, 2022, and July 14, 2022

UNFINISHED BUSINESS

Tab 1: Action: Board Conduct Policy	David Wold
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NEW BUSINESS

Tab 2: Action: Correction of Scrivener's Error in College President's Contract	Marc Lyons
Action: Emeritus Status for Christie Wood	David Wold
Discuss Upcoming Agenda Topics	Nick Swayne

INFORMATION ITEMS

Enrollment Update

Kassie Silvas

Athletic Conference Affiliation Update

Alex Harris

Campus Security Update

Alex Harris

Accreditation Update

Steve Kurtz

Action: Executive Session*


David Wold

REMARKS FOR THE GOOD OF THE ORDER**

ADJOURN

* Executive sessions may be called for the purposes of considering personnel matters [Idaho Code § 74-206(1) (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general; (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; [Idaho Code § 74-206(1)(c)], deliberating regarding an acquisition of an interest in real property; [Idaho Code § 74-206(1)(d)] considering records that are exempt from public disclosure; [Idaho Code § 74-206(1)(e)] considering preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body; [Idaho Code § 74-206(1)(f)] communicating with legal counsel regarding pending/imminently-likely litigation; [Idaho Code § 74-206(1)(i)] communicating with risk manager/insurer regarding pending/imminently-likely claims.

** Remarks are subject to NIC Policy 2.01.03. Copies are available from the President's Office.

 **North Idaho College**
BOARD OF TRUSTEES MEETING
Edminster Student Union Building
June 22, 2022
MINUTES

CALL TO ORDER AND VERIFICATION OF QUORUM

Chair Wold called the meeting to order at 5:00 p.m. and verified that a quorum was present. Trustee Goedde made a motion to go into executive session under Idaho Code § 74--206(1)(a) to consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. The motion was seconded, and roll call vote was taken as follows:

Todd Banducci	nay
Pete Broschet	aye
John Goedde	aye
Greg McKenzie	nay
David Wold	aye

The meeting was recessed at 5:27 p.m.

CALL TO ORDER AND VERIFICATION OF QUORUM

Chair Wold reconvened the meeting at 6:00 p.m. and verified that a quorum was present. He next welcomed attendees and led them in the Pledge of Allegiance.

ATTENDANCE

Trustees: Todd Banducci
Pete Broschet
John Goedde
Greg McKenzie
David Wold

Also present: Michael Sebaaly, Interim President
Kassie Silvas, Interim Provost
Sarah Garcia, Interim VP Finance and Business Affairs
Laura Rumpler, Chief Communications and Government Relations Officer
Marc Lyons, Attorney for North Idaho College

PUBLIC COMMENT

Judy Foss commented on the presidential search
Geoffrey Winkler commented on insurance
Howard Kuhns commented on the presidential search
Doug Miller commented on athletics
Russell and Russ Grove commented on athletics
Corey Symons commented on athletics

CELEBRATING SUCCESS

Association Professor of Graphic Design Philippe Valle presented achievements and successes of Graphic Design students.

PRESIDENT'S REPORT

Dr. Sebaaly reported on collaborative efforts between the Idaho public higher education institutions and commented that he looks forward to completing board orientation sessions and a conducting a facilities workshop in the month of July. He expressed his thanks and gratitude to members of the leadership team and others who helped during the transition.

FOUNDATION BOARD REPORT

Chair Wold reported that the Foundation Board of Directors received a presentation from Erin Lanigan from GIZMO-CDA. He also reported that the house project for the Really BIG Raffle is on schedule for completion and the drawing will be held on July 13. He next reported that the annual fundraising campaign is going well and will conclude at the end of the fiscal year on June 30. He closed by reporting that board officers have been approved for the next two years.

CONSENT AGENDA

There was no discussion on the consent agenda, which consisted of minutes of the May 25, 2022, June 9, 2022, June 10, 2022, June 13, 2022, and June 16, 2022 board meetings, and it was accepted, as presented.

UNFINISHED BUSINESS

Resolution to Reserve Foregone Taxes

Dr. Sebaaly offered opening comments and expressed his appreciation to Interim VP Sarah Garcia and her team. Ms. Garcia briefly explained that the board's authorization is needed to reserve the available tax that was not levied this year in the amount of \$519,000.

Trustee McKenzie made a motion for the board to not reserve foregone taxes. The motion was seconded, and following discussion, carried unanimously.

Board Conduct Policy

Dr. Sebaaly presented revisions to Policy 2.01.10 and shared that the administration continues to work on the development of an ombudsman program.

Trustee McKenzie made a motion to table the policy until an ombudsman program is implemented. The motion was seconded and failed with three opposed.

Trustee Goedde made a motion to adopt revisions to Policy 2.01.10 and forward it to the Northwest Commission on Colleges and Universities as part of their recommendations. The motion was seconded. Following discussion, Trustee Banducci made an amended motion to work on the board conduct policy revisions in tandem with the implementation of an ombudsman policy and program. The motion was seconded. Following discussion, Trustees Goedde and Banducci withdrew their motions.

Trustee McKenzie made a motion to table the revised policy and bring it before the board no later than the October meeting with a policy for an ombudsman program. The motion was seconded and carried unanimously.

NEW BUSINESS

Selection of President

College Attorney Marc Lyons provided comments and turned the floor over to Pauly Group President Angela Provart. Ms. Provart asked each trustee to provide the name of his first choice from the four final candidates.

Trustee Goedde offered the name of Nick Swayne.
Trustee Broschet offered the name of Nick Swayne.
Trustee McKenzie offered no name.

Trustee Banducci offered no name.
Chair Wold offered the name of Nick Swayne.

Trustee McKenzie made a motion for the board to select Dr. Todd Brand. The motion was seconded and following discussion, failed with three opposed.

Trustee Goedde made a motion for the board to select Dr. Nick Swayne as the next president of North Idaho College and authorize the board chair to work with the college attorney to negotiate a contract of employment, which contract will need to be approved by the board of trustees. The motion was seconded. Trustee McKenzie made an amended motion to offer Dr. Swayne the contract held by the prior president with same salary. The motion was seconded and following discussion, Trustee McKenzie further amended his motion to authorize the contract for a two-year term. The amendment was seconded. The amended motion failed with three opposed.

Trustee McKenzie made an amended motion that contract negotiations are conducted by email and that all trustees are copied on the emails in order to understand negotiations. The motion was seconded and failed with three opposed.

Trustee Banducci made an amended motion to delay the vote until a site visit can be made to Dr. Swayne's college. The motion was seconded and failed with three opposed.

The original motion to offer the position to Dr. Nick Swayne carried with three in favor.

At this time, the board took a recess.

Revise Annual Calendars to Add Juneteenth Holiday

Dr. Sebaaly asked the board to table this item until constituent groups and others are able to look at all of the federal holidays and how the college recognizes them and come back with a more complete package for the board to consider. Trustee Goedde made a motion to table. The motion was seconded and carried unanimously.

Change Athletic Conference Affiliation

Dr. Sebaaly asked the board to provide the college direction to speak with the Northwest Athletic Conference about changing our conference affiliation and bring back a recommendation to the board, this fall, for changes in conference affiliation and the associated costs. Trustee Banducci expressed his interest in the college conducting a study of the costs to change conference affiliation, to take a poll of the coaches about their interest in moving back to the National Jr. College Athletic Association, contacting the Northwest Athletic Conference about a release of NIC programs that are interested in changing affiliation, and adding assistant coaches for the wrestling and golf programs. Trustee Broschet expressed his interest in an analysis of how changing conference affiliation will affect student enrollment and retention, the short- and long-term financial impact of a change, and polling not only the coaches, but also faculty and staff, and getting input from the new president on the college's conference affiliation.

Trustee McKenzie made a motion for the administration to poll the coaches about which conference they would prefer the college affiliates with and a summary from each one describing why. The motion was seconded and carried unanimously.

Trustee McKenzie made a motion for the administration to discuss with the Northwest Athletic Conference, their willingness to release NIC sports programs, and recommend a plan with associated costs and timeline. The motion was seconded and carried unanimously.

Upcoming Agenda Topics

Dr. Sebaaly requested trustees provide recommendations for topics for upcoming board agendas. He shared that specific enrollment data previously requested by the board will be included. Trustee McKenzie requested that a board training session be scheduled in November or later.

INFORMATION ITEMS

Accreditation Update

Dr. Steve Kurtz, director of Planning, Strategy and Effectiveness shared information on the history of planning at North Idaho College, the evaluation of improvement initiatives related to the college's strategic plan goals, and efforts to address the two recommendations the college received from the Northwest Commission on Colleges and universities following the 2020 Year-7 evaluation and site visit.

Data Analyst Chris Brueher presented an online dashboard exhibiting elements measuring mission fulfillment under the college's strategic plan goals and objectives.

Discuss Security on Campus

Director of Security and Interim Dean of Students Alex Harris stood for questions from trustees related to campus security. Trustee Banducci expressed his interest in receiving a cost estimate and timeline to train and arm campus security officers. Trustee Broschet requested an analysis of liability insurance related to armed security officers as well as input on the matter from students, faculty and staff. Trustee McKenzie requested information from other institutions that had experienced an active shooter incident.

Insurance Update

Sarah Garcia reported that following an appeal to the Idaho Counties Risk Management Program, the college's risk management insurer, the Program issued the college a 90-day policy for coverage July through September 2022, and she shared that the college is working to identify alternative insurers. She informed the board that the college will work through the current broker to secure coverage for the coming fiscal year and develop a Request for Proposal for issue next spring for fiscal year 2024 coverage.

Trustee Banducci expressed interest in the college better codifying professional services so there is a regular cycle for contract review and renewal to help the community understand when professional services may be open for bid. Trustee McKenzie expressed interest in a public facing website to show the college's contracted services. Trustee Goedde shared that ICRMP will not agree to separately insure certain things for the college and when the 90 day period ends, coverage will end until sometime in the future when they might reconsider.


REMARKS FOR THE GOOD OF THE ORDER

Chair Wold commented on Dr. Nick Swayne and he expressed his thanks to all four of the finalist candidates for spending their time with the community and the board of trustees. He thanked the staff for their efforts in supporting the process, and he thanked the presidential search committee. He expressed his thanks to Dr. Sebaaly.

Trustee Goedde remarked that when he joined the board of trustees, he divested himself of membership in the Save NIC organization. He informed trustees that ICRMP had offered to provide the trustees board member training. He also expressed thanks to Dr. Sebaaly for his help over the past month.

There were no further remarks and the meeting adjourned at 9:27 p.m.

Respectfully Submitted,
Shannon Goodrich, Board Clerk

 **North Idaho College**
BOARD OF TRUSTEES MEETING
Edminster Student Union Building
July 14, 2022
MINUTES

CALL TO ORDER AND VERIFICATION OF QUORUM

Chair Wold called the meeting to order at 5:30 p.m. and verified that a quorum was present. Trustee Goedde made a motion to go into executive session under Idaho Code § 74--206(1)(a) to consider hiring a public officer, and (c) to deliberate regarding an acquisition of an interest in real property. The motion was seconded, and roll call vote was taken as follows:

Todd Banducci	nay
Pete Broschet	aye
John Goedde	aye
Greg McKenzie	nay
David Wold	aye

The meeting was recessed at 5:45 p.m.

CALL TO ORDER AND VERIFICATION OF QUORUM

Chair Wold reconvened the meeting at 6:00 p.m. and verified that a quorum was present. He next welcomed attendees and led them in the Pledge of Allegiance.

ATTENDANCE

Trustees: Todd Banducci
Pete Broschet
John Goedde
Greg McKenzie
David Wold

Also present: Michael Sebaaly, Interim President
Sarah Garcia, Interim VP Finance and Business Affairs
Marc Lyons, Attorney for North Idaho College

Approve President's Contract

College Attorney Marc Lyons reviewed elements of the employment agreement for Dr. Nick Swayne.

Trustee Goedde made a motion for the board to approve the employment agreement for Dr. Nick Swayne. The motion was seconded, and following discussion, roll call vote was called:

Trustee Wold	aye
Trustee Goedde	aye
Trustee Broschet	aye
Trustee Banducci	nay
Trustee McKenzie	nay

Purchase of Property

Mr. Lyons commented on the required processes for the college to purchase real property from a private party. VP Sarah Garcia provided information about the property commonly known as the Fort Ground Grill that is situated adjacent to the North Idaho College campus, and she reviewed the terms of the purchase.

Trustee Broschet made a motion for the board to adopt Resolution 2022-01, entering the appraisal into the board's record, and authorizing the board chair to execute both the resolution and the real estate purchase and sales agreement. The motion was seconded, and following discussion, carried with Trustees Broschet, Goedde, and Wold voting in favor of the purchase of the Fort Ground Grill and Trustees Banducci and McKenzie voting against the purchase.

There was no further business and the meeting adjourned at 6:47 p.m.

Respectfully Submitted,
Shannon Goodrich, Board Clerk

Policy

Policy #2.01.10

Effective Date: 8/24/20

Rescinded: 12/16/20

Revised and Reinstated: 5/26/21

Revised: _____

<p><i>(Impact Area - Dept Name)</i></p> <p>Board of Trustees</p>	<p><i>(General Subject Area)</i></p> <p>Board of Trustees</p>	<p><i>(Specific Subject Area)</i></p> <p>Board Member General Conduct</p>
	<p>Author: Board of Trustees</p>	<p>Supersedes Policy</p>
<p>Relates to Procedure #</p>	<p>Impact: Board of Trustees</p>	
<p>Legal Citation <i>(if any)</i>:</p>		
<p><i>North Idaho College</i></p>		

Policy Narrative

Page 1 of 6

Pursuant to Idaho Code Title 33 Chapter 21; 33-2107 entitled General Powers of the Board of Trustees, the Board of Trustees of each community college district shall have the power to adopt policies and regulations for its own government and the government of the college. In furtherance of this power the Board of Trustees establishes this policy regarding Board Conduct.

Purpose

The purpose of this policy is to prescribe processes, behaviors, and methods of appropriate communications for effective and efficient Board operations. This policy is not intended to infringe upon individual first amendment rights nor interfere with

personal relationships. Utilizing proper procedures and channels of communications and exercising respectful behaviors results in a more effective and efficient organization.

General Guidelines for Conduct

The Board expects its members to demonstrate ethical and businesslike conduct. This commitment includes proper use of authority and respect in group and individual behavior when acting as Board members.

Board members are expected to:

1. Devote time, thought, and study to the duties of a trustee in order to be effective and provide credible service.
2. Consider information received from all sources and base personal decisions upon all available facts while maintaining confidentiality of privileged information.
3. Work with fellow trustees in a spirit of harmony and co-operation in spite of differences of opinion.
4. Recognize that authority over the organization is only vested in the Board when it meets in legal session.
5. Maintain the integrity of the Board and the position of the trustee when communicating and interacting with outside individuals and agencies. This includes full disclosure to participants when attending meetings as an ordinary citizen.
6. Respect the majority decisions of the Board.
7. Work to support the interests of North Idaho College ("**NIC**") and the Board.
8. Demonstrate discretion when making public statements in person, online or in other forums, so as to minimize the impression that such statements reflect the opinion of NIC or the Board when they do not.
9. Maintain the highest standards of civility and respect accorded to public office through the absence of unwarranted criticism of fellow Board members, the Board, NIC administration or employees.
10. Deal appropriately with sensitive issues and respect the confidentiality of discussions that take place during executive sessions.
11. Represent everyone the College serves, not a particular interest group.
12. Declare any conflict of interest. A trustee will not participate in, vote on, or exert influence on, any decision in which the trustee has any interest.

The Board of Trustees recognizes that it has authority to act only as a unit and that individual Board members have no authority to act in College matters without approval of the Board.

The Board will enforce upon itself and its members effective practices to govern and discharge its duties effectively and efficiently. The Board and individual Board member's self-discipline will apply at all times and to such matters including, but are not limited to attendance, respect for others, proper decorum, confidentiality with sensitive information, speaking with one voice for external communications, and adherence to the policies and rules of the College and the Board. The Board will take appropriate action to enforce the obligations imposed hereunder, including without limitation, limiting or suspending Board privileges, private or public censure, or other such action as the Board deems appropriate.

Each Board member is subject to and shall conform his or her behavior in accordance with Board and general College policies regarding ethical and professional conduct.

Interaction with College Personnel Guidelines

College personnel regard a visit by a Board member, except for consultation with the President, as a special occasion. Ongoing interaction can create confusion as to the roles of the Board and the College Administration. To prevent the appearance of impropriety or unethical conduct and to avoid the use of undue and inappropriate influence over College personnel, Board members shall inform the president about contact and interactions with College personnel. Board members should be afforded confidential communication with the NIC community. Nothing herein shall be construed to prohibit or discourage communications between board members and members of the faculty, staff, administration or community.

Individual Trustees, however, must refrain from communicating or acting in a manner that violates, interferes with or circumvents College policy and administrative procedures and guidelines. Trustees are responsible for familiarizing themselves with College policies, adhering to those policies, procedures, and guidelines and complying with the spirit and intent of those policies.

The Board recognizes the rights of students, faculty, administrators and other employees of the College to hold private meetings and to carry on the day-to-day operations of the College without the participation of Board members. Accordingly, it is improper for Board members:

1. To attend or participate in private meetings of students, faculty, administrators or other employees of the College where College business is to be considered, unless the Board member has been invited to attend as an observer only, or the

Board as a whole is invited to attend and has decided to participate, or the Board member has been officially designated by the Board to attend or participate;

2. To participate in the day-to-day operations of the College without official Board approval;
3. To intercede with students, faculty, administrators or any other employees of the College on behalf of any person or program without informing the Board.
4. To threaten or harass or intimidate any employee or student of the College or anyone doing business with the College; and
5. To borrow money, solicit funds or accept gratuities of any kind from any employee of the College, unless the activity, is conduct involving election, campaigning, or free speech or is otherwise protected by constitution or statute.

Communications Procedures/Board Members Request for Information

In order to assure that internal and external communication between the Board, the public and the college staff are clear and represent the unity and maintain the integrity of the Board acting as a whole, these policies will be followed as individual responsibilities of each Trustee. Trustees should be continually conscious of the potential that their position is viewed as one of power and may unduly influence college employees

1. Individual Trustees requesting information that will require a material amount of staff time to compile, or the preparation of a special report, or that may be disruptive shall make such requests to the Chairperson of the Board. The Board Chairperson may approve the request or, at his or her discretion, have the request placed on the agenda of the next Board meeting for the consideration of the Board of Trustees. Compilations and reports prepared pursuant to this provision will be available to all Trustees. Individual Trustees shall not make such requests directly to an employee of the College.
2. Individual Trustees with questions regarding the operations of the College, such as inquiries concerning employment or admission to the College, complaints for or about students, complaints from or about faculty and staff, complaints or questions about administrative decisions, and complaints or questions from or about facilities, shall convey such to the Office of the President for consideration and possible action;
3. When discussing community concerns, issues involving the College, and actions taken by the Board of Trustees and the administration, Trustees should carefully delineate between opinions that are personal and held as an individual citizen versus opinions that reflect officially approved policies or action of the Board or College;

4. Trustees should make no announcement of nor give any information about action taken by the Board until such action has been communicated by the Board Chairperson or President through regular official channels;
5. Consistent with this and other Board Policies, an individual Trustee shall not purport to act for, bind, or commit the College to any act or course of conduct without prior approval of the Board. The College can be bound only by formal action of the Board.

Communication with Legislators, Public Officials, and Community Leaders

Unless authorized by the Board, Board members, should take reasonable care to clarify that they are acting as individuals and not on behalf of the Board or the College and should strive to maintain consistency with established board decisions, policies and plans.

Relationship with the Press

The Board Chairperson and the President, or their respective designees, shall be the spokespersons to the press on College matters. In most cases, Board members should refer inquiries from reporters to the Chairperson and/or President, or designee. The goal is to speak with one voice on College matters and to remove the potential of conflicting statements. However, the Board recognizes elected officials will speak to the Press when they feel it is appropriate.

Conflict of Interest

As required by state law, if a Board member's outside activity (employment, participation or involvement in another business, corporation, institution or other entity) constitutes a conflict of interest, then the Board member will (a) disclose to the Board such conflict or the potential conflict; (b) absent herself/himself from discussion regarding any issue which involves his or her role as a Board member and his or her outside activity, and (c) refrain from voting on any such issue.

Trustee Usage of Facilities

Trustees are not prohibited from using College facilities for professional or personal reasons provided such facilities are normally available to the public, and the Trustee is subject to the same conditions, goes through the same procedures and pays the same compensation as would a member of the public who is not a College employee or are specifically authorized by Board policy.

Complaints Regarding Individual Board Member

In the event the College receives a complaint about a Trustee from a member of the public or from a College employee, the complaint shall be referred to the Board Chairperson or, if the complaint is against the Chairperson, to the Vice Chairperson. The Trustee that is the subject of the complaint shall be notified and given an opportunity to respond. The Board shall have the discretion to investigate the complaint, including the authority to engage an outside consultant to undertake the investigation. Any report from an outside consultant shall be disseminated to all Board members prior to any action being taken against the Board member. Meetings to hear complaints or to consider the conduct of a Board member shall initially take place in executive session. If the Board decides to take action (such as censure), such action may be a private admonishment or, if the Board decides the conduct justifies public admonishment, may announce censure (or other appropriate sanction) at an open meeting.

Potential Action for Trustee Violation of Policy

A Trustee violation of this policy will be subject to the following potential action as determined by the Board as a whole:

- Loss of Board appointments to committees.
- Loss of officer status (e.g. designation as Chair, Vice-Chair, Secretary, Treasurer, etc.).
- Private censure in executive session by other Board members.
- Public censure by the Board (by motion or resolution in an open meeting)

Prior to such action, the Trustee will be entitled to a hearing before the Board in executive session to hear the charges and to allow the Trustee to respond. The decision of a majority of the Board is final.

The Board shall cause a record to be made of any such complaint proceedings and deposit such record in a confidential file maintained by the Secretary of the Board.

BOARD OF TRUSTEES MEETING
August 22, 2022

TAB 2

SUBJECT

Correction of Scrivener's Error in College President's contract.

BACKGROUND

The employment contract for North Idaho College President was approved by the Board at the July meeting. As explained by the College attorney at the time, the agreed upon contract eliminated the "termination without cause" option, which term was negotiated and agreed by the new President and the Board Chair and which was also approved by the Board last month.

DISCUSSION

In putting together the final draft to be signed, the attorney inadvertently replaced two words in section 12.1 about how the contract can be terminated that included the following language: "by *either party* without cause." This was intended to read "by *the President* without cause."

The agreement section 12.1 needs to be corrected to read as follows:

This Agreement may be terminated by mutual agreement of the parties, by ~~either party~~ *the President* without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

This modification reflects the agreed language consistent with what the attorney represented at the last meeting and eliminates an inconsistency.

COMMITTEE ACTION

No committee action is necessary.

FINANCIAL IMPACT

There is no financial impact.

REQUESTED BOARD ACTION

The Board is requested to consider a motion to correct the President's employment agreement by removing the words "either party" from section 12.1 and replacing them with the words "the President."

Prepared by,
Marc Lyons, Attorney for
North Idaho College

MACOMBER REPORT EXHIBIT B

Swayne v. NIC Lawsuit, January 2, 2023
Subpoena Tracking Sheet by Art Macomber, NIC Attorney

(P/NP = Party/Non-Party)

UPDATED 2-19-23

Sub #	Name	P/NP	State	<u>iCourt</u>	<u>District Court</u>	Date out for Svc	Date Served	<u>Aff. of Svc</u>	<u>Computed</u>	<u>Reminder Email</u>	Docs Recvd	Bates Prefix	<u>Responses</u>
				Date Filed	Date File-Stamped			File-Stamped	Date of Reply	Sent to NIC Parties			Reviewed
1	Lyons O'Dowd, PLLC	NP	Idaho	12/31/2022	1/3/2023	1/11/2023	1/26/2023	1/30/2023	2/27/2023	NA	Quashed	Lyon-	
2	Angela Provart/Pauly Group	NP	Illinois	12/31/2022	1/3/2023	1/17/2023	1/19/2023	1/20/2023	2/20/2023	NA	Challenge	Paul-	
3	David Wold	NP	Idaho	12/31/2022	1/3/2023	1/11/2023	1/18/2023	1/20/2023	2/20/2023	NA	No Response	Wold-	
4	John Goedde	NP	Idaho	12/31/2022	1/3/2023	1/11/2023				NA	No Response	Godd-	
5	Peter Broschet	NP	Idaho	12/31/2022	1/3/2023	1/11/2023	1/20/2023	1/24/2023	2/20/2023	NA	No Response	Bros-	
6	Sarah Garcia	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/5/2023	1/13/2023	2/6/2023	1/30/2023	2/3/2023	Garc-	2/9/2023
7	Karen Hubbard	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/18/2023	1/20/2023	2/17/2023	1/30/2023	FMLA	Hubb-	
8	Laura Rumppler	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/5/2023	1/13/2023	2/6/2023	1/30/2023	2/3/2023	Rump-	2/18/2023
9	Ken Wardinsky	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/5/2023	1/13/2023	2/6/2023	1/30/2023	2/3/2023	Ward-	2/19/2023
10	Rayelle Anderson	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/10/2023	1/13/2023	2/9/2023	1/30/2023	2/2/23*	Ande-	
11	Lloyd Duman	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/9/2023	1/13/2023	2/8/2023	Retired	Retired	Duma-	
12	Shannon Goodrich	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/5/2023	1/13/2023	2/6/2023	1/30/2023	No Response	Good-	
13	Steve Kurtz	P	Idaho	12/31/2022	1/3/2023	1/4/2023	1/9/2023	1/13/2023	2/8/2023	Already Responded	1/20/2023	Kurt-	2/9/2023
14	Ken Howard	NP	New Mexico	12/31/2022	1/13/23 NM	1/16/2023	1/20/2023	1/23/2023	2/22/2023	NA	Quashed	Howa-	
15	Christie Wood	NP	Idaho	12/31/2022	1/3/2023	1/11/2023	1/19/2023	1/20/2023	2/20/2023	NA	Quashed	Wood-	
16	Michael Sabaaly	NP	Nebraska	1/9/2023	1/13/23 NB	1/16/2023	1/26/2023	1/31/2023	2/27/2023	NA	1/31/2023	Saba-	2/12/2023

*Direct To Walther

From: [North Idaho College](#)
To: [Karen Hubbard](#)
Subject: NICNow: Date Correction: Members sought for Presidential Search Committee
Date: Tuesday, February 1, 2022 3:15:12 PM



Faculty and Staff News

Tuesday, Feb. 1, 2022

Seeking members for

Presidential Search Committee

The Board of Trustees has contracted with Pauly Group, Inc. to facilitate NIC's Presidential Search. I'm Angela Provart, President of Pauly Group, your key contact for the search process. As part of an open and transparent process, the board is seeking internal and external stakeholders to bring value to the Presidential Search Committee.

Any employee interested in putting in their name for consideration, please express your personal interest to my attention at aprovart@paulygroup.com **on or before 3 p.m. Monday, Feb. 7**. You may also nominate an employee who you feel may be a good representative on the search committee by sending their name and contact information to me.

The Presidential Search Committee will include: Chairman Todd Banducci, Trustee Ken Howard, Dr. Lita Burns, two NIC staff members, two NIC faculty members, one NIC adjunct faculty member, one NIC part-time staff member, two NIC students, two NIC administrators, and representatives from the NIC Foundation and a variety of community and business sectors.

The goal is to have a committee representative of many areas of the college including general studies, workforce education/CTE, student services, administrative services, and the external communities the college serves.

Once names are submitted, I will work with President's Cabinet to make selections. Individuals selected will be contacted with an invitation to serve on the committee. It is expected that the first committee meeting will be held in March and future meeting dates chosen at that meeting. The search will likely conclude late this semester.

Additional details about the process:

- The Pauly Group will host several open forums to discuss the challenges facing NIC and seek input on the skills and characteristics needed in the next president.
- A position profile will be developed based on input received from the open forums.
- Recruiting for applicants will begin this spring.
- The search committee will then identify and interview semi-final candidates.
- Final candidates will come to NIC to meet with various constituency groups. (Once identified, these dates will be announced.)
- The Board of Trustees will make a final selection with the anticipation of the selected candidate beginning his or her presidential role in the upcoming summer or fall semester.

Thank you for your interest in the search committee. Please stay tuned for updates. I look forward to working with the entire college community on this

important search for NIC's next president.

Angela Provart, President
Pauly Group, Inc.
217-241-5400
aprovart@paulygroup.com

NICNow is a publication of North Idaho College. It is a communication medium for college-related items of importance and interest to NIC employees.

NICNow publishes by email to faculty and staff most weekdays during the Fall and Spring Semesters. During the summer, publication is limited and will be on an as-needed basis.

To ensure publication of NICNow submissions, please submit items at least two to three business days prior to the desired publication date.

All content and images are subject to editing.

SUBMIT EMPLOYEE NEWS FOR THE NICNOW BY EMAIL TO:
NICNOW@NIC.ED

FOR NEWS RELEASES, EMAIL: Maureen.Dolan@nic.edu

TO REQUEST MARKETING SERVICES (flyers, posters, invitations, banners, etc.), USE THE FORM BELOW

NIC Marketing Project online request form





|

North Idaho College | 1000 W Garden Ave, Coeur d'Alene, ID 83814

[Unsubscribe klhubbard@nic.edu](#)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by nicnow@nic.edu

Presidential Search Profile Report by the Pauly Group created March 17, 2022 in Adobe Illustrator 26.1 (MacIntosh).

The screenshot displays the Adobe Illustrator 26.1 interface. The main canvas shows a design for a 'Presidential Search Position Profile Report'. The design features a large red chevron shape pointing downwards, which contains an aerial photograph of a college campus. Below the chevron, the text 'North Idaho College' is positioned above 'Presidential Search' in a large, bold font. Underneath that, 'POSITION PROFILE' is written in a smaller, all-caps font. At the bottom of the design is the 'Pauly Group' logo, which includes a stylized flame icon and the text 'Pauly Group' and 'ACADEMIC SEARCH CONSULTING'.

The 'Document Properties' dialog box is open, showing the following information:

- Description:**
 - File: PresidentialSearchPositionProfileReport22
 - Title: 220310 Presidential Search Position Profile Report v1d
 - Author:
 - Subject:
 - Keywords:
- Created:** 3/17/2022 3:19:16 PM
- Modified:** 3/17/2022 3:37:42 PM
- Application:** Adobe Illustrator 26.1 (Macintosh)
- Advanced:**
 - PDF Producer: Adobe PDF library 16.04
 - PDF Version: 1.6 (Acrobat 7.x)
 - Location: F:\Vault\Vault 4\
 - File Size: 935 MB (9,808,549 Bytes)
 - Page Size: 8.50 x 11.00 in
 - Number of Pages: 7
 - Tagged PDF: No
 - Fast Web View: Yes

Subject: Re: External Committee Member name suggestions
Date: Thursday, February 10, 2022 at 4:30:58 PM Pacific Standard Time
From: Laura Rumpler
To: Angela Provar
CC: Karen Hubbard, Shannon Goodrich
Attachments: image001.jpg

MACOMBER REPORT
EXHIBIT C

No worries. As I mentioned to you briefly during one of our breaks between the Dean interviews, I am enlisting help of several individuals across the college and our community to gather together names of potential community members to serve. Please feel free to let me know the other sources you are tapping so we can coordinate efforts. Take care. - Laura

From: Angela Provar <aprovar@paulygroup.com>
Date: Thursday, February 10, 2022 at 12:55 PM
To: Laura Rumpler <lrumpler@nic.edu>
Cc: Karen Hubbard <klhubbard@nic.edu>, Shannon Goodrich <sgoodrich@NIC.EDU>
Subject: RE: External Committee Member name suggestions

Hey Laura. I got to thinking, we want to make sure we are covering every base we can think of in the community and I would like to tap a couple more sources for external names as well....this way I'm not putting all the pressure on you for all external names. There will probably be cross over, but if that is the case....then we know we are getting the right people. 😊

Thanks so much for all the help you're offering.

Angela

We are now announcing our positions by text. Text [position](tel:8335851646) to (833) 585-1646.

Angela Provar, Ph.D.
President



Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

From: Angela Provar
Sent: Wednesday, February 9, 2022 9:56 AM
To: Laura Rumpler <lrumpler@nic.edu>
Subject: RE: External Committee Member name suggestions

Thank you! I know this is a lot to ask.

We are now announcing our positions by text. Text [position](#) to (833) 585-1646.

Angela Provart, Ph.D.
President



Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, February 9, 2022 9:56 AM
To: Angela Provart <aprovart@paullygroup.com>
Cc: Shannon Goodrich <sgoodrich@NIC.EDU>; Karen Hubbard <klhubbard@nic.edu>
Subject: Re: External Committee Member name suggestions

Yes, to second question and will do my best on first. I understand the unique priority of all of this. 😊

From: Angela Provart <aprovart@paullygroup.com>
Sent: Wednesday, February 9, 2022 7:25:48 AM
To: Laura Rumpler <lkrumpler@nic.edu>
Cc: Shannon Goodrich <sgoodrich@NIC.EDU>; Karen Hubbard <klhubbard@nic.edu>
Subject: RE: External Committee Member name suggestions

Perfect. Thank you, Laura. And, we are on a tight time frame....think you can have names to me by Monday and introductions to the Tribe and Foundation within the next day?

Angela

We are now announcing our positions by text. Text [position](#) to (833) 585-1646.

Angela Provart, Ph.D.
President



Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, February 9, 2022 9:08 AM
To: Angela Provart <aprovart@paullygroup.com>
Cc: Shannon Goodrich <sgoodrich@NIC.EDU>; Karen Hubbard <klhubbard@nic.edu>
Subject: Re: External Committee Member name suggestions

Good morning, all. Happy to assist with all of this. In my role for the college, I attend the monthly Foundation Board meetings. At this month's board meeting president Steve Matheson mentioned the executive committee had already begun to narrow down names for foundation representation on search committee. I will make an introduction to him via separate email to you. And for the tribe, I will do the same. Sound good? Thanks. - Laura

From: Angela Provart <aprovart@paullygroup.com>
Sent: Wednesday, February 9, 2022 7:02:33 AM
To: Laura Rumpler <lkrumpler@nic.edu>
Cc: Shannon Goodrich <sgoodrich@NIC.EDU>; Karen Hubbard <klhubbard@nic.edu>
Subject: External Committee Member name suggestions

Business – Other than listed below
Manufacturing
Construction
Healthcare
Forestry
K-12
Sand Point
Silver Valley
Tribe
Higher Education
Elected Official
Economic Development – 2 People on Committee

Hi, Laura. Sorry for the formatting of this email. UGH!

We need to enlist your help in developing a few names for the external members of the Search Committee. To the left are the categories we are looking to fill on the committee from the external communities.

I'm hoping you can give us 2-3 names per slot, except for the Economic development group, where we would like 5-6 names if possible.

We will select one from each group, two from economic development....so I'm asking for a few extras in case someone is not available to serve or is opposed by either of our Trustees on the committee.

If you can kill two birds with one stone in a person you suggest, that would be great. For example, someone who serves in the economic development group and is also representative of healthcare....or any combination is fine. Make sense?

Also, we need to reach out to the Tribe and Foundation to get names of people they would like to see on the committee. Who would I work with to make that contact?

Thanks, Angela

We are now announcing our positions by text. Text position to (833) 585-1646.

Angela Provart, Ph.D.
President



From: Mike Sebaaly <mwsebaaly@nic.edu>
Sent: Thursday, April 7, 2022 9:40 AM
To: Steve Kurtz <sjkurtz@nic.edu>
Subject: Fwd: letter

Sent from my iPhone

Begin forwarded message:

From: Matt Freeman <Matt.Freeman@osbe.idaho.gov>
Date: March 23, 2022 at 10:57:57 AM PDT
To: Mike Sebaaly <mwsebaaly@nic.edu>
Subject: letter

Mike,

Just sharing with you this letter that was sent to my State Board members.

Matt

John W Goedde

3/22/22

State Board of Education

Boise, Id

Re: North Idaho College

Dear Members

I hope that you will take these comments as credible; over the years, I have served with five of your members in one capacity or another. I have previously communicated with the board on the issue of leadership at North Idaho College and I appreciate your letter requesting immediate action from the NIC board with regard to the NWCCU's first correspondence. I hope you have read the site committee recommendations; leadership was cited time after time in their report. My point here deals with the NIC response to the recommendations. It was done by the interim president with no input from at least half of the board. Further, the president initially refused to share the document with those same board members, an action beyond my comprehension. Such insubordination should lead to termination but it can't be dealt with now or without a quorum.

It is my understanding that your Deputy Attorney General has opined that, in the event of three trustee vacancies, it will fall on your shoulders to fill them. I have suggested to Matt Freeman that he have a plan of action. This is a critical time of year for Board decisions and the NIC board will not have a quorum to decide anything if appointments land in your court and are not dealt with immediately. I ask you, how can an institution operate under current conditions with two opposing camps or with no quorum? I urge you to be ready with a plan for the continuance of college leadership because time will be of the essence. This is the time of year when budgets are set, when tuition is determined, and, for NIC, the long delayed presidential search may be impacted.

You may feel that locally elected official positions should be dealt with locally but that is not what statute dictates. I suggest you can feel comfortable making appointments with full knowledge those seats will be open for local electors to determine in November. Your work would be a short term solution to staunch the bleeding until the long term treatment is finished.

Todd Banducci does not want a new president and has done everything possible to delay the process. He has publicly stated that he would like the interim president to stay for longer than a year. I believe he thinks if he can delay the action until November, he will get his way. In addition to the points above, NIC needs leadership now to deal with the issue of accreditation should the NWCCU board adopt their committee report and that leadership cannot be the lapdog of Mr. Banducci who is personally cited many times in the site visit committee report as being the problem

I ask you to direct Matt Freeman to set the process and timeline for trustee replacement in the most expeditious manner.

Respectfully submitted,

John W Goedde

art@artmacomber.com

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Friday, June 10, 2022 11:41 AM
To: David Wold;John Goedde
Subject: Meeting motions - Atty/Client Communication
Attachments: Motion to amend agenda & set interview process.docx

David and John,

I have attached drafts of motions to amend the agenda and to establish the process for interviews. Let me know if you have any concerns about these motions.

On the issue of dinners, I will tell you that I am not very comfortable with the dinner meetings with candidates. I have not been a large part of previous searches, but do recall there were some dinners, but they may have been held at the college and may have been noticed (not because they were necessarily a meeting, but just as a precaution). My concern with making a formal motion to authorize the chair to designate two or fewer trustees to have informal dinners with each candidate arguably makes it look like we are trying to circumvent the open meeting laws. Furthermore, even if the chair is authorized to designate trustees for such dinners, I think it is likely that Greg will claim that it is part of a serial meeting and that he has a right to attend. Or, he will just show up regardless.

It would be better to simply dispense with any further dinner meetings. I think as board chair you can individually and informally meet with a candidate, but if we make it part of a process authorized by the board at a notice meeting, the optics are poor and raises legality questions.

Let me know your thoughts.

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

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Motion to amend agenda

[Chair] I need a motion to accept the amended agenda for tonight's meeting. [Someone says "so moved"]

[make sure you have a second]

[no need for discussion-it either passes or it doesn't]

All in favor say Aye

All opposed to say Nay

(depending on vote) Motion passes and the Agenda is amended

Citation

74-204. * * * If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda. * * *

Motion to establish process for interviews

I move that the process for interview will be to have the candidate respond to the pre-agreed questions and the board chair will allow each trustee to have the opportunity for one follow-up question, with the potential for an additional follow-up at the board chair's discretion.

[make sure you have a second]

Ask if there is any discussion?

All in favor say Aye

All opposed to say Nay

(depending on vote) Motion passes

art@artmacomber.com

From: John Goedde
Sent: Friday, June 10, 2022 11:53 AM
To: Marc Lyons;David Wold
Subject: Re: Meeting motions - Atty/Client Communication

Mar - I am good with your suggestion. Will Pete make that motion? John

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Friday, June 10, 2022 11:40 AM
To: David Wold <dawold@nic.edu>; John Goedde <jwgoedde@nic.edu>
Subject: Meeting motions - Atty/Client Communication

David and John,

I have attached drafts of motions to amend the agenda and to establish the process for interviews. Let me know if you have any concerns about these motions.

On the issue of dinners, I will tell you that I am not very comfortable with the dinner meetings with candidates. I have not been a large part of previous searches, but do recall there were some dinners, but they may have been held at the college and may have been noticed (not because they were necessarily a meeting, but just as a precaution). My concern with making a formal motion to authorize the chair to designate two or fewer trustees to have informal dinners with each candidate arguably makes it look like we are trying to circumvent the open meeting laws. Furthermore, even if the chair is authorized to designate trustees for such dinners, I think it is likely that Greg will claim that it is part of a serial meeting and that he has a right to attend. Or, he will just show up regardless.

It would be better to simply dispense with any further dinner meetings. I think as board chair you can individually and informally meet with a candidate, but if we make it part of a process authorized by the board at a notice meeting, the optics are poor and raises legality questions.

Let me know your thoughts.

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

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prohibited. If you have received this e-mail in error, please immediately notify the sender by reply e-mail and destroy all copies of the original message.

art@artmacomber.com

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Friday, June 10, 2022 12:40 PM
To: John Goedde
Cc: David Wold
Subject: Re: Meeting motions - Atty/Client Communication

Yes. When the agenda item re process for informal trustee meetings there will be no need for action, David can say as chair the following:

"I did try to arrange dinners but since some trustees have raised objections to informal dinner events with candidates, in the interests of accommodation all trustees, I am canceling any informal dinners. I do apologize for this situation and we do not have the time to schedule all trustees for a noticed dinner meeting."

[Or something like that]

I did talk to Pete and he is ok with canceling the dinners.

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
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On Jun 10, 2022, at 12:30 PM, John Goedde <jwgoedde@nic.edu> wrote:

Is this for David to read?

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Friday, June 10, 2022 1:17:56 PM
To: John Goedde <jwgoedde@nic.edu>
Cc: David Wold <dawold@nic.edu>
Subject: Re: Meeting motions - Atty/Client Communication

We have some trustees who have raised objections to informal dinner events with candidates, so in the interests of accommodation all trustees. We do not have the time or the facility to schedule all trustees for a noticed dinner meeting.

Marc Lyons
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P.O. Box 131
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marc@lyonsodowd.com
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On Jun 10, 2022, at 12:06 PM, John Goedde <jwgoedde@nic.edu> wrote:

How do we tell the public dinners are cancelled?

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Friday, June 10, 2022 1:02:47 PM
To: John Goedde <jwgoedde@nic.edu>
Cc: David Wold <dawold@nic.edu>
Subject: Re: Meeting motions - Atty/Client Communication

If you are in agreement with the suggestion that we dispense with further dinner meetings, Pete won't have to make any motion at all. Maybe I misunderstood your communication.

It is unfortunate that we have at least one trustee who seems intent on disrupting what typically is a gracious informal event, but since that is happening and seems to be the intent, it is probably better not to have the dinner at all.

Again, let me know your thoughts.

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com

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Mar - I am good with your suggestion. Will Pete make that motion? John

From: Marc Lyons <marc@lyonsodowd.com>

Sent: Friday, June 10, 2022 11:40 AM

To: David Wold <dawold@nic.edu>; John Goedde <jwgoedde@nic.edu>

Subject: Meeting motions - Atty/Client Communication

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Let me know your thoughts.

Marc

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art@artmacomber.com

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Wednesday, June 15, 2022 2:35 PM
To: David Wold
Subject: Attorney/Client Communication - Do Not Forward
Attachments: Tab __- President selection and contract.docx

David,

I think we need to have some discussion about next Wednesday's meeting. I assume the board will select one of the finalist candidates to be the next president. I would hope that the trustees could discuss that in executive session at the beginning, but you probably need to be prepared for the contingency that two of the trustees will not support executive session. I don't know if you spoke with anyone about alternative process, but let me throw out a possibility.

It might be best if you as board chair contact each of the candidates that you would consider ahead of the meeting to confirm that, if offered, they would be willing to except a position as president. If you have not had an executive session discussion, some board member needs to make a motion to select whoever you think is the preferred candidate. Hopefully, somebody doesn't make a motion for a candidate and that motion loses the vote. Ideally, if you have to do this in public, there will be one motion to select the top candidate and that will be the end of it, after which thanking all of the other candidates and saying nice things about them.

I don't think we can approve a contract on Wednesday. Every presidential contract that I have been involved with with has been negotiated with the prospective candidate after initial selection, but before finalization of the contract. Key issues are usually compensation (sometimes including supplemental retirement accounts or housing allowances) and term of contract. Angela may be able to give you greater insight on this. Ideally, I would like to avoid things like car or housing allowances. Do you know if the salary range was communicated to the candidates?

An agenda tab item might be like the attached. I will get Shannon's thoughts on this as well. I think we should talk about this before next Wednesday.

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
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BOARD OF TRUSTEES MEETING
June 22, 2022

TAB __

SUBJECT

Selection of new College President and negotiation of Contract

BACKGROUND

The North Idaho College President is hired by the Board of Trustees and, consistent with past practice, a president is hired pursuant to an employment contract executed by the President and, with the approval and authorization of the Board of Trustees, also executed by the Board Chair.

DISCUSSION

Following a detailed search and interview process, the Board of Trustees will select a finalist candidate and offer the position of North Idaho College President. Dr. MacLennan has agreed to accept the position of College President consistent with the terms of the employment contract. The contract is a three year contract, starting June 27, 2016.

COMMITTEE ACTION

No committee action is necessary.

FINANCIAL IMPACT

The financial impact is to the employee compensation budget.

REQUESTED BOARD ACTION

The Board is requested to consider a motion to select one of the Presidential search candidates to be the next North Idaho College President, and to authorize the College attorney and the Board Chair to negotiate a contract of employment, which contract will need to be approved by the Board of Trustees.

Prepared by,
Marc Lyons, Attorney for North Idaho College

art@artmacomber.com

From: Angela Provarit <aprovarit@paullygroup.com>
Sent: Monday, June 20, 2022 9:43 AM
To: Marc Lyons
Cc: David Wold;David Wold
Subject: RE: Conversation about 6-22

Great! 217-241-5400

We are observing summer hours from June 3 - August 26 and are closed on Fridays during this time. Business hours during the summer are Monday-Thursday, 7am-5pm, Central.

We are now announcing our positions by text. Text position to (833) 585-1646.

Angela Provarit, Ph.D.
President



Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Monday, June 20, 2022 11:42 AM
To: Angela Provarit <aprovarit@paullygroup.com>
Cc: David Wold <dawold@nic.edu>; David Wold <docwold@aol.com>
Subject: Re: Conversation about 6-22

Angela,

It is probably easier if we call you. David and I will be with Laura Rumpler at the College Admin building. What number do you want us to call?

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

This e-mail is for the sole use of the intended recipient(s) and contains information belonging to Lyons O'Dowd, PLLC, which is confidential and/or legally privileged. If you are not the intended recipient, you are hereby notified that any

disclosure, copying, distribution or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by reply e-mail and destroy all copies of the original message.

On Jun 20, 2022, at 9:38 AM, Angela Provart <aprovart@paullygroup.com> wrote:

What number should I call?

We are observing summer hours from June 3 - August 26 and are closed on Fridays during this time. Business hours during the summer are Monday-Thursday, 7am-5pm, Central.

We are now announcing our positions by text. Text position to (833) 585-1646.

Angela Provart, Ph.D.
President

<image001.jpg>

Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Monday, June 20, 2022 9:52 AM
To: Angela Provart <aprovart@paullygroup.com>
Cc: David Wold <dawold@nic.edu>; David Wold <docwold@aol.com>
Subject: Re: Conversation about 6-22

2:00 works for me.

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

This e-mail is for the sole use of the intended recipient(s) and contains information belonging to Lyons O'Dowd, PLLC, which is confidential and/or legally privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by reply e-mail and destroy all copies of the original message.

On Jun 19, 2022, at 1:09 PM, Angela Provart <aprovart@paullygroup.com> wrote:

Perfect for me. Thanks

Get [Outlook for iOS](#)

From: David Wold <dawold@nic.edu>
Sent: Sunday, June 19, 2022 2:47:10 PM
To: Angela Provart <aprovart@paulgroup.com>; Marc Lyons <marc@lyonsodowd.com>; docwold@aol.com<docwold@aol.com>
Subject: Re: Conversation about 6-22

Will Monday at 2 work?

Get [Outlook for iOS](#)

From: Angela Provart <aprovart@paulgroup.com>
Sent: Thursday, June 16, 2022 4:05:27 PM
To: David Wold <dawold@nic.edu>; Marc Lyons <marc@lyonsodowd.com>; docwold@aol.com<docwold@aol.com>
Subject: FW: Conversation about 6-22

Is there a time the three of us can talk early next week? I would like to get the process for the 22nd ironed out.

Thanks, Angela

Angela Provart, President

<image001.jpg>

Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

art@artmacomber.com

From: Angela Provar <aprovar@paulgroup.com>
Sent: Tuesday, June 21, 2022 5:51 AM
To: David Wold;David Wold
Cc: Marc Lyons (marc@lyonsodowd.com)
Subject: Statement / Candidate Phone Numbers

Statement for public, feel free to edit:

On behalf of the NIC Board of Trustees, I would like to thank the finalists for spending their time with our college communities and Board of Trustees. We had four outstanding candidates to consider and our decision was a tough one. In addition, I would like to thank the college staff who worked tenuously to make this process go as smooth as possible and ensure the finalists had a good experience while visiting us. Lastly, thank you to the Presidential Search Committee. The search process was a labor-intensive process that required a lot of time and effort from the NIC staff and committee members. We understand that this effort has been a large commitment of time and the college community is grateful for their willingness to serve NIC.

James Taylor: 435-549-9355
Chad Crumbaker: (304) 834-9967
Todd Brand: 606-585-7501
Nick Swayne: 540.246.4948

We are observing summer hours from June 3 - August 26 and are closed on Fridays during this time. Business hours during the summer are Monday-Thursday, 7am-5pm, Central.

We are now announcing our positions by text. Text [position](tel:8335851646) to (833) 585-1646.

Angela Provar, Ph.D.
President



Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

Subject: Re: Sample Press Release
Date: Tuesday, June 21, 2022 at 1:35:28 PM Pacific Daylight Time
From: Laura Rumpler
To: Angela Provart
Attachments: image002.jpg, image003.jpg

Thanks.

From: Angela Provart <aprovart@paulgroup.com>
Date: Tuesday, June 21, 2022 at 1:29 PM
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: RE: Sample Press Release

Whoops. Let's try that again.

We are observing summer hours from June 3 - August 26 and are closed on Fridays during this time. Business hours during the summer are Monday-Thursday, 7am-5pm, Central.

We are now announcing our positions by text. Text position to (833) 585-1646.

Angela Provart, Ph.D.
President



Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Tuesday, June 21, 2022 3:19 PM
To: Angela Provart <aprovart@paulgroup.com>
Subject: Re: Sample Press Release

Actually when I opened it you may have sent me wrong attachment. This announces 4 finalists, not final selection. 😊

From: Laura Rumpler <lkrumpler@nic.edu>
Date: Tuesday, June 21, 2022 at 1:14 PM
To: Angela Provart <aprovart@paulgroup.com>
Subject: Re: Sample Press Release

Great. thanks

From: Angela Provart <aprovart@paullygroup.com>
Date: Tuesday, June 21, 2022 at 12:10 PM
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: Sample Press Release

Please see attached. This is for another search, but might provide some ideas for you.

Angela

We are observing summer hours from June 3 - August 26 and are closed on Fridays during this time. Business hours during the summer are Monday-Thursday, 7am-5pm, Central.

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Angela Provart, Ph.D.
President



Telephone: 217.241.5400
[Web](#) / [Twitter](#) / [LinkedIn](#)

art@artmacomber.com

From: John Goedde
Sent: Wednesday, June 22, 2022 8:37 AM
To: David Wold
Subject: phone

Good morning. Please call when you get a chance. I am playing pickleball 10-noon today. John

Subject: Attorney Client Communicatio: Draft News Release and Draft Chair Statement
Date: Wednesday, June 22, 2022 at 9:03:53 AM Pacific Daylight Time
From: Laura Rumpler
To: Marc Lyons
CC: David Wold, Angela Provart
Priority: High
Attachments: DRAFT News Release(s) - Selection of President.docx, Chair Statement_complaint about process.docx

Good morning Marc. (And David and Angela).

Sending this as attorney client privilege as we plan for this evening's meeting.

Since I wasn't able to meet with you on Monday as originally planned, I wanted to get these drafts to you for review.

Attached are drafts of news releases, crafted specifically for each of the four finalists, taking information the candidates shared during their site visits and from their bios.

Second is a draft of a statement for Chair Wold if there is any noise tonight or later this week regarding complaints about the process.

Please feel free to call me on my cell, 208-771-3291 to discuss. I will be available all day except between 1 pm and 2:15 pm when I am taking my son Ari, to a post-op appointment.

Also – there will be many moving pieces to updating the website, preparing the selected president's headshot, linking to bios etc. for my team to do based on the outcome of tonight's board meeting. If there are two of the four candidates that are rising to the top, can you give me an indication so I can best prep, knowing that we won't know the final outcome until the board takes action tonight? I'd really like to narrow down our work and strategy if possible. And of course, everything remains confidential and protected under attorney/ client.

Thanks. - Laura

DRAFT News Release(s)/News Splash on web page:

JUNE 22, 2022

Contact: Laura Rumpler, Chief Communications and Government Relations Officer

(208) 769-3404 or laura.rumpler@nic.edu

Dr. Samuel “Todd” Brand

North Idaho College Board of Trustees Selects Dr. Samuel “Todd” Brand as XXth President

Dr. Brand’s career in higher education spans more than two decades

COEUR d’ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. Samuel “Todd” Brand to serve as the college’s XX President.

“North Idaho College plays a critical role in this community and Dr. Brand has the background and leadership skills needed to make sure NIC delivers for its students,” said Board Chair David Wold.

Brand has spent the past three years serving as Chief Academic Officer at Ashland Community & Technical College in Ashland, Ky. Prior to that he served for more than a decade as Division Chair of fine Arts and Communications at as Arts & Letter Series Director at Meridian Community College in Meridian, Miss.

“I look forward to leading NIC and to learning more about the community it serves,” Brand said. “I know this has been a challenging time for this college but I believe in its future and expanding the opportunities it provides.”

During his interviews, Brand said he’d focus on building a culture of continuous improvement at the college and planned to look for every opportunity to be out in the community talking about the value of North Idaho College to the region it serves.

The new president’s official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. Samuel “Todd” Brand here ([link to bio](#)).

Dr. James Y. Taylor

North Idaho College Board of Trustees Selects Dr. James Y. Taylor as XXth President

Dr. Taylor’s academic and professional focus include sustainable rural and mountain communities

COEUR d’ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. James Y. Taylor to serve as the college’s XX President.

“North Idaho College plays a critical role in this community and Dr. Taylor has the background and leadership skills needed to make sure NIC delivers for its students,” said Board Chair David Wold.

Taylor comes to North Idaho College after serving as Senior Associate Vice President for Utah State University. He was also Chief Campus Administrator for multiple campuses and educational centers in Eastern Utah. He is an Associate Professor in the Department of Sociology and Anthropology. His academic and professional interests include sustainable rural and mountain communities.

“My meetings on campus and with community members left me tremendously impressed by the potential – both realized and future – that North Idaho College offers for its students and the regional economy,” Taylor said. “I’m looking forward to working together to make sure that people know North Idaho College is an investment that pays off for us all.”

During his interviews, Taylor discussed the need for students to earn a degree and enter the workforce in a timely manner. He also shared the need to provide students – particularly first-generation college students – with robust supports that include mentors, on-site academic advisors and mental health counselors.

The new president’s official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. James Y. Taylor here. ([link to bio](#))

Dr. Nick Swayne

North Idaho College Board of Trustees Selects Dr. Nick Swayne as XXth President

Dr. Swayne brings more than 20 years of leading and developing programs and partnerships in higher education

COEUR d’ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. Nick Swayne to serve as the college’s XX President.

“North Idaho College plays a critical role in this community and Dr. Swayne has the background and leadership skills needed to make sure NIC delivers for its students,” said Board Chair David Wold.

Swayne comes to North Idaho College after serving as the Executive Director of 4-Virginia, a collaborative partnership between eight universities in the state of Virginia. He is also the founder of a comprehensive academic innovation ecosystem at James Madison University.

Swayne earned his bachelor’s degree from the University of Idaho, a master’s in public administration from Northeastern University and a doctorate in postsecondary strategic leadership from James Madison University.

“This is an exciting opportunity for me,” Swayne said. “During my recent visit to North Idaho College I met several dedicated, honorable people in college leadership, on the faculty and staff, as well as students. There are so many good things going on at the college and I’m looking forward to making sure the community knows that.”

During his interviews, Swayne discussed the need to focus on student recruitment and retention. There's competition in the region, he said, but there's no reason why North Idaho College shouldn't stand out as a valued destination for students as they embark upon or return to their educational journey.

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. Nick Swayne here. ([link to bio](#))

Dr. Chad Crumbaker

North Idaho College Board of Trustees Selects Dr. Chad Crumbaker as XXth President

Dr. Crumbaker brings extensive experience working with business and community partners

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"North Idaho College plays a critical role in this community and Dr. Crumbaker has the background and leadership skills needed to make sure NIC delivers for its students," said Board Chair David Wold.

Crumbaker comes to North Idaho College after serving as the Provost and Executive Vice President for Academic and Student Affairs at West Virginia University-Parkersburg. Working with business and community partners, he helped lead the development of an Advanced Manufacturing degree, established an Entrepreneurship Center and facilitated the expansion of Learn and Earn opportunities for students.

"Colleges, particularly community colleges, change lives through the opportunities they provide," Crumbaker said. "I'm looking forward to working together and discovering the tremendous opportunities North Idaho College already brings and can bring to its students and to this region.

During his interviews, Crumbaker discussed the need to focus on serving its students despite challenges that include increased costs, maintaining transparent and collaborative relationships and continuing to develop innovative programs that truly prepare students for the future.

Crumbaker graduated from the University of South Carolina with a bachelor's degree in international studies. He attended Capital University Law School, earning his Juris Doctor. He is a licensed member of the state bars of West Virginia and Ohio.

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. Chad Crumbaker here. ([link to bio](#))

Statement in the event that there is a formal/or very public complaint and/or challenge to the selection process:

From Board Chair David Wold:

The process by which the North Idaho College Board of Trustees selected the college's next president spanned several months. The Board initiated a national search last December and included key stakeholders from start through finish.

The next president of North Idaho College will help determine the direction of not just the college but also our region's future. I feel confident that the professional consultant who managed this process, the Search Committee involved in this process and the Board Members who participated exercised due diligence and demonstrated respect for everyone involved.

art@artmacomber.com

From: Laura Rumpler
Sent: Wednesday, June 22, 2022 11:44 AM
To: Brand, Todd (Ashland)
Subject: Draft comments

Hi Dr. Brand. Below is DRAFT language for a news release that I will continue to work on this afternoon. Took themes from your comments throughout the site visit to draft quotes/ thoughts from you.

One of our strategic communication goals throughout this process has been to keep the focus on the strength of NIC and of our faculty and staff. Please send me any feedback this afternoon. Happy to adjust or tweak anything attributed to you to your comfort level.

Best wishes this evening. And as I believe I shared with you my mantra when we met, “expect the unexpected”. I will be here tonight at the meeting. Text me on my cell if you need anything, 208-771-3291.

Thanks. – Laura

LAURA RUMPLER

Chief Communications and Government Relations Officer
North Idaho College / Sherman 102
208-771-3291 cell
lkrumpler@nic.edu

North Idaho College Board of Trustees Selects Dr. Samuel “Todd” Brand as 11th President

Dr. Brand’s career in higher education spans more than two decades

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Brand has spent the past three years serving as Chief Academic Officer at Ashland Community & Technical College in Ashland, Ky. Prior to that he served for more than a decade as Division Chair of fine Arts and Communications at as Arts & Letter Series Director at Meridian Community College in Meridian, Miss.

“I look forward to leading NIC and to learning more about the community it serves,” Brand said. “I know this has been a challenging time for this college but I believe in its future and expanding the opportunities it provides.”

During his interviews, Brand said he’d focus on building a culture of continuous improvement at the college and planned to look for every opportunity to be out in the community talking about the value of North Idaho College to the region it serves.

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. Samuel "Todd" Brand here ([link to bio](#)).

art@artmacomber.com

From: Laura Rumpler
Sent: Wednesday, June 22, 2022 11:47 AM
To: james.taylor@usu.edu
Subject: Draft comments

Hi Dr. Taylor. Below is DRAFT language for a news release that I will continue to work on this afternoon. Took themes from your comments throughout the site visit to draft quotes/ thoughts from you.

One of our strategic communication goals throughout this process has been to keep the focus on the strength of NIC and of our faculty and staff. Please send me any feedback this afternoon. Happy to adjust or tweak anything attributed to you to your comfort level.

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Thanks. – Laura

LAURA RUMPLER

Chief Communications and Government Relations Officer
North Idaho College / Sherman 102
208-771-3291 cell
lkrumpler@nic.edu

North Idaho College Board of Trustees Selects Dr. James Y. Taylor as XXth President

Dr. Taylor’s academic and professional focus include sustainable rural and mountain communities

COEUR d’ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. James Y. Taylor to serve as the college’s XX President.

“North Idaho College plays a critical role in this community and Dr. Taylor has the background and leadership skills needed to make sure NIC delivers for its students,” said Board Chair David Wold.

Taylor comes to North Idaho College after serving as Senior Associate Vice President for Utah State University. He was also Chief Campus Administrator for multiple campuses and educational centers in Eastern Utah. He is an Associate Professor in the Department of Sociology and Anthropology. His academic and professional interests include sustainable rural and mountain communities.

“My meetings on campus and with community members left me tremendously impressed by the potential – both realized and future – that North Idaho College offers for its students and the regional economy,” Taylor said. “I’m looking forward to working together to make sure that people know North Idaho College is an investment that pays off for us all.”

During his interviews, Taylor discussed the need for students to earn a degree and enter the workforce in a timely manner. He also shared the need to provide students – particularly first-generation college students – with robust supports that include mentors, on-site academic advisors and mental health counselors.

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. James Y. Taylor here. ([link to bio](#))

art@artmacomber.com

From: Laura Rumpler
Sent: Wednesday, June 22, 2022 11:50 AM
To: swaynedd@gmail.com
Subject: Draft comments

Hi Dr. Swayne. Below is DRAFT language for a news release that I will continue to work on this afternoon. Took themes from your comments throughout the site visit to draft quotes/ thoughts from you.

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Thanks. – Laura

LAURA RUMPLER

Chief Communications and Government Relations Officer

North Idaho College / Sherman 102

208-771-3291 cell

lkrumpler@nic.edu

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Dr. Swayne brings more than 20 years of leading and developing programs and partnerships in higher education

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Swayne comes to North Idaho College after serving as the Executive Director of 4-Virginia, a collaborative partnership between eight universities in the state of Virginia. He is also the founder of a comprehensive academic innovation ecosystem at James Madison University.

Swayne earned his bachelor’s degree from the University of Idaho, a master’s in public administration from Northeastern University and a doctorate in postsecondary strategic leadership from James Madison

University.

“This is an exciting opportunity for me,” Swayne said. “During my recent visit to North Idaho College I met several dedicated, honorable people in college leadership, on the faculty and staff, as well as students. There are so many good things going on at the college and I’m looking forward to making sure the community knows that.”

During his interviews, Swayne discussed the need to focus on student recruitment and retention. There’s competition in the region, he said, but there’s no reason why North Idaho College shouldn’t stand out as a valued destination for students as they embark upon or return to their educational journey.

The new president’s official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. Nick Swayne here. ([link to bio](#))

art@artmacomber.com

From: Laura Rumpler
Sent: Wednesday, June 22, 2022 11:53 AM
To: ccrumbaker@gmail.com
Subject: Re: Draft comments

Hi Dr. Crumbaker. Below is DRAFT language for a news release that I will continue to work on this afternoon. Took themes from your comments throughout the site visit to draft quotes/ thoughts from you.

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Thanks. – Laura

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Chief Communications and Government Relations Officer
North Idaho College / Sherman 102
208-771-3291 cell
lkrumpler@nic.edu

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Dr. Crumbaker brings extensive experience working with business and community partners

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“Colleges, particularly community colleges, change lives through the opportunities they provide,” Crumbaker said. “I’m looking forward to working together and discovering the tremendous opportunities North Idaho College already brings and can bring to its students and to this region.

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The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. Chad Crumbaker here. ([link to bio](#))

art@artmacomber.com

From: James Taylor <james.taylor@usu.edu>
Sent: Wednesday, June 22, 2022 12:28 PM
To: Laura Rumpler
Subject: Re: [EXT] Draft comments
Attachments: Taylor edits.docx

Laura,

Thanks, this is helpful and here are some minor changes and I have attached a tracked changed document if you want to see the changes made (suggested). Best luck and thanks for the cell phone contact and I will reach out if I have questions as things progress tonight.

COEUR d'ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. James Y. Taylor to serve as the college's XX President.

"North Idaho College plays a critical role in this community and Dr. Taylor has the background and leadership skills needed to make sure NIC delivers for its students," said Board Chair David Wold.

Taylor comes to North Idaho College after serving as Senior Associate Vice President for Utah State University where he is also the Chief Campus Administrator for multiple campuses and educational centers in Eastern Utah. He is an Associate Professor in the Department of Sociology and Anthropology. His academic and professional interests include sustainable rural and mountain communities.

"My meetings on campus and with community members left me tremendously impressed by the potential – both realized and future – that North Idaho College offers for its students and the regional economy," Taylor said. "I'm looking forward to working together to make sure that people know North Idaho College is an investment that pays off for individuals and communities." Taylor feels honored to be selected and great sense of stewardship for the entire North Idaho College community.

During his interviews, Taylor discussed the need for students to earn a degree and enter the workforce in a timely manner. He also shared the need to provide students – particularly first-generation college students – with robust support that include mentors, on-site academic advisors and mental health counselors.

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. James Y. Taylor here. ([link to bio](#))

Dr. James Y. Taylor

Senior Associate Vice President | Utah State University | Uintah Basin
Professional Practice Associate Professor Sociology & Anthropology

On Jun 22, 2022, at 12:47 PM, Laura Rumpler <lrumpler@nic.edu> wrote:

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Thanks. – Laura

LAURA RUMPLER

Chief Communications and Government Relations Officer
North Idaho College / Sherman 102
208-771-3291 cell
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Dr. Taylor’s academic and professional focus include sustainable rural and mountain communities

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During his interviews, Taylor discussed the need for students to earn a degree and enter the workforce in a timely manner. He also shared the need to provide students – particularly first-generation college students – with robust supports that include mentors, on-site academic advisors and mental health counselors.

The new president’s official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. James Y. Taylor here. (link to bio)

CAUTION: This email originated from outside of USU. If this appears to be a USU employee, beware of impersonators. Do not click links, reply, download images, or open attachments unless you verify the sender’s identity and know the content is safe.

North Idaho College Board of Trustees Selects Dr. James Y. Taylor as XXth President
Dr. Taylor's academic and professional focus include sustainable rural and mountain communities

COEUR d'ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. James Y. Taylor to serve as the college's XX President.

"North Idaho College plays a critical role in this community and Dr. Taylor has the background and leadership skills needed to make sure NIC delivers for its students," said Board Chair David Wold. Taylor comes to North Idaho College after serving as Senior Associate Vice President for Utah State University [where he is was also the](#) Chief Campus Administrator for multiple campuses and educational centers in Eastern Utah. He is an Associate Professor in the Department of Sociology and Anthropology. His academic and professional interests include sustainable rural and mountain communities.

"My meetings on campus and with community members left me tremendously impressed by the potential – both realized and future – that North Idaho College offers for its students and the regional economy," Taylor said. "I'm looking forward to working together to make sure that people know North Idaho College is an investment that pays [for individuals and communities off for us all.](#)"

During his interviews, Taylor discussed the need for students to earn a degree and enter the workforce in a timely manner. He also shared the need to provide students – particularly first-generation college students – with robust supports that include mentors, on-site academic advisors and mental health counselors. [Taylor feels honored to be selected and great sense of stewardship for the entire North Idaho College community.](#)

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. James Y. Taylor here. (link to bio)

art@artmacomber.com

From: Brand, Todd (Ashland) <todd.brand@kctcs.edu>
Sent: Wednesday, June 22, 2022 12:45 PM
To: Laura Rumpler
Subject: RE: Draft comments

Hello,

The release looks great! I only saw a few minor things:

First, as you will see highlighted in yellow, please change “fine” to “Fine.”

Secondly, as you will see highlighted in blue, please change “at” to “and.” Or it could be change to “as well as”

Finally, as you will see highlighted in green, please change “Letter” to “Letters.”

Hopefully this all makes sense. Thanks so much!! Have a great evening.

Samuel Todd Brand, Ph.D.
Chief Academic Officer
Ashland Community & Technical College
606-326-2163

A better life



From: Laura Rumpler <lrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 2:44 PM
To: Brand, Todd (Ashland) <todd.brand@kctcs.edu>
Subject: Draft comments

You don't often get email from lrumpler@nic.edu. [Learn why this is important](#)

Hi Dr. Brand. Below is DRAFT language for a news release that I will continue to work on this afternoon. Took themes from your comments throughout the site visit to draft quotes/ thoughts from you.

One of our strategic communication goals throughout this process has been to keep the focus on the strength of NIC and of our faculty and staff. Please send me any feedback this afternoon. Happy to adjust or tweak anything attributed to you to your comfort level.

Best wishes this evening. And as I believe I shared with you my mantra when we met, “expect the unexpected”. I will be

here tonight at the meeting. Text me on my cell if you need anything, 208-771-3291.

Thanks. – Laura

LAURA RUMPLER

Chief Communications and Government Relations Officer

North Idaho College / Sherman 102

208-771-3291 cell

lkrumpler@nic.edu

North Idaho College Board of Trustees Selects Dr. Samuel “Todd” Brand as 11th President

Dr. Brand’s career in higher education spans more than two decades

COEUR d’ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. Samuel “Todd” Brand to serve as the college’s 11th President.

“North Idaho College plays a critical role in this community and Dr. Brand **has the background and leadership skills needed to make sure NIC delivers for** its students,” said Board Chair David Wold.

Brand has spent the past three years serving as Chief Academic Officer at Ashland Community & Technical College in Ashland, Ky. Prior to that he served for more than a decade as Division Chair of fine Arts and Communications at as Arts & Letter Series Director at Meridian Community College in Meridian, Miss.

“I look forward to leading NIC and to learning more about the community it serves,” Brand said. “I know this has been a challenging time for this college but I believe in its future and expanding the opportunities it provides.”

During his interviews, Brand said he’d focus on building a culture of continuous improvement at the college and planned to look for every opportunity to be out in the community talking about the value of North Idaho College to the region it serves.

The new president’s official start date will be determined over the next few weeks as he and the Board finalize his contract. Read more about Dr. Samuel “Todd” Brand here ([link to bio](#)).

art@artmacomber.com

From: Chad Crumbaker <ccrumbaker@gmail.com>
Sent: Wednesday, June 22, 2022 1:29 PM
To: Laura Rumpler
Subject: Re: Draft comments

Thanks. I'd like to focus on student success initiatives so an edit to this sentence:

Working with business and community partners, he helped lead the development of an Advanced Manufacturing degree, established an Entrepreneurship Center and created the Success Epicenter to focus resources and outreach toward student success.

On Jun 22, 2022, at 2:52 PM, Laura Rumpler <lkrumpler@nic.edu> wrote:

Working with business and community partners, he helped lead the development of an Advanced Manufacturing degree, established an Entrepreneurship Center and facilitated the expansion of Learn and Earn opportunities for students.

From: Laura Rumpler <lkrumpler@nic.edu>
Date: Wednesday, June 22, 2022 at 4:55 PM
To: "Swayne, Nick - swaynedd" <swaynedd@jmu.edu>
Subject: Re: Draft comments

Received. Thank you.

From: Swayne, Nick - swaynedd <swaynedd@jmu.edu>
Sent: Wednesday, June 22, 2022 4:53:40 PM
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: Fwd: Draft comments

Sent from my iPad

Begin forwarded message:

From: Dominic Swayne <swaynedd@gmail.com>
Date: June 22, 2022 at 7:53:03 PM EDT
To: "Swayne, Nick - swaynedd" <swaynedd@jmu.edu>
Subject: Fwd: Draft comments

CAUTION: This email originated from outside of JMU. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sent from my iPad

Begin forwarded message:

From: Dominic Swayne <swaynedd@gmail.com>
Date: June 22, 2022 at 7:30:48 PM EDT
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: Re: Draft comments

Just a tweak to this one sentence.

There's competition in the region, he said, ~~but there's no reason why~~ and North Idaho College shouldn't stand out as a valued destination for students as they embark upon or return to their educational journey.

Sent from my iPad

On Jun 22, 2022, at 6:50 PM, Dominic Swayne <swaynedd@gmail.com> wrote:

Laura,

For the purposes of tonight's messaging - I think you hit all the right points. The only point would be to make the following statement focus on the positive (should vs shouldn't).

There's competition in the region, he said, ~~but there's no reason why~~ North Idaho College shouldn't stand out as a valued destination for students as they embark upon or return to their educational journey.

Sent from my iPad

From: Laura Rumpler <lrumpler@nic.edu>
Date: Wednesday, June 22, 2022 at 4:18 PM
To: "swaynedd@gmail.com" <swaynedd@gmail.com>
Subject: Re: Draft comments

Good evening Dr. Swayne. I saw from your recent text message that you had a small tweak/ suggestion. Unfortunately I haven't seen the email come through. Would you mind resending it? Thank you. – Laura

From: Laura Rumpler <lrumpler@nic.edu>
Date: Wednesday, June 22, 2022 at 11:50 AM
To: swaynedd@gmail.com <swaynedd@gmail.com>
Subject: Draft comments

Hi Dr. Swayne. Below is DRAFT language for a news release that I will continue to work on this afternoon. Took themes from your comments throughout the site visit to draft quotes/ thoughts from you.

One of our strategic communication goals throughout this process has been to keep the focus on the strength of NIC and of our faculty and staff. Please send me any feedback this afternoon. Happy to adjust or tweak anything attributed to you to your comfort level.
Best wishes this evening. And as I believe I shared with you my mantra when we met, "expect the unexpected". I will be here tonight at the meeting. Text me on my cell if you need anything, 208-771-3291.

Thanks. – Laura

LAURA RUMPLER
Chief Communications and Government Relations Officer
North Idaho College / Sherman 102
208-771-3291 cell
lrumpler@nic.edu

North Idaho College Board of Trustees Selects Dr. Nick Swayne as 11th President

Dr. Swayne brings more than 20 years of leading and developing programs and partnerships in higher education

COEUR d'ALENE, IDAHO – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. Nick Swayne to serve as the college's 11th President.

"North Idaho College plays a critical role in this community and Dr. Swayne has the background and leadership skills needed to make sure NIC delivers for its students," said Board Chair David Wold.

Swayne comes to North Idaho College after serving as the Executive Director of 4-Virginia, a collaborative partnership between eight universities in the state of Virginia. He is also the founder of a comprehensive academic innovation ecosystem at James Madison University. Swayne earned his bachelor's degree from the University of Idaho, a master's in public administration from Northeastern University and a doctorate in postsecondary strategic leadership from James Madison University.

“This is an exciting opportunity for me,” Swayne said. “During my recent visit to North Idaho College I met several dedicated, honorable people in college leadership, on the faculty and staff, as well as students. There are so many good things going on at the college and I’m looking forward to making sure the community knows that.”

During his interviews, Swayne discussed the need to focus on student recruitment and retention. There’s competition in the region, he said, but there’s no reason why North Idaho College shouldn’t stand out as a valued destination for students as they embark upon or return to their educational journey.

The new president’s official start date will be determined over the next few weeks as he and the Board finalize his contract. [Read more about Dr. Nick Swayne here.](#) (link to bio)

To: Angela Provart

MACOMBER REPORT
EXHIBIT M-8

Ok. I will do that

Wed, Jun 22 at 10:22 AM

Give me a quick call when u can

Tag you're it. Call me back. 😊

Wed, Jun 22 at 4:49 PM

Is the executive session link the same as the boars book zoom link?

I believe yes.

I'm on my way & I can check in w/ Steve when I get there.

Ok. I'm n

Well waiting on host to start meeting

2087693432 is exec session zoom

Read 6/22/22

From: Laura Rumpler
Subject: Draft to review/ edit
Date: June 22, 2022 at 6:29:15 PM PDT
To: Megan Snodgrass <mpsnodgrass@nic.edu>

Megan. As I shared in the other email, I've prepared a draft news release unique to each of the four finalists.

Much of the content is the same throughout the news release, with the unique quotes for each candidate of course.

Will you review and make any edits and send back to me? Then start formatting for how you usually send out a news release.

While Dr. Swayne is one of our stronger candidates, I just chose his news release for us to work with. No candidate has been names yet. 😊

Here it is:

(Laura's contact info)

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The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract.

art@artmacomber.com

From: Megan Snodgrass
Sent: Wednesday, June 22, 2022 7:01 PM
To: Laura Rumpler
Subject: RE: Draft to review/ edit
Attachments: new pres news release draft 1.docx

Oh exciting!!

Ok here is draft 1.

I should have tracked changes (dangit my bad) and I will going forward. I didn't make many changes to the copy – couple of comma edits and added an “and” to Swayne's quote.

Also – cheers to what Sebaaly said about you and Shannon ❤️

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 6:29 PM
To: Megan Snodgrass <mposnodgrass@nic.edu>
Subject: Draft to review/ edit

Megan. As I shared in the other email, I've prepared a draft news release unique to each of the four finalists.

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(Laura's contact info)

North Idaho College Board of Trustees Selects Dr. Nick Swayne as 11th President

Dr. Swayne brings more than 20 years of leading and developing programs and partnerships in higher education

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“North Idaho College plays a critical role in this community and Dr. Swayne has the background and leadership skills needed to make sure NIC delivers for its students,” said Board Chair David Wold.

Swayne comes to North Idaho College after serving as the Executive Director of 4-Virginia, a collaborative partnership between eight universities in the state of Virginia. He is also the founder of a comprehensive academic innovation ecosystem at James Madison University.

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During his interviews, Swayne discussed the need to focus on student recruitment and retention. There's competition in the region, he said, and North Idaho College should stand out as a valued destination for students as they embark upon or return to their educational journey.

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract.



North Idaho College

NEWS RELEASE

June 22, 2022

To: **All Media**
For story info: NIC Chief Communications and Government Relations Officer
Laura Rumpler
(208) 769-3404 or laura.rumpler@nic.edu

North Idaho College Board of Trustees Selects Dr. Nick Swayne as 11th President

Dr. Swayne brings more than 20 years of leading and developing programs and partnerships in higher education

Coeur d'Alene, Idaho – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. Nick Swayne to serve as the college's 11th President.

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The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract.

For more information, contact NIC Chief Communications and Government Relations Officer Laura Rumpler at (208) 769-3404 or laura.rumpler@nic.edu.

###

art@artmacomber.com

From: Laura Rumpler
Sent: Wednesday, June 22, 2022 6:36 PM
To: Megan Snodgrass; Shawn Harrington
Subject: Re: Prep news release & webpage for announcement

Yes – I will give you both a green light 😊

From: Megan Snodgrass <mpsnodgrass@nic.edu>
Date: Wednesday, June 22, 2022 at 6:35 PM
To: Laura Rumpler <lrumpler@nic.edu>, Shawn Harrington <sdharrington@nic.edu>
Subject: RE: Prep news release & webpage for announcement

Yep, can do! Got your other email with the draft. I'll edit and prep a news release.

In terms of timing, assuming we put the word out ASAP after they decide/officially take the vote?

From: Laura Rumpler <lrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 6:23 PM
To: Shawn Harrington <sdharrington@nic.edu>; Megan Snodgrass <mpsnodgrass@nic.edu>
Subject: Prep news release & webpage for announcement

Hi Megan and Shawn. Thanks for helping me out this evening as we anticipate the majority of the board will select and name a candidate this evening.

For the website, Shawn, I'd like you to put the content of the "news release" on the top of the page of:
www.nic.edu/presidentialsearch

replacing the paragraphs of text above the boxes with the candidates pictures and bios etc.

For now, keep all the candidates pictures and bios lower on the page, and again have the top of the page be the headline of the release and then the content below.

Tomorrow we can work on reworking the whole page.

Then Megan, please get ready to edit my draft news release and prep to go out to the media.

I will go ahead and send out simultaneously as an internal message to campus.

Separate from this email I will send you a draft of one of the candidates so Megan, you can begin editing my draft. I have prepared news releases specific to each candidate.

From: Megan Snodgrass
Subject: RE: Draft to review/ edit
Date: June 22, 2022 at 7:18:40 PM PDT
To: Laura Rumpler <lkrumpler@nic.edu>

Yep, will get it from Shawn (:

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 7:17 PM
To: Megan Snodgrass <mposnodgrass@nic.edu>
Subject: Re: Draft to review/ edit

Can you get his headshot from Shawn off the website? I don't have his headshot.

From: Megan Snodgrass <mposnodgrass@nic.edu>
Date: Wednesday, June 22, 2022 at 7:13 PM
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: RE: Draft to review/ edit

Let me know any more changes you have!

Can you send his headshot please? I don't think I have a copy..

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 7:08 PM
To: Megan Snodgrass <mposnodgrass@nic.edu>
Subject: Re: Draft to review/ edit

No worry on tracking changes. 😊

From: Megan Snodgrass <mposnodgrass@nic.edu>
Date: Wednesday, June 22, 2022 at 7:00 PM
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: RE: Draft to review/ edit

Oh exciting!!

Ok here is draft 1.

I should have tracked changes (dangit my bad) and I will going forward. I didn't make many changes to the copy – couple of comma edits and added an “and” to Swayne's quote.

Also – cheers to what Sebaaly said about you and Shannon ♥

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 6:29 PM
To: Megan Snodgrass <mpsnodgrass@nic.edu>
Subject: Draft to review/ edit

Megan. As I shared in the other email, I've prepared a draft news release unique to each of the four finalists.

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Will you review and make any edits and send back to me? Then start formatting for how you usually send out a news release.

While Dr. Swayne is one of our stronger candidates, I just chose his news release for us to work with. No candidate has been names yet. 😊

Here it is:

(Laura's contact info)

North Idaho College Board of Trustees Selects Dr. Nick Swayne as 11th President

Dr. Swayne brings more than 20 years of leading and developing programs and partnerships in higher education

Coeur d'Alene, Idaho – Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. Nick Swayne to serve as the college's 11th President.

"North Idaho College plays a critical role in this community and Dr. Swayne has the background and leadership skills needed to make sure NIC delivers for its students," said Board Chair David Wold.

Swayne comes to North Idaho College after serving as the Executive Director of 4-Virginia, a collaborative partnership between eight universities in the state of Virginia. He is also the founder of a comprehensive academic innovation ecosystem at James Madison University.

Swayne earned his bachelor's degree from the University of Idaho, a master's in public administration from Northeastern University and a doctorate in postsecondary strategic leadership from James Madison University.

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During his interviews, Swayne discussed the need to focus on student recruitment and retention. There's competition in the region, he said, and North Idaho College should stand out as a valued destination for students as they embark upon or return to their educational journey.

The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract.

art@artmacomber.com

From: DoNotReply@nic.edu on behalf of North Idaho College <DoNotReply@nic.edu>
Sent: Wednesday, June 22, 2022 7:25 PM
To: Laura Rumpler
Subject: [NIC Announcement] Board Selects New President

North Idaho College Board of Trustees Selects Dr. Nick Swayne as 11th President

Dr. Swayne brings more than 20 years of leading and developing programs and partnerships in higher education

Following a national search, public interviews and forums, the North Idaho College Board of Trustees selected Dr. Nick Swayne to serve as the college's 11th President.

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The new president's official start date will be determined over the next few weeks as he and the Board finalize his contract.

More information will be shared in upcoming NICNow employee e-newsletters. Thank you and have a good evening.

Laura Rumpler, Chief Communications and Government Relations Officer

From: Megan Snodgrass
Subject: RE: Draft to review/ edit
Date: June 22, 2022 at 7:35:08 PM PDT
To: Laura Rumpler <lkrumpler@nic.edu>

Yep watching, yep wow. Looks like it !

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 7:32 PM
To: Megan Snodgrass <mpsnodgrass@nic.edu>
Subject: Re: Draft to review/ edit

Yes, it is. And if you are watching the meeting.... It looks like it might be Dr. Swayne.

From: Megan Snodgrass <mpsnodgrass@nic.edu>
Sent: Wednesday, June 22, 2022 7:22:39 PM
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: RE: Draft to review/ edit

Is that doc going to be the final draft? Can I send to Shawn to start prepping the website?

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 7:17 PM
To: Megan Snodgrass <mpsnodgrass@nic.edu>
Subject: Re: Draft to review/ edit

Can you get his headshot from Shawn off the website? I don't have his headshot.

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To: Megan Snodgrass <mpsnodgrass@nic.edu>
Subject: Re: Draft to review/ edit

No worry on tracking changes. 😊

From: Megan Snodgrass <mpsnodgrass@nic.edu>
Date: Wednesday, June 22, 2022 at 7:00 PM
To: Laura Rumpler <lkrumpler@nic.edu>
Subject: RE: Draft to review/ edit

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Also – cheers to what Sebaaly said about you and Shannon ♥

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From: Megan Snodgrass
Subject: RE: Prep news release & webpage for announcement
Date: June 22, 2022 at 7:37:27 PM PDT
To: Laura Rumpler <lkrumpler@nic.edu> , Shawn Harrington <sdharrington@nic.edu>
Attachments: Headshot Nick Swayne May 22.jpg (118.0 KB), 062222 BOT selects Swayne as 11th president.docx (63.2 KB)

Ok here's the final draft of the news release and headshot.

I have the news release prepped to go out via email to the media and ready to post on the NIC Newsroom.

Standing by for the green light from Laura!

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 7:08 PM
To: Megan Snodgrass <mpsnodgrass@nic.edu>; Shawn Harrington <sdharrington@nic.edu>
Subject: Re: Prep news release & webpage for announcement

Excellent. thanks

From: Megan Snodgrass <mpsnodgrass@nic.edu>
Date: Wednesday, June 22, 2022 at 7:01 PM
To: Laura Rumpler <lkrumpler@nic.edu>, Shawn Harrington <sdharrington@nic.edu>
Subject: RE: Prep news release & webpage for announcement

Just sent you a draft Laura!

Will remember to CC Shawn with final draft so he has copy for web (:

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 6:50 PM
To: Megan Snodgrass <mpsnodgrass@nic.edu>; Shawn Harrington <sdharrington@nic.edu>
Subject: Re: Prep news release & webpage for announcement

And when or if you have any edits, please send back to me so I can also prep in parallel to you prepping news release, the message out to the college. Thanks. 😊

From: Laura Rumpler <lkrumpler@nic.edu>
Date: Wednesday, June 22, 2022 at 6:36 PM

To: Megan Snodgrass <mpsnodgrass@nic.edu>, Shawn Harrington <sdharrington@nic.edu>
Subject: Re: Prep news release & webpage for announcement

Yes – I will give you both a green light 😊

From: Megan Snodgrass <mpsnodgrass@nic.edu>
Date: Wednesday, June 22, 2022 at 6:35 PM
To: Laura Rumpler <lkrumpler@nic.edu>, Shawn Harrington <sdharrington@nic.edu>
Subject: RE: Prep news release & webpage for announcement

Yep, can do! Got your other email with the draft. I'll edit and prep a news release.

In terms of timing, assuming we put the word out ASAP after they decide/officially take the vote?

From: Laura Rumpler <lkrumpler@nic.edu>
Sent: Wednesday, June 22, 2022 6:23 PM
To: Shawn Harrington <sdharrington@nic.edu>; Megan Snodgrass <mpsnodgrass@nic.edu>
Subject: Prep news release & webpage for announcement

Hi Megan and Shawn. Thanks for helping me out this evening as we anticipate the majority of the board will select and name a candidate this evening.

For the website, Shawn, I'd like you to put the content of the "news release" on the top of the page of:
www.nic.edu/presidentialsearch

replacing the paragraphs of text above the boxes with the candidates pictures and bios etc.

For now, keep all the candidates pictures and bios lower on the page, and again have the top of the page be the headline of the release and then the content below.

Tomorrow we can work on reworking the whole page.

Then Megan, please get ready to edit my draft news release and prep to go out to the media.

I will go ahead and send out simultaneously as an internal message to campus.

Separate from this email I will send you a draft of one of the candidates so Megan, you can begin editing my draft. I have prepared news releases specific to each candidate.

From: Laura Rumpler <lkrumpler@nic.edu>

Subject:

Date: June 22, 2022 at 7:52:00 PM PDT

To: Mike Culton <msculton@nic.edu> , Cathy Greif <cagreif@nic.edu> , Ben Clark <brclark@nic.edu> ,
Elli Oba <etoba@nic.edu> , Megan Snodgrass <mpsnodgrass@nic.edu> , Shawn Harrington
<sdharrington@nic.edu> , Amy Huguenin <anhuguenin@nic.edu> , 28:0af95b67-5890-4306-9c1c-
a8591cead09e

Megan and Shawn get ready. It looks like the board will be selecting Dr. Swayne as our next president within the next few minutes.

From: Laura Rumpler <lkrumpler@nic.edu>

Subject:

Date: June 22, 2022 at 8:03:44 PM PDT

To: Mike Culton <msculton@nic.edu> , Cathy Greif <cagreif@nic.edu> , Ben Clark <brclark@nic.edu> ,
Eli Oba <etoba@nic.edu> , Megan Snodgrass <mpsnodgrass@nic.edu> , Shawn Harrington
<sdharrington@nic.edu> , Amy Huguenin <anfuguenin@nic.edu> , 28:0af95b67-5890-4306-9c1c-
a8591cead09e

No green light yet. Recess is for chair Wold to go call dr Swayne to make certain he
accepts

From: Marc Lyons <marc@lyonsodowd.com>
Subject: Attorney Client communication - Do Not Forward.
Date: June 23, 2022 at 3:22:51 PM PDT
To: John Goedde <jwgoedde@nic.edu>
Attachments: Pres. Contract 6.22.22 draft.docx (37.8 KB)

John,

Attached is a draft contract form for the president. I did send this form to Nick Swayne to have him review and point out any areas of concern. I also discussed some of it on the phone with him. Housing is still an issue that is being reviewed.

Please call me at your convenience to discuss.

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

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EMPLOYMENT AGREEMENT
PRESIDENT NORTH IDAHO COLLEGE

THIS AGREEMENT is made, effective as of August 1, 2022, by and between North Idaho College (“NIC”) and Dr. Nick Swayne (“President”). The parties hereby agree as follows:

Section 1. Purpose

This document reflects the agreement between the President and the Board of Trustees of North Idaho College (the “Board”) as to the terms of the President’s employment at North Idaho College.

Section 2. Responsibilities

The President is appointed by the Board as the Chief Executive Officer of NIC, reports directly to the Board and serves at its pleasure. The President is authorized and responsible for the administration of NIC and has authority over all matters affecting NIC at the operational level, in accordance with applicable laws as well as the policies, rules and regulations approved and/or sanctioned by the Board. In addition to the foregoing, the President shall also be responsible for carrying out all duties described verbally or in writing by the Board. In carrying out these duties, the President recognizes the need for effective communication with the Board.

Section 3. Term

The term of this Agreement will commence on August 1, 2022 and will continue until June 30, 2025, unless terminated consistent with Section 12. “Annual” for purposes of this Agreement means a fiscal year beginning July 1 and ending June 30 of the following year.

Section 4. Notice of Non-Renewal and Resignation

4.1. If prior to June 30, 2023, or prior to any subsequent June 30th on which this Agreement is in effect, the Board shall fail to notify the President, in writing, of its intention not to extend this Agreement beyond its then termination date, then this Agreement will, without more, be automatically extended for an additional term of one (1) year beyond the initial termination date or the then extended termination date; provided, however, that it shall be required of the President that he give each Board member a notice, in writing, prior to May 31, 2023, or prior to any subsequent May 31st on which this Agreement is in effect, of the Board's duty to provide him with notice pursuant to the terms set forth herein. Neither the initial term of this Agreement nor any extension thereof shall be construed to create or be evidence of contractual continued service or tenure of the President as an administrator under any provisions, policies or rules extrinsic to this Agreement.

4.2. In the event the President wishes to terminate this Agreement at the end of its initial term, he shall so notify the Board, in writing no later than June 30, 2024. If the President wishes to terminate any extension of this Agreement, he shall so notify the Board in writing, no later than the June 30th in the year proceeding the year of the desired June 30th termination date.

4.3 NIC has no duty to renew this Agreement at the expiration of the term. This Agreement will not automatically renew, except as set forth in 4.1. The Board may, in its sole discretion, extend the Agreement for an additional term as determined by the Board.

Section 5. Compensation

5.1. NIC will pay the President an annual base salary of \$_____, which amount will be earned and payable in monthly installments. Subject to the terms of Section 11.3 of this Agreement, there is no right to unearned amounts if this Agreement is terminated prior to expiration of the term.

5.2. NIC will make an annual retirement contribution, equal to ___% of the President's base salary, to the President's supplemental retirement account. _____. Payment into such account will be earned and made monthly in conjunction with payroll. Any employee payroll taxes resulting from this contribution will be withheld in connection with the President's base salary. There is no right to unearned amounts if this Agreement is terminated prior to expiration of the term.

Section 6. Employee Benefits

6.1 The President shall receive 24 annual vacation days, accruing at a rate of 2 days per month. Accrued vacation days may carry over into the following fiscal year; however, total accumulated vacation time will not exceed 30 days. Upon termination of the employment relationship, the President will be paid for any accrued and unused vacation days. The President shall notify the Board prior to taking vacation and the Board, in its discretion, may require such plans to be deferred as the Board deems appropriate. The President is entitled to holidays recognized by state law and NIC.

6.2. The President is entitled to annual sick leave in accordance with NIC Policy and Idaho Code.

6.3. Subject to Sections 6.1 and 6.2, the President will otherwise be eligible to participate in the NIC programs and other benefits available to NIC employees.

6.4 During the first year of this term, the President will be reimbursed for the reasonable, actual expenses for relocation in an amount not to exceed \$_____. This amount can also be used to reimburse actual, reasonable temporary housing expense and travel (including spouse) to Kootenai County to look for housing. The President will provide receipts

and other appropriate documentation supporting actual relocation expenses for review and approval by the Vice President of Finance.

Section 7. Automobile

The President shall furnish his own automobile, and shall be liable for all maintenance, repairs, insurance, and operating expenses, including fuel costs. The College shall reimburse the President for all in-district and out-of-district travel using his own personal vehicle for College business at the applicable IRS deductible rate in effect at the time of travel.

Section 8. Professional Development

The President shall be eligible to attend and participate in educational conferences, conventions, workshops, seminars, and similar professional activities and events, subject to reasonable review and approval by the Board. The College shall reimburse the President for reasonable out-of-pocket expenses incurred by the President in connection with such approved activities and events consistent with College procedures and practices.

Section 9. Expenses

9.1 The Board agrees that the College will pay the President's reasonable, actual travel expenses, hotel bills, and other actual and necessary travel-related expenses incurred when the President is traveling on NIC business. The responsibilities of the President include the attendance (sometimes with spouse) at various community events, hosting events and entertainment reasonably calculated to promote the College. Reimbursement will be consistent with College procedures, practices and consistent with the College's budget.

9.2 The College will provide the President with appropriate electronic/tech equipment to assist the President in performing his duties.

Section 10. Outside Professional Activities

Subject to the Board's prior approval, the President may undertake outside professional activities, including, without limitation, consulting, speaking and writing. Such activities may be performed for consideration provided that they do not interfere with the President's normal duties and such activities are conducted only with the President using accrued vacation time. The President agrees not to engage in any other employment, activity or enterprise, whether or not for remuneration, that is inconsistent, incompatible, in conflict with, or inimical to the President's duties, functions and responsibilities.

Section 11. Performance Review

The Board shall review the President's performance annually in accordance with NIC policy. The Board may also elect to have more frequent reviews (for example, semiannual or quarterly reviews) as determined by the Board in its discretion.

Section 12. Termination

12.1. This Agreement may be terminated by mutual agreement of the parties, by either party without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

12.2. If, during its term, this Agreement is terminated by the President without cause, the termination shall become effective 60 days after receipt of written notice of termination. The obligations of NIC under this Agreement cease when the termination is effective. The Board may, in its discretion, place the President on administrative leave during part or all of the 60-day notice period.

12.3. If a super-majority of the Board (defined as 4 or more Trustees) elects to terminate the President without cause, NIC agrees to pay the President twelve (12) months of salary and benefits or the remainder of the term of the contract outlined in Section 3 above, whichever is less. At the Board's option, the amounts owed as salary and benefits under this section or Sections 4 and 5 may be paid according to the same schedule as previously paid. This provision shall be construed as liquidated damages, and not as a penalty, to compensate the President for the injury by reason of such termination, it being impossible to ascertain or estimate the entire or exact cost, damage or injury that the President may sustain by reason of such termination and such sum is agreed upon as full compensation for the injury or damage suffered by the President. A termination without cause shall become effective 60 days after receipt of written notice of termination. The Board may, in its discretion, place the President on administrative leave during part or all of the 60-day notice period.

12.4. This Agreement may be terminated for cause, if a majority of the Board in its sole discretion, determines that: (1) the President has significantly failed or refused to act in accordance with a material provision of this Agreement or any directive or order of the Board; (2) the President has exhibited gross misconduct or dishonesty in regard to his employment; (3) the President is (or has been) convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (4) the President is unable to perform the essential functions of the position; or (5) the President has acted in bad faith to the detriment of NIC.

12.5. In the event of termination for cause, the Board shall provide the President a written statement of its intent to terminate and its reasons for termination. Before the Board makes a final decision, the President is entitled to meet with the Board in closed session, within thirty (30) calendar days of the issuance of the written statement. The President may present any evidence to the Board to rebut the stated reasons for the termination. After the President has had an opportunity to respond to the stated reasons for termination, the Board will make a final decision in writing.

Section 13. Governing Law

This Agreement will be governed, construed, and enforced according to the laws of the State of Idaho.

Section 14. Assignment

This Agreement is personal to the President and is not assignable.

Section 15. Amendments

This Agreement may be amended by mutual agreement of the parties. Such amendments must be in writing signed by the President and the Board Chair, following approval by a super-majority of the Board.

Section 16. Notification to Board of Application for Outside Employment

The President may, but is not required to, notify the Board Chair if an application for employment is submitted anywhere other than NIC. The President shall notify the Board Chair should the President become a finalist for employment in any capacity.

Section 17. Waiver

The failure or delay of the President or NIC to enforce at any time or to require compliance at any time with any provision of this Agreement, or to take any permitted action under this Agreement, shall in no way be construed as a continuing or future waiver of such provision or of any other provision of this Agreement, shall not affect the right of either party thereafter to enforce each and every provision of this Agreement, and shall not render any such provision(s) unenforceable or invalid.

Section 18. Entire Agreement

This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior or contemporaneous representations, understandings or agreements, whether written or oral, between the parties, and cannot be changed or modified unless in a writing signed by the parties hereto.

Section 19. Modification

This Agreement may be modified by mutual agreement of the parties. Any such modifications must be in writing, signed by the President and the NIC Board Chair, following approval by the NIC Board.

Section 20. Severability

The unenforceability, invalidity, or illegality of any provision or clause of this Agreement shall not render any of its other provisions as unenforceable, invalid, or illegal, and such remaining provisions shall be construed in all respects as if the unenforceable, invalid, or illegal provision(s) were omitted.

Signatures on Next Page

DATED this ____ day of _____, 2022.

NORTH IDAHO COLLEGE

By _____

Chair, Board of Trustees

DATED this ____ day of _____, 2022.

PRESIDENT

By _____

Nick Swayne
President

File Properties for Pres. Contract 6.22.22 draft.docx found in John Goedde's NIC Email Inbox

Wardinski Subpoena Response 1-18-23, Macomber

<input type="checkbox"/>	Name	Date modified	Type	Size
<input checked="" type="checkbox"/>	Pres. Contract 6.22.22 draft	1/26/2023 9:58 PM	Microsoft Word D...	38 KB

Pres. Contract 6.22.22 draft Properties

General Security Details Previous Versions

Property	Value
Description	
Title	
Subject	
Tags	
Categories	
Comments	
Origin	
Authors	Megan O'Dowd
Last saved by	Marc Lyons
Revision number	14
Version number	
Program name	Microsoft Office Word
Company	Microsoft
Manager	
Content created	6/22/2022 11:27 AM
Date last saved	6/23/2022 3:13 PM
Last printed	6/29/2018 11:08 AM
Total editing time	01:00:00

[Remove Properties and Personal Information](#)

OK Cancel Apply

LYONS O'DOWD
ATTORNEYS & COUNSELORS

INVOICE

INVOICE NUMBER: 2374
INVOICE DATE: JULY 07, 2022

DUE DATE: JULY 21, 2022

FROM: Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

TO: North Idaho College
Business Office
1000 W. Garden Ave.
Coeur d'Alene, ID 83814

[Click here to pay online.](#)

DATE	PROJECT	DESCRIPTION	HOURS	RATE	AMOUNT
JUN-01-22	General Representation	(Marc Lyons) Telephone conferences with S Goodrich; correspondence with trustees regarding meeting to address insurance issues; telephone conference with HR regarding personnel matter; correspondence and telephone conference with L Rumpler regarding public record request; review employee contract forms for HR.	3.10	\$200.00	\$620.00
JUN-02-22	General Representation	(Marc Lyons) Prep for and attend meeting with Chair and Vice Chair re presentation of insurance appeal; correspondence re search; correspondence with trustees; correspondence with K Hubbard re employee contract forms.	2.20	\$200.00	\$440.00
JUN-06-22	General Representation	(Marc Lyons) Telephone conference with M Sebaaly; telephone conference with L Rumpler; review issues regarding record request; evaluate issues regarding open meeting law in context of president candidate interviews.	1.60	\$200.00	\$320.00
JUN-07-22	General Representation	(Marc Lyons) Correspondence from A Harris regarding disability records requested; telephone conference regarding records; correspondence with S Goodrich regarding Agenda issues and president contract.	0.60	\$200.00	\$120.00
JUN-08-22	General Representation	(Marc Lyons) Review agenda and correspondence from L Rumpler; correspondence with D Wold; Communication with trustees.	0.80	\$200.00	\$160.00
JUN-09-22	General Representation	(Megan O'Dowd) Edit/revise PSA.	0.90	\$200.00	\$180.00

DATE	PROJECT	DESCRIPTION	HOURS	RATE	AMOUNT
JUN-09-22	General Representation	(Marc Lyons) Communication with M Sebaaly; communication with K Hubbard; communication with S Garcia; prepare a draft of real estate purchase agreement; review and comment regarding police academy MOU; communications with trustees; prepare for and attend board meeting.	6.80	\$200.00	\$1,360.00
JUN-10-22	General Representation	(Marc Lyons) Review issues regarding real estate purchase agreement; correspondence with S Garcia; prep for and attend board meeting re interviews; telephone conference with M Sebaaly; communication with trustees.	6.60	\$200.00	\$1,320.00
JUN-11-22	General Representation	(Marc Lyons) Communicate with L Rumpler; review issues regarding agendas for interview special meetings; review insurance issue regarding potential self insured liability for board discussion.	1.60	\$200.00	\$320.00
JUN-13-22	General Representation	(Marc Lyons) Correspondence with S Garcia; review issues regarding real estate sale contract; correspondence with property seller; correspondence with trustees regarding insurance issues; correspondence with city attorney and finance manager regarding self insurance potential; preparation for and attendance at board meeting.	4.70	\$200.00	\$940.00
JUN-14-22	General Representation	(Marc Lyons) Correspondence with HR re memo; telephone conference with M Sebaaly re insurance situation and potential RFP; telephone conference with A Harris regarding release of disability records; correspondence with search consultant regarding public record issue.	0.80	\$200.00	\$160.00
JUN-15-22	General Representation	(Marc Lyons) Communication with HR regarding personnel issue; draft memorandum regarding FERPA protections; review and edit agenda; Communication with board chair regarding agenda and meeting issues; communication with S Goodrich regarding issues for meeting;	3.60	\$200.00	\$720.00
JUN-16-22	General Representation	(Marc Lyons) Telephone conference and review with HR various personal issues; telephone conference with trustee; communication with admin re search issues; review agenda; review property matter; attend the board meeting.	3.80	\$200.00	\$760.00
JUN-17-22	General Representation	(Megan O'Dowd) Edit/revise PSA; telephone call with Sarah Garcia; revise PSA; email S. Widmyer.	1.20	\$200.00	\$240.00
JUN-17-22	General Representation	(Marc Lyons) Review real estate sales agreement and telephone conference with S. Garcia (no charge); Communication with S Goodrich; prep for and attend meeting with board chair and administration regarding monthly meeting.	4.30	\$200.00	\$860.00
JUN-20-22	General Representation	(Megan O'Dowd) Review preliminary commitment; communicate with Steve Widmyer.	0.20	\$200.00	\$40.00

DATE	PROJECT	DESCRIPTION	HOURS	RATE	AMOUNT
JUN-20-22	General Representation	(Marc Lyons) Communication with S Goodrich; review minutes; draft potential motions for meeting; correspondence with search consultant; review agenda and board book; prep for meeting; meet with board chair.	2.90	\$200.00	\$580.00
JUN-21-22	General Representation	(Megan O'Dowd) Communicate with Sarah and Steve re: potential purchase.	0.20	\$200.00	\$40.00
JUN-21-22	General Representation	(Marc Lyons) Correspondence with consultant; review language for draft employment agreement; review issues regarding draft memo addressing student confidential information.	2.30	\$200.00	\$460.00
JUN-22-22	General Representation	(Megan O'Dowd) Review/revise FERA memorandum.	0.20	\$200.00	\$40.00
JUN-22-22	General Representation	(Marc Lyons) Correspondence from admin reps; telephone conf with M Sebaaly; review issues for board meeting; draft contract form; prepare for and attend board meeting.	7.30	\$200.00	\$1,460.00
JUN-23-22	General Representation	(Megan O'Dowd) Review/revise Presidential contract.	0.40	\$200.00	\$80.00
JUN-23-22	General Representation	(Marc Lyons) Review and revise employment contract draft; correspondence and telephone conference with candidate; communicate with trustee; response and telephone conference with HR; correspondence with S Goodrich; Communication with S Garcia.	3.90	\$200.00	\$780.00
JUN-24-22	General Representation	(Marc Lyons) Review and revise employment contract; communication with candidate; Communication with board chair	2.20	\$200.00	\$440.00
JUN-27-22	General Representation	(Marc Lyons) Telephone conferences with M Sebaaly; telephone conf with D Wold; conference with S Garcia; Communication with candidate regarding contract terms.	1.90	\$200.00	\$380.00
JUN-28-22	General Representation	(Marc Lyons) Communication with candidate; review, revise and edit contract; correspondence with S Garcia regarding moving expense; communicate with board chair; communicate with attorney B Rice;	2.70	\$200.00	\$540.00
JUN-29-22	General Representation	(Marc Lyons) Telephone conference with M Sebaaly; telephone conference with R Rumppler; Communication with board chair; communication with N Swayne; review and edit draft contract.	1.90	\$200.00	\$380.00
JUN-30-22	General Representation	(Megan O'Dowd) Edit/revise employment contract.	0.40	\$200.00	\$80.00
JUN-30-22	General Representation	(Marc Lyons) Review and revise employment contract; communication with trustees; correspondence and telephone conference with candidate.	3.20	\$200.00	\$640.00
		Total hours for this invoice	72.30		
		Total amount of this invoice			\$14,460.00

ACCOUNT INFORMATION

Prior account balance as of JUN-02-2022	\$10,500.00
Invoice 2374 JUL-07-2022	\$14,460.00
Current account balance	\$24,960.00

AMOUNT DUE: \$24,960.00

From: Shannon Goodrich
Subject: RE: Meeting for Rayelle
Date: June 29, 2022 at 3:06:12 PM PDT
To: Darcy Ward <dward@NIC.EDU>

That might be better once he's with us in person in early August.

Shannon

From: Darcy Ward <dward@NIC.EDU>
Sent: Wednesday, June 29, 2022 2:56 PM
To: Shannon Goodrich <sgoodrich@NIC.EDU>
Subject: RE: Meeting for Rayelle

Also, Rayelle asked that I mention that the NIC Foundation officers are poised to provide an orientation. If Dr. Swayne would like to that with that group before the Foundation Board meeting, please let us know when he can be available. If he prefers after the meeting, we will work with you to coordinate that as well.

Thanks again

Darcy

From: Shannon Goodrich <sgoodrich@NIC.EDU>
Sent: Wednesday, June 29, 2022 2:52 PM
To: Darcy Ward <dward@NIC.EDU>
Subject: RE: Meeting for Rayelle

Give me a best time for her on the morning of the 5th and I'll get it scheduled.

Thanks,

Shannon

From: Darcy Ward <dward@NIC.EDU>
Sent: Wednesday, June 29, 2022 2:49 PM
To: Shannon Goodrich <sgoodrich@NIC.EDU>
Subject: RE: Meeting for Rayelle

Hi,

She has a 9:15 a.m. on July 6, so the morning of July 5 would work better.

We will send Dr. Swayne a Zoom appointment for July 7.

Thanks, Shannon

Darcy Ward

Senior Administrative Assistant
Development Department/NIC Foundation
(208) 769-5978
dward@nic.edu
www.nic.edu



1000 W. Garden Ave.
Coeur d'Alene, ID 83814

From: Shannon Goodrich <sgoodrich@NIC.EDU>
Sent: Wednesday, June 29, 2022 2:32 PM
To: Darcy Ward <dward@NIC.EDU>
Subject: Meeting for Rayelle

Darcy,

Rayelle and I discussed scheduling some time for her to chat with Dr. Swayne on the phone prior to your July 7 board meeting. What's her availability the morning of July 5 or at 8 a.m. July 6? Also, were you planning to send him the calendar invite for the meeting so he can Zoom in?

Thanks,

Shannon



0004950967

MACOMBER REPORT

EXHIBIT Z



STATE OF IDAHO
Office of the secretary of state, Lawrence Denney
ANNUAL REPORT

Idaho Secretary of State
PO Box 83720
Boise, ID 83720-0080
(208) 334-2301
Filing Fee: \$0.00

For Office Use Only

-FILED-

File #: 0004950967

Date Filed: 10/12/2022 2:47:22 PM

Entity Name and Mailing Address:

Entity Name: NORTH IDAHO COLLEGE FOUNDATION, INC.
The file number of this entity on the records of the Idaho Secretary of State is: 0000181354
Address: 1000 W GARDEN AVE
COEUR D ALENE, ID 83814-2161

Entity Details:

Entity Status: Active-Good Standing
This entity is organized under the laws of: IDAHO
If applicable, the old file number of this entity on the records of the Idaho Secretary of State was: C56640

The registered agent on record is:

Registered Agent: Rayelle Anderson
Registered Agent
Physical Address: 1000 W GARDEN AVE
COEUR D ALENE, ID 83814-2161
Mailing Address: 1000 W GARDEN AVE
COEUR D ALENE, ID 83814-2161

Corporate Officers and Directors:

Name	Title	Business Address
Steve Masterson	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Michelle Schini Haneline	Treasurer	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Jody Azevedo	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Beti Becker	President	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Pat Clevenger	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Jim Coleman	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Rod Colwell	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Brad Dugdale	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Joe Dunlap	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Mark Fisher	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814

B0747-9126 10/12/2022 2:47 PM Received by Office of the Idaho Secretary of State



Alison Granier	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Dean Haagenson	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Anne Hagman	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Tim Komberec	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Ashley Lenz	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Denise Lundy	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Chris Meyer	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Steve Meyer	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Sue Thilo	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Troy Tymesen	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Marc Wallace	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Kory Wilson	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
David Wold	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
K. John Young	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Rayelle Anderson	Director	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Lita A. Burns	Secretary	4000 W GARDEN AVE COEUR D ALENE, ID 83814 2161
Greg McKenzie	Director	4000 W GARDEN AVE COEUR D ALENE, ID 83814 2161
Elva Allan	Director	1000 W GARDEN AVE COEUR D ALENE, ID 83814-2161
Chad Foust	Director	1000 W GARDEN AVE COEUR D ALENE, ID 83814-2161
Nick Swayne	Secretary	1000 WEST GARDEN AVENUE COEUR D'ALENE, ID 83814
Peter Smith	Vice President	1000 W GARDEN AVE COEUR D ALENE, ID 83814-2161

The annual report must be signed by an authorized signer of the entity.

Job Title: Executive Director

Rayelle Anderson

Sign Here

10/12/2022

Date

From: Marc Lyons <marc@lyonsodowd.com>
Subject: ATTY/CLIENT COMMUNICATION Draft Employment Agreement
Date: June 30, 2022 at 12:53:08 PM PDT
To: David Wold <dawold@nic.edu>
Cc: David Wold <docwold@aol.com>
Attachments: President's Contract. 6.30.22 final draft .docx (38.5 KB)

David,

See below. I sent this to Nick Swayne as the employment agreement. Note that I removed the termination without cause and added a 4 out of 5 trustees to the termination for cause provision. Call me if you have any questions.

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

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Begin forwarded message:

From: Marc Lyons <marc@lyonsodowd.com>
Subject: Final draft (as of this date) of employment Agreement
Date: June 30, 2022 at 12:47:54 PM PDT
To: Dominic Swayne <swaynedd@gmail.com>

Nick,

Please see the attached. Let me know if you have any questions.

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com

www.lyonsodowd.com

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EMPLOYMENT AGREEMENT
PRESIDENT NORTH IDAHO COLLEGE

THIS AGREEMENT is made effective as of August 1, 2022, by and between North Idaho College (“NIC” or the “College”) and Dr. Nick Swayne (“President”). The parties hereby agree as follows:

Section 1. Purpose

This document reflects the agreement between the President and the Board of Trustees of North Idaho College (the “Board”) as to the terms of the President’s employment at North Idaho College (the “Agreement”).

Section 2. Responsibilities

The President is appointed by the Board as the Chief Executive Officer of NIC, reports directly to the Board. The President is authorized and responsible for the administration of NIC and has authority over all matters affecting NIC at the operational level, in accordance with applicable laws as well as the policies, rules and regulations approved and/or sanctioned by the Board. In addition to the foregoing, the President shall also be responsible for carrying out all duties requested by the Board. In carrying out these duties, the President recognizes the need for effective communication with the Board.

Section 3. Term

The term of this Agreement will commence on August 1, 2022 and will continue until June 30, 2025 unless terminated consistent with Section 12. “Annual” for purposes of this Agreement means a fiscal year beginning July 1 and ending June 30 of the following year. The term may be extended by the Board, consistent with Section 4.

Section 4. Renewal and Resignation

4.1 The Parties agree that the President and the Board will review this Agreement before or in close temporal proximity to the end of each fiscal year for the Board and the President to decide and agree whether to extend this Agreement an additional year (with or without additional modification). Neither the initial term of this Agreement nor any extension thereof shall be construed to create or be evidence of contractual continued service or tenure of the President as an administrator under any provisions, policies, or rules extrinsic to this Agreement.

4.2. In the event the President wishes to terminate this Agreement at the end of its initial term, he shall so notify the Board, in writing no later than June 30, 2024. If the President wishes to terminate any extension of this Agreement, he shall so notify the Board in writing,

no later than the June 30th in the year proceeding the year of the desired June 30th termination date.

4.3 NIC has no duty to renew this Agreement at the expiration of the term. This Agreement will not automatically renew. The Board may, in its sole discretion, extend the Agreement for an additional term as determined by the Board.

Section 5. Compensation

5.1. NIC will pay the President an annual base salary of \$230,000, which amount will be earned and payable biweekly.

5.2. NIC will make an annual retirement contribution, equal to 10% of the President's base salary, to the President's supplemental retirement account. Payment into such account will be earned and made biweekly in conjunction with payroll. Any employee payroll taxes resulting from this contribution will be withheld in connection with the President's base salary. There is no right to unearned amounts if this Agreement is terminated prior to expiration of the term.

5.3 The President will have temporary housing provided by the College, at a location and price deemed appropriate by the College, while the President seeks more permanent housing. When the President moves to the more permanent housing the College will provide the President a housing allowance in the amount of \$3,000 per month, starting on the first of the month when the President occupies the more permanent housing. The combination of either the temporary housing or housing allowance shall continue for a total of eighteen months, unless employment is earlier terminated in accordance with this Agreement, or the housing allowance is extended by a majority of the Board.

Section 6. Employee Benefits

6.1 The President shall receive 24 annual vacation days, accruing at a rate of 2 days per month. Accrued vacation days may carry over into the following fiscal year; however, total accumulated vacation time will not exceed 30 days (240 hours). Upon termination of the employment relationship, the President will be paid for any accrued and unused vacation days at a rate equivalent to the President's annual base salary. The President shall notify the Board prior to taking vacation and the Board, in its discretion, may require such plans to be deferred as the Board deems appropriate. The President is entitled to paid holidays recognized by NIC.

6.2. The President is entitled to annual sick leave in accordance with NIC Policy and Idaho Code.

6.3. Subject to Sections 6.1 and 6.2, the President will otherwise be eligible to participate in the NIC programs and other benefits available to NIC employees.

6.4 During the first year of the term of this Agreement the College will pay for the reasonable, actual expenses associated with the President's relocation to Idaho. The President will provide receipts and other appropriate documentation supporting actual relocation expenses for review and approval by the Vice President of Finance. The College's payment of relocation expenses under this Section 6.4 may be made directly to vendors or via reimbursement to the President for expenses incurred by the President. During relocation, the President may have up to an additional ten (10) business days of non-chargeable leave to facilitate the move.

Section 7. Automobile

The President shall furnish his own automobile, and shall be liable for all maintenance, repairs, insurance, and operating expenses, including fuel costs. The College shall reimburse the President for all in-district and out-of-district travel using his own personal vehicle for College business at the applicable IRS deductible rate in effect at the time of travel.

Section 8. Professional Development

The President shall be eligible to attend and participate in educational conferences, conventions, workshops, seminars, and similar professional activities and events, subject to reasonable review and approval by the Board. The College shall reimburse the President for reasonable out-of-pocket expenses incurred by the President in connection with such approved activities and events consistent with College procedures and practices.

Section 9. Expenses

9.1 The Board agrees that the College will pay the President's reasonable, actual travel expenses, hotel bills, and other actual and necessary travel-related expenses incurred when the President is traveling on NIC business. The responsibilities of the President include attendance (sometimes with spouse) at various community events, hosting events, and entertainment reasonably calculated to promote the College. Reimbursement will be consistent with College procedures, practices and consistent with the College's budget.

9.2 The College will provide the President with appropriate electronic/tech equipment to assist the President in performing his duties.

Section 10. Outside Professional Activities

Subject to the Board's prior approval, which shall not be unreasonably withheld, the President may undertake outside professional activities, including, without limitation, consulting, speaking and writing. Such activities may be performed for consideration provided that they do not interfere with the President's normal duties. The President agrees not to engage

in any other employment, activity or enterprise, whether or not for remuneration, that is inconsistent, incompatible, in conflict with, or inimical to the President's duties, responsibilities, functions or the policies of the College.

Section 11. Performance Review

The Board shall review the President's performance annually in accordance with NIC policy. The Board may also elect to have more frequent reviews (for example, semiannual or quarterly reviews) as determined by the Board in its discretion.

Section 12. Termination

12.1. This Agreement may be terminated by mutual agreement of the parties, by either party without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

12.2. If, during its term, this Agreement is terminated by the President without cause, the termination shall become effective 60 days after receipt of written notice of termination. The obligations of both parties under this Agreement cease when the termination is effective. The Board may, in its discretion, place the President on administrative leave during part or all of the 60-day notice period.

12.3 This Agreement may be terminated for cause, if a super-majority of the Board (defined as 4 or more Trustees) in its sole and reasonable discretion, determines that: (1) the President has significantly failed or refused to act in accordance with a material provision of this Agreement or any directive or order of the Board; (2) the President has exhibited gross misconduct or dishonesty in regard to his employment; (3) the President is (or has been) convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (4) the President is unable to perform the essential functions of the position; or (5) the President has acted in bad faith to the detriment of NIC.

12.4. In the event of termination for cause, the Board shall provide the President a written statement of its intent to terminate and its reasons for termination. Before the Board makes a final decision, the President is entitled to meet with the Board in executive session, within thirty (30) calendar days of the issuance of the written statement. The President may present any evidence to the Board to rebut the stated reasons for the termination. After the President has had an opportunity to respond to the stated reasons for termination, the Board will make a final decision in writing.

Section 13. Governing Law

This Agreement will be governed, construed, and enforced according to the laws of the State of Idaho.

Section 14. Assignment

This Agreement is personal to the President and is not assignable.

Section 15. Amendments

This Agreement may be amended by mutual agreement of the parties. Such amendments must be in writing signed by the President and the Board Chair, following approval by a majority of the Board.

Section 16. Notification to Board of Application for Outside Employment

The President may, but is not required to, notify the Board Chair if an application for employment is submitted anywhere other than NIC. The President shall notify the Board Chair should the President become a finalist for employment in any capacity.

Section 17. Waiver

The failure or delay of the President or NIC to enforce at any time or to require compliance at any time with any provision of this Agreement, or to take any permitted action under this Agreement, shall in no way be construed as a continuing or future waiver of such provision or of any other provision of this Agreement, shall not affect the right of either party thereafter to enforce each and every provision of this Agreement, and shall not render any such provision(s) unenforceable or invalid.

Section 18. Entire Agreement

This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior or contemporaneous representations, understandings or agreements, whether written or oral, between the parties, and cannot be changed or modified unless in a writing signed by the parties hereto.

Section 19. Severability

The unenforceability, invalidity, or illegality of any provision or clause of this Agreement shall not render any of its other provisions as unenforceable, invalid, or illegal, and such remaining provisions shall be construed in all respects as if the unenforceable, invalid, or illegal provision(s) were omitted.

Signatures on Following Page

DATED this ____ day of July 2022.

NORTH IDAHO COLLEGE

By _____
David Wold
Chair, Board of Trustees

DATED this ____ day of July 2022.

PRESIDENT

By _____
Nick Swayne
President

DAVID WOLD: I'm calling the reconvening of the Board of Trustees of North Idaho College. Would you join me in the Pledge of-- oh, we have a quorum. Excuse me, we do have a quorum. Would you join me with the Pledge of Allegiance, please?

ALL: I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

DAVID WOLD: Our first action for the evening is the approval of the president's contract, and I'll call on Marc Lyons to start off the discussion, please.

MARC LYONS: you, Mr. Chairman. Let me first start with a little background. This board previously selected Dr. Nick Swayne to be the next college president. The board authorized me, as college attorney and the board chair, to negotiate an employment agreement with Dr. Swayne, and we have done so. I've given a copy of the proposed contract to each of the trustees, and I will go over the highlights and provide some of the explanation right now.

This is a three-year contract with a base salary of \$230,000 a year. The college will pay annually into a supplemental retirement account 10%--

GREG MCKENZIE: Can I ask a question before--

MARC LYONS: --of compensation.

DAVID WOLD: No, let's let him finish, and then we'll open up--

GREG MCKENZIE: If we're going to read it, why don't we just post it for the public to have?

MARC LYONS: The board's range for the base pay for this position was \$220,000 to \$240,000, so what was negotiated as the base pay was right in the middle of that range. The supplemental retirement contribution is standard for a president position and has been included in contracts for previous North Idaho College presidents. In our view, this is a competitive salary for a chief executive with extensive experience and qualifications for this position.

The contract also provides for a \$2,500 monthly housing allowance. The reason for that relates to the housing market here in Kootenai County in the Coeur d'Alene area. As many people have come to recognize recently, this area is one of the hottest real estate markets in the country. Housing prices in this area have risen substantially over the last year or so, to the point where many employers are struggling to attract qualified people. This allowance is necessary to attract quality candidates, and that was very important to Dr. Swayne, as it should be, given the local circumstances.

Also, I want to point out that the termination section in this agreement does not include a termination without cause. And for the termination for cause, it requires four out of five votes. Chairman Wold and I believe that this is an improvement to prior contracts. Termination of a president should not be done lightly. And to ensure that such action would be appropriately considered, a supermajority of the board should agree.

The contract also requires the board and the president to meet at the end of every fiscal year to discuss the issue of contract renewal. That gives both the board and the president an understanding of how things have gone and whether a renewal is being considered. Historically, the contracts for presidents are renewed every year for an additional year.

On balance, we think that this is a good employment agreement with provisions necessary to attract and compensate an experienced, qualified presidential candidate like Dr. Swayne. The terms that are in this agreement, that I've given a copy to all the trustees, are agreeable to Dr. Swayne. And I do want to note that it is with an understanding that he would accept this position, knowing that this institution is facing immediate serious hurdles involving governance, accreditation, enrollment, and the recent loss of many of the college's senior level leadership.

So really, at this point, we would ask for a motion that the board adopt the proposed employment agreement to hire Dr. Nick Swayne as the next college president, starting August 1, 2022, and that the board chair be authorized to execute the employment agreement on behalf of North Idaho College. Mr. Chairman.

DAVID WOLD: Now, I'm very pleased to be asking board approval to hire Dr. Swayne to be the next president of this college. He is an impressive candidate, and it's clear to me that both his experience and his leadership qualities is exactly what this college needs. I will ask the board for its approval of the employment agreement so we can have President Swayne in place by the end of this month. Do I have such a motion?

JOHN GOEDDE: Mr. Chairman.

DAVID WOLD: Yes.

JOHN GOEDDE: So moved.

DAVID WOLD: Is there a second?

PETE BROSCHE: Second.

DAVID WOLD: It's moved and seconded. Discussion?

TODD BANDUCCI: Yeah, I'll start that discussion.

DAVID WOLD: Todd.

TODD BANDUCCI: Sort of like watching President Biden read there. All right, this is outrageous. This is a gold-plated contract. The public needs to know. \$230,000, \$23,000 more for retirement, \$36,000 for housing allowance-- we're at a base of just \$289,000 not counting benefits, including health insurance, PERSI, 24 days of vacation, sick leave, paying for his relocation, where there is no limit indicated, so that could be an unlimited number. I mean, we're well over \$300,000.

And a normal contract is a one-year contract plus two 1-year extensions. And in fact, originally, it was one year plus one and ten went to one year plus one plus one when the former president was hired, Rick. So we had a three-year rolling contract with one-year base, two additional contract years, and then you could add an additional year each year as you came up on that anniversary. Instead, you've got a three-year contract, which is unprecedented. We've never done that before.

So that in itself-- we just did a gold-plated contract. We're just-- wow. It's shocking. We're supposed to be fiduciaries. You really set the bar for the future.

I guess you do what you think is best, whatever the cost or the means used. It's kind of like us-- we have unlimited money, and we'll do what we want here. It's an interesting thing because we look at this process, and I'm going to talk about that for just a second because I believe you guys violated open meeting law. And I think everything thereafter is tainted and null and void, just like what happened to the alternate form of government group.

You look at the emails that were FOIA'd, and there was already a draft of the contract on the 22nd, which would have been prior to that meeting that night where he was selected. Greg's going to talk about some things that will add to this. But it's just like we just gave him the keys to the house before-- and it's not about him. It's the process, this whole process. Could have been anybody that we picked.

We have no idea. He's never been a president. We don't know if the staff and faculty are going to like him. We have no probationary period built in.

We're giving him all this money, and we're giving him the keys to the house. I mean, he had email accounts before he showed up. In fact, they had to try to do non-employee forms, I guess, because it was prior to his onboarding, so he shouldn't have even had an email account. We've rushed to try to introduce him to the donors and the stakeholders and the foundation and the SBOE. I don't know about the NWCCU or not.

It's interesting. All this money up front, sort of like-- I look at it like athletes. If you have a veteran and you're on his second or third contract, then he's performed, and you give him a certain contract based on that. But most of the rookie contracts are outrageous because you've got someone that's never proven themselves yet.

And this is what I liken this to is that we're throwing all this money up front, and yet we haven't had him work for us for one day. I can't believe we-- and then trying to tie the hands of the future boards with these votes. I've never heard of such a thing in a contract. How can you dictate what a future vote is?

There's five people on a board, and it's by majority. That's how decisions are made. I don't know legally how you can try to say that we have to have more than a simple majority for any decision that this board makes. I guess contract law would have to be reviewed on that.

So you look at the emails. You've even stated it. You and Dr. Wold are supposed to work on this. I'd like to know why there were so many emails with John Getty about this contract.

I'd like to know what he saw, if other trustees didn't see, so I'm going to ask that question. And why it seemed like it took several days before David Wold was even in the email loop, that I could tell, and trying to track those emails on the dates and the times that say, draft contract dated 6/22, which would tell me that there was a draft contract before, again, we even had the meeting and he was selected. So somebody was kind of prescient about that and must have just known.

And I don't get the impression that Angela really-- although we were paying her salary, I don't know that she was helping us in this negotiation. It almost feels like she was working for the candidates. So this whole process is just been-- well, it's been a bit surreal just trying to look at this thing and how it's gone on. And I can't see how we're going to have a high level of confidence in this.

I guess we're just to assume it's OK and everything that was done-- although it was, again, highly unusual and irregular. And I've just touched on the surface of some of these things. But to me, it's a lack of institutional integrity, and that's been one of the big points of emphasis through this whole thing with the accreditation. And the process got compromised.

And you look at how this was done. Who was involved in negotiating? What was the timeline? This whole contract that's being put together, I've never seen such a thing like this.

And then I guess the question would be, we're starting on 1 August. What does this look like? Is he actually going to be relocated and ready to move and ready to work on 1 August? I mean, what I don't want is for him to start work on 1 August and then have to go back East and then get himself moved, and then we really don't see him until September.

So I guess that's a question I have, too, is what's his actual availability, boots on the ground? And when do we get him full-time for what we're paying for? So that's a question I'd like to ask, too. I don't know.

You guys must think-- any car looks a lot better when it's on the showroom floor, sitting on the lot. But I think we haven't even test-driven this car yet, and we've already paid full price for it. And we're adding all the accessories. So I do not support where we're at.

We had reset the bar and were back down to numbers that were under \$200,000, and it made sense. Much of the community was aghast, I think, when they realized how much we were paying the former president. And now we're actually going to be paying more than where we were. So wow, we've just reset that bar. And then, again, some of this contract just makes no sense, and it's not consistent with anything this college has ever done.

MARC LYONS: Mr. Chairman, if I may.

DAVID WOLD: Yes. Yes, Marc.

MARC LYONS: Let me just respond to a couple of these. The three-year rolling contract is standard for college presidents-- community college presidents-- essentially throughout this country. And more to the point, it has been the standard at North Idaho College over the last 20-plus years, and I know that because I have been here over the last 20-plus years.

There have been some exceptional years where it's been different. But the three-year-old contract is the standard, and it has been the standard. And I do want to point out that virtually every school district in Idaho has a superintendent. Those school district superintendents all have a three-year rolling contract.

That is what the State Department of Education had recommended, and that is the required contract. So it is standard. Also, we have basically the CEO-- the head of a multi, \$10 million-- millions of dollars-- \$60 million budget organization with 400 employees and thousands of students and other people that we serve as an institution. It is a very complex organization. It takes a lot of skill, training, and knowledge on how to run that. So attracting qualified candidates requires that you pay essentially what is the market for this rate, and we think that is.

Now, get to the question of contracts and was this all baked in the cake in advance, the answer is no. I never talked to a single candidate except Dr. Swayne and only after the board authorized Chair Wold and I to negotiate. That's the first time I've ever talked to any of the candidates. I had no involvement in the selection process otherwise.

TODD BANDUCCI: I don't think I said anything about you talking to the candidates. I talked about the chain of sequence of events of the emails and the negotiation of the contract.

MARC LYONS: Well, I have emails with other people over other subjects and involving other matters. And my communications are what they are. But the only trustee that has seen this contract that we are just discussing before tonight is Chairman David Wold. So that has not been shared with either Trustee Broschet or Trustee Goedde or you or Trustee McKenzie.

Normally, we would have this discussion of the details in executive session, but we were unable to get into executive session because we could not get four votes to do that. So now we're in a situation where we're having to do this discussion in an open session. And really, it is a narrow issue that's before the trustees. The only action on this matter before the trustees is a motion to approve this contract and authorize the board chair to sign it. That's what the motion is.

The history is the history. The negotiations took place, and those would be the discussions that Chair Wold and I would have with Dr. Swayne. And this is the result of it, so this is what's presented to the board for the board's consideration.

GREG MCKENZIE: Chair Wold, if I may.

DAVID WOLD: Thank you. Greg.

GREG MCKENZIE: So what we're at right now is there's been communication that has happened on, and it's being shielded through attorney-client privilege by Marc, who's not giving it to me, even though I've requested a communication of this sort. You would think that communal representation on the board, our attorney wouldn't have to claim attorney-client privilege with one of us trustees. But that's the thing.

And another thing is a public records planning violation. OK, so why don't we get the emails now that I'm asking for, Marc? It's happened in the past. There's no more responding. Am I going to get the emails that I'm requesting? Because I haven't gotten those yet, and I'm asking for those.

MARC LYONS: The issue before the trustees right now is to approve the contract that has been negotiated with Dr. Swayne.

GREG MCKENZIE: So what's going on is they've communicated, and they're not wanting to basically look in the past to see if everything was done properly and legally because--

MARC LYONS: In my opinion, everything was done legally and properly.

GREG MCKENZIE: In your opinion, every conversation you have is attorney-client privilege, sir.

MARC LYONS: I don't think it's appropriate to sidetrack this discussion. We have an issue before the board that needs to be decided. That's the issue on the agenda.

DAVID WOLD: OK, can we keep the discussion to the motion? Todd.

TODD BANDUCCI: OK. So Marc, we have three trustees that-- or two trustees have made a motion and seconded the motion, and then Chair Wold had his statement at the beginning. I don't hear the three of them defending the process. It's falling back on you, which is-- I guess that's not to be unexpected.

But here's the deal. There has been released, through the FOIAs, emails. And if you look at what wasn't redacted, it shows who sent the email, who the email went to, what the topic of the email was, and if there's an unlisted attachment. And I guess I'm trying to figure out how to do this as politely as possible.

But I guess I challenge or question that statement that you made a moment ago about the timing and who saw what. And I don't know if we're splitting hairs and if it's just this very final version of the contract that only Chairman Wold saw because I guess the other question then would be, were there other versions of this or draft versions of this that was seen by other trustees previously but not by all? Because if you look at the emails that were FOIA'd, even without the redacted text that was in there, just the headings seem to indicate that that was the case. Unless we're looking at those and we're not able to understand plain English or what it said was, 6/22/22 draft version of contract. And it went from here to here.

MARC LYONS: Todd, when you were--

TODD BANDUCCI: I'm just asking the question.

MARC LYONS: When you were board chair, you and I had many conversations. We had many emails. And our conversations and communications through email were not shared with other trustees unless we agreed to do that.

TODD BANDUCCI: But that wasn't to Chairman Wold, sir. Some of those don't have Chairman Wold as the recipient from you.

MARC LYONS: And I talk to other trustees. You and Trustee McKenzie have not supported any part of this process. And frankly, that isn't even important to me because what's important here is that Trustee Wold-- Chairman Wold and I negotiated this contract as the board authorized us to do. And you can sit there and say you think that maybe the drafts were sent around to other trustees.

I can tell you that they were not. This is the first time any trustees other than the Chairman has seen the negotiated contract. So you can cast aspersions on the process, I guess, if you want to, but we are still down to the issue.

We've negotiated this contract. We think it's a fair contract, an appropriate contract. And this is the issue that the board needs to decide. And if you're unhappy with me and the way I've done, this is a conversation for a different time.

DAVID WOLD: Is there any further discussion? Pete?

PETE BROSCHE: Yes. Thank you, Mr. Chair. In reviewing salary survey data, just as I did when we came up with the range, I looked at CEOs, presidents, COO, executive directors, salary data points for the general area, various industries-- for-profit, nonprofit. I also included the president pay for the five local colleges that we talked about when we set the pay range.

I also took into consideration the complexity of the environment-- multiple locations, 496 full-time employees, 443 part-time employees, a budget of \$50-plus million. And the base salary data points for a top level position in this area are about probably 25% to 30% higher than what this position is being paid, not only base but with the retirement. And then looking-- just rough numbers off the back of a napkin-- at \$230,000 with a 10% retirement, those are easy numbers at \$253,000.

I believe the last presidential contract, Mr. MacLennan-- Dr. MacLennan-- he was right around \$225,000 with a 12.25% retirement. That puts him right about \$254,000, \$255,000. So the base pay with retirement for both presidents is equal or close to each other. I think that the pay for this position is appropriate.

DAVID WOLD: Thank you, Pete. Further discussion. Greg?

GREG MCKENZIE: So if you recall, Chair Wold, you sat down with Trustee Banducci early on when you guys came on the board. And this is thirdhand. I'm relaying what Banducci-- and I encouraged Banducci to sit down with you and basically explain what happened with MacLennan. And basically, this board had 10 months of a rocky relationship with the former president.

And this board was left in a position-- and I believe Banducci offered to show you the ICRAM legal assessment of our options. And one of our options was to roll over and play dead or to let him just build his legal case against us, like he was obviously doing that I can show you. And so this board chose to move on to a different president that thought was better and would not be building its legal case against us.

So I'm sure I don't like finding myself in those type of situations where that happens. Nobody wishes for those rocky relationships. But the sad reality is they do happen. And as this contract is right now, as Attorney Lyons, there's no option if we find ourselves in that scenario again.

So I know the narrative out there is that this board got elected several years ago. And from your perspective, I can see you're ones that have politically opposed every move. And so obviously, you believe that narrative, based off of this contract. But the reality is this board tried very hard to make it work, and it didn't work.

And I can share a lot more reasons and unhappy scenarios where people look to this Board of Trustees to where, is everything fine, and that when we're completely left in the dark and people are protesting on campuses and people say, hey, I don't have to answer any questions-- then there's no way that we can fulfill our trustee responsibility. And so when this board, if it happens again, gets left in a similar scenario to where it's a very rocky relationship, there's no remedy here as you just laid out at the beginning of this thing.

DAVID WOLD: Thank you, Greg. I guess I would have to respond, beware of third-hand information you get and quoting third-hand information. Some of what you mentioned is not true, but just beware of doing that in terms of trying to use third-hand information for an argument.

GREG MCKENZIE: Sir, if I may respond, I offered to sit down with you one-on-one and explain to you what happened with MacLennan. And you responded to me saying you want to move forward. And so I'll relay firsthand information, sir, that you just want to move forward and not talk about the past. And when I offer to sit down with you and explain everything, sir.

DAVID WOLD: We're going to move on. And any more discussion on the motion?

JOHN GOEDDE: Mr. Chairman.

DAVID WOLD: Yes.

JOHN GOEDDE: I'd like to speak to the three-year contract because I think that's important for our consideration. There are huge hurdles that the new president is going to have to overcome. He's going to have to find a new cabinet.

He's going to have to address accreditation, enrollment. And it's not going to be done in one year or two years. I think he needs to be given the three-year opportunity to turn this thing around. And Mr. Chairman, with that, I would call for the question.

GREG MCKENZIE: I would like to respond to that, if I may.

DAVID WOLD: Greg, go ahead.

GREG MCKENZIE: I would just like to say, this ship is turned around under President Sebaaly. And if you look at the letter from the accreditation agency, they basically said that our president-- there's

no rush in doing it. We have well into next year and that we're making great progress with the administration that we have and that the only problem is with board members.

And if I could just summarize here, it's following procedures and being consistent with past practices and fellow board members paying attention to board directives and treating all board members equally. And the three of you have just violated everything that the warning and that the accreditation agency is watching for. Basically, the NWCCU is concerned with behavior and that we're listening to all involved parties.

And you've steamrolled Todd when he's highlighted the inconsistencies of this whole process. The board-- community involvement, we haven't listened to at all. I mean, shoot, we didn't even post the forums for links for the community members who can't even work, for those that have a job.

I mean, the fact that we're trying to say we're representing the community in this whole process is a sham. And just this whole-- I have one more question, too. It's important for this whole process and actually is directed toward Dr. Swayne, if I may.

DAVID WOLD: I think that's inappropriate at this time.

GREG MCKENZIE: Well, no, it's not. It's important because we're going to make a decision, and it'd be nice to know that it wasn't predetermined in the first place.

MARC LYONS: [HEAVY SIGH] [WHISPERING] Go ahead and call for it.

DAVID WOLD: Question has been called for.

MARC LYONS: I don't think it's appropriate to ask the candidate any questions--

GREG MCKENZIE: Yeah, you wouldn't.

MARC LYONS: --at this time.

TODD BANDUCCI: Marc, I would-- I'm sorry. Chairman.

DAVID WOLD: Todd.

TODD BANDUCCI: I do want it noted that I-- Marc responded to a couple of things I said. And he elaborated about the executive session. I want it noted that I did point out that it looked like there may have been an error in how we had the agenda posted for the meetings tonight. And we spent about 10, 15 minutes trying to clarify that.

And it sounded like it was still kind of a, hmm, maybe not. But in my opinion, it was not. And so we should not have gone into executive session. That was part of the reason that I said no to that. And so I do want that noted because there was a question how the agenda was posted.

And the content of the agenda and the disclosures and disclaimers that are normally part of that agenda were not present, even though Marc said they would be. There's an asterisk there, but the below portion where the asterisks would be expanded upon was missing. So the public would see that we were going to go in executive session under sections A and C but would have had no idea what A and C were. And that was missing, so we did not do what we normally do for the first time that I can remember in a long while.

GREG MCKENZIE: I would like one more thing to be on the record, too, is that I've noted that we're having a public meeting and that we haven't provided adequate time for the public to weigh in input for this. And so we're claiming-- you're abusing attorney-client privilege. We're abusing the notices saying that we were planning an executive session.

Basically, to do this right, guys-- you can still do this without Todd and I's help. But to do this, we're going to have to have another meeting and actually notice this for the public to at least be able to email us and have it noticed properly. And also, the motion that was initially provided, it said nothing about fringe benefits, to be honest. It was base salary. And this basically another \$90,000-plus on the side wasn't ever discussed in the original motion.

DAVID WOLD: Well, that is related to the motion. So you want to respond to that, Marc?

MARC LYONS: Yes. Yes, I can. The motion is for the board to adopt the proposed amended-- the proposed employment agreement to hire Dr. Nick Swayne as the next college president, starting August 1, and that the board chair be authorized to execute the employment agreement on behalf of North Idaho College. It didn't have the details in it. That is the motion. And I would just say on the other thing, we did discuss the agenda, and I advised the board that the agenda was proper under Idaho law.

TODD BANDUCCI: Marc--

MARC LYONS: So I think we're at the point where we need to have a vote on the pending motion.

TODD BANDUCCI: Marc, I did have one question that wasn't answered. What is Dr. Swayne's availability?

DAVID WOLD: He'll be here August 1.

TODD BANDUCCI: What's that?

DAVID WOLD: He will be available August 1.

TODD BANDUCCI: He will be here in place, and we'll have him for the month of August?

GREG MCKENZIE: Permanently? Not having to go back for another week or--

DAVID WOLD: I'm going to intervene here. The question has been called for, and I'll ask for a roll call vote.

TODD BANDUCCI: Hmm.

MARC LYONS: OK, I'm going to go down the list that we had for executive session. Dr. Wold?

DAVID WOLD: Yes.

MARC LYONS: Mr. Goedde?

JOHN GOEDDE: Yes.

MARC LYONS: Mr. Broschet?

PETE BROSCHE: Yes.

MARC LYONS: Mr. Banducci?

TODD BANDUCCI: No.

MARC LYONS: Mr. McKenzie?

GREG MCKENZIE: No.

MARC LYONS: The motion--

DAVID WOLD: The motion passed 3 to 2. Dr. Swayne, we look forward to you joining us in August. We look forward to a wonderful experience with you.

MARC LYONS: Process.

GREG MCKENZIE: I have a motion related to the president's contract.

DAVID WOLD: The motion is already finished.

GREG MCKENZIE: Yes, I have another motion.

DAVID WOLD: I would like you to state the motion, and then I'll declare whether or not it's a reasonable motion in terms of the special meeting agenda.

GREG MCKENZIE: I would like to amend Dr. Sebaaly's contract. That was before-- maybe it's no longer anymore. I don't know if we--

DAVID WOLD: No, that is not on the agenda.

GREG MCKENZIE: No, it is. It's president's contract. He's still president.

MARC LYONS: The agenda-- excuse me, Mr. Chairman. The agenda states that the action item is to approve the president's contract, and that has been done.

DAVID WOLD: We'll move on to the next item on the agenda.

GREG MCKENZIE: I have a motion for the president's contract that I'd like approved.

DAVID WOLD: And I just ruled that it was out of order. The next one--

GREG MCKENZIE: When there are no rules because you guys removed Robert's Rules of Order, it's real convenient.

DAVID WOLD: Greg, are you asking to speak, or are you just speaking on your own?

GREG MCKENZIE: Well, there's no rules. You guys repealed the Robert's Rules of Orders.

DAVID WOLD: The next item on the agenda--

GREG MCKENZIE: Can I just propose my motion?

DAVID WOLD: --is the purchase of the property, and I will ask Marc to lead us through that, please.

MARC LYONS: Mr. Chairman-- and I will ask Vice President Garcia to assist on this. As Vice President Garcia had told the board sometime ago-- a month ago-- there was a property available in the campus area that it was private real estate that was owned by a seller that was interested in selling to the college. What is required-- for an institution like the college, what is required for the college to purchase real property from a non-government institution-- a private party, if you will-- is you have to comply with a legal process that requires that the property be appraised.

That before the property is acquired, that the property be-- that the appraisal be put into the record and that the institution cannot pay more than the appraised value. So Vice President Garcia did have the property appraised, and that appraisal came in at \$1,000,000. Vice President Garcia has negotiated a real estate purchase transaction that is relatively simple for \$1,000,000. And I'm going to turn this over to Vice President Garcia.

And I think you can say who the seller is. We have a contingent signed purchase agreement that is subject to board approval. So Vice President Garcia, go ahead.

SARAH GARCIA: Thank you, Mr. Lyons. Chair Wold, trustees, as Mr. Lyons and as I've explained to you prior, we, the college, was approached with the opportunity to purchase some property adjacent to the college. And we followed the process as described by Mr. Lyons, where we went forward and did a professional appraisal because of the requirements in the case that we were interested in purchasing the property.

So I had a conversation with the seller. The property in question is the Fort Ground Grill property-- the building and the land that it sits on. And it is kind of nestled in between two pieces of NIC-owned property currently.

So I had a conversation with the owner of the property. And we discussed the terms of-- the terms for which we would purchase it at \$1,000,000. And in the purchase and sale agreement, it's outlined that the seller will deliver to us the building in the form of a clean shell. So all of the fixtures and anything related to the restaurant that currently supports the restaurant operations would not be part of what was turned over to the college.

MARC LYONS: Mr. Chairman, if I may--

DAVID WOLD: Yes.

MARC LYONS: --clarify. I have handed out to the trustees a copy of the purchase and sale contract. It's fairly standard except that it has a bit of a leaseback provision in it because it is the Fort Ground Grill, and the seller wanted to lease it back, at least through the summer months. Vice President Garcia has mentioned that right now it is not anything that the institution would do in the short-term.

So the leaseback is essentially a triple net, will not cost the college anything. And it is easily terminable. I've also handed out a copy of the resolution for North Idaho College 2022-01. It is appraisal and purchase of military district property.

If you may recall-- well, those of you who have been part of this process, this is a fairly standard resolution that we put together whenever we acquire property for the college from a private party. It basically asks the appraisal to be entered into the records of the board because that is a requirement of law and has the board ratify the terms of the purchase and sale agreement, which is essentially a cash sale agreement, and authorizes the board chair, and in this case, Vice President Sarah Garcia, to sign the purchase and sale agreement.

And interim Vice President Sarah Garcia will be the one who will just go through and take care of the closing things on what's appropriate. So this is standard. We've done this many times at the college. The trustees of this college have always supported acquiring additional property, particularly where this property is almost like a private island surrounded by North Idaho College property.

DAVID WOLD: I would accept a motion to purchase the property.

MARC LYONS: Well, Mr. Chairman, the motion would be--

DAVID WOLD: Oh, you got--

MARC LYONS: The motion would be that the board adopt resolution 2-- I'm sorry. The motion would be for the board to adopt resolution 2022-1, entering the appraisal in the board's record and authorizing the board chair to execute both the resolution and the real estate purchase and sales agreement.

DAVID WOLD: Do I hear a motion?

GREG MCKENZIE: Mr. Chair.

JOHN GOEDDE: Motion.

DAVID WOLD: Is there a second.

PETE BROSCHE: Second.

DAVID WOLD: Is there any discussion?

GREG MCKENZIE: I feel this contract, again, like the last one, was not properly noticed and also violates open meeting laws.

MARC LYONS: Mr. Chairman, if I could quickly say, the contract is negotiated between private parties. It is excluded from open meeting law. It will be public if it's entered-- authorized and entered into. So there's no violation of either open meeting law, and there's no violation of any public records law at this point. So the fact that you as a board of trustees have to consider this doesn't mean it's also a public record.

DAVID WOLD: Is there any further discussion or questions for Vice President Garcia? Yes, Todd.

TODD BANDUCCI: All right. So if I'm understanding this, the leaseback is for \$1,200 a month. It says it can be terminated by either party with 60 days' notice for the effective date of termination.

But I don't know that I see-- so I don't see any particular timelines called out for-- if there's a time right now where it's set to sunset or expire. It's just going to kind of be open and ongoing until either we shut it down or he shuts it down. Or is there some other language that I'm missing on that? And is \$1,200 the correct amount?

SARAH GARCIA: Yes.

MARC LYONS: Yeah.

SARAH GARCIA: Chair Wold, Trustee Banducci, no, we did not set an end date to that lease arrangement. The intention is not to continue to operate the restaurant for a long period of time. That is the reason why the seller is interested in selling to the college, is they do not want to continue to operate the restaurant.

The conversation that occurred between me and the seller was about the fact that summer is a very busy time for them, and they wanted a little extra time to get the staff-- help out the staff and give the community who supports that restaurant and the NIC community who supports the restaurant, give them an opportunity not to just shut it down, but to give them an opportunity to exit gracefully.

GREG MCKENZIE: And I have a question.

DAVID WOLD: Greg.

GREG MCKENZIE: Is that rent value market rate then?

SARAH GARCIA: No, sir.

GREG MCKENZIE: As in under market rate then? Over market rate or--

SARAH GARCIA: As in, we talked about the rate. We discussed the rate without referring back to the market because in my opinion, the college, if we did not rent it back to the person who's currently operating it, it would remain vacant.

DAVID WOLD: Is there any further discussion or questions for Vice President Garcia? Todd.

TODD BANDUCCI: This then falls under the category of discussion, not necessarily a question for Sarah. We started purchasing properties years ago. And we were setting money aside. And the last batch of money we set aside we thought would buy us three of the residences on Military Drive.

And as it turned out with the price appreciation, it looks like that chunk is going to have gotten us a few dollars left. So we're going to have to keep augmenting that fund. Obviously, this would be a big augmentation of the fund here, also.

And it's interesting that we've got a patchwork there of what we own. And I guess I'm starting to feel less and less enthusiastic about this endeavor because I suspect we're going to get to the end, and we're going to have the last one or two or three property owners that are going to want us to empty the vault to buy their properties because they're going to feel they have us over a barrel. And so I kind of dread getting to the last property or two or three and wondering what sort of money they're going to ask for us to get those properties so we have that contiguous land group under our possession and in our ownership because without having all the little squares of land there all together, it limits us in what we can do with that until we have it all as one plot, one piece.

So this is just a start. But I don't know that this is going to be an achievable goal. So I'm trying to decide how far into this we go until we get to the point of we get to those last half a dozen properties-- and particularly those last few-- that people are holding onto because I mean, we've been doing this for years. I don't know the exact timeline for that. Maybe Sarah could share that, when we started buying properties on Military Drive.

But I know it's been pretty much my entire tenure, and I'll be at 10 years this fall. So we've been doing this for a while. So is this a fool's errand that we keep buying stuff when we don't know that we can get there and end up buying everything over there? And who knows how we'll be held ransom at the end? So it's an interesting question as to where do we get and how long is it going to take us and what's it going to cost us.

DAVID WOLD: Pete.

PETE BROSCHE: Thank you, Mr. Chair. While I do agree that the prices are going up, I believe that by statute we can only pay the assessed value, so it doesn't matter what--

SARAH GARCIA: Appraised value.

PETE BROSCHE: Appraised value. So it doesn't matter what the seller asks for. If it doesn't appraise for that, we can't buy it. I think that-- I think that this property acquisition will allow NIC future growth around its main campus.

DAVID WOLD: Is there any further discussion? Greg. Yes.

GREG MCKENZIE: I think it's odd that we give the president \$2,500 a month, yet a whole business can rent for \$1,200 a month. So it just seems odd.

DAVID WOLD: Is there any further discussion? Todd.

TODD BANDUCCI: I would acknowledge that what Trustee Broschet said is correct. And I do understand that it's about appraise. But to get to that point, you still have to have someone have the willingness to sell. And that's my concern.

We were lucky to get the last batch, which was two which were owned by the same family, which is one of the same families that we had had some-- butted heads with a little bit just a few years before. But they came to a different position and decided. So I'm not sure how this will all play out. Hard to know.

DAVID WOLD: I'll ask for the question. Question's been called. All those in favor, signify by saying aye. Aye.

BOARD MEMBERS: Aye.

DAVID WOLD: All those opposed, nay.

GREG MCKENZIE: Nay.

TODD BANDUCCI: Nay.

DAVID WOLD: 3 to 2. That concludes the business. This meeting is adjourned. Thank you for your attendance.

art@artmacomber.com

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Friday, July 15, 2022 8:01 AM
To: Shannon Goodrich;Karen Hubbard;Sarah Garcia;Laura Rumpler;Mike Sebaaly
Cc: David Wold
Subject: Executed Swayne Employment Agreement
Attachments: Signed NIC Contract.pdf

Attached is an executed employment agreement for the new NIC President, effective August 1. Nick Swayne suggested that rather than having to deal with public record requests, the contract could be accessible through a link on the NIC website.

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

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**EMPLOYMENT AGREEMENT
PRESIDENT OF NORTH IDAHO COLLEGE**

THIS AGREEMENT is made effective as of August 1, 2022, by and between North Idaho College (“NIC” or the “College”) and Dr. Nick Swayne (“President”). The parties hereby agree as follows:

Section 1. Purpose

This document reflects the agreement between the President and the Board of Trustees of North Idaho College (the “Board”) as to the terms of the President’s employment at North Idaho College (the “Agreement”).

Section 2. Responsibilities

The President is appointed by the Board as the Chief Executive Officer of NIC, reports directly to the Board. The President is authorized and responsible for the administration of NIC and has authority over all matters affecting NIC at the operational level, in accordance with applicable laws as well as the policies, rules and regulations approved and/or sanctioned by the Board. In addition to the foregoing, the President shall also be responsible for carrying out all duties requested by the Board. In carrying out these duties, the President recognizes the need for effective communication with the Board.

Section 3. Term

The term of this Agreement will commence on August 1, 2022 and will continue until June 30, 2025, unless terminated consistent with Section 12. “Annual” for purposes of this Agreement means a fiscal year beginning July 1 and ending June 30 of the following year. The term may be extended by the Board, consistent with Section 4.

Section 4. Renewal and Resignation

4.1 The Parties agree that the President and the Board will review this Agreement before or in close temporal proximity to the end of each fiscal year for the Board and the President to decide and agree whether to extend this Agreement an additional year (with or without additional modification). Neither the initial term of this Agreement nor any extension thereof shall be construed to create or be evidence of contractual continued service or tenure of the President as an administrator under any provisions, policies, or rules extrinsic to this Agreement.

4.2 In the event the President wishes to terminate this Agreement at the end of its initial term, he shall so notify the Board, in writing no later than June 30, 2024. If the President wishes to terminate any extension of this Agreement, he shall so notify the Board in writing,

no later than the June 30th in the year proceeding the year of the desired June 30th termination date.

4.3 NIC has no duty to renew this Agreement at the expiration of the term. This Agreement will not automatically renew. The Board may, in its sole discretion, extend the Agreement for an additional term as determined by the Board.

Section 5. Compensation

5.1 NIC will pay the President an annual base salary of \$230,000, which amount will be earned and payable biweekly.

5.2 NIC will make an annual retirement contribution, equal to 10% of the President's base salary, to the President's supplemental retirement account. Payment into such account will be earned and made biweekly in conjunction with payroll. Any employee payroll taxes resulting from this contribution will be withheld in connection with the President's base salary. There is no right to unearned amounts if this Agreement is terminated prior to expiration of the term.

5.3 The President will have temporary housing provided by the College, at a location and price deemed appropriate by the College, while the President seeks more permanent housing. When the President moves to the more permanent housing the College will provide the President a housing allowance in the amount of \$2,500 per month, starting on the first of the month when the President occupies the more permanent housing.

Section 6. Employee Benefits

6.1 The President shall receive 24 annual vacation days, accruing at a rate of 2 days per month. Accrued vacation days may carry over into the following fiscal year; however, total accumulated vacation time will not exceed 30 days (240 hours). Upon termination of the employment relationship, the President will be paid for any accrued and unused vacation days at a rate equivalent to the President's annual base salary. The President shall notify the Board prior to taking vacation and the Board, in its discretion, may require such plans to be deferred as the Board deems appropriate. The President is entitled to paid holidays recognized by NIC.

6.2 The President is entitled to annual sick leave in accordance with NIC Policy and Idaho Code.

6.3 Subject to Sections 6.1 and 6.2, the President will otherwise be eligible to participate in the NIC programs and other benefits available to NIC employees.

6.4 During the first year of the term of this Agreement the College will pay for the reasonable, actual expenses associated with the President's relocation to Idaho. The President

will provide receipts and other appropriate documentation supporting actual relocation expenses for review and approval by the Vice President of Finance. The College's payment of relocation expenses under this Section 6.4 may be made directly to vendors or via reimbursement to the President for expenses incurred by the President. During relocation, the President may have up to an additional ten (10) business days of non-chargeable leave to facilitate the move.

Section 7. Automobile

The President shall furnish his own automobile, and shall be liable for all maintenance, repairs, insurance, and operating expenses, including fuel costs. The College shall reimburse the President for all in-district and out-of-district travel using his own personal vehicle for College business at the applicable IRS deductible rate in effect at the time of travel.

Section 8. Professional Development

The President shall be eligible to attend and participate in educational conferences, conventions, workshops, seminars, and similar professional activities and events, subject to reasonable review and approval by the Board. The College shall reimburse the President for reasonable out-of-pocket expenses incurred by the President in connection with such approved activities and events consistent with College procedures and practices.

Section 9. Expenses

9.1 The Board agrees that the College will pay the President's reasonable, actual travel expenses, hotel bills, and other actual and necessary travel-related expenses incurred when the President is traveling on NIC business. The responsibilities of the President include attendance (sometimes with spouse) at various community events, hosting events, and entertainment reasonably calculated to promote the College. Reimbursement will be consistent with College procedures, practices and consistent with the College's budget.

9.2 The College will provide the President with appropriate electronic/tech equipment to assist the President in performing his duties.

Section 10. Outside Professional Activities

Subject to the Board's prior approval, which shall not be unreasonably withheld, the President may undertake outside professional activities, including, without limitation, consulting, speaking and writing. Such activities may be performed for consideration provided that they do not interfere with the President's normal duties. The President agrees not to engage in any other employment, activity or enterprise, whether or not for remuneration, that is inconsistent, incompatible, in conflict with, or inimical to the President's duties, responsibilities, functions or the policies of the College.

Section 11. Performance Review

The Board shall review the President's performance annually in accordance with NIC policy. The Board may also elect to have more frequent reviews (for example, semiannual or quarterly reviews) as determined by the Board in its discretion.

Section 12. Termination

12.1 This Agreement may be terminated by mutual agreement of the parties, by either party without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

12.2 If, during its term, this Agreement is terminated by the President without cause, the termination shall become effective 60 days after receipt of written notice of termination. The obligations of both parties under this Agreement cease when the termination is effective. The Board may, in its discretion, place the President on administrative leave during part or all of the 60-day notice period.

12.3 This Agreement may be terminated for cause, if a super-majority of the Board (defined as 4 or more Trustees) in its sole and reasonable discretion, determines that: (1) the President has significantly failed or refused to act in accordance with a material provision of this Agreement or any directive or order of the Board; (2) the President has exhibited gross misconduct or dishonesty in regard to his employment; (3) the President is (or has been) convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (4) the President is unable to perform the essential functions of the position; or (5) the President has acted in bad faith to the detriment of NIC.

12.4 In the event of termination for cause, the Board shall provide the President a written statement of its intent to terminate and its reasons for termination. Before the Board makes a final decision, the President is entitled to meet with the Board in executive session, within thirty (30) calendar days of the issuance of the written statement. The President may present any evidence to the Board to rebut the stated reasons for the termination. After the President has had an opportunity to respond to the stated reasons for termination, the Board will make a final decision in writing.

Section 13. Governing Law

This Agreement will be governed, construed, and enforced according to the laws of the State of Idaho.

Section 14. Assignment

This Agreement is personal to the President and is not assignable.

Section 15. Amendments

This Agreement may be amended by mutual agreement of the parties. Such amendments must be in writing signed by the President and the Board Chair, following approval by a majority of the Board.

Section 16. Notification to Board of Application for Outside Employment

The President may, but is not required to, notify the Board Chair if an application for employment is submitted anywhere other than NIC. The President shall notify the Board Chair should the President become a finalist for employment in any capacity.

Section 17. Waiver

The failure or delay of the President or NIC to enforce at any time or to require compliance at any time with any provision of this Agreement, or to take any permitted action under this Agreement, shall in no way be construed as a continuing or future waiver of such provision or of any other provision of this Agreement, shall not affect the right of either party thereafter to enforce each and every provision of this Agreement, and shall not render any such provision(s) unenforceable or invalid.

Section 18. Entire Agreement

This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior or contemporaneous representations, understandings or agreements, whether written or oral, between the parties, and cannot be changed or modified unless in a writing signed by the parties hereto.

Section 19. Severability

The unenforceability, invalidity, or illegality of any provision or clause of this Agreement shall not render any of its other provisions as unenforceable, invalid, or illegal, and such remaining provisions shall be construed in all respects as if the unenforceable, invalid, or illegal provision(s) were omitted.

Signatures on Following Page

DATED this 14th day of July 2022.

NORTH IDAHO COLLEGE

By David A. Wold
David Wold
Chair, Board of Trustees

DATED this 15th day of July 2022.

PRESIDENT

By Nick Swayne
Nick Swayne
President

art@artmacomber.com

From: Marc Lyons <marc@lyonsodowd.com>
Sent: Thursday, August 11, 2022 12:08 PM
To: Shannon Goodrich
Cc: Nick Swayne;David Wold
Subject: Tab item - Correction of scrivener's error in President's contract
Attachments: Tab __- Correction of Scrivener's error to Contract.docx

Shannon,

Here is a draft of a Tab item for the August 22 Board meeting. It is the Board Chair's and the President's call, but I think this should be on the agenda. It would be an action item to correct this one aspect of the President's contract.

Marc

Marc Lyons
Lyons O'Dowd, PLLC
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 ext. 1

marc@lyonsodowd.com
www.lyonsodowd.com

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BOARD OF TRUSTEES MEETING
August 22, 2022

TAB __

SUBJECT

Correction of scrivener's error in College President's contract.

BACKGROUND

The employment contract for North Idaho College President was approved by the Board at the July meeting. As explained by the College attorney at the time, the agreed upon contract eliminated the "termination without cause" option, which term was negotiated and agreed by the new President and the Board Chair and which was also approved by the Board last month.

DISCUSSION

In putting together the final draft to be signed, the attorney inadvertently replaced two words in section 12.1 about how the contract can be terminated that included the following language: "by *either party* without cause." This was intended to read "by *the President* without cause."

The agreement section 12.1 needs to be corrected to read as follows:

This Agreement may be terminated by mutual agreement of the parties, by ~~either party~~ *the President* without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

This modification reflects the agreed language consistent with what the attorney represented at the last meeting and eliminates an inconsistency.

COMMITTEE ACTION

No committee action is necessary.

FINANCIAL IMPACT

There is no financial impact.

REQUESTED BOARD ACTION

The Board is requested to consider a motion to correct the President's employment agreement by removing the words "either party" from section 12.1 and replacing them with the words "the President."

Prepared by,
Marc Lyons, Attorney for
North Idaho College

Section 11. Performance Review

The Board shall review the President's performance annually in accordance with NIC policy. The Board may also elect to have more frequent reviews (for example, semiannual or quarterly reviews) as determined by the Board in its discretion.

Section 12. Termination

12.1 This Agreement may be terminated by mutual agreement of the parties, by ~~either party~~ the President without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

12.2 If, during its term, this Agreement is terminated by the President without cause, the termination shall become effective 60 days after receipt of written notice of termination. The obligations of both parties under this Agreement cease when the termination is effective. The Board may, in its discretion, place the President on administrative leave during part or all of the 60-day notice period.

12.3 This Agreement may be terminated for cause, if a super-majority of the Board (defined as 4 or more Trustees) in its sole and reasonable discretion, determines that: (1) the President has significantly failed or refused to act in accordance with a material provision of this Agreement or any directive or order of the Board; (2) the President has exhibited gross misconduct or dishonesty in regard to his employment; (3) the President is (or has been) convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (4) the President is unable to perform the essential functions of the position; or (5) the President has acted in bad faith to the detriment of NIC.

12.4 In the event of termination for cause, the Board shall provide the President a written statement of its intent to terminate and its reasons for termination. Before the Board makes a final decision, the President is entitled to meet with the Board in executive session, within thirty (30) calendar days of the issuance of the written statement. The President may present any evidence to the Board to rebut the stated reasons for the termination. After the President has had an opportunity to respond to the stated reasons for termination, the Board will make a final decision in writing.

Section 13. Governing Law

This Agreement will be governed, construed, and enforced according to the laws of the State of Idaho.

Amendment Acknowledgement

*Board Chair Wold
David Wold, 8/24/22*

*President Swayne
Swayne, 24/Aug/22*

*Corrected by
Board Meeting
8-22-2022*