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November 15, 2011

Dear Members of the Board of Regents:

Your November 17th work session includes a discussion of proposed changes to the "Board of Regents Bylaws." We have reviewed those changes and wish to share with you a few comments we have about them that we hope you will consider.

1. Section A-11 [Conduct of Meetings]. The current bylaws provide that a roll call vote *shall* be taken upon the demand of any member. The proposed revision would leave it to the discretion of the Chair whether to take a roll call vote. However, the open meetings law, and particularly R.I.G.L. §42-46-7(a)(3), requires "a record by individual member of any vote taken." (See also §42-46-7(b)). At a minimum, therefore, the current language should be retained. To avoid any confusion, the Board might want to further clarify that sentence to ensure that individual votes are noted for the minutes regardless of whether a request for a roll call vote has been made.

2. Section A-11 [Conduct of Meetings]. This section also sets new guidelines for the public comment period at Board meetings. Point #12 bars anyone from "indulging in personal attacks, shouting, or other disruptive behavior." While the Board has the right to set reasonable restrictions on how the public comment period is conducted, and certainly can prohibit disruptive behavior, we believe the proposal's ban on "personal attacks" is overly broad and vague and raises First Amendment concerns. Courts have struck down similar provisions in the past. *See, e.g., Bach v. School Bd. of City of Virginia Beach*, 139 F.Supp.2d 738 (E.D. Va. 2001)(striking down school board by-law prohibiting "personal attacks" during public comment period of school board meetings); *Leventhal v. Vista Unified School District*, 973 F.Supp. 951 (S.D. Cal. 1997)(striking down school board by-law prohibiting criticism of district employees during public comment segment of public meetings). We urge deletion of the phrase "indulging in personal attacks," as the remaining language will give the Chair sufficient ability to deal with any disruptive activity by members of the public.

3. Section A-11 [Conduct of Meetings]. We also have concerns about Point #14, which allows public comment to be closed for any item "where public comment has been received either at a public hearing, at a Regents meeting or both." As we understand this provision, a person could be barred from speaking on a relevant item merely because, for example, another speaker had addressed the topic at a previous meeting of the Board. We do not believe this is an appropriate basis on which to prevent an individual from addressing the Board. The fact that other people may have previously commented on an item should hardly serve as grounds for preventing another person from doing so. Since other provisions already give the Chair the right to limit repetitive, non-germane or lengthy comments, we urge deletion of this sentence.

4. Deletion of Chapter 2 on "Open Records." According to the explanation accompanying these revisions, the Board proposes to eliminate Chapter 2 dealing with "Open Records" because it has "been preempted by comprehensive state and federal laws." Without evaluating the specifics of Chapter 2, we note that the Access to Public Records Act, R.I.G.L. §38-2-3(c), specifically requires every public body to "establish procedures regarding access to public records." To the extent that Chapter 2 does that, deleting this section may place the Board in non-compliance with this statutory provision.

5. Deletions of Chapter 6 and 7 on "Equal Employment Opportunity." We have not had the opportunity to research this, but like our point #4 above, it may be possible that the Board has an obligation to have in place EEO procedures and policies that comport with the "comprehensive state and federal laws" that exist on the subject, and this may be the purpose of Chapters 6 and 7. We would encourage the Board to research this before deleting these sections.

Thank you in advance for considering our views.

Sincerely,

Steven Brown
Executive Director