

**OLD DOMINION UNIVERSITY
BOARD OF VISITORS
GOVERNANCE COMMITTEE MEETING
Tuesday, December 1, 2020**

MINUTES

The Governance Committee of the Board of Visitors of Old Dominion University met at 10:30 a.m. on Tuesday, December 1, 2020. The meeting was held electronically via the Zoom application pursuant § 4-0.01(g) of Chapter 1289 of the 2020 Acts of Assembly. Present from the Committee were:

Jerri F. Dickeski, Chair
Yvonne T. Allmond, Vice Chair
Kay A. Kemper, Rector (*ex-officio*)
R. Bruce Bradley, Vice Rector (*ex-officio*)
Robert S. Corn
Peter G. Decker, III
Lisa B. Smith

Also in attendance from the Board: Unwanna B. Dabney
Ross A. Mugler
P. Murry Pitts

Also present: Austin Agho
Greg DuBois
Donna Meeks
R. Earl Nance
Amanda Skaggs

The Chair called the meeting to order at 10:31 a.m. and reviewed the Committee's responsibilities, as listed in the Board's Bylaws. These include providing oversight of functions relating to board governance and conduct of business, establishing the agenda for the Board's annual planning retreat, developing the Board self-assessment process, reviewing the Bylaws on a regular basis for proposed revisions for Board approval, overseeing the formal review process for Board policies and procedures, developing qualifications and competencies for Board members, and assisting with Board nominations to the Governor.

The Committee discussed a proposed action plan to respond to the major recommendations noted in the Board Governance Audit completed in 2019. Amanda Skaggs, Chief Audit Executive, reviewed the five major recommendations. She noted that one of the Committee's major tasks will be the review of the Board's Bylaws and policies and procedures and the recommended revisions in Appendices A-C of the Audit.

The Chair commented that discussion of the Board's self-evaluation, which was conducted in 2019 and was to have been discussed at the Board's retreat in April before it was cancelled due to COVID, will be done during today's full Board meeting. Based on those discussions, the

Committee will consider proposed revisions to the survey, which will be conducted in early 2021 for discussion at the Board's retreat scheduled in April 2021. The Rector noted that the presentation on the Board's operating budget was done in June and updates on the status of the budget will be given by the Vice Rector at each quarterly meeting.

Upon a motion made by Mr. Bradley and seconded by Mr. Decker, the following Board Governance Audit Action Plan was approved by the Committee by roll-call vote (*Aye: Allmond, Bradley, Corn, Decker, Dickeski, Kemper; Nay: None*).

BOARD GOVERNANCE AUDIT Findings, Recommendations and Action Plans

Finding #1 - There was not a well-established process to ensure timely, comprehensive reviews of the Bylaws, policies, and other important documents. Bylaws, policies, and committee charters need numerous revisions to maintain accuracy and alignment with Virginia codified requirements and published guidance by the Association of Governing Boards of Universities and Colleges.

Recommendation #1: In the near future, revise Bylaws, policies and create documents as recommended within Appendices A through C. Establish a review cycle for the Bylaws, Board policies and procedures that includes reviewing Code of Virginia requirements to ascertain whether Bylaws and policies are current with code requirements.

Board's Response – Agree with the findings and recommendations

Action Plan – Corrective action is being taken, with full implementation expected by the end of calendar year 2021. The Board revised its Bylaws at its meeting on September 17, 2020 to create a Governance Committee. This committee will be responsible for overseeing the regular review of the Board's Bylaws, policies, and procedures. The Governance Committee will begin its work on the review of the Board's Bylaws and policies and procedures in accordance with Appendices A through C, as well as for any other changes it may deem necessary, and will establish a process and timeframe for formal review and updates that will include input from the President, Vice Presidents, University Counsel, and assistance by the Executive Secretary to the Board.

Finding #2 – The Board has not established a self-evaluation process. Board self-evaluations have not occurred in more than 5 years. Soon after the audit entrance meeting with the Chief Audit Executive, the Rector developed and launched a Board survey to commence the self-assessment process.

Recommendation #2 – Implement a regular self-review process of Board objectives and performance that facilitates dialogue and feedback, results in recorded and approved outcomes and includes a schedule for implementing improvements. Update Bylaws to include the expected self-evaluation frequency.

Board's Response – Agree with the findings and recommendations

Action Plan - Corrective action is being taken, with full implementation expected by April 2021. The Board revised its Bylaws at its meeting on September 17, 2020 to create a Governance Committee. This committee will be responsible for developing and implementing the self-

assessment process to be conducted on an annual basis. The Board Bylaws will be updated to include the process and frequency of these self-evaluations. At the December 2020 quarterly meeting, the Board will be presented with the findings of the first self-assessment survey conducted in late-2019 (which was initially planned for the April 2020 Board retreat that was canceled due to COVID). These findings will be discussed by the Board members in a moderated. The self-assessment survey form will be updated based on those discussions and a new survey will be sent to the Board in early 2021 for discussion at its retreat in April 2021. The self-assessment survey, survey results, and Board minutes reflecting and actions taken by the Board as a result of these discussions will be provided as evidence in support of the SACSCOC reaccreditation process.

Finding #3 – Review of CY2019 closed sessions revealed occurrences where meeting activities did not fully comply with Code of Virginia requirements. One of these was related to the topic of not meeting an authorized purpose, and several others where vote were not recording for entering a closed session and/or reconvening into open session.

Recommendation #3 – To ensure closed sessions are limited to authorized purposes, and that a recorded vote occurs when entering a closed session and reconvening in open session, we minimally recommend sending guidance to all Committee Chairs and meeting secretaries. The Executive Secretary to the Board could additionally review minutes and as necessary meet individually with secretaries to reinforce compliance requirements.

Board's Response – Agree with the findings and recommendations

Action Plan - Corrective action was taken prior to the September 2020 quarterly meeting and will be an ongoing responsibility of the Executive Secretary to the Board of Visitors. The Executive Secretary to the Board of Visitors has communicated with the secretaries to the Board committees the requirements for recording of votes on motions to go into closed session and the FOIA certification once reconvening in open session and will review minutes to ensure that this requirement has been met. The Executive Secretary will also ensure that all meetings involving a closed session will include University Counsel's review of the proposed purpose of the closed session, that it meets one or more of the exemptions allowed by FOIA, and the motion is properly worded. In addition to the documentation on the Freedom of Information Act included in the Board's online manual and mandatory training provided by the State Council of Higher Education, the Board may receive periodic updates on FOIA from University Counsel.

Finding #4 – The Bylaws address the need for the presence of University Counsel at all meetings, which affords real time legal guidance and opinions about authorized purposes for entering a closed session. Based on open session attendance records University Counsel was not present at several of twenty-two CY2019 committee meetings. About half of these also contained closed sessions for which attendance was indeterminate because it was not recorded. Counsel attended a meeting, held for the purpose of discussing the evaluations of the President, which the Bylaws disallow unless there is a directive by the Attorney General.

Recommendation #4 – Unless Counsel has provided notice of intended absence or directive by the Attorney General, prior to the commencement of meetings, the Chair or Meeting Secretary should verify Counsel's attendance as appropriate. Other actions could include recording closed session

attendance by the meeting secretary, and the Executive Secretary to the Board could maintain explanations for necessary Counsel absences.

Board's Response – Agree with the findings and recommendations

Action Plan - Corrective action was taken in advance of the September 2020 quarterly meeting. The Executive Secretary to the Board of Visitors has already begun addressing this recommendation by meeting with the secretaries to the Board committees to advise them to record in meeting minutes the names of the non-Board members, including University Counsel, who remained in closed session with the Board. The Board will direct University Counsel that either he or the Associate University Counsel must attend all committee meetings unless Counsel has provided notice of intended absence or directive by the Attorney General prior to each meeting. University Counsel will be directed to notify the Executive Secretary of the Board of any expected absence and an explanation for the absence. The Bylaws will be revised to state that the Rector will direct University Counsel to be excused from a closed session, or any portion thereof, at any meeting that the Board discusses the president's evaluation and compensation, unless otherwise previously directed by the Attorney General.

Finding #5 – The Board's annual budget has not historically been presented to the Board for approval. Static base budget amounts have not consistently been sufficient, requiring one-time funds to address shortfalls. Accounts were overspent in FY18 by \$565, and in FY19 by \$3,017. The Executive Secretary to the Board, who monitors the budget, has acknowledged the overages as due to challenges of forecasting fluctuating catering and travel expenses for the annual June board meetings for which one-time funds were not transferred prior to the fiscal year's end. The Secretary has responded by requesting a base increase as part of the FY21 budget process.

Recommendation #5 – For compliance and the opportunities to more accurately forecast projected expenses, the Board budget as described in Bylaw 9.04 should be formulated by the Vice Rector, in conjunction with the Executive Secretary, predicated on guidance developed by the Rector grounded on past spending patterns and anticipated needs and presented by the Vice Rector at the Spring regular meeting. The Executive Secretary to the Board should continue to monitor expenses and address any Board account deficits prior to the end of the fiscal year.

Board's Response – Agree with the findings and recommendations

Action Plan - Corrective action was taken at the June 2020 quarterly meeting and will be an ongoing responsibility of the Executive Secretary to the Board of Visitors. The Executive Secretary to the Board of Visitors worked with the Rector and Vice Rector to present an overview of the Board's operating budget at its meeting held in June 2020. A recommendation was made that the Board's base budget not be increased, that efforts will be made to stay within budget as much as possible, and any funds needed to address projected shortfalls will be presented to the Board for approval and requested from the President. The Vice Rector provided an update on the Board's FY21 budget at its meeting in September and will continue to provide an update on the Board's operating budget at each of its quarterly meetings.

Donna Meeks, Executive Secretary to the Board of Visitors, presented a proposed methodology for the Committee to collaborate on the review of the Board bylaws and policies. She noted that the recommendations from the Audit appendices have been annotated in each of the documents. The Committee agreed to meet on a monthly basis to conduct this comprehensive review and will bring any proposed revisions to the Board for approval at its quarterly meetings.

With no further business to discuss, the meeting was adjourned at 11:00 a.m.