

**OLD DOMINION UNIVERSITY
BOARD OF VISITORS
GOVERNANCE COMMITTEE MEETING
Monday, April 12, 2021**

MINUTES

The Governance Committee of the Board of Visitors of Old Dominion University met at 1:00 p.m. on Monday, April 12, 2021. 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 (*ex-officio*)
Robert S. Corn
Peter G. Decker, III
Lisa B. Smith

Also present:

Greg DuBois
Casey Kohler
Donna Meeks
Tom Odom
Amanda Skaggs
Jay Wright

The Chair called the meeting to order at 1:01 p.m.

BYLAWS REVIEW

The Chair recognized Lisa Smith, who explained that the proposed revisions have been put into three categories. The first category includes those that are time-sensitive in that they are statutory provisions or are necessary for SACSCOC compliance. The best practices category includes those recommended by AGB, provisions that are either out of compliance or conflict with other provisions, and antiquate provisions based on current practice followed by the Board. The third category includes items for Board consideration that include overarching, philosophical issues that will require further discussion by the Board and will impact the Board's Bylaws.

Ms. Meeks noted that she had highlighted in the Bylaws those provisions that fall under the first, time-sensitive category. Mr. Wright clarified that the Committee can vote on the proposed revisions as a whole at the end of their review, unless there is a provision that the Committee believes merits additional discussion and a separate vote. Ms. Smith noted that SACSCOC has added additional Bylaws requirements than they had during the last reaccreditation process. She also said that throughout the document, references were made to sections of the Code of Virginia but the text of the section was not included; links to the Code sections will be added.

Mr. Bradley commented that some of the revisions being made may impact the Board's agenda for future meetings. For example, the Board receives data on graduation and retention rates in its Dashboards, but there is no discussion by the Board on how those rate may be improved. Ms. Smith noted that she, Amanda and Donna have already discussed the need for having a compliance checklist for the Board once the Bylaws are revised in order to ensure that the Board is doing the things it is supposed to do. Ms. Dickeski added that the Governance Committee would take on the role for ensuring that the Board meeting agendas include the appropriate topics to ensure this compliance. Ms. Meeks stated that the University already has a compliance database that includes Board compliance issues, so that checklist can be pulled out of that existing database, although, as noted by Ms. Dickeski, the fidelity of what equals compliance may change.

The Committee reviewed the highlighted sections and discussed specific sections, as noted below.

Mr. Bradley asked about the added provisions under Article I, specifically the responsibility of the Board for establishing regulations or institution policies for the acceptance and assistance of students and agreements with each associate-degree granting public institutions. Mr. Wright noted that the Board has delegated responsibility to the President under Section 7.01 of its Bylaws. Ms. Skaggs added that the Board may ask someone from the Office of Admissions to give presentations the Board with some frequency to keep them informed.

Ms. Allmond asked about the section on Affiliated Foundations and whether the Educational Foundation Investment Committee and the Barry Art Museum Foundation should be added. In response to a question, she said that she was invited by the Barrys to be on the Barry Art Museum Foundation, but not as a representative of the Board. The Rector said that in earlier discussions with the President, he felt that the Board did not need to have require a Board representative on that Foundation. This can be revised in later discussions.

Under Section 2.03, Removal, it was recommended that the Board create a new policy to document how a Board member would be given an opportunity to respond if the Board voted for his or her removal. This is also a SACSCOC requirement. Ms. Smith noted that Donna is required to keep track of Board attendance and provide an annual report to the Governor's Office. Board members are also required to attend SCHEV's orientation every two years, submit the annual Financial Disclosure Statement, and complete the Conflict of Interest training every two years, but there is no defined process for dealing with Board members who do not complete these requirements. Ms. Meeks added that she has polled her counterparts around the state and all have the exact language in their Bylaws, as required by statute, but none have experienced this situation nor have they created a policy to address it. She is also waiting to hear back from the Secretary of the Commonwealth to see if they have a policy or process in place. The proposed policy would also serve as a reminder for Board members that they have certain requirements that they are obligated to meet. All agreed that the requirement as noted in the Bylaws puts the Board in an awkward situation, and Mr. Corn suggested that the policy note that the Board acts "in consultation with or notification to the Governor's Office."

Under Section 3.01, Regular Meetings, it is recommended that Policy 1105 be revised to address electronic meetings under emergency situations as well as other specific details that are better suited to a policy that being added to the Bylaws. Committee members agreed.

Ms. Smith noted that they are recommending that the Board establish a Conflict of Interests policy in addition to the added Section 3.10 in the Bylaws in order to meet SACSCOC requirements. Mr. Wright explained that Board members routinely contact their office to discuss possible conflicts and a determination is made whether they need to recuse themselves from discussion and abstain from voting on related Board matters. The proposed policy would also authorize University Counsel to review the submitted Financial Disclosure Statements for possible conflicts of interest that may arise as an aid to Board members, although the ultimate responsibility remains with the individual Board member to disclose such conflicts. Mr. Corn expressed his concern that this may be adding another step that might be outside the norm of universities or any state agencies or institutions. Ms. Skaggs noted that the SACSCOC requirement says that the Board is responsible for ensuring that they do not have any conflicts of interest, and a process is needed to explicitly demonstrate it. The Committee discussed situations of possible intentional violation where a Board member knowingly does not disclose a conflict. Mr. Wright noted that that would constitute malfeasance and the Governor can remove such a Board member. She will ask the SACSCOC coordinator if the enhanced Bylaws is sufficient or if a policy is needed. If so, the Committee will consider a proposed policy at its meeting in May.

Mr. Bradley commented that Section 8.01.C. regarding the vacancy of the University's Audit Executive, stating that it seems very onerous and asked if having Board involvement in the search is required. Ms. Smith commented that there is a similar issue with appointment of vice presidents and deans, and whether the Board must approve these appointments. Ms. Skaggs noted the importance of Board involvement in the process of hiring the University's Audit Executive to ensure the independence of the position, and during the search process when she was hired two representatives of the Board's Audit Committee were involved in the final selection. The Chair noted that this section is not included in those that are time-sensitive and can be discussed further at a later meeting.

The proposed revisions to Section 10.03, Board Evaluation, were discussed. Ms. Skaggs clarified the changes that were required for SACSCOC. The Committee agreed to change the formal evaluation from five years to three and to remove the last sentence.

At the conclusion of their discussion, Mr. Bradley made a motion to approve the proposed revisions as discussed. The motion was seconded by Ms. Kemper and approved by roll-call vote (*Ayes: Allmond, Bradley, Corn, Decker, Dickeski, Kemper, Smith*).

The Chair asked that the proposed changes be shared with President Broderick and President-elect Hemphill prior to the June Board meeting.

Ms. Smith reviewed the issues that the Board will need to consider as it continues its review of the Bylaws. The first is the section related to Visitors Emeriti and the requirement to meet once a year with the current Board. She said that it has been a tradition for the President to host the current and former Board members at an annual event, but it should not be a requirement and should be deleted from the Bylaws as such. Additionally, it contains language about having access to minutes of the Board meetings; however, these minutes are now posted online and are available to everyone, so that requirement is no longer necessary for the Bylaws. The intent is to formally recognize former Board members with the Emeritus title but without the additional requirements.

Another issue relates to the composition of the Executive Committee meeting, which is currently comprised of the officers and the chairs of the standing committees, as well as vice chairs should a chair also serve as an officer. As a result, the number of Board members on the Executive Committee is quite large and this Committee may want to consider limiting the number of those who serve on the Executive Committee, either by having only certain committees represented or by consolidating committees to have fewer chairs.

The next issue relates to the Academic & Research Advancement Committee and the review of negative tenure decisions and severe sanctions. The Committee needs to consider if this authority should continue to be delegated or if those decisions should be approved by the full Board, or if this should be altogether delegated to the President.

Ms. Smith also pointed out that most Boards on which she has served the chair has the authority to appoint committee members in all cases. Other Boards in Virginia include appointment of the Nominating and Presidential Search Committee members while ODU's Bylaws require that they be elected by the Board. In addition, some Boards deem the Governance Committee as the Nominating Committee. These should also be discussed as possible considerations for ODU's Board.

The timing of nominations and elections and the eligibility to serve as an officer should also be considered by the Governance Committee. At Ms. Smith's request, Ms. Meeks explained how the timing of nominations and elections shifted over the years. In her review of the Bylaws of the other universities, some have included eligibility for those who are up for appointment to a second term. Ms. Dickeski voiced her support for whatever would make the most number of Board members eligible to serve as an officer. Terms of officers and whether a Board member is eligible to serve in the same office for more than one term, and how interim terms are considered, merit future discussion.

Board approval of the appointment of vice presidents and deans is another matter for consideration. Should this be the at the discretion of the President for vice presidents and the Provost for deans? Vice President DuBois stated that he and Vice President Sanderlin have recently discussed this issue and noted that the Faculty Handbook states that the Board must approve all faculty and faculty administrative appointments, however, it will be changed so that Board approval is no longer required, although it remains in the Board's Bylaws.

The final issue deals with the temporary suspension of the Bylaws and how long that suspension lasts.

As to the timeline, the Committee is now prepared to recommend to the Board the revisions that were discussed today to take to the Board at the June meeting, and can then continue its discussion on the proposed best practices and the major issues noted above for future consideration.

The Chair noted that the Committee will discuss revisions to Board policies 1101 and 1301 and University Counsel's review of current Board policies for possible removal at the Committee's next meeting on May 18.

With no further business to discuss, the meeting was adjourned at 3:04 p.m.