



University of Colorado

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To: Regents Governance Committee

From: Patrick T. O'Rourke

Vice President, University Counsel & Secretary of the Board of Regents

Re: February 2 – Governance Committee Meeting
Articles 1 and 2 and accompanying policies.

Date: February 1, 2018

Overview

The Board of Regents, through its Governance Committee is reviewing all of the Laws of the Regents and the associated regent policies. The purpose of the review is to simplify existing laws and policies, make sure that those laws and policies reflect current legal and institutional requirements, and better align the laws and policies with other policy documents.

I am bringing forward multiple proposed revisions to Articles 1 and 2 of the Laws of the Regents and the associated policies. Articles 1 and 2 deal primarily with the organizational structure of the University of Colorado and the Board of Regents.

Article 1 – University of Colorado, Legal Origin, Mission, and Ethical Conduct

Article 1, Parts A and B detail the constitutional history of the University of Colorado. The provisions in this section are largely unchanged, with the only revisions to appropriately refer to the CU Anschutz Medical Campus, rather than the Health Sciences Center.

Article 1, Part C is a new provision to describe the University of Colorado policy framework. It establishes that the University of Colorado and the Board of Regents are first governed by federal state laws and specific state legislation. The Laws of the Regents then are the primary source of legal authority for the University of Colorado, with regent policies giving operational effect to the Laws of the Regents. Administrative Policy Statements provided system-wide policy governance. Campus and departmental policies are subordinate to system-wide policies.

Article 1, Part D incorporates the recently enacted Code of Conduct into the Laws of the Regents.

Policy 1.A – Preservation of Self-Governing Responsibilities

The Board of Regents has taken the position that the university administration is authorized to inform the members of the General Assembly and the governor that the regents oppose abolishing or limiting the constitutional provisions related to the self-governance of the university. The policy has been modified only to remove superfluous, non-operative language.

Policy 1.B. – Guiding Principles

The guiding principles were only recently enacted by the Board of Regents. The only revisions are being made to clarify, rather than change, the guiding principles.

Article 2 – Regents of the University of Colorado

Article 2, Part A describes the organization and powers of the Regents of the University of Colorado. Part A has been modified to reflect current law and to clarify existing provisions. It has also been modified to eliminate a distinction between standing and ad hoc committees, as well as to specify that no committee can bind the Board of Regents without an express delegation of authority.

Article 2, Part B describes Board of Regent meetings. It has been modified to delete references to “study sessions” of the Board of Regents, as that concept is not recognized as a separate type of meeting under the Colorado Open Meetings Act. It has been modified to provide a more legally accurate definition of what constitutes public business under the Colorado Open Meetings Act and to specify that the open meetings requirements do not apply to social gatherings or other meetings in which the discussion of public business is not the central purpose. The revisions delete a statement of operational principles that are captured elsewhere in the Laws of the Regents and regent policy.

Policy 2.X – Fiduciary Obligations

The Board of Regents has considered regents to be fiduciaries of the University of Colorado, but the Board of Regents has never adopted a statement of those fiduciary obligations. This is a newly proposed policy that incorporates three fiduciary duties traditionally recognized in both corporate and non-profit governance, including the duty of care, the duty of loyalty, and the duty of obedience.

Policy 2.B – Regent Acceptance of Money from the University

Regents are not compensated for their service on the Board of Regents. This policy prohibits regents from receiving monetary payments from the university, other than reasonable expenses incurred consistently with university policy, without prior authorization.

Policy 2.D – Regent General Study Session

I have recommended that the Board of Regents repeal this provision as inconsistent with Board of Regents operational practices.

Policy 2.E – Faculty, Staff and Student Representatives to the Board of Regents

I have recommended deletion of the alumni representatives to the Board of Regents. It has expired, and the Board of Regents did not believe that the reports of the alumni representatives were necessary for Board of Regents meetings.

Policy 2.G – Direct Expenditure Authorization via Board Resolution

This is a recent Board of Regents policy. I have not recommended modifications.

Policy 2.H – Regent Travel Policy

This is a recent Board of Regents policy. I have not recommended modifications.

Policy 2.J – Sexual Harassment –

I have recommended deletion of this policy. It is duplicative of other university policies, including Article 10 of the Laws of the Regents and APS 5014.

Policy 2.K – Personnel Authority for Employees Exempt from the State Personnel System

I have modified this provision to make clear that the Board of Regents has delegated authority over most personnel matters to the President of the University. The President may further delegate authority to chancellors or vice presidents. All delegations must be in writing. The Board of Regents has retained authority for personnel who report to the Board of Regents as officers of the university. Hiring decisions for the Department of Internal Audit reside with the Associate Vice President of Internal Audit.

Policy 2.L – Public Comment at Meetings of the Board

I have modified this policy to have it reflect the current structure of the Board of Regents' meetings. I have also modified this policy to remove a provision that limited the subject matter of public comments. Because the Board of Regents has opened this portion of the meeting for public comment as a limited public forum, I do not recommend that it employ content based restrictions in receiving public comments.

Policy 2.M – Reprimand or Censure of a Board Member

Since this Board of Regents enacted this provision in 2005, it has not used it. In the event the Board of Regents would wish to censure a regent, this policy governs how the censure would occur. I have modified the provisions to make more clear the types of conduct that could give rise to a censure, as well as to identify the process for imposing a censure.

Policy 2.N. – Approval, Revisions or Repeal of Regents Policy

This is a recent Board of Regents policy. I have not recommended modifications.