

UNIVERSITY OF MINNESOTA

BOARD OF REGENTS

Educational Planning & Policy Committee

November 8, 2007

A meeting of the Educational Planning and Policy Committee of the Board of Regents was held on Thursday, November 8, 2007 at 3:15 p.m. in the East Committee Room, 600 McNamara Alumni Center.

Regents present: David Larson, presiding; Anthony Baraga, Maureen Cisneros, Linda Cohen, Steven Hunter, and Patricia Simmons.

Staff present: Chancellor Jacqueline Johnson; Senior Vice President & Provost Thomas Sullivan; Senior Vice President Frank Cerra; Vice Presidents Kathryn Brown and R. Timothy Mulcahy; General Counsel Mark Rotenberg; and Executive Director Ann Cieslak.

Student Representatives present: Meghan Keil and Nathan Olson.

AREA HEALTH EDUCATION CENTER: RESOLUTION

Senior Vice President Cerra led the discussion of the Resolution Related to the Area Health Education Center (AHEC) as described in docket materials. This is the third such resolution the Board has been asked to approve, and it will enable the creation of an independent, not-for-profit corporation in Fergus Falls to support and promote rural health professional education in Central Minnesota.

A motion was made and seconded, and the committee voted unanimously to recommend approval of the resolution to establish the Central Minnesota Area Health Education Center.

**BOARD OF REGENTS POLICY:
INTELLECTUAL PROPERTY**

Senior Vice President & Provost Sullivan introduced General Counsel Rotenberg and Mulcahy, Vice President for Research, who led the discussion. Rotenberg identified the four types of intellectual property rights recognized in the United States—patent, copyright, trademarks, and trade secrets—and indicated that federal law predominates in the areas of patent, copyright, and trademarks, while state laws predominate in the area of trade secrets (materials on file in the Board Office). Under U.S. patent law, ownership is vested with the inventor and the employer must negotiate with the employee to obtain ownership. Under U.S. copyright law, ownership vests with the employer if the employee was acting within the scope of their job duties.

In contrast to the provisions of federal law, the policies of most U.S. research universities vest ownership of patents with the institution, giving inventors a share of

the net income derived from licensing patent rights. Conversely, copyright ownership of academic works in U.S. universities has traditionally vested with the faculty.

Mulcahy summarized key changes to Board of Regents Policy: *Intellectual Property* (materials in the docket). One important change is the new title, which now includes explicit recognition that the policy addresses the *licensing* of intellectual property rights. Other changes include new definitions; a new principle acknowledging the academic value of commercialization as currently expressed in Board of Regents Policy: *Faculty Tenure*; new language to allow the University's use of intellectual property for humanitarian purposes; and the extension of the policy scope to include students, who are now more systematically involved in research relationships with faculty.

Mulcahy noted that one important aspect of the policy that remains the same is the distribution of income. One-third of the income will continue to be distributed to the faculty inventor, one-third to the college/department, and one-third to the Office of the Vice President for Research (OVPR).

In response to a question from Regent Hunter, Rotenberg stated that one goal of the Board's recently completed policy review process has been to eliminate delegations to individuals other than the President. Mulcahy informed the committee that the President has delegated this responsibility to him and that decisions regarding changes in the distribution of income would remain with the OVPR, in consultation with the parties involved, including the President.

In response to a number of questions from the committee, Mulcahy reported that there had been extensive consultation with faculty regarding the proposed changes, that some significant changes were based on comments from the faculty, and that faculty are pleased with the proposed policy.

Regarding the distribution of income, Mulcahy indicated that he did an exhaustive review of similar policies at peer institutions across the country and found that at least half employ a fixed distribution of income and that equal shares also is not unusual. Modeling of alternative distribution scenarios revealed that strategies involving caps or tiered/sliding scale distributions increased administrative costs, did little to increase the University's income, and could be a disincentive to faculty.

In the case of start-up investments in lieu of royalty income, Mulcahy explained that with an expected increase in start-up investments, University policy protects a larger share of equity in start-ups in exchange for licensing the start-up. In this case, the University would negotiate as large a share of equity as possible in lieu of a cash license, but once the inventor gets the financial support necessary, the University's share of equity would decline while the faculty share would remain proportional.

The policy will return to a future meeting of the committee for action.

BOARD OF REGENTS POLICY: COPYRIGHT

Senior Vice President & Provost Sullivan identified problems with current Board of Regents policy in the area of copyrights; described the consultative process used to develop the proposals to be presented; listed the objectives of the policy proposal;

highlighted important policy terms and definitions; and discussed questions and issues raised by faculty that informed the proposed policy.

Sullivan introduced Wendy Lougee, University Librarian, and Ruth Okediji, professor, School of Law, who were available to answer questions. In response to a question from Regent Larson, Okediji explained that U.S. universities vest rights to *academic works* in the faculty who created them. In the new proposed policy, the University owns *directed works* if three conditions are satisfied: (1) there was a specific request by the University to produce the work; (2) the work was supported by substantial University resources; and (3) the work was agreed upon by the University and the creator. *Works for hire* are the non-directed or non-academic works of an employee that the University owns if the work created was within the scope of their employment.

In response to questions from Regent Simmons, Okediji stated that the 20 institutions selected for comparison were selected because they are (1) public institutions with a public mission similar to the University's; (2) privates who are more innovative and moving to transform existing paradigms; or (3) public and private institutions that are on the cutting edge.

In response to additional questions from the committee, Okediji agreed that the proposed copyright policy will establish as policy what is already being practiced at the University and generally practiced at most other major research institutions. The new policy will not necessarily prevent copyrights from leaving the University with departing faculty, but it does strike a balance between the University's interests and incentives for faculty to create and disseminate their work.

Okediji also explained that *faculty-like* employees are non-tenure track employees who teach or write scholarly works. Librarians, for example, are evaluated for what they contribute to the intellectual environment and to the University, and they would be classified as faculty-like.

Lougee stated that encouraging faculty and students to provide the greatest possible access to copyrighted works is a very critical guiding principle. New models are emerging from such organizations as the National Institutes of Health that recommend that federally funded research be publicly accessible in an open form of publication. Also, this language will remind creators that there are responsibilities that come with copyrights and we would encourage doing things to promote the broadest possible access.

The policy will return to a future meeting of the committee for action.

CONSENT REPORT

A motion was made and seconded, and the committee unanimously recommended approval of the following academic program changes, as described in the docket materials:

New Academic Program:

- College of Education and Human Development (Twin Cities campus) – Create Post-Baccalaureate Certificate in Parent Education

Academic Program Change:

- Labovitz School of Business and Economics (Duluth campus) – Discontinue Minors in Business Administration, Finance, Management, Management Information Systems, and Marketing for non-business students.

Endorsement of Change in Accreditation Stipulation:

- The Twin Cities campus seeks Board endorsement of its request to the Higher Learning Commission (Commission), the University's regional accrediting agency, to remove the standard stipulation that prior Commission approval is required before distance education programs can be offered.

INFORMATION ITEMS

There were no information items this month.

The meeting adjourned at 4:30 p.m.



ANN D. CIESLAK
Executive Director and
Corporate Secretary