

University Senate Minutes

Fargo, ND 58105

North Dakota State University

February 14, 2005

University Senate Meeting Minutes February 14, 2005

The University Senate met at 3:30 p.m. in the Peace Garden Room of the Memorial Union with Dr. C. Harter presiding and the following senators present: T. Ambrosio, B. Bahrami, E. Berry, S. Bornsen, K. Brooks, V. Clark Johnson, J. Cook, J. Council, L. Disrud, J. Foertsch, J. Garden-Robinson, K. Grafton, A. Grazul-Bilska, C. Gross, R. Groves, C. Gustafson, H. Hatterman-Valenti, D. Hauck, J. Hektner, O. Helweg, D. Hopkins, K. Howatt, I. Justitz, A. Kallmeyer, A. Kamel, C. Kilber, T. Knoepfle, J. Larson, J. Leitch, M. Mahinfalah, L. Manikowske, F. Michael, D. Miller, A. Montgomery, D. Moser, J. Olsen, L. Presser, S. Rasmussen, T. Riley, M. Robinson, N. Rogers, R.C. Schnell, D. Scott, C. Skauge, D. Steele, D. Terbizan, A. Thompson, B. Welk, and D. Wittrock.

Substitutions: J. Mathern for S. Beck, C. Huang for M. Bhandary, D. Rider for M. Boetel, L. Peterson for D. Danbom, J. Richardson for D. Hopkins, S. Duffield for W. Hannon, and J. Wang for D. Katti.

Reminder: Current senators may not serve as substitute for other senators.

Previous Minutes

MOTION (Helweg/Kamel): to approve the minutes of the January 24, 2005, meeting as posted. A MOTION TO AMEND (Montgomery) the minutes regarding the Dead Week committee recommendation (page 4) to read, "Based on the survey results, the committee unanimously recommends that Dead Week be continued and that it be mandatory across the university." MOTION TO APPROVE MINUTES AS AMENDED PASSED WITH UNANIMOUS CONSENT.

General Announcements

1. Provost and Vice President Schnell provided the following legislative updates:
 - English pronunciation bill (HB 1364) passed the House 78-12 and now will go to the Senate. The bill is similar to NDSU's policy 339, but recommends that an interim report of complaints be filed by June 30, 2006. Student Senate also is addressing this issue because students are not filing formal complaints. Future officer platforms will include addressing this in a non-threatening manner to students and help to more clearly identify warranted complaints. In-Forum.com has a web log on this issue with approximately 300 comments logged to date.

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- Equity Funding of \$12.2 million to NDSU, BSC and LRSC (HB 2206)- Many senators and others, including the chancellor, have cited support of this bill based on ethical inequities. It was modified to redistribute funding based on 60% parity-40% equity (adjusted from the initial 80%-20% request). Concern continues since parity actually extends inequity. This bill was defeated, so the chancellor has proposed a compromise asking for \$10 million in new money, which still puts focus on parity. If passed, the SBHE would oversee the distribution of funds to the state institutions. Institutions have been asked to support this.
2. Presiding Officer Harter reported the following:
- Effective immediately, all votes in the Senate be taken via PRS units, not just those that are not unanimous. This will encourage those who choose to abstain to go on record.
 - Commended student representatives Kilber, Larson and Beck for their lobbying efforts with the legislature.
 - The April Executive Committee meeting will need to be moved a week later, to April 4th, due to a spring semester holiday on March 28th. This will not allow for the agenda to be posted for a full week, according to Senate Bylaws. No objection was voiced.
 - Harter wants representation units to begin reviewing 2005-2006 Senate committee membership. Each college needs to find replacements as needed so they may be approved at the May meeting.

Committee Reports

1. Academic Affairs ([Attachment 1](#)):
 - D. Meyer, chair, introduced program, course and unit title proposals. New programs include a College Teaching graduate certificate and M.S. degree in Criminal Justice. A request for inactive status for the Plant Protection undergraduate major, and the unit title change for Construction Management and Engineering from Division to Department also were made. MOTION (Ambrosio/Council): to approve the program and unit title requests as presented. MOTION PASSED WITH UNANIMOUS CONSENT.

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- New courses, course changes, course deletions and cross-listing proposals were presented. MOTION (Knoepfle/Terbizan): to approve the course proposals as presented. MOTION TO AMEND (Schnell): to include a prefix change for Coatings and Polymeric Materials (formerly Polymers and Coatings). This new prefix will be CPM (formerly P&C). AMENDED MOTION PASSED UNANIMOUSLY WITH ONE ABSTENTION.

2. General Education:

L. Peterson, chair, presented courses for continued approval as general education ([Attachment 2](#)). MOTION (Ambrosio/Mahinfalah): to approve the General Education Committee report as posted. MOTION PASSED UNANIMOUSLY WITH ONE ABSTENTION.

3. Council of College Faculties:

H. Hatterman-Valenti reported that:

- Ralph Kingsbury has completed his term on the SBHE and will not seek reelection.
- The Arts and Humanities conference will be held at NDSU in 2006.
- A distance education policy is being reviewed at the state level to require that content experts be involved with the development of distance-delivered courses and programs.
- PeopleSoft access of faculty to student records was discussed at the state level. Drop-in advising (for all faculty to see all student records) is not compliant with FERPA.
- CCF is reviewing policies of other institutions to provide to the SBHE when responding to HB1364 (English language pronunciation).

Unfinished Business

1. Vertical Integration of English ([Attachment 3](#)):

- Presiding Officer Harter shared slides provided by Bill Slanger, Office of Institutional Research and Analysis ([Attachment 4](#)). The Senior Academic Profile and Optional Essay yielded a disappointing average score of 3.3 out of 8 for NDSU students. Proficiency at the highest levels resulted in a score of 17% in writing. Alumni comments cited the need for more writing and communication courses at a higher level. Only 36% of alumni said NDSU had a major impact on recognizing and using effective written communication skills compared with 45% of peer institution alumni.

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- The motion on vertical integration of English at the January Senate was tabled. A new MOTION (Kilber/Helweg): to enhance writing skills of students was distributed ([Attachment 5](#)). Discussion ensued regarding placement into ENGL 120, results of the pilot study ([Attachment 5](#)), and anticipated timeframe.

MOTION TO AMEND (Gustafson/Ambrosio) to add in item #2 "...approval by Academic Affairs with input by the English Department." Additional discussion was held on how to handle existing upper division writing courses as well as teaching credentials for these courses. Provost Schnell asked the Senate to decide on whether or not it supports upper-level writing across the curriculum.

AMENDMENT WAS CHANGED (Riley/approved by Gustafson with no objection) for item #2 to read "...then it will have to get recommended by the English Department and approved by the appropriate Senate committee." MOTION TO APPROVE THE AMENDMENT CARRIED 46-3-3. The following senators or their substitutes voted aye: Balaz, Beck, Berry, Bhandary, Boetel, Brooks, Clark Johnson, Cook, Council, Danbom, Disrud, Foertsch, Grazul-Bilska, Gross, Groves, Gustafson, Hatterman-Valenti, Hauck, Hektner, Helweg, Hopkins, Howatt, Justitz, Kallmeyer, Kilber, Knoepfle, Larson, Leitch, Mahinfalah, Manikowske, Michael, Miller, Moser, Peterson, Presser, Rasmussen, Riley, Robinson, Rogers, Schnell, Scott, Skauge, Terbizan, Thompson, Welk, and Wittrock. The following senators or their substitutes voted no: Ambrosio, Garden-Robinson, and Montgomery. The following senators or their substitutes abstained: Borsen, Hannon, and Olsen.

MOTION (Kilber/Larson): to remove ENGL 110 as a required course and renumber it accordingly effective for Fall 2006. MOTION CARRIED 41-8-6. The following senators or their substitutes voted aye: Bahrami, Balaz, Beck, Berry, Boetel, Clark Johnson, Cook, Council, Danbom, Disrud, Garden-Robinson, Gross, Groves, Gustafson, Hauck, Hektner, Helweg, Hopkins, Howatt, Kallmeyer, Katti, Kilber, Knoepfle, Larson, Leitch, Mahinfalah, Miller, Montgomery, Peterson, Presser, Rasmussen, Riley, Robinson, Rogers, Schnell, Scott, Skauge, Steele, Terbizan, Thompson, and Welk. The following senators or their substitutes voted no: Ambrosio, Borsen, Brooks, Foertsch, Hannon, Justitz, Moser, and Wittrock. The following senators or their substitutes abstained: Bhandary, Grazul-Bilska, Hatterman-Valenti, Manikowske, Michael, and Olsen.

MOTION TO ENHANCE WRITING SKILLS OF STUDENTS AS AMENDED CARRIED 38-9-4.

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2. Dead Week:

MOTION (Larson/Kilber): to approve Dead Week on a permanent basis. Montgomery presented original resolution SR-07-04 ([Attachment 6](#)), which called for a trial basis of dead week for spring and fall 2004 semesters. New resolution SR-10-05 ([Attachment 7](#)), pertaining to the permanent and enforced implementation of dead week, was approved by Student Senate. Montgomery presented his findings on student and faculty benefits, institutional policies and practices, no court record of such a dead week dispute, and the lack of an AAUP opinion on the matter. Discussion was held as to whether problems currently exist with end-of-term exams at NDSU, impacts on teaching, and the committee recommendations based on the survey results.

MOTION TO AMEND (Larson/Kilber): to include only the first five 'whereas' statements in the motion. Enforcement of the policy was discussed briefly. MOTION TO AMEND CARRIED 38-3-6. The following senators or their substitutes voted aye: Balaz, Beck, Berry, Boetel, Clark Johnson, Cook, Council, Disrud, Michael, Moser, Foertsch, Grazul-Bilska, Gross, Gustafson, Hannon, Hektner, Hopkins, Howatt, Kallmeyer, Kilber, Knoepfle, Larson, Leitch, Mahinfalah, Manikowske, Miller, Montgomery, Olsen, Peterson, Presser, Rasmussen, Riley, Rogers, Schnell, Scott, Steele, Terbizan, and Thompson. The following senators or their substitutes voted no: Ambrosio, Bornsen, and Garden-Robinson. The following senators or their substitutes abstained: Bhandary, Grafton, Groves, Hauck, Justitz, and Wittrock.

MOTION TO AMEND (Ambrosio/Larson): to change the 'therefore' statement to read, "Therefore, let it be resolved that North Dakota State University Senate will implement dead week on a permanent basis effective fall 2005." MOTION TO AMEND CARRIED 38-5-4. The following senators or their substitutes voted aye: Ambrosio, Balaz, Beck, Berry, Bhandary, Boetel, Clark Johnson, Council, Disrud, Foertsch, Garden-Robinson, Gross, Grazul-Bilska, Gustafson, Hannon, Hektner, Hopkins, Howatt, Kallmeyer, Kilber, Knoepfle, Larson, Leitch, Mahinfalah, Manikowske, Michael, Miller, Montgomery, Moser, Peterson, Rasmussen, Riley, Rogers, Schnell, Scott, Steele, Terbizan, and Thompson. The following senators or their substitutes voted no: Bornsen, Cook, Grafton, Olsen, and Presser. The following senators or their substitutes abstained: Groves, Hauck, Justitz and Wittrock.

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Brief discussion was held on the future inclusion of additional exceptions. MOTION TO APPROVE DEAD WEEK ON A PERMANENT BASIS AS AMENDED CARRIED 27-19-1. The following senators or their substitutes voted aye: Balaz, Beck, Berry, Clark Johnson, Council, Foertsch, Garden-Robinson, Gross, Hannon, Hopkins, Howatt, Kilber, Larson, Leitch, Manikowske, Michael, Miller, Montgomery, Moser, Peterson, Rasmussen, Riley, Rogers, Schnell, Scott, Terbizan, and Thompson. The following senators or their substitutes voted no: Ambrosio, Bahrami, Bhandary, Boetel, Bornsen, Cook, Disrud, Grazul-Bilska, Groves, Gustafson, Hektner, Justitz, Kallmeyer, Knoepfle, Mahinfalah, Olsen, Presser, Steele, and Wittrock. Senator Hauck abstained.

3. Graduation with Honors (no discussion/vote due to lack of time).
4. Policy 190 – Employee Responsibility and Activities: Intellectual Property ([Attachment 8](#))

Presiding Officer Harter reintroduced Policy 190, which was tabled at the January 2005 meeting due to lack of quorum. Vice President Boudjouk fielded questions regarding turn backs on patents at NDSU. The ‘up to 30%’ language (3.2.b.1) allows for flexibility of net income to be returned to NDSU. The number of disclosures from faculty is on the rise (up to 47 from 19 this past year). This money allows NDSU to pay for patents. Items under consideration when setting the percentage include start-up costs, how much money is left in the budget at a given time of year, professional opinions on the viability of an invention, breakdown of distribution, and return on indirect costs. NDSU’s policy is middle of the road. MOTION (from January 24, 2005, meeting) TO APPROVE POLICY 190 FAILED DUE TO LACK OF QUORUM.

5. Plus/Minus Grades (no discussion/vote due to lack of quorum).

New Business

Confirmation of Fall 2004 Graduates (no discussion/vote due to lack of quorum).

Adjournment

The meeting adjourned at 5:30 p.m.

Submitted,
Kristi Wold-McCormick, Ph.D.

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Attachment 1

Academic Affairs Committee

Approved Curricular Recommendations

New Programs			
College Teaching Certificate (Graduate Level)			
Master of Science in Criminal Justice			
Program Inactivation			
Bachelor of Science in Plant Protection			
Prefix Change			
From: Polymers & Coatings (P&C)		To: Coatings & Polymeric Materials (<i>CPM</i>)	
Unit Title Change			
From: Division of Construction Management and Engineering		To: <i>Department of Construction Management and Engineering</i>	
New Courses			
Dept.	No.	Title	Crs.
BUSN	446	Corporate Finance	3
ENGL	360	The Grammatical Structure of English	3
NURS	240	Nursing as a Scholarly Profession	3
NURS	252	Gerontologic Nursing	2
NURS	340	Leadership and Ethical Reflection	2
NURS	406	Public Health Nursing	4
NURS	440	Nursing Issues and Career Development	2
NURS	450	Nursing Synthesis and Practicum	2
P&C	785	Nanomaterials Chemistry	3
PHRM	461	Introduction to the Pharmaceutical Industry	2
PHRM	462	Stress Management for Health Care Professionals	1
PHRM	463	Current Issues in Hospital and Institutional Pharmacy	2
PHRM	464	Current Concepts in Pharmacy Practice	2
PHRM	551	Pharmaceutical Care V	2
PHRM	552	Pharmaceutical Care VI	2
PSYC	385	Psychology on Film	3

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Attachment 1

Course Deletions								
NURS	351	Nursing Concepts					4	
NURS	401	Community Health Nursing					4	
NURS	411	Role Development I					2	
NURS	412	Role Development II					2	
NURS	420	Nursing Research					2	
SOC	764	Parole & Probation					3	
Changes in Course Prefix, Number, Title, and Credits								
Dept.	No.	From	Crs.	Dept.	No.	To	Crs.	
ME	484/ 684	Gas Turbines	2	ME	484/ 684	Gas Turbines	3	
NURS	362	Family Nursing II	4	NURS	362	Family Nursing II	5	
NURS	403	Adult Health II	4	NURS	403	Adult Health <i>Nursing</i> II	5	
PSYC	718	Visual and Cognitive Neuroscience	3	PSYC	718	<i>Visual Neuroscience</i>	3	
Cross-Listed Course and Change in Credits								
Dept.	No.	Title	Crs.	Cross-Listed Department				
ENT	742	Quantitative Biology	2	BIOL				3

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Attachment 2

Five Year Review of General Education Courses

Approved General Education Recommendations.

Outcomes Key:				
1. Communicate effectively in a variety of contexts and formats.		5. Comprehend concepts and methods of inquiry in science and technology, and their applications for society.		
2. Locate and use information for making appropriate personal and professional decisions.		6. Integrate knowledge and ideas in a coherent and meaningful manner.		
3. Comprehend the concepts and perspectives needed to function in national and international societies.		7. Comprehend the need for lifelong learning.		
4. Comprehend intrapersonal and interpersonal dynamics.				
Continued Approval for General Education with Changes in Outcomes				
Course No.	Course Title	Categories	Previous Outcomes	Recommended Outcomes
MUSC 103	Introduction to Music History	A	1, 6, 7	6, 7
Continued Approval for General Education with No Changes				
PLSC 110	World Food Crops	G Sn	3, 6	3, 6

Exemptions from English 110: Survey of Instructors and Students

FEC surveyed students who were offered an invitation to skip 110, as well as these students' instructors.

English 110 Results

Instructor reports

Thirty-three (33) students who were invited to skip 110 enrolled in 110 for Fall 2004. We have instructor reports on twenty-four (24) of those students.

Instructors were asked if the student(s) we invited to skip 110 were among the top 5 students in the class:

- 11 yes
- 12 no
- 1 stopped coming.

Instructors were also asked if these students would have done well in 120.

- 13 yes
- 9 maybe
- 3 no.

Student surveys

Seventeen (17) of the thirty-three students in 110 returned the student survey in which they were asked to explain their choice for taking 110 rather than 120 or 111. Students could give more than one reason.

- 8 said the process was not clear to them.
- 3 said they wanted to complete 110 and 120 their first year.
- 5 wanted to participate in the CCLP program.
- 1 felt that 110 would be an appropriate starting point.
- 3 wanted an easy class and didn't see any advantage in taking a harder class.
- 2 wanted to maintain a high GPA.

Students were also asked if they found English 110 to be sufficiently challenging.

- 10 said yes
- 6 said no
- 1 said "yes" and "no."

Students were asked if they would make the same choice again.

- 13 said yes
- 4 said no.

English 120 Results

Instructor reports

Thirty-eight (38) students who were invited to skip 110 enrolled in English 120. We have instructor reports on twenty-nine (29) of those students.

Instructors were asked if these students are in the top quarter of the class, top half, or bottom half.

17 are in the top quarter of their section
9 are in the top half
3 have stopped coming.

Instructors were asked if the students would have benefited from 110

21 no
5 maybe
0 yes
3 no shows.

Student surveys

Twenty-two (22) students returned the student portion of the survey. These students were asked to explain why they choose English 120.

6 said they already had credit for 110 from high school, another college, or AP Exams.
6 were just glad to have been given the option; no clear reason for their choice.
5 said they had good high school preparation.
3 said they wanted a challenge.
2 said their advisor suggested they take 120.

Students were asked if they would have benefited from English 110, but all 22 said “no.”

Students were asked if they found English 120 challenging.

15 said yes
5 said no
2 said “yes” and “no”

Students were asked if they would make the same choice again.

19 said “yes.”
3 said “no.”

English 111 Results

Instructor reports

Seventeen (17) students choose Honors Composition, English 111. We have instructor reports on all 17 of those students.

- 3 are in the top quarter of their section
- 6 are in the top half of their section
- 8 are in the bottom half of their section

Honors instructors were asked if students would have benefited from 110:

- 12 no
- 3 yes
- 2 maybe

Student surveys

All seventeen of the students returned the student survey. These students were asked to explain why they choose Honors composition.

- 6 said they wanted a challenge and/or thought English 110 would be boring.
- 4 were planning on taking the Honors section anyway.
- 2 said they thought it would be appropriate and it looked interesting.
- 2 said they were glad to be given the option.
- 1 took 110 in high school
- 1 thought that Honors sounded more elite
- 1 had parents encourage the Honors section

Students were asked if they would have benefited from English 110, but all 17 said “no.”

Students were asked if they would make the same choice again.

- 15 said yes.
- 1 said no.
- 1 did not answer the question.

General Observations

None of the students who choose 120 or 111 felt like 110 would have been beneficial, although instructors of 120 and 111 said three would have benefited from 110 and seven might have. Some of the students who choose 120 seemed to have avoided the Honors section because they did not want to work very hard, and all of the students in the Honors section felt as if they had to work very hard. All seventeen of the Honors students found their section to be challenging.

Interestingly, the English 110 instructors were least impressed with the skills of the students who were invited to skip 110. Half of those students were not in the top 5 within their section, and sixteen of the twenty-four students reported on might have had difficulty moving directly into 120, according to their instructors perception. Perhaps more of those who choose 110 knew that the course would be appropriate for them, even though they did not indicate that on the survey.

We asked instructors of 110 if they had other students who would have done well taking 120 only, and instructors typically reported that 3-5 students per section would have done well in 120 without 110. Presumably we would have many more students moving directly into 120 even if we keep the ACT scores as they are but the option is expanded to all in-coming students.

Using the ACT English of 27 and the ACT Reading Comprehension of 23 seems to have worked pretty well from both the student and instructors' perspective. We might consider a 25 and 22 exemption policy and see what kinds of results we get.

Sixty students (60) who were invited to skip 110 did not register for an English class in the Fall of 2004. As of Nov. 29, 2004, thirty-one (31) of those sixty (60) are registered in 120, two (2) are registered in 110, three (3) are registered in 121, and five (5) are not registered for Spring Semester. Nineteen (19) are registered for Spring Semester, but not registered for any English classes.

Senior Academic Profile and optional essay

Optional essay disappointing
Average score 3.3 out of 8

Proficient at the highest levels

- Reading 67%
- Critical Thinking 22%
- Writing 17%
- Mathematics 33%

Alumni Comments

From graduating class of 200/2001

“Writing should be a larger part of upper-level courses at NDSU. I believe NDSU students need more writing skills education than they receive in the required English courses”

Alumni Comments

From the graduating class of 1999/2000

“I could have used more writing classes; particularly technical writing.” and “However, I think more classes should stress writing skills and public speaking.”

Quantitative data

Only 36% of our alumni say NDSU had a major impact on “Recognizing and using effective written communication skills,” while 45% of the alumni of our peer institutions say their respective alma matters had a major impact in this area.

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Attachment 5

A Motion to Enhance Writing Skills of Our Students

1. Our students will take one upper-division writing-intensive course, which is closely related to their discipline.
2. This course will preferably be developed and offered by English Department in consultation with each department and/or college. If any other department has or would like to develop an upper-division writing-intensive course, then it will have to get ~~approved~~ **recommended** by the English Department **and approved by the appropriate Senate committee.**
3. Based on a successful pilot study of admitting qualified first year students directly in to English 120, all qualified first year students will now be directly placed in English 120. Criteria for admitting students directly in English 120 will be developed by the English Department, in consultation with the Provost and the Registrar, and brought back to the University Senate.
4. This policy will take effect for students admitted from Fall 2006.

This motion is made by Craig Kilber and seconded by Otto Helweg.

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Attachment 6

SR-07-04

A resolution pertaining to the specifics of a “dead Week.”

Whereas the intent of a dead week is to reduce stress for students during an already stressful time, and

Whereas a dead week would allow for only one exam or quiz to be given, per course, during the last two weeks of the semester which includes finals week, and

Whereas if a professor chooses to give an exam during the last week of classes, he/she must make some instructional use of the final examination time as required by policy of the State Board of Higher Education, and

Whereas a list of exceptions to this rule should include:

- Summer classes
- Self-paced/correspondence courses
- Make-up exams
- Courses in which a laboratory is incorporated with a lecture
- One-credit courses
- Quizzes that account for less than 5% of the students overall grade, and

Whereas a make-up exam should be defined as any exam that is not given to the entire class, and is used to give a student, or group of students a chance to improve the overall grade of individual students. This clause is intended to allow professors both the option to give a makeup exam for missed exams, and also to offer an exam during the last week of classes that can help the grade of students who wish to participate, but not hinder the grade of the students that choose not to participate.

Therefore, let it be resolved that North Dakota State University Student Senate continues to support the implementation of a dead week, and

Let it further be resolved that this should be implemented on a trial basis during the spring semester of the 2004 school year, with the intention of gaining feedback from professors and students alike. A decision should be made early in the fall semester of the 2004 school year as to the final status of a dead week at North Dakota State University.

Respectfully submitted

Jim Larson
Engineering and Architecture Senator

David M. Axt
Human Development and Education Senator

Imitiaz Mondal
Business Administration Senator

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Attachment 7

SR-10-05

A Resolution Pertaining to the Permanent Implementation of “Dead Week”

Whereas a “dead week” policy was implemented throughout North Dakota State University on a trial basis through the Spring and Fall 2004 semesters, and

Whereas a post-trial survey has shown, overwhelmingly, that students appreciated the policy as a deterrent of stress, and

Whereas the students of this university wish to continue having a “dead week” according to the post-trial survey, and

Whereas it is the duty of the North Dakota State University Student Government to represent and convey the wishes of our constituents to the university and this community,

Therefore, let it be resolved that the North Dakota State University Student Senate supports the implementation of a “dead week” on a permanent basis, and

Let it be further resolved that the North Dakota State University Student Senate strongly recommends that this policy be enforced throughout the entire university.

Respectfully submitted,

Adam Montgomery
Off – Campus

Adam Palczewski
Off – Campus

Melissa Mallett
Off – Campus

James Foertsch
University Senate

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SECTION 190: EMPLOYEE RESPONSIBILITY AND ACTIVITIES: INTELLECTUAL PROPERTY

SOURCE: SBHE Policy Manual, Section 611.2

1. General Principles.

The primary purposes of this policy are to encourage and promote research and scholarship based on the traditional principles of the academic profession. These products may constitute Intellectual Property that could be of financial benefit to the individuals involved and the Institution. This policy establishes guidelines to support faculty, staff, and students, in identifying, protecting and administering Intellectual Property and defining the rights and responsibilities of all involved. This policy governs unless a policy on specific Intellectual Property provides a different rule.

2. Definitions.

- a. "Author(s)": Person who creates a Copyrightable Work.
- b. "Copyrightable Work or Work": An original Work of authorship which has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, such as books, journals, software, computer programs, musical work, dramatic works, videos, multimedia products, sound recordings, pictorial and graphical works, etc. A Work may be the product of a single Author or a group of Authors who have collaborated on a project. A Work is created by an Author.
- c. "Creator": Either an Inventor(s) in the context of an Invention, or an Author(s) in the context of a Copyrightable Work.
- d. "Institution": The individual colleges and universities and the North Dakota University System.
- e. "Inventor": Person(s) who creates an Invention.
- f. "Intellectual Property": Collectively, all forms of property created by the mind including, but not limited to, Inventions, Copyrightable Work, Trademarks, and Tangible Research Property.
- g. "Invention": A process, method, discovery, device, plant, composition of matter,

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or other Invention that reasonably appears to qualify for protection under the United States patent law (including, but not limited to, utility patent, plant patent, design patent, certificate of Plant Variety Protection, etc.), whether or not actually patentable. An Invention may be the product of a single inventor or a group of inventors who have collaborated on a project.

- h. "Mediated Courseware": Teaching aids created and/or deployed electronically. Mediated Courseware may incorporate text, graphics, video, and audio elements. Examples of such materials include, but are not limited to, hypertext modules, simulation software, web sites, and databases containing numbers, images, or text.
- i. "Significant Use of University System or Institution Resources": Significant Use of Institution Resources means an Author's use of other employees' time or Institution facilities or equipment that appreciably increases the Institution's costs beyond those normally incurred in support of an employee in the Institution. Significant Use does not include the normal use of Institution employees, facilities, or equipment commonly available to faculty, staff, or the public, such as libraries, Internet access, office space, office equipment, computers, and/or office supplies. Unless otherwise agreed, Significant Use also does not include the use of Institutional developmental leave time, so long as it does not appreciably increase the Institution's costs beyond those normally incurred in support of an employee of the Institution.
- j. "Tangible Research Property": Tangible items produced in the course of research including, but not limited to, such items as biological materials, engineering drawings, integrated circuit chips, computer databases, prototype devices, circuit diagrams, and equipment. Individual items of Tangible Research Property may be associated with one or more intangible properties, such as Inventions, Copyrightable Work, and Trademarks. An item of Tangible Research Property may be the product of a single Creator or a group of individuals who have collaborated on the project.
- k. "Trademark" (including Service Mark): A distinctive word, design, or graphic symbol, or combination word and design, that distinguishes and identifies the goods and services of one party from those of another, such as names or symbols used in conjunction with plant varieties or computer programs, or the Institutional names, logos, or derivatives thereof.
- l. "Work For Hire": Defined pursuant to Federal Copyright Law which includes a Work prepared by an employee within the scope of employment or a Work created pursuant to a written agreement identifying the Work as a Work for Hire.

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3. General Patent Policy.

- a. The North Dakota State Board of Higher Education encourages the faculty, staff, and others associated with the Institutions under its jurisdiction to seek patents on Inventions as a method of bringing recognition and remuneration to all parties involved. Each Institution shall establish a "patent review procedure" to define the Institution's processing of such Inventions or discoveries, consistent with Board policy. The inventor(s) shall submit to the Institution the conception and/or reduction to practice of all potentially patentable discoveries prior to public "enabling" disclosure.
- b. A patentable discovery may arise from the development of a new and useful process, device or apparatus, article of manufacture, composition of matter (including chemical compounds, microorganisms, and the like), plant, or related improvement, or a new use for a known material or device. A public "enabling" disclosure is one which will enable others in the same or a related field to fully understand and practice the Invention. The Institutional "patent review procedure" shall assure provision of guidelines to the inventor(s) in defining what may constitute a public "enabling" disclosure. NDSU's guidelines are found in the Invention Record Application for Patent Screening Form.
- c. The Institution shall have the right of first refusal to the title of all patentable discoveries derived with the use of facilities, gifts, grants, or contract funds through the university, subject to restrictions arising from the overriding obligations of the Institution pursuant to gifts, grants, contracts, or other agreements with outside organizations. The inventor(s) shall provide all necessary declarations, assignments, or other documents as may be necessary in the course of Invention evaluation, patent prosecution, or protection of patent rights to assure that title in such Inventions shall be held by the Institution or other parties as may be appropriate under the circumstances.
- d. The Institution shall have six months in which to assess the technical and commercial viability and patentability of the discovery in accordance with Institutional procedures. This evaluation period may be extended beyond six months if further research and development activity is required to ensure patentability and/or market or commercial feasibility. If the Institution judges the discovery not to be patentable, or decides not to pursue a patent, and, in the absence of over-riding obligations to outside sponsors of the discovery and subject to NDSU procedures (see 3.3(c)), all rights will revert to the inventor. In no instance, and regardless of ownership of the patent, may the Institution's name be used in connection with the marketing of the Invention.
 - (1) Subject to restrictions arising from overriding obligations of the Institution pursuant to gifts, grants, contracts, or other agreements with outside organizations, the Institution agrees, for and in consideration of the assignment of patent rights, to pay annually to the named inventor(s), or to

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the inventor(s)' heirs, successors, or assigns, a minimum of 30 percent of the net royalties and fees received by the Institution. Net royalties are defined as gross royalties and fees less the expenses incurred by the Institution in conducting the research and in procuring, protecting, preserving, maintaining, and licensing the patent and related property rights, and such other costs, taxes, or reimbursements as may be necessary or required by law.

- (2) When there are two or more inventors, each inventor shall share equally in the inventor's share of royalties, unless all inventors have agreed in writing to a different distribution of such share. The Institution will have final authority over any agreement purporting to share rights and/or royalties between participating parties.
- (3) In addition to the inventor(s) share, the net royalties shall be disbursed by negotiated agreement with allocations to the originating department, the originating college/school, and the Institution. In the disposition of any net royalty income accruing to Institutional parties, other than the inventor(s), support of research shall receive first consideration. The "patent review procedure" shall outline the negotiation and distribution mechanism at each Institution.
- (4) The provisions of this section apply to plant variety protection unless inconsistent with Institution policy.

3.1 *Plant Variety Protection Policy*

- a. *NDSU Policy 190 on patents and patent procedure shall apply to the plant variety protection inventorship and proceed distribution process except to the extent it is inconsistent with the terms of this Policy. The term "variety" includes germplasm, natural selections, cultivar, inbred lines, or hybrids. The term "inventor" or "breeder" includes the plural as well.*
- b. *It is the position of the North Dakota Agricultural Experiment Station ("NDAES") that intellectual property protection may be obtained on all varieties developed by the NDAES. This protection provides a mechanism to identify ownership of the variety which will be required for subsequent transfer or licensing. A secondary reason for obtaining plant variety protection is to allow the option to collect and to enforce royalties (research fees) from the sale or utilization of these varieties.*

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- c. *The NDAES recognizes the NDSU Research Foundation (“NDSU/RF”) as the recipient of assignments of patents, trademarked cultivars, and plant variety protection for NDSU. At the time of release or before plant variety protection is filed, ownership of the varieties is transferred from NDSU on behalf of the NDAES to NDSU/RF. NDSU/RF files for the appropriate intellectual property protection and is responsible for subsequent enforcement.*
- d. *In any intellectual property development there is an inventor of the discovery. In the case of plant variety development, this inventor is the plant “breeder” as defined by the PVPA, 7 U.S.C. § 2401(a)(2). Per North Dakota law, N.D.C.C. § 15-10-17(9) and NDUS Policy 611.2, the percentage of the net proceeds due the inventor is established pursuant to rules of the State Board of Higher Education and NDSU (See f(1)).*
- e.
 - (1) *An inventor or “breeder” is: (1) the person(s) who directs the final breeding creating a variety and/or (2) the person(s) who discovers and develops the variety. 7 U.S.C. § 2401(a)(2). “Discover” means finding a natural plant which results in breeding a variety, or finding a new variety by performing experiments on results of cross-breeding and realizing that the resulting plant is different and closer in characteristics to a desired variety. “Develop” means to make additional selections for (1) cross-breeding and/or (2) developing pure lines. This may lead up to the variety for which protection is sought or may eliminate variance and convert a non-uniform variety to a uniform variety using the desired characteristics.*
 - (2) *Like patent law, persons whose work is directed by the inventor are not considered the breeder as they do not direct the breeding process.*
 - (3) *Should a scientist(s) believe he/she is a breeder or inventor entitled to a portion of the inventor share and has not been so identified as stated in this section, the scientist must notify the Director, NDAES, in writing of their alleged inventorship before the release of the variety.*
- f.
 - (1) *The NDAES supports the following internal distribution of royalties generated from the utilization of plant varieties developed by the NDAES. The NDSU/RF will be reimbursed for expenses. Then, net proceeds (as defined in NDSU Policy 190) will be distributed as follows: 20% to the NDSU/RF, 30% to the inventor(s), and the remaining 50% to be distributed as directed by NDAES to the contributing departments or units as determined in paragraph g. The NDAES and the NDSU/RF can negotiate to change the NDAES and NDSU/RF percentages on a case by case basis.*
 - (2) *The breeder or his/her immediate supervisor will identify, before a variety release, other scientists who provided inventive activity towards the development of the variety. The breeder and scientists will decide how to*

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divide the inventor share among themselves and will recommend this distribution to the department chairs and Director, NDAES. Any unresolved dispute shall be handled by the Director, NDAES, in consultation with the relevant chairs. The Vice president for Agriculture will serve as final arbiter of any disputes.

- g. (1) The distribution of the percentage to the NDAES will be among units with collaborators and inventor(s) that contributed to the development of the variety. This distribution might not be in the same proportion as the inventor share(s). Collaborators may encompass more faculty or other staff than are considered the breeder under the PVPA. Following prerelease, but in no event later than the release, the collaborating departments/units will be identified and the scientists and his/her immediate supervisor involved in the breeding effort will meet and make a recommendation for a fair allocation of the royalty distribution. Based on that recommendation, or, if they are unable to come to an agreement, the respective department chairs will then recommend a fair royalty distribution. The final decision on royalty distribution will be made by the Director, NDAES.*
- (2) The collaborators contributing to the variety development may vary from commodity-to-commodity and variety-to-variety. The formula for distribution will be reached at the time of release and before any royalties are generated. The formula developed should remain in place for distribution of all future royalties generated from the named variety. The Director, NDAES, the respective department heads/directors, and the NDSU/RF can decide to place the NDAES and/or contributing departments or units share into an endowment with the NDSU/RF to be distributed pursuant to the agreed upon terms of the endowment.*
- h. Disputes on inventorship or department/unit distributions shall be handled as set forth in 3.3(d)(3) except the decision panel shall be the Vice President for Research, Creative Activities, and Technology Transfer, the Vice President for Agriculture, Director of the Experiment Station, and the Department Chair(s) involved, in consultation with the General Counsel. The Vice President of Agriculture may include an advisory panel of faculty with expertise in the area to advise the decision panel.*
- i. Upon termination of employment, an employee must identify to his/her immediate supervisor and the Director of the NDAES any advanced genotype(s) in which s/he claims inventorship. The University and the employee shall negotiate rights in the varieties. If the employee fails to make this disclosure prior to or at the time of termination of employment, employee shall be deemed to have waived any rights to royalties on nondisclosed varieties. Royalties may be paid only for a set term pursuant to the agreement on advanced genotypes released as varieties.*

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- j. *The inventor/breeder shall elect at the time of release of the variety to receive or permanently waive some or all of that share that such employee(s) is/are entitled to receive from net revenue, if any, from the variety.*

3.2 NDSU Procedures:

- a. *Any Invention developed by faculty, students, employees and associates using NDSU facilities, time or materials, must be reported to the NDSU Technology Transfer Office (TTO). Adjunct faculty are subject to this policy if working on NDSU projects or using NDSU facilities unless expressly exempted by the Vice President for Research, Creative Activities & Technology Transfer. The TTO shall be responsible for determining the procedure to be followed in securing patent protection and the assignment of rights to be made.*
- b. *Ownership of such patent rights normally will be assigned to NDSU except in the following cases:*
 - (1) *When NDSU, in turn, elects not to pursue a patent, ownership reverts to the Inventor(s). As a condition of its release of the right to ownership, NDSU may elect to receive up to 30% of any net income (gross income less legal and licensing expenses) received, by the Inventor(s) from the Invention or Work. NDSU may negotiate an equity position in a start-up business. Inventor(s) shall not assign, transfer, or license such intellectual property as a result of a consulting contract or other means so as to avoid payment to NDSU of its share under this section.*
 - (2) *When prior agreement between NDSU and an external agency assigned all rights to the agency, usually as a condition of a contract or grant.*
- c. *The Vice President for Research, Creative Activities, & Technology Transfer must approve the conditions of any contract or grant in which*
 - (1) *the disposition of patents is specified as being other than to NDSU and/or*
 - (2) *in which specific licensing agreements are specified.*
- d. *Profits from patented Inventions and discoveries shall be shared by the Inventor(s), and NDSU. Inventor(s) shall receive a minimum of 30 percent of the net proceeds with the remainder being distributed as per agreement between NDSU or the NDSU Research Foundation and the contributing colleges(s) and department(s).*
- e. *All proceeds received by NDSU shall be devoted to the support of NDSU research program.*
- f. *In no instance, and regardless of the ownership of the patent, may the name of NDSU be used in any connection with the marketing of an Invention.*

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3.3 Patent Review Procedures:

- a. *North Dakota State University patent policy provides that discoveries or Inventions developed by faculty, staff, students, and associates using NDSU facilities, time, or materials shall be vested in NDSU and must be offered to NDSU through the Office of Sponsored Program Administration or its designee.*
- b. *Faculty, staff, students, and associates with discoveries or Inventions will supply the appropriate materials and descriptions to the Director - Technology Transfer using the Application for Patent Screening form or software disclosure form for processing prior to any public disclosure to prevent loss of patent rights.*
- c. *North Dakota State University will have a period of six (6) months to evaluate the commercial viability and patentability of the discovery. This evaluation may be extended beyond six months if further research or development activity is required to ensure patentability and/or market or commercial feasibility. If the discovery is patentable, NDSU will find a mechanism to obtain patents and arrange licenses. If NDSU, in writing, decides not to pursue institutional rights on the discovery, the Inventor will retain ownership and may proceed to file a patent application on his/her own behalf with NDSU waiving all rights with the exception of being reimbursed for all costs incurred, if any, and may elect to retain up to 30% of any net income under (b)(1) above, by NDSU or its assignee.*
- d. *Distribution of Proceeds*
 - (1) *Any proceeds received from such patents will first be used to cover the expenses incurred in patenting and licensing.*
 - (2) *The remaining net proceeds will be divided so that at least 30% of the net proceeds shall be paid to those responsible for the Invention.*
 - (3) *If more than one individual is responsible for the discovery, the appropriate ownership rights among the participating parties shall be determined prior to submission for a patent. If disputes occur, resolution will be made by the Academic Dean(s) involved, the Vice President for Research, Creative Activities, & Technology Transfer in consultation with the university attorney. Such agreements shall be on file in the Office of Sponsored Program Administration and/or Technology Transfer Office.*
 - (4) *The remaining royalty proceeds shall be assigned to the NDSU Research Foundation to be distributed according to an agreement negotiated by the originating College Dean(s), Department Chair(s), and the Vice President for Research, Creative Activities, & Technology Transfer and the NDSU Research Foundation to support endeavors to enhance Research.*

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- (5) *NDSU may assign its rights and responsibilities under this subsection to the NDSU Research Foundation.*

4. General Copyright Policy.

- a. Except as otherwise explicitly provided under this policy or applicable law, an employee who creates a Work retains copyright ownership of the Work. If there has been Significant Use of University System or Institutional Resources, the provisions of section 4b of this policy shall apply.
- b. If there has been Significant Use of Institutional Resources, as defined in section 2 of this policy, to create a Copyrightable Work, the ownership of which is vested in the individual employee, the Institution shall be reimbursed out of the royalties, in accord with an agreement between the employee and the Institution, up to that amount that constitutes the Institution's Significant Use. The Institution shall be reimbursed for the Significant Use of any facilities, personnel or resources, except those considered part of the normal academic environment including library facilities. This pertains to all Copyrightable Work except Copyrightable Software as described in section 6.
- c. If employees are employed or commissioned by the Institution or agencies of the Institution for the creation of Work, or if by prior agreement they are assigned to produce or develop Work in the course of their regular duties, and if such Work is deemed appropriate for copyright, it must be reported to the NDSU Technology Transfer Office pursuant to its copyright review procedure. In such instances, the NDSU Technology Transfer Office shall have the first option to secure copyright in the name of the Institution. Should the committee decide, in writing, it would not be appropriate to secure copyright, the employee then may proceed to personally secure the copyright.
- d. Royalties received as a result of copyright ownership by the Institution will be disbursed, with at least 30 percent to the employee(s). The remainder would be distributed according to NDSU Procedures.

5. Mediated Courseware.

- a. Self-initiated Mediated Courseware. When employees develop Mediated Courseware without specific direction by the Institution, unless otherwise agreed, the ownership of the courseware shall remain with the employee. Normally, no royalty, rent or other consideration shall be paid to the employee when that Mediated Courseware is used for instruction at the Institution and such Mediated Courseware shall not be used or modified without the consent of the employee. While the Creator is under Institutional employment, the Mediated Courseware shall not be sold, leased, rented or otherwise used in a manner that competes in a substantial way with the for-credit offering of the employee's own Institution

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unless that transaction has received the approval of the chief academic officer of the Institution. The Institution shall have a perpetual, non-exclusive royalty-free right to use such courseware for archival research purposes. Should approval be granted to offer the course outside of the Institution, the provisions of section 4b of this policy shall apply.

- b. Institution-directed Mediated Courseware. When the Institution directs in an employment contract the creation of a specific Mediated Courseware, the resulting Mediated Courseware belongs to the Institution and the Institution shall have the right to revise it and decide who will utilize the Mediated Courseware in instruction. The Institution may specifically agree to share revenues, pursuant to the General Patent Policy with the employee(s) receiving a minimum of 30 percent of the net royalties and fees, and control rights with the employee.
- c. Development and use of Institution-directed Mediated Courseware shall be reported to the unit head and/or college administrator with a copy to the Technology Transfer Office at the Institution.

6. Copyrightable Software.

Unless a separate written agreement provides otherwise, software created by employees within the scope of their employment and not covered under Mediated Courseware in section 5 of this policy shall be treated as a Work for Hire, owned by the Institution and commercialized pursuant to the General Patent Policy, with the employee(s) getting a minimum of 30 percent of the net royalties and fees.

7. Student Work.

- a. The ownership of copyrights in student Work is governed by the following:
 - (1) Copyright ownership of student Work that is performed in whole or in part by the student with financial support in the form of wages, salaries, stipend, or grants from funds administered by the Institution shall be determined in accordance with the terms of the support agreement, or in the absence of such terms, shall become the property of the Institution.
 - (2) Copyright ownership of student Work generated by research performed in whole or in part utilizing equipment or facilities provided by the Institution under conditions that impose copyright restrictions shall be determined in accordance with such restrictions.
 - (3) Students will own the copyrights to their Work not within the provisions of (1) and (2) above; however, a student must, as a condition to a degree award, grant royalty-free permission to the Institution to reproduce and publicly distribute, including by electronic means, copies of the student's Work.

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- (4) Where there is Significant Use of Institution Resources, copyright ownership shall be determined under section 4b of this policy.
- b. Ownership of student Inventions shall be governed by the Patent Policy in section 3 of this policy.

It is the policy of North Dakota State University that this grant of ownership and control extends to any Work products or written reports of employees that are essential for documentation of any invention or discovery resulting from research administered by the institution. Graduate student employees who are performing services as teaching assistants or research assistants or who are using university resources shall therefore be required by the departmental administrator to submit the original form of any laboratory notebook, spectral information, and other written documentation related to University administered research. (Source - NDSU Policy 342)

8. General Trademark Policy

NDSU may develop a Trademark policy that provides for the protection of NDSU Trademarks and Service Marks. [Option: The provisions of the General Patent Policy section will apply to Trademarks unless inconsistent with NDSU policy.]

9. NDSU Procedures.

NDSU shall adopt procedures implementing this policy that include:

- a. Procedures for required disclosure of Intellectual Property;
- b. Procedures for review, evaluation, and protection of Intellectual Property;
- c. Rules governing distribution of net royalties or fees;
- d. A process for resolving disputes; and
- e. A process for informing faculty, staff, and students of the rights and responsibilities of Intellectual Property. Upon employment, all regular employees must sign the NDSU Intellectual Property Agreement. Temporary employees may be required to sign as well based on supervisor discretion. A failure to have the Agreement signed in no way changes or lessens the applicability of this Policy.

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10. Transfer of Rights

- a. NDSU may assign or transfer ownership rights in Intellectual Property to independent foundations created for the purpose of obtaining or administering and marketing NDSU Intellectual Property, receiving gifts, or supporting or promoting NDSU or NDSU research.
- b. It is the responsibility of employees to ensure that the terms of their consulting agreements with third parties do not conflict with their commitments to the Institution. Each employee shall make the nature of the employee's obligations to NDSU clear to any third party for whom the employee expects to consult. Specifically, the scope of the consulting services must be distinguished from the scope of research commitments to NDSU.

HISTORY: Replaces the current 611.2. New policy. SBHE Minutes, April 24-25, 1989, page 5812.
Amendment SBHE Minutes, June 20-21, 2002.