

# University Senate Minutes

Fargo, ND 58105

North Dakota State University

January 24, 2005

## University Senate Meeting Minutes January 24, 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, S. Beck, M. Bhandary, M. Boetel, S. Bornsen, K. Brooks, J. Chapman, V. Clark Johnson, D. Comez, J. Cook, J. Council, D. Danbom, L. del Rio Mendoza, L. Disrud, J. Foertsch, M. Frank, A. Grazul-Bilska, C. Gross, R. Groves, C. Gustafson, W. Hannon, H. Hatterman-Valenti, D. Hauck, C. Hawley, J. Hektner, O. Helweg, I. Justitz, A. Kamel, D. Katti, C. Kilber, T. Knoepfle, J. Leitch, L. Manikowske, D. Miller, A. Montgomery, D. Moser, C. Musiba, 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, A. White, and D. Wittrock

Substitutions: M. Harris for M. Boetel, J. Giles for D. Hopkins, M. Mallet for J. Larson, N. Jazar for M. Mahinfalah, H. Bastow-Shoop for L. Manikowske, M. Mooney for C. Peterson, and J. Hershberger for M. Robinson

### Previous Minutes

MOTION (Montgomery/Helweg): to approve the minutes of the December 13, 2004, meeting as posted. MOTION PASSED WITH UNANIMOUS CONSENT.

### General Announcements

1. President Chapman provided the following legislative updates:
  - Testimony before the legislature has gone well thus far. In late December, a letter was sent to each legislator, which included a copy of the State of the University address. This document highlighted NDSU's positive additional economic impact (nearly \$1 billion) to the state over the last five years.
  - The number of ND residents who have been able to go to graduate school in the state because of the increased emphasis on graduate programs impressed legislators. Reports indicate that more than 800 students would have otherwise gone out-of-state for their graduate education.
  - The legislature was provided with an overview of activities on the main campus, as well as a testimony on the agencies and the mission of a land-grant university.
  - A lot of interest has been generated this year in addressing long-standing issues, such as equity in funding. A hearing before the Education

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Committee, which Craig Kilber (student) and Charles Harter will attend, is scheduled for January 25. Funds are being requested for the purpose of providing equity funding at a minimum of 55% of peer institutions, which would equate to an additional \$7,605,130 for NDSU.

- It is anticipated that the English language bill will be opposed.
- A proposal concerning forensics labs, which would bring more opportunities to NDSU, is also being considered by the legislature.

## 2. Provost Schnell reported the following:

- PeopleSoft Payroll-Faculty and staff who did not get paid or who found errors in their paychecks should contact Human Resources. HR has been working to get these problems corrected before the next pay cycle. Some of these discrepancies resulted from changes in withholdings.
- The Information Technology Roundtable will be resurrected to begin filling in the details for the organization of technology at NDSU. This will be brought back to Senate at a future date.
- The requirement of advisor signatures for course drops between weeks four and 14 (record-W-drop period) is being revisited. This requirement was included in the approved policy that changed the WP/WF to a W and moved the deadline for No Record Drops from six to three weeks. The result this past semester was nearly 600 students trying to drop the day of the deadline, and many who could not obtain the necessary signatures.
- The definition and timeframe for completion of self-paced courses is being reviewed to better accommodate current academic policies and procedures, such as grade loading and academic progress.
- The English language bill before the legislature is being opposed by NDSU. In-Forum.com has a web log (blog) on this issue. Student Sarah Beck already has received 187 emails on the topic. NDSU has had a policy (Policy 339) in place since 1994, and it was updated in the spring of 2004. Problems result when students don't report proficiency/communication barriers of instructors to the appropriate university officials. In order for complaints to be investigated, they first need to be documented. Schnell indicated that only one complaint to date has been justified. Most other complaints have been dropped after the policy was explained and details sought. While some believe international faculty are paid less than domestic faculty, the salary scales are the same for all faculty. NDSU seeks only those individuals who are committed, caring, and qualified.

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3. Chuck Harter reported that Student Senate President Craig Kilber and he will travel to Bismarck to testify on the inequity funding issue. In preparation for this testimony, Harter has studied the ethics of numbers as well as the state accountability report. He has found tremendous differences in faculty/student ratios and staff/student ratios between NDSU and UND.

## Committee Reports

### 1. Academic Affairs:

- S. Meinhardt, committee member, introduced several new course and course changes approved by Academic Affairs ([Attachment 1](#)). MOTION (Helweg/Kamel) to approve the Academic Affairs report as distributed. Brief discussion was held on the 5-credit nature of some HNES courses. MOTION PASSED WITH UNANIMOUS CONSENT.

### 2. Council of College Faculties:

- H. Hatterman-Valenti reported that CCF met earlier in January and passed a resolution to reinstate \$6-8 million shortfall and support a solution for a long-range finance plan. John Peterson (MaSU) and Ann Burnett (NDSU) presented at a legislative hearing regarding low faculty salaries and salary compression.
- Hatterman-Valenti also encouraged senators to contact their legislators (see [www.state.nd.us/lr/assembly/59-2005/dist-legis.html](http://www.state.nd.us/lr/assembly/59-2005/dist-legis.html)) to voice opposition to the English language bill (HB 1364).

### 3. Policy Coordinating Committee:

- J. Council, chair, introduced to the Senate Policy 703-Bison Card Terms and Conditions ([Attachment 2](#)). The term "ID Card" has been replaced with "Bison Card" throughout the policy. Policy change language reflects what is currently in practice. A privacy statement is added, and FERPA guidelines are addressed. MOTION (Ambrosio/Gustafson): to approve the policy as changed. Discussion followed on students' ability to punch holes in the card for key chains. MOTION TO TABLE (Helweg/Rogers) until reasons not to allow holes in Bison Cards can be looked into further. MOTION TO TABLE PASSED WITH UNANIMOUS CONSENT.

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## Unfinished Business

### 1. Dead Week Review

- D. Sellnow, Teaching and Professional Service Committee, reported the findings of a survey sent to students and faculty regarding the Dead Week trial period ([Attachment 3](#)). Based on the survey results, the committee unanimously (amended 2-14-05) recommends that Dead Week be continued and that it be mandatory across the university. 75% of students support the continuation of Dead Week, where as 41% of faculty voted for its continuation. Qualitative feedback indicated that frustration resulted with students because Dead Week was not upheld by all faculty during the trial period. Discussion was held on why 'don't care' votes were included with the 'yes' vote totals, the option to let students vote as a class to waive Dead Week rules, its effects on the teaching of courses, impacts on academic freedom, diversity of classes, and educational needs of students.

While no formal vote was taken, a test of the new PRS system revealed that a mandatory Dead Week was not supported by the Senate (16-36-4). However, a recommendation for instructors to adhere to Dead Week was more widely supported (38-12-4). Student Senate was asked to draft a policy for University Senate to review at a future meeting.

### 2. Vertical Integration of Writing (Brooks/Sullivan)

- K. Brooks, English Department, presented updated copy on the vertical writing requirement ([Attachment 4](#)). MOTION (Brooks/Berry) to approve the vertical communication requirement as distributed.

Discussion was held on the General Education Committee's role in approving higher-level writing courses before they go to the Senate. Questions also were raised on non-majors wanting to take discipline-specific courses, compliance with NDSU General Education policy and SBHE GERTA policy, writing ability of graduates, and proposed guidelines to exempt students from ENGL 110. The English Department ultimately would like to lower the number of ENGL 110 sections. ENGL 110 must remain as general education, but students could potentially get waived from it if their ACT subtest scores meet minimum cut-offs.

It was recommended that outcomes of the initial pilot program be shared with the Senate. Some expressed concerns on the impacts this requirement would have on program curricula, as well as consequences for students who don't successfully complete ENGL 120 if placed directly into it. Writing across the curriculum definitions were requested and provided. Many different models currently exist with varying outcomes and degrees of success. MOTION (Danbom/Hannon): to table this proposal until outcomes from the pilot study

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can be shared, and the NDUS renders a decision regarding compliance with current Board policy. A PRS vote was required. The following senators or their substitutes voted aye: Balaz, Beck, Berry, Bhandary, Boetel, Clark Johnson, Council, Danbom, del Rio Mendoza, Disrud, Foertsch, Frank, Garden-Robinson, Grazul-Bilska, Gross, Groves, Gustafson, Hannon, Hatterman-Valenti, Hauck, Hawley, Hektner, Hopkins, Kamel, Katti, Kilber, Manikowske, Miller, Montgomery, Musiba, Olsen, Peterson, Presser, Rasmussen, Riley, Robinson, Rogers, Scott, Terbizan, Thompson, White, and Wittrock. The following senators or their substitutes voted nay: Brooks, Cook, Helweg, Knoepfle, Mahinfalah, Schnell, and Steele. MOTION TO TABLE PASSED WITH A 42-7 VOTE.

## New Business

- Policy 190-Employee Responsibility and Activities: Intellectual Property ([Attachment 5](#))

R. Johnson, NDSU attorney, presented NDSU Policy 190 as a new policy section created to incorporate SBHE Policy 611.2. Current NDSU policies 340: Copyrights and 341: Patents will be deleted as both have been incorporated into Policy 190. Policy 342, which deals with ownership of work products of teaching assistants, also will be deleted and select copy relocated to the new policy.

This policy was presented to the Senate during the spring 2002, after which it was sent to the Research and Consulting Committee. In April 2003, it returned to the Senate with a lengthy discussion on institutional profit and property ownership. An amendment was proposed and later tabled. The policy no longer includes this amended language.

MOTION (Knoepfle/Hawley) to approve the new policy 190 as distributed. MOTION TO AMEND (Rasmussen/Katti) that the language in section 3.3.c. be reduced from 30% to 5%. Discussion ensued over what the University should be able to retain when it releases rights back to the inventors, and what other universities do. A roll call vote was sought due to a number of dissenting votes, however, NO ACTION COULD BE TAKEN ON THE AMENDMENT DUE TO LACK OF A QUORUM.

## Adjournment

The meeting adjourned at 5:35 p.m.

Submitted,  
Kristi Wold-McCormick, Ph.D.

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Attachment 1

## Academic Affairs Committee

### Approved Curricular Recommendations

<b>New Courses</b>			
<b>Dept.</b>	<b>No.</b>	<b>Title</b>	<b>Crs.</b>
ADFH	254	Interior Design Studio III: Small Scale Contract	2
ADFH	261	Interior Design Graphics II	3
ADFH	264	Residential Systems	2
ADFH	280	Introduction to Facility Management	3
ADFH	300	Design Resource Management	1
ADFH	362	Codes for Interiors	2
ECE	775	Hardware for Cryptography	3
EDUC	460/ 660	Adolescent Readers: Theory and Practice	3
HNES	781	Orthopedic Assessment I	5
HNES	782	Orthopedic Assessment II	5
MATH	473/ 673	Cryptology	3
NURS	250	Health Promotion	2
PHYS	413/ 613	Lasers for Scientists and Engineers	2
<b>Course Deletions</b>			
ADFH	252	Interior Design II - Lecture	3
ADFH	350	Interior Design III - Lecture	3
ADFH	451	Interior Design V - Studio	3
ECE	312	Digital and Analog Circuits Lab	1
ECE	314	Electromagnetics/Signals Lab	1
ECE	322	Electronics I Laboratory	1
ECE	324	Electronics II Laboratory	1
ECE	402	Machines/Control Systems Lab	1
ECE	404	Communications/DSP Lab	1

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<b>Changes in Course Prefix, Number, Title, and Credits</b>							
<b>Dept.</b>	<b>No.</b>	<b>From</b>	<b>Crs.</b>	<b>Dept.</b>	<b>No.</b>	<b>To</b>	<b>Crs.</b>
ADFH	150	Design Fundamentals - Lecture	3	ADFH	150	Design Fundamentals - Lecture	<i>1</i>
ADFH	160	Interior Design and Facility Management Careers	1	ADFH	160	<i>Interior Design Careers</i>	1
ADFH	250	Interior Design I	3	ADFH	250	<i>Interior Environmental Analysis</i>	<i>2</i>
ADFH	251	Interior Design I - Studio	3	ADFH	251	<i>Interior Design Studio I: Residential</i>	<i>2</i>
ADFH	253	Interior Design II - Studio	3	ADFH	253	<i>Interior Design Studio II: Office Design</i>	<i>2</i>
ADFH	263	Interior Technology I	3	ADFH	263	<i>Construction Methods and Technology</i>	3
ADFH	351	Interior Design III - Studio	3	ADFH	351	<i>Interior Design Studio IV: Advanced Residential</i>	3
ADFH	353	Interior Design IV - Studio	3	ADFH	353	<i>Interior Design Studio V: Large Scale Contract Design</i>	3
ADFH	363	Interior Technology II	3	ADFH	363	<i>Commercial Lighting Design and Building Systems</i>	3
ADFH	450	Interior Design V - Lecture	3	ADFH	450	<i>Research and Project Development in Interior Design</i>	3
ADFH	460	Professional Practice	3	ADFH	460	<i>Career Development and Professional Practice</i>	3
HNES	211	Successful Coaching	2	HNES	211	Successful Coaching	<i>1</i>
HNES	384	Therapeutic Exercise	3	HNES	<del>484/684</del>	Therapeutic Exercise	3
HNES	385	Therapeutic Modalities	3	HNES	<del>485/685</del>	Therapeutic Modalities	3
HNES	486	Medical Aspects of Athletic Training	3	HNES	<del>486/686</del>	Medical Aspects of Athletic Training	3
HNES	487	Administration of Athletic Training Programs	3	HNES	<del>487/687</del>	Administration of Athletic Training Programs	3
HNES	489	Athletic Training Capstone Experience	3	HNES	489	Athletic Training Capstone Experience	<i>2</i>
NURS	341	Client Concepts	4	NURS	341	<i>Foundations of Clinical Nursing</i>	<i>3</i>
NURS	342	Adult Health Nursing I	4	NURS	342	Adult Health Nursing I	<i>5</i>
NURS	352	Family Nursing I	4	NURS	352	Family Nursing I	<i>5</i>
NURS	402	Mental Health Nursing	4	NURS	402	Mental Health Nursing	<i>5</i>

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Attachment 2

## POLICY CHANGE COVER SHEET

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy):

### **Section 703: Bison Card Terms and Conditions (formerly "ID Card Terms and Conditions")**

The term "ID Card" has been replaced with "Bison Card" throughout the policy. Policy change language reflects what is currently in practice. A privacy statement is added, and FERPA guidelines are addressed.

2. This policy has been reviewed/passed by the following (include dates of official action):

Policy Coordination Committee – 10/8/03; 1/16/04; 11/18/04  
Staff Senate – 10/8/03; 12/8/04  
University Senate –  
President's Council – 12/10/04

3. This policy revision was originated by (individual, office or committee/organization):

Bison Card Advisory Group, Wendy Clarin, Support Service Manager, Chair

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### SECTION 703: BISON CARD TERMS AND CONDITIONS

SOURCE: NDSU President

A. **BISON CARD.** The NDSU **Bison Card** is the official North Dakota State University identification card. All faculty, staff, and students are required to have a Bison Card for identification, security, and access to University buildings and services. The card must be carried at all times while on the NDSU campus. Cardholder must present card for identification if requested by a University official. The card is valuable and should be treated like cash, a credit card or a key. (See Policy 707: Card/Key Access and Building Security.)

North Dakota State University issues an all-campus card subject to the following terms and conditions:

1. To obtain a Bison Card, an individual must first be assigned a University generated identification number.
2. The **Bison Card** is intended for campus use only and must be returned upon request.
3. The **Bison Card** is non-transferable and will be confiscated and returned to the Bison Card Center if found in the possession of another person.
4. The **Bison Card** must be presented upon any request for campus services.
5. The cardholder will not damage or alter the card in any manner. This includes, but is not limited to, punching holes in or affixing unapproved stickers to the card.
6. The **Bison Card**, transactions and activities related to the use of the card, and any account balances, are the responsibility of the individual cardholder.
7. IMMEDIATELY report lost, found, or stolen cards to the NDSU Police (701-231-8998).

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8. A replacement Bison Card can be obtained at the Bison Card Center (Memorial Union). A photo ID is required at the time of replacement.
9. The Bison Card is valid for as long as the person retains their faculty, staff, or student status at NDSU.
10. A fee is charged for all new cards and a replacement fee is charged for any lost, stolen, or invalid card.
11. Associate Status for any individual/group must have prior approval by the NDSU President or Vice President for Business & Finance Student Affairs. Associate Status is granted to groups or individuals who may work on campus, but are not faculty, staff or students of the University.
  - 10.1 Associate Status does not guarantee access to all NDSU activities, events, and facilities.
12. The Card Department Director, Campus Police or Facilities Management may revoke a Bison Card if it is determined that abuse of the privileges associated with the Bison Card has occurred. Students who misuse their Bison Cards may also be referred to the Dean of Student Life Office for possible disciplinary actions. Faculty or staff misuse will be reported to the faculty or staff member's supervisor.

B. BISON BUCKS ACCOUNT. Bison Bucks is a debit card service that is linked to the NDSU Bison Card. This benefit is free to ALL students, faculty, and staff. There are NO hidden charges, expenses, or interest.

1. A \$5 minimum is required for opening a Bison Bucks account and for additional deposits.
2. No minimum balance must be maintained.
3. Cash refunds are not given for any Bison Bucks purchases at any participating merchants. Credit is returned to the Bison Bucks account.
4. Bison Bucks balances carry over from semester to semester. Refunds on any balance above \$15 ~~s~~ at the end of the academic year are available by submitting a Dining Services Refund Form on or before June 30<sup>th</sup>. Refunds on any balance above \$15 during the academic year will be given upon graduation or official withdrawal from the University if requested by the customer. For balances \$15 or below, the customer is encouraged required to spend out this amount.
5. ~~Any unclaimed balances after two years become the property of the NDSU Bison Card Center. A \$15 fee will be imposed for accounts that are inactive for more than one year~~
6. Customers with checks returned for insufficient funds will have accounts frozen until payment is received.
7. Funds are non-transferable.
8. ~~If a customer's Bison Card is lost or stolen, the cardholder is responsible for any purchases made until the card is reported lost.~~ IMMEDIATELY report lost or stolen cards to the NDSU Police (701-231-8998). Once the card has been reported lost, the cardholder is not responsible for any additional purchases. Per federal regulations, the card holder is responsible for up to \$50 if the lost or stolen card is reported within two business days. If the lost or stolen card is not

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reported within two business days, the card holder can be liable up to \$500 or the total account balance, whichever is lower.

**Privacy Statement:** Through the Family Educational Rights and Privacy Act, also known as FERPA or the Buckley Amendment, data collected on the use of University facilities and services by an individual cardholder will only be used for University purposes within FERPA guidelines. Information regarding a cardholder's account will not be provided to third parties unless required by applicable laws or with written permission of the cardholder.

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Attachment 3

To: University Senate

From: Teaching and Professional Service Committee (D. Sellnow, Chair,  
J. Franckowiak, B. Erickson, S. Panigrahi, K. Katti, L. Manikowske,  
M. Mooney, D. Rymph)

Re: Dead Week Recommendation

Date: January 19, 2005

The Teaching and Professional Service Committee surveyed students and faculty regarding whether or not to continue offering a dead week each semester. Based on the survey results of both students and faculty, the committee unanimously recommends that the Dead Week be continued and be enforced as mandatory across the university.

Survey Results:

Students N=1704

Are you in favor of continuing the Dead Week Policy?

YES = 1312	(77%)	
DON'T CARE = 256	(15%)	
		TOTAL: 92%
NO = 126	(7%)	

Does it reduce stress for you?

YES = 793	(47%)	
DON'T KNOW = 505	(30%)	
		TOTAL: 77%
NO = 396	(23%)	

Faculty N= 227

Are you in favor of continuing the Dead Week Policy?

YES = 92	(41%)	
DON'T CARE = 67	(30%)	
		TOTAL: 71%
NO = 65	(29%)	

Did the policy change the way you teach your course?

YES = 39	(20%)
NO = 156	(80%)

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Attachment 4

## Vertical Communication Requirement

New Motion on the Vertical Writing Requirement for NDSU Faculty Senate:

I move that

1. the General Education requirements for Category 1, Communication (C), be revised to indicate that 12 credits are required in this category and to indicate that Communication 110, English 110, English 120, and one upper-division, general-education approved writing or writing-intensive course are required;
2. the English Department, working with the Registrar's Office, develop methods for exempting students who do not need English 110 from that class and for giving credit for English 110 to those same students if they complete English 120 successfully;
3. writing-intensive courses may be developed and offered by departments other than English as long as they have English 120 as a prerequisite, meet the General Education Committee's writing-intensive criteria, and are approved by the General Education Committee;
4. the General Education Committee be authorized to create a Communication Across the Curriculum subcommittee that will be authorized to draft for the General Education Committee criteria and procedures for approving upper-division writing and writing-intensive courses, to review proposals for such courses, and to recommend certification and re-certification of such courses to the General Education Committee; and
5. this policy will be take effect the beginning of Fall semester, 2005.

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Attachment 5

## POLICY CHANGE COVER SHEET

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy):

**Section**

190: Employee Responsibility and Activities: Intellectual Property

NDSU Policy 190 is a new policy section created to incorporate newly created SBHE Policy 611.2. The current NDSU Policies 340: Copyrights and 341: Patents will be deleted as both have been incorporated in to the new NDSU Policy 190. NDSU Policy 342: Ownership of Work Products of Teaching Assistants will be deleted and the appropriate language from 342 placed after Section 7.b. of the new policy 190.

2. This policy has been reviewed/passed by the following (include dates of official action):  
Policy Coordination Committee -  
Staff Senate -  
University Senate -
3. This policy revision was originated by (individual, office or committee/organization):  
State Board of Higher Education  
General Counsel  
Research and Consulting Comm.  
Technology Transfer Office

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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.

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## 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, 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

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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.

### 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

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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 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.

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- (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.*
- 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.*

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- (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) believes 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 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*

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*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.*
- 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.*

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- (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.*

### 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.*

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## *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.*
- (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

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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 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.

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## 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.
- (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)*

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## 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.

## 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.