

**OFFICIAL MINUTES**  
**MEETING OF THE STATE BOARD OF EDUCATION**  
**BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**  
**TRUSTEES OF IDAHO STATE UNIVERSITY**  
**TRUSTEES OF LEWIS-CLARK STATE COLLEGE**  
**TRUSTEES OF BOISE STATE UNIVERSITY**  
**STATE BOARD FOR PROFESSIONAL TECHNICAL EDUCATION**  
**TRUSTEES FOR THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND**

July 6, 2000  
Teleconference Call  
Boise, Idaho

The meeting notice was posted and distributed in compliance with Idaho Open Meeting Law requirements. With a quorum present, the meeting was lawfully convened at 9:00 a.m., with Mr. Tom Boyd, President of the State Board of Education and Board of Regents of the University of Idaho, presiding.

Members Present

Tom Boyd, President  
Karen McGee, Vice President  
James C. Hammond, Secretary  
Curtis H. Eaton  
Severina Haws  
Marilyn Howard, State Superintendent of Public Instruction  
Roderic W. Lewis

Members Absent

All exhibits, appendices and items referenced in these minutes are on file as permanent exhibits with the Office of the State Board of Education.

Among the persons meeting with the State Board of Education/Board of Regents of the University of Idaho were:

Gregory G. Fitch

Kevin Satterlee

Mike Killworth

Laurie Boston

Peter Morrill

Media Representatives

Citizens

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**OTHER**

1. Executive Session

**It was moved by Dr. Howard, seconded by Ms. McGee and carried (7-0)** to enter into Executive Session per *Idaho Code 67-2345 (a,d & f)*. **A roll call vote was taken:**

AYES: Ms. McGee, Mr. Hammond, Mr. Lewis, Mr. Eaton, Dr. Howard, Ms. Haws, Mr. Boyd  
NAYS: None  
ABSTAIN: None  
ABSENT: None

The Board discussed:

1. Candidates for the Interim President position at Lewis-Clark State College.
2. A personnel issue.
3. A personnel issue.
4. Pending litigation with legal counsel.
5. Hiring of several public employees.

(Motion #1)

No decisions were reached.

(Minutes for #4 and #5 were taken by Kevin Satterlee)

2. LCSC Interim President

During its Executive Session the Board reviewed the applications of the six candidates for the position.

**It was moved by Mr. Hammond, seconded by Ms. McGee and carried (7-0)** to authorize the Executive Director to move forward in negotiations with one of the potential candidates for the Interim President of Lewis-Clark State College. (Motion #2)

3. Idaho Public Television - Legislative Intent Language

*Legal Background*

Mr. Satterlee said he has been looking into the issue of freedom of speech versus government speech. He advised the Board of the following:

The U.S. Supreme Court and several other federal courts have clearly defined that there is a difference between the First Amendment and freedom of speech and what is called the Doctrine of Governmental speech.

The Doctrine of Governmental speech effectively states that the First Amendment does not prohibit the government from speaking or regulating the manner or method in which the government itself speaks, i.e. the First Amendment does not preclude the government from exercising editorial discretion over its own medium of expression. It specifically permits the government to regulate the content of what is or what is not expressed when the government itself is the speaker, i.e. the state may make content-based choices.

A recent case that clearly defines the Doctrine of Governmental Speech is a case in Missouri where the Ku Klux Klan tried to underwrite some of the programming for public radio. When the University of Missouri declined to allow them access to the public broadcast system, the Klan sued. The 8th Circuit Court of Appeals stated when the government speaks through its public broadcasting system, it can make choices on what it will or will not fund as government speech. Thus, the government has regulatory authority over its own medium of expression.

Mr. Satterlee felt the intent language in the appropriation bill is constitutional and that it was an appropriate exercise of the legislature's authority to put that restriction in the appropriations bill for Idaho Public Television and to direct the Board to set programming policies.

#### *Board Discussion*

Mr. Eaton felt the Idaho Educational Public Broadcasting System (IEPTC) needed to provide balance in order to provide for a change of ideas. An attempt at balance was made in June 1999 when, prior to the showing of It's Elementary, the Board moved to endorse the free expression of ideas and recommended that if the management of Public Television elected to air the program, that equal time be made available to those in opposition to the portions of the film they find objectionable.

Mr. Eaton then quoted from an editorial written by Senator Hal Bunderson: Any controversial Idaho Educational Public TV program whose format does not balance opposing views is guilty of censorship. Such programs should not be aired until balance is assured. In the future, the State Board of Education will be consulted when the station manager considers broadcasting controversial programs that are not balanced.

Mr. Eaton suggested the discussion focus on the legislative intent language, the policy change and the formation of a citizens review committee.

- 1) Legislative Intent Language - Mr. Eaton reviewed the language of the bill and said much of that language has been incorporated into the proposed Board policy.
- 2) Proposed Policy Change - Mr. Eaton felt the proposed policy statements were responsive to the legislature and also provide balance.

Mr. Lewis asked Mr. Eaton if it were necessary to include the paragraph that begins on page 8 and ends on page 9 of the document. Mr. Eaton felt it was in that it would allow IPTV to show programs that may show actions or events that are illegal in Idaho since it indicates that the acts or events are not being promoted and are for educational purposes only. Mr. Lewis did not feel the statement would fulfill the purpose to the viewer nor would it satisfy the legislative intent language.

Mr. Hammond said he had concerns that so much work has been put into a single issue over two programs dealing with homosexuality. He was also concerned that bending to a particular point does not enhance the image of Idaho. Mr. Lewis said it was partly in that spirit that he questioned the need for the paragraph. He felt the statement was awkward and unnecessary and that the Board would be imposing a strange statement on IPTV programming. But while he would prefer that kind of statement not be broadcast continually on IPTV, if others feel it will be helpful, he did not have a major objection.

**It was moved by Mr. Eaton, seconded by Mr. Hammond and carried (7-0)** to approve for First Reading of Governing Policies and Procedures, Section IV, Subsection C, Idaho Educational Public Broadcasting System. (Motion #3)

- 3) Citizens Advisory Committee - Mr. Lewis suggested the formation of the committee was to add to the changes in policy as he is concerned that the Board adequately fulfill the legislative charge.

Mr. Lewis felt the Board had a responsibility regarding IPTV program selection which can result in programming decisions that might be controversial. He felt that as the Board is sometimes perceived to be a political entity, it needs to put in place a process that takes decisions out of the political arena. He proposed the establishment of a citizens review committee to function with the management of IPTV. The committee would review programs that might be deemed controversial and provide recommendations to the Board as to whether or not the program(s) should be shown. He felt the current IPTV internal review committee would continue to function, but if there was not a unanimous opinion on airing a program, the committee would bring the program to the citizens review committee, which would bring its recommendation to the Board for final decision.

Mr. Eaton felt such a committee should serve a function similar to that of the Statewide Engineering Education Advisory Council (SEEAC), i.e. could help the Board assess such things as fiscal programming and accountability issues that are in the legislative intent language. He suggested a committee be established to do an assessment and bring recommendations to the Board.

Mr. Lewis suggested the committee be formed using the following criteria:

1. a selection process by which the Board would identify regions, solicit and review applications and select a member from each region, or
2. each Board member would select a member, which would ensure that the sensibilities of the committee would reflect those of the Board, or
3. other criteria.

Mr. Lewis felt it was critical that the committee have a diverse membership and to ensure a continuing diversity of thought, the membership should change through a rotation system.

Mr. Lewis suggested the Board establish a subcommittee to develop the committee structure and the process to be used. And, and that it meet with IPTV management, OSBE staff and legislators to review the process and determine the extent to which it would be an acceptable solution to the legislature. The committee could bring a final proposal on structure and process to the Board in August.

Mr. Hammond recommended the proposed subcommittee contact both public and private broadcasting stations and ask them to review IPTV and come back with recommendations. Mr. Lewis said he felt that would be included in the subcommittee's role as it would access other entities to determine how they do things, what an appropriate structure would be, the role and functions of commissions, and how citizens groups are used in public radio and libraries.

Mr. Hammond felt the Board would be better served to form a subcommittee to just bring back recommendations on the citizen review committee. Mr. Lewis said passage of the motion (Motion #4) would indicate Board support for a citizens review committee. Mr. Eaton said he agreed, but felt the motion recommended a program review committee. He asked Mr. Lewis to restate the motion to have the subcommittee study the issue of citizens committees and bring back recommendations.

Mr. Lewis said the intent was to support the formation of a citizens review committee and that the Board should determine what the general overall goal or purpose of the group should be. He did not feel that just appointing a committee assessing IPTV would satisfy the legislative charge. He said his goal is to propose a review committee process. Mr. Eaton did not agree because:

- 1) The proposal presented says the charge is to the committee to make final determinations as to the broadcast of referred programs. He felt that determination was Board responsibility and he was not sure it could be legally delegated. Additionally, he did not want to set up another group for the purpose of deflecting controversial programs.
- 2) The Board would be predetermining a need for a committee. It may be that one is needed, but it is too early to tell at this point.

Mr. Lewis agreed that the Board has the responsibility, but felt a citizens group that makes final programming recommendations to the Board would allay the appearance of political involvement.

Mr. Boyd asked if Mr. Eaton supported a Board subcommittee to look into the advisability, the ramifications and the parameters of a review committee with a report to come to the Board in August.

**It was moved by Mr. Lewis and carried by Ms. McGee** to support the formation of a citizens program review committee and to appoint a subcommittee of the Board to work with IPTV management and with legislative leaders to develop a final recommendation as to the formation of the review committee to be brought before the Board in its August meeting. **The motion failed (2-5).** (Motion #4)

Mr. Eaton clarified that what was needed was a subcommittee of the Board to look at the creation of a citizens committee, i.e. look into how other such citizens committees are developed and their form and function. He asked Mr. Boyd to appoint Board members to begin that task and bring a report to the Board in August. There was agreement that that was a good suggestion as it would get the process started. Mr. Boyd said he would make the appointments.

**ADJOURNMENT:** 12:10 p.m.

**CERTIFICATION:**

The minutes are not verbatim. However, to the best of my knowledge, they constitute a complete and accurate record of the proceedings of the meeting.

Recording Secretary: Vicki E. Barker