

BOARD MEETING MINUTES OF THE BOARD OF TRUSTEES OF LARAMIE COUNTY COMMUNITY COLLEGE DISTRICT, STATE OF WYOMING, HELD WEDNESDAY, MARCH 5, 2014, CENTER FOR CONFERENCES AND INSTITUTES, ROOM 130, LARAMIE COUNTY COMMUNITY COLLEGE

Board Present: Chairwoman Carol Merrell, Vice Chairman Kevin Kilty, Secretary Brenda Lyttle, Treasurer Ed Mosher, and Trustees Don Erickson and Christine Lummis

Board Excused: Trustee Bill Dubois

Staff Present: President Joe Schaffer; Vice Presidents José Fierro, Judy Hay and Carol Hoglund, Associate Vice Presidents Lisa Murphy and Kathleen Urban, and Executive Director Peggie Kresl-Hotz; Administrators, Faculty and Staff Members Teresa Authier, Terry Benson, Juan-Antonio Bernabéu, Mohamed Chakhad, Carolyn Cuestas, Judy Dunn, Amy Ehlman, Roger Findley, Arun Goyal, Peri Jessel, Robert LaFaso, Rich Laidlaw, Rachel Martinez, Arshi Nisley, Leah Noonan, Cathy Rogers, Roz Schliske, Jeff Shmidl, Linda Specht, Ty Stockton, Jim Streelman, Maggie Swanger, Leif Swanson, Rob Van Cleave, Bryan Wilson, and David Zwonitzer; and Legal Counsel Debb Roden

Visitors: Amil Chourasia (Texas A&M), Bruce Curl, Aerin Curtis (*Wyoming Tribune-Eagle*), Greg Hacker (Hacker, Hacker & Kendall), Daniel Martinez and Brooke Rogers (*Wingspan* Co-Editors), Stephanie McGee (*Wingspan* Online Editor), Tycee Mohler (SGA Vice President), and Kathy Scheurman (Wyoming Education Association Higher Education Representative)

1. **CALL TO ORDER** of the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell called to order the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees at 7:01 p.m.

Board Chairwoman Carol Merrell provided an overview of the meeting's structure for the evening's order of business.

Recess of Board Meeting to Conduct the Public Hearing

2. **RECESS** of the March 5, 2014, Board Meeting – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell adjourned the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees at 7:02 p.m.

Recess of Board Meeting to Conduct the Public Hearing

3. **RECESS** of the March 5, 2014, Board Meeting – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell adjourned the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees at 7:02 p.m.

4. **CALL TO ORDER** of the Public Hearing – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell called to order the March 5, 2014, Public Hearing of the Laramie County Community College District Board of Trustees at 7:02 p.m.

A summary of the public hearing's comment was transcribed separately and is attached to these minutes as matter of information.

5. ADJOURNMENT OF PUBLIC HEARING

Board Chairwoman Carol Merrell adjourned the March 5, 2014, Public Hearing of the Laramie County Community College District Board of Trustees at 7:26 p.m. and stated the Board will take a five minute break before re-convening the Board Meeting.

Reconvene Board Meeting

1. RECONVENE of the March 5, 2014, Board Meeting – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell reconvened the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees at 7:35 p.m.

2. MINUTES – Approval of the [February 19, 2014, Board Meeting Minutes](#) – Board Chairwoman Carol Merrell

Trustee Erickson moved and Trustee Kilty seconded,

MOTION: That the Board of Trustees approves the February 19, 2014, Board Meeting Minute as written.

MOTION CARRIED unanimously.

3. CONSIDERATION OF PROPOSED CHANGES TO HUMAN RESOURCES POLICIES AND PROCEDURES – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell stated the Board will not be taking action on the proposed human resources' policies and procedures nor the proposed rules' amendment and repeal. Legal Counsel Debb Roden noted the highlighted text represents the most recent changes and that those changes were made from the input received from three forums and consultative feedback. President Schaffer noted further the consultative feedback period remains open through the end of business on Monday, March 10, 2014.

A. [Employment Policy 6.1](#)

B. [Employment – General Procedure 6.1.1P](#)

A “legacy employee” was further clarified. A major shift occurred for those employees who are hired after the policies and procedures become effective. Professional employees hired after the policy and procedure effective date will be contracted on an annual basis, which is the same way administrators are currently treated. Classified staff will have an at-will status. Faculty will be split into two groups—provisional and continuing contract. Provisional faculty (previously called initial faculty) will receive annual contracts for four years. During their fourth year, the provisional faculty may apply for continuing contract faculty status. Currently, faculty may apply for continuing contract status during their third year.

C. [Employment – Hiring and Recruitment for Vacant Positions Procedure 6.1.2P](#)

Provides clear procedures for the hiring and recruitment of employees.

D. [Employment – Existing or Non-Vacant Positions Procedure 6.1.3P](#)

Speaks to how existing employees will receive contract information. Contract employees will be notified three months prior to their contract end date as to whether or not their contract will be renewed or will be terminated.

E. [Employment – Separation Procedure 6.1.4P](#)

Delineates in more detail the separation procedure and what supervisors are required to do; e.g., making sure LCCC property is returned. Also, recommendations for termination would be processed up the chain of command and with consultation from Human Resources.

F. [Nondiscrimination Anti-Harassment Policy 6.2](#)

G. [Nondiscrimination Anti-Harassment Procedure 6.2P](#)

H. [Sexual Harassment Policy 6.3](#)

I. [Sexual Harassment Procedure 6.3P](#)

Policies 6.2 and 6.3 and Procedures 6.2P and 6.3 have to do with discrimination and harassment and what is specific to sexual harassment. Title IX compliance is stipulated in both policies. The steps for initiating a discrimination or sexual harassment complaint are stated.

J. [Employee Benefits Policy 6.4](#)

K. [Employee Benefits Procedure 6.4P](#)

Provides an overview of employee benefits and the eligibility criteria.

L. [FMLA Policy 6.5](#)

M. [FMLA Procedure 6.5P](#)

The policy outlines the FMLA (Family Medical Leave Act). The procedure addresses how the College will implement those areas under FMLA for which it has a choice; e.g., the College may choose a calendar year or a rolling year.

N. [Leaves of Absence Policy 6.6](#)

O. [Leaves of Absence – Paid Leave Procedure 6.6.1P](#)

P. [Leaves of Absence – Other Leaves Procedure 6.6.2P](#)

Q. [Leaves of Absence – Paid Leave Donation Procedure 6.6.3P](#)

In 6.6.1P vacation leave will be earned as it is accrued rather front-loaded at the beginning of each year. Procedure 6.6.3P would eliminate the College's sick leave bank and would implement a donated leave procedure. This change would give the employee a say-so in the donation of their earned and accrued leave.

R. [Employee Grievance Policy 6.8](#)

S. [Employee Grievance Procedure 6.8P](#)

The procedure clearly defines a grievable offense and provides steps for bringing forward a grievable matter. The supervisor over the respondent would decide whether or not a grievable offense has occurred. A process for appealing a decision (administrative review) is provided in the procedure.

- T. [Reduction in Force Policy 6.9](#)
- U. [Reduction in Force Procedure 6.9P](#)

The policy and procedure would replace Chapter III Rules of Practice and Procedures for a Reduction in Force. Severance pay would be changed from 85 days to a calculation based on how long the person has been employed by the College. A non-legacy staff person, who is an at-will employee, would not be entitled to severance pay under the new policy and procedure.

- V. [Employee Conduct and Discipline Policy 6.10](#)
- W. [Employee Conduct and Discipline Procedure 6.10P](#)

The policy and procedure would replace Chapter II Rules of Practice and Procedures for Discipline for Employee. Appeal steps were added to what currently exists, for a total of three appeal steps before any matter would move to a contested case. Additionally, based on feedback from forums the timelines were made consistent.

President Schaffer shared the significant changes that have been made to the policies and procedures and pointed out policy and procedure language was changed to provide greater clarity, and that the policies and procedures are still in draft form, are not perfect, and may continue to be edited as they move through the approval process. He pointed out the reference table provides a brief explanation of the changes since the first iteration was presented to the Board during their retreat on January 24, 2014, and also includes major key considerations. He also restated that many of the changes occurred from the feedback received during campus forums and online consultative feedback.

Board Chairwoman Merrell announced the Board would now hold a discussion with President Schaffer and their counsel concerning the proposed policies and procedures and amendment and repeal of rules.

Board of Trustees and President Schaffer Comments/Clarifications

- The Board of Trustees only formally approves proposed Board policy. Procedures are provided to the Board so they have the context and administrative approach used to ensure the President's procedures meet the intent of the Board's policies.
- Some philosophical differences may still exist but a good deal of response to employee concerns has resulted from the input received during forums.
- The Board had only Policy Governance policies and no rules prior to the Board's adoption of Chapters I, II, and III rules during their May 28, 2011, business meeting.
- The Board changed their governing model from Policy Governance to a traditional governance model with the adoption of their new Board policies and corresponding procedures on September 19, 2012. Policy Governance policies were subsequently eliminated.
- The Board will be asked to take action on all the newly proposed human resources policies during their April 2, 2014, Board Meeting.
- The Board's *Policy Development and Approval Procedure* 1.2.11P does not establish an official length of time for the consultative feedback period. However, in response to staff and faculty requests, the initial feedback period of January 22nd through February 17th was extended through March 10th providing 48 days (nearly seven weeks) of time for feedback. Procedure No. 1.2.11P does speak to consultative feedback and shared governance, making the processes very structural.

- The proposed rules' amendment and repeal were noticed for a 45-day period as statutorily required. Substantive changes would trigger another 45-day comment period. However, because of the exhaustive vetting of the policies, procedures, and rules, changes from the feedback received prior to this meeting and the continued vetting from the input received during this meeting, only grammatical changes are anticipated.
- The repealed rules' language is not going away. The language has been incorporated into proposed policies and procedures.
- One of President Schaffer's directives from the Board was to address the "chaos that existed in policies and procedures" [Trustee Kilty] and so undertook re-writing policies and procedures so that the language in and among them becomes consistent. "This is the only reason for the changes." [Trustee Kilty]
- The policies and procedures and rules were vetted through an internal process that included President's Cabinet's first reading, a consultative feedback period, public forums to garner feedback from faculty and staff, and a public hearing. (POSTSCRIPT TO MINUTES: On Friday, March 14th, President's Cabinet electronically approved the policies and procedures as further edited from the input received during the Wednesday, March 5th, Public Hearing and Board Meeting.) On Monday, March 17th, College Council will review and decide whether any or all of the procedures should be ratified for President Schaffer's signature and if any or all of the policies should be recommended for approval by the Board. If the process continues with the same timeline, the policies and procedures will be presented to the Board on first reading on March 19th, and again on second reading with a request for approval on April 2nd.
- The Board of Trustees only takes action and formally approves proposed Board policy. When policies are presented to the Board on first and second reading, the supporting procedures accompany those policies, so the Board is made aware of the context and administrative approach used to ensure the President's procedures meet the intent of the Board's policies.
- The policy language should be well-designed.

Public Comment

- Rob Van Cleave, Faculty Senate President – The Faculty Senate is very pleased with the revisions that have come forward and with the willingness to listen to what the faculty have to say. The administration has held the EaglesEye comment period open until March 10th. The sense Mr. Van Cleave is getting is that "we" are moving forward. Faculty Senate met right after the last forum but will wait to make a formal statement until the revisions are known. The Faculty Senate meets again Friday, March 7th.
- Rob Van Cleave, Faculty Member – Chapter III Rules of Practice and Procedures for Reduction in Force (RIF) that is to be repealed stated an employee has a two-year reinstatement period. The proposed *Reduction in Force Procedure* 6.9P originally had no reinstatement period but has been revised to include a one-year reinstatement period. Mr. Van Cleave would like to see one year changed to two years as was directed in Chapter III. The RIF policy and procedure could be interpreted as providing a means for getting rid of persons. Mr. Van Cleave believes this is not the intent of the current administration, but the intent of future administrations may be different. Mr. Van Cleave also advocated for classified staff stating his concern about an at-will status being implemented for non-legacy, classified staff. Noting faculty are provided a four-year "probationary" period, Mr. Van Cleave stated giving classified staff a probationary period and due process following the end of that probationary period would seem reasonable and just. President Schaffer stated the section to which Mr. Van Cleave is referring is in Procedure 6.1.1P, Section B. 3) on page 5, the last paragraph under Definition of Employee. Restating what Mr. Van Cleave is proposing, President Schaffer said a non-legacy, classified staff employee would have an at-will (no contract) status for a probationary period after which the non-legacy, classified staff employee would move into an at-will status where he/she could only be removed through a reduction in force or due process.

Mr. Hacker stated a fairly common and reasonable practice is to have classified staff go through a probationary period following which they have an established protective status where they have for-cause protection and a right to a hearing.

- Greg Hacker, Attorney – President Schaffer responded to Mr. Hacker’s question concerning at which stage the policies and procedures are in the development process defined in *Policy Development and Approval Procedure* 1.2.11P, Section 5.0. The policies and procedures before the Board this evening are currently in the consultative feedback period. As previously stated, the initial feedback period of January 22nd through February 17th was extended through March 10th providing 48 days (nearly seven weeks) of time for feedback. Next, President’s Cabinet will decide whether or not to approve the policies and procedures to go forward to College Council on March 17th. The College Council is a recommending body whose review provides another opportunity for discourse and action. The College Council’s membership represents all of the College’s major constituencies—President’s Cabinet, administrators, faculty, professional staff, classified staff, and students. For the Record: “The LCCC College Council is a representative, shared governance body designed to ensure the College is effectively and efficiently achieving the institution’s mission.”

Mr. Hacker questioned what is represented in procedure is not consistent with how procedure is defined in *Policy Development and Approval Procedure* 1.2.11P. Procedures are intended to be the implementation steps followed by administration to carry out policy statements of the Board. He suggested employee definitions are policy statements, and therefore, these definitions should be placed in policy. If the definitions are not placed in policy, then they may not be enforceable in a court of law because they have not been formally adopted by the Board.

Mr. Hacker cautioned some procedure language may contain violations of constitutional rights, the details of which he addressed in a document dated March 5, 2014, RE: *Comments on Proposed Rules Changes*, that was delivered to the President’s Office at 4:58 p.m. this evening. Copies of the document were subsequently given to the Board prior to the convening of this evening’s public hearing and Board meeting. Referring to rules’ language being moved into policy and procedure, Mr. Hacker cautioned the Board about references to other policies and procedures that are not yet in force.

President Schaffer stated the policy and procedure under development have to do with a contract connection to a faculty ranking and promotion system. The policy and procedure necessitate that the College has a ranking and promotion system be in place before the next round of applications for continuing contract. President Schaffer will review Mr. Hacker’s March 5, 2014, document for other references. He noted the College’s legal counsel and human resources’ staff have done a great job in the preparation of the proposed human resources’ policies and procedures and rules changes. To further assure language viability and legality the proposed policies and procedures and rules’ changes will be subjected to another legal review.

- Bruce Curl, Former LCCC Human Resources Director – As stated by Trustee Erickson, policies are broad statements adopted by the College that are approved the Board of Trustees to provide basic principles by which the procedures provide detail steps of the Board’s intent. Mr. Curl believed the policy statements are currently poorly written and need to be re-designed. As an example, he noted *Employment Policy* 6.1, Section B. Best Candidate, states the College’s intent is to hire the best employee through competitive process. Referring to at-will status for classified staff and the provisional status for new faculty, he questioned how the College can be competitive and attract best possible candidates when the College does not provide any form of job security or due process. The Board “needs to put some meat into” Section C. Employment and Employee Categories that would give employees job security through due process and property rights. Mr. Curl also addressed *Leaves of Absence – Paid Leave Donation Procedure* 6.6.3P, stating the proposed procedure is a “bad idea.” The College’s current sick leave donation policy has been

the envy of other institutions and is the most equitable and fair way to treat employees with an extended illness. He suggested placing a cap on the current sick leave policy instead of replacing it.

- Dr. Arun Goyal, Dean of Special Projects – Dr. Goyal stated he is addressing the Board as a community member. He reiterated his comment during the public hearing about students needing to be a Board priority and that the Board should be spending time addressing student needs instead of policy and procedure. Trustee Erickson responded the Trustees have a number of priorities all of which focus ultimately on the needs of the College's students. Trustee Kilty also noted the Board is aware they need to take control of policy and reminded Dr. Goyal the topic of the current discussion is commentary on policies and procedures.

Trustee Erickson suggested taking a five-minute recess at which time Board Chairwoman Carol Merrell announced the Board will take a five-minute recess at 9:08 p.m.

The Board reconvened at 9:12 p.m. Board Chairwoman Carol Merrell welcomed Dr. Goyal back to the podium but cautioned him not to stray from commenting on the policies and procedures. If his comments do stray, he will be asked to return to the podium during agenda item No. 7 Public Comment, which allows for public comment on anything not on the agenda. Dr. Goyal stated he would "stay with the document."

- Dr. Arun Goyal, Dean of Special Projects – Dr. Goyal referred to *Nondiscrimination Anti-Harassment Procedure* 6.2P and stated the Board should make sure none of the language in blue is plagiarized and that both state and federal laws should be examined. He also referred to *Grievance Policy* 6.8, which he stated "should be a very, very strong policy" and "consistent with the rest of the country." Referring to *Employee Conduct and Discipline Policy* 6.10, he stated the policy allows manipulation of personal favors.
- Arshi Nisley, Faculty Member – Ms. Nisley thanked the Board and President Schaffer for allowing lots of opportunities to make public comment—during consultative feedback on EaglesEye, through written comments, during forums, and during this evening's public hearing and Board meeting. She also expressed her thanks for extending the time of the consultative feedback period.
- Jeff Shmidl, Faculty Member – Mr. Shmidl also thanked the Board for the opportunities to make public comment. He also concurred with Trustee Erickson's statement that all of the College's employees have a mission that focuses on students and provided additional comment on the proposed at-will status of classified staff, the inclusion of job status definitions in policy, the removal of the existing sick leave bank policy, and the change in the severance pay period for a reduction in force.

The at-will status is bothersome because the classified staff would have no due process. Faculty and staff need to be invested in the College and its students and for the most part they are. However, an at-will status could diminish the investment a classified staff employee might make. A probationary period could identify a timeframe for determining whether a good employee could be made into a best employee. Mr. Shmidl also pointed out the language "a supervisor must inform" (*Employee Conduct and Discipline Procedure* 6.10P) does not equate with due process. Referring to the inclusion of job status definitions in policy, Mr. Shmidl stated public institutions should define job status in policy. Speaking to the sick leave bank policy, Mr. Shmidl observed the existing policy does not require an employee to personally ask someone for a contribution of their time, which could cause the employee to have to divulge personal circumstances they would prefer to keep confidential. Conversely, requiring an employee to make a determination as to whether another employee should be granted a donation of sick time places an undue burden on the employee who is being asked to donate the time because they cannot be expected to know the extenuating circumstances that would justify the appropriateness of the donation. Changing the amount of time for which a RIF'd employee would be paid a severance salary to no more than two months for qualified employees would not save the College enough money to justify the reduced severance pay. Mr. Shmidl thanked President Schaffer for agreeing to seven business days as the length of time in which

to request an appeal (*Employee Conduct and Discipline Procedure* 6.10P), adding ten days would be even more preferable.

- Carolyn Cuestas – Classified Staff Member – Ms. Cuestas thanked the faculty for speaking up for classified staff and expressed concern about the proposed at-will status. She pointed out in *Employment – General Procedure* 6.1.1P if a “...a current Legacy Classified Staff applies for, is selected, and accepts a promotion to an at-will Classified position...” the Legacy employee then becomes an at-will employee. She believed becoming an at-will employee could jeopardize her retirement and would prevent her from seeking a promotion. President Schaffer confirmed Ms. Cuestas’s understanding of the procedure is correct, stating the parameters around an at-will position apply as the policies and procedures are proposed.
- Juan-Antonio Bernabéu – Faculty Member – Employees are excelling because they are invested in the College. The student success rate is increasing. He stated risk is a reality he has to live with. He has three children and he is heavily invested in the community. He expressed his appreciation for the policy and procedure process and the respect shown to him. However, he is concerned about what the proposed policies and procedures will do to the relationship between employees, administration, and the Board.
- Leah Noonan – Faculty Member – Mrs. Noonan asked if another opportunity to speak on the policies and procedures will occur. President Schaffer stated the consultative feedback period is open through the end of business on Monday, March 10th, and that the Board will have first reading of the proposed policies and procedures during their March 19th Board meeting. Mrs. Noonan offered her support for Ms. Cuestas’s comments concerning at-will status but noted a four-year probationary period would be way too long. She also agreed the current sick leave bank policy should be retained.

President Schaffer reminded everyone the consultative feedback period remains open through Monday, March 10th, and also stated he is happy to take additional comments via email.

Board Chairwoman Carol Merrell thanked everyone for being so engaged and having the courage to speak on how to improve the College. Trustee Mosher reemphasized employees wishing to comment should not wait to do so, adding trustees are watching the commentary on EaglesEye.

4. ADDITIONAL ITEMS – Information Only

None

5. NEXT MEETINGS/EVENTS

- **March 19 (Wednesday)** – Board Meeting and Dinner: Dinner – 6 p.m. – CCC 178/179; Meeting – 7 p.m. – Petersen Board Room – At Board Chairwoman Merrell’s request this meeting was moved to CCI 130.
- **April 2 (Wednesday)** – Board Meeting and Dinner: Dinner – 6 p.m. – CCC 178/179; Meeting – 7 p.m. – Petersen Board Room
- **April 16 (Wednesday)** – Board Meeting and Dinner: Dinner – 6 p.m. – CCC 178/179; Meeting – 7 p.m. – Petersen Board Room

6. NEW BUSINESS – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell read an article, “A Different Kind of Counseling,” in the *Winter 2014 Trustee Quarterly* and asked President Schaffer to look into free legal counsel for the student body. President Schaffer agreed to do so.

Trustee Mosher asked the trustees to share comments on legislative action and any other issues prior to the WACCT’s meeting on March 30th. (POSTSCRIPT TO MINUTES: The WACCT chose not to meet in March.)

Trustee Erickson announced Trustee Mosher was elected president of the Wyoming Association of Community College Trustees (WACCT). He is looking forward to working with Trustee Mosher in his new role and believes he will provide good leadership.

7. PUBLIC COMMENT (Public comment on anything not on the agenda)

Dr. Goyal spoke briefly about circumstances specific to his administrative leave.

8. ADJOURNMENT of the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees – Board Chairwoman Carol Merrell

Trustee Erickson moved and Trustee Kilty seconded the March 5, 2014, Board Meeting be adjourned.

MOTION CARRIED unanimously and Board Chairwoman Carol Merrell adjourned the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees at 9:48 p.m.

9. EXECUTIVE SESSION – *An executive session was not held.*

Respectfully submitted,

Vicki Boreing
Board Recording Secretary

LARAMIE COUNTY COMMUNITY COLLEGE
BOARD OF TRUSTEES
PUBLIC HEARING
Wednesday, March 5, 2014, 7 p.m.
Room CCI 130
Center for Conferences and Institutes

Board Present: Chairwoman Carol Merrell, Vice Chairman Kevin Kilty, Secretary Brenda Lyttle, Treasurer Ed Mosher, and Trustees Don Erickson and Christine Lummis

Board Excused: Trustee Bill Dubois

Staff Present: President Joe Schaffer; Vice Presidents José Fierro, Judy Hay and Carol Hoglund, Associate Vice Presidents Lisa Murphy and Kathleen Urban, and Executive Director Peggie Kresl-Hotz; Administrators, Faculty and Staff Members Teresa Authier, Terry Benson, Juan-Antonio Bernabéu, Mohamed Chakhad, Carolyn Cuestas, Judy Dunn, Amy Ehlman, Roger Findley, Arun Goyal, Peri Jessel, Robert LaFaso, Rich Laidlaw, Rachel Martinez, Arshi Nisley, Leah Noonan, Cathy Rogers, Roz Schliske, Jeff Shmidl, Linda Specht, Ty Stockton, Jim Streelman, Maggie Swanger, Leif Swanson, Rob Van Cleave, Bryan Wilson, and David Zwonitzer; and Legal Counsel Debb Roden

Visitors: Amil Chourasia (Texas A&M), Bruce Curl, Aerin Curtis (*Wyoming Tribune-Eagle*), Greg Hacker (Hacker, Hacker & Kendall), Daniel Martinez and Brooke Rogers (*Wingspan* Co-Editors), Stephanie McGee (*Wingspan* Online Editor), Tycee Mohler (SGA Vice President), and Kathy Scheurman (Wyoming Education Association Higher Education Representative)

1. **CALL TO ORDER** of the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell called to order the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees at 7:01 p.m. and stated the order of the meeting.

Recess of Board Meeting to Conduct the Public Hearing

1. **RECESS** of the March 5, 2014, Board Meeting – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell adjourned the March 5, 2014, Board Meeting of the Laramie County Community College District Board of Trustees at 7:02 p.m.

2. **CALL TO ORDER** of the Public Hearing – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell called to order the March 5, 2014, Public Hearing of the Laramie County Community College District Board of Trustees at 7:02 p.m.

3. **CONSIDERATION OF PROPOSED CHANGES TO RULES**

- A. [Chapter I – Rules of Practice and Procedures for a Contested Case – Proposed Amendment](#)
- B. [Chapter II – Rules of Practice and Procedures for Discipline for Employees – Proposed Repeal](#)
- C. [Chapter III – Rules of Practice and Procedures for Reduction in Force – Proposed Repeal](#)

Legal counsel Debb Roden provided an overview of the amendment to Chapter I Rules of Practice and Procedures for a Contested Case and the repeal of Chapters II Rules of Practice for Discipline for Employees and Chapter III Rules of Practice for Reduction in Force, noting three forums were held for faculty and staff in addition to the consultative feedback requested on EaglesEye. Significant changes have since been made from the feedback received. The language in Chapters II and III will be placed into policy and procedure. Speaking to the changes in Chapter I, Legal Counsel Roden stated the amended rule denotes a hearing officer will still hear the personnel matter and will submit proposed findings of fact and conclusions of law. Both parties may follow with written exceptions (objections) to the hearing officer's submissions. The Board will not be present at the actual hearing but will receive a transcript or audio of the full record of the proceedings. After their review of the findings in their entirety, the Board may accept, modify, or reject the findings.

Counselor Roden stated the purpose of the public hearing is for the Board to receive additional feedback and public comment on the proposed amendment and rescission of the College's rules.

4. CALL FOR PUBLIC COMMENT/QUESTIONS – Board Chairwoman Carol Merrell

Board Chairwoman Carol Merrell opened the public comment period and asked that persons wishing to address the Board please come to the podium and state their name prior to offering their public comment or feedback.

Public Comment

- Rich Laidlaw, Faculty – The revised version of Chapter I was not posted on the website of EaglesEye. (POSTSCRIPT TO SUMMARY: Board Secretary Vicki Boreing emailed version two of Chapter I to the campus and posted it on EaglesEye the next morning, Thursday, March 6, 2014.)
- Cathy Rogers, Faculty – She stated the Board adopted Chapters I, II, and III three years ago after receiving feedback from College employees and legal counsel and questioned why the Board is now considering the amendment and rescission of these rules.
- Jeff Shmidl, Faculty – Spoke as a heavily invested community member and as a full-time faculty member. Community support of the College was evidenced by the passing of a bond election in November 2013. Under Policy Governance, which was the Board's governing model at the time the rules were adopted, the Board concluded the rules were necessary to prevent wrongful disciplinary action and misuse of a reduction in force. The Board's adoption of the rules was an innovative approach to assuring proper action would be taken concerning contested cases, discipline, and reduction in force; their action was not an anomaly.
- Dr. Arun Goyal, Dean of Special Projects – Dr. Goyal addressed the Board as a community member, noting he is on administrative leave as the Dean of Special Projects. He stated time needs to be devoted to changes for students instead of making policy and procedure changes.
- Greg Hacker, Attorney – Mr. Hacker spoke on behalf of the Wyoming Education Association, the LCCC Education Association, and as a community member and taxpayer. The core of the rules has been in place for at least 25 years ("not verified"). (FOR THE RECORD: the rules adopted three years ago were new rules and not revisions of past or current rules.) No explanation has been given on why the rules adopted three years ago need to be changed or repealed. Personnel policies in rule are just as "binding, effective, useful, and functional as they are in policy." A movement exists to take personnel policy language out of rules and place that language into policy and procedure. Not all governmental agencies have their personnel policies in rule. The College's proposed human resource policies and procedures and rules amendment and repeal is the "largest wholesale revision" of rules and policy and procedure Mr. Hacker has observed in his 15 years as an attorney. The conversion of rules into policy provides an opportunity for rollbacks in employee rights to take place. Mr. Hacker provided written comments on behalf of his "clients" to the Board just prior to the public hearing that addressed "to some degree" rollback of employee rights' issues. The current version of Chapter I is one of the better administrative procedure rules for contested case

hearings Mr. Hacker has seen in his practice of holding administrative hearings before governmental entities. Chapter I as it is currently written is largely reasonable and fair and represents both the College and employee interests in the process. Mr. Hacker did not believe the revised version of Chapter I, that he has seen, provides the same degree of fairness and representation. The reference to the Administrative Procedures Act (APA) is appropriate. However, the APA is largely guidelines and not actual procedural steps and does not address all constitutional due process requirements. An APA compliant hearing does not necessarily meet the requirements of a due process hearing. A hearing conducted by a hearing officer hired by the Board is the Board's hearing, and the Board is liable for breaches of due process or other legal violations. The process for selecting a hearing officer needs to be specified. One option would be for the Board and the person requesting the hearing to be allowed five days to jointly select a hearing officer. If no agreement is reached, then the Board would make the selection. The College selecting the hearing officer would be problematic and would equate to a prosecutor instead of the defense attorney selecting the jury. In practice, both sides select the jury so a balance and fairness are effected. Mr. Hacker also expressed his opinion that the legal status of employee rights (continuing contract or not, or an at-will employee or not and what those mean) should be stated in policy rather than procedure because these are not steps of implementation; i.e., "they are not something subordinate." Also, the Board should simultaneously act on the rules and the policies and procedures. For the Record: This is the Board's plan of action.

5. ADJOURNMENT OF PUBLIC HEARING

Board Chairwoman Carol Merrell adjourned the March 5, 2014, Public Hearing of the Laramie County Community College District Board of Trustees at 7:26 p.m. and stated the Board will take a five minute break before re-convening the Board Meeting. The minutes of the March 5, 2014, Board Meeting are recorded in the official transcription of minutes for that meeting.

Respectfully submitted,

Vicki Boreing
Board Recording Secretary