

MINUTES OF MEETING
BOARD OF GOVERNORS
WESTERN COMMUNITY COLLEGE AREA

TIME AND PLACE ROLL CALL NOTICE OF MEETING	A special meeting of the Western Community College Area Board of Governors was held at 10:12 a.m., on Tuesday, February 18, 2014, in the Boardroom, Western Nebraska Community College, Scottsbluff Campus, located at 1601 East 27 th Street, in the City of Scottsbluff, in the County of Scotts Bluff, in the State of Nebraska, as per the publicized notice in the <u>Star-Herald</u> , on February 7, 2014, with the following members present: Timothy H. Daniels, F. Lynne Klemke, L. Paul Leseberg, Kimberly A. Marcy, Jack L. Nelson, Alexander D. Pavlista, M. Thomas Perkins, Mary K. Shaver, Julienne K. Walworth, Merlyn L. Gramberg, Chairperson. Absent: Richard G. Stickney. Student Representatives present: None. Faculty Representatives present: None. College staff present: Todd R. Holcomb, Coral E. Richards, Ellen M. Dillon, Erin E. Stinner, Susan K. Yowell. College Attorney present: Philip M. Kelly. A current agenda was available in the College President's office and the Board Secretary's office on the Scottsbluff Campus at the time of the publicized notice.
QUORUM	Dr. Gramberg declared a quorum was present for the transaction of business.
VISITORS	Visitors were: Bart Schaneman, Scottsbluff.
BOARD CHAIRPERSON COMMENTS	Dr. Gramberg announced that for public information, there is a copy of the Nebraska Open Meetings Act available on the table at the back of the room.
APPROVAL OF AGENDA	Dr. Perkins moved the agenda be approved as presented. Seconded by Ms. Klemke. The vote was, Yes: Daniels, Klemke, Leseberg, Marcy, Nelson, Pavlista, Perkins, Shaver, Walworth, Gramberg. No: None. Absent: Stickney. Motion carried.
APPOINTMENT OF HEARING OFFICER Mr. Paul W. Snyder	Mr. Kelly explained that in the past there has been an attorney as a member of the Board of Governors. Since the current membership does not include an attorney, Mr. Kelly has asked Mr. Paul W. Snyder, a local attorney, to serve as the Hearing Officer for today's meeting. Mr. Snyder will assist the Board with procedural and technical legal matters much like a judge would do.

APPOINTMENT OF
HEARING OFFICER
Mr. Paul W. Snyder
Cont.

Dr. Perkins moved the Board appoint Mr. Paul W. Snyder as the Hearing Officer for the Due Process Hearing regarding Dr. Hieu X. Phan, Jr. Seconded by Mr. Daniels. The vote was, Yes: Klemke, Leseberg, Marcy, Nelson, Pavlista, Perkins, Shaver, Walworth, Daniels, Gramberg. No: None. Absent: Stickney. Motion carried.

DUE PROCESS HEARING
Re: Dr. Hieu X. Phan, Jr.

Mr. Snyder reported there is a preliminary matter the Board will need to consider before the Due Process Hearing begins.

Mr. Snyder reported that at approximately 8:32 a.m., Mr. Groshans received a text message from Dr. Phan, indicating that his flight from Denver was cancelled and that his attorney could not appear without him. Dr. Phan requested another hearing date.

Mr. Snyder asked Mr. Groshans to assist in trying to include Dr. Phan in the meeting by calling him on the conference telephone. Mr. Groshans called Dr. Phan's cell phone number. There was no answer. Mr. Groshans then tried to call Dr. Phan's home phone number. The call was forwarded to a voice mail message which indicated the mail box was full.

Mr. Snyder then asked Mr. Groshans to take the witness stand, and Mr. Groshans was sworn in.

Mr. Snyder asked Mr. Groshans to state his position at the College. Mr. Groshans is the Vice President of Human Resources/Institutional Development.

Mr. Snyder asked Mr. Groshans if he had received a text message from Dr. Phan. Mr. Groshans responded that he had received a text message from Dr. Phan at approximately 8:32 a.m. in which Dr. Phan said his flight to Denver was cancelled, that his attorney could not meet without him and they were requesting another hearing date.

Mr. Snyder entered a copy of the text message Mr. Groshans received from Dr. Phan as Exhibit 39. He also entered a copy of a text message that Mr. Groshans sent to Dr. Phan as Exhibit 40. In that text message, Mr. Groshans told Dr. Phan that he needed to speak with him as soon as possible, that we needed to speak with his attorney immediately to discuss possible continuance, and asked Dr. Phan to call him immediately at his cell phone number.

DUE PROCESS HEARING
Re: Dr. Hieu X. Phan, Jr
Cont.

Mr. Groshans testified that shortly after he received the text message from Dr. Phan, the College Attorney, Mr. Kelly arrived on campus. Mr. Groshans attempted to contact Dr. Phan every five to eight minutes calling Dr. Phan's cell phone number and sending three text messages. Mr. Groshans received no response. Mr. Groshans then went to Dr. Phan's personnel file, and obtained his home phone number. When Mr. Groshans called the home phone number he reached a voice message indicating the mailbox was full.

Mr. Snyder inquired if the phone numbers Mr. Groshans used this morning had been used previously to contact Dr. Phan. Mr. Groshans responded "yes." Mr. Snyder inquired if the phone numbers used in the meeting were the same numbers that Mr. Groshans had used prior to the meeting. Mr. Groshans responded they were the same numbers.

Mr. Snyder inquired if anyone else had contacted Dr. Phan about the meeting today. Mr. Groshans reported that Ms. Coral E. Richards, Board Secretary, received an e-mail from Dr. Phan requesting a hearing. Dr. Phan also requested the time for the hearing be extended beyond January 15, 2014. Mr. Groshans reported in a Conference call to Dr. Phan, in which Ms. Richards and Mr. Kelly were present, Dr. Phan indicated that today, February 18, 2014, was an agreeable date. After confirming this date was agreeable with Board members, Ms. Richards notified Dr. Phan of the date and time. Mr. Groshans testified that Dr. Phan has declined to identify his attorney, or provide information to the College Attorney about any witnesses he might call or evidence that he would present.

There were no further questions for Mr. Groshans.

Mr. Kelly asked Ms. Susan L. Verbeck, Executive Administrative Assistant to the President, to take the witness stand. She was sworn in by Mr. Snyder.

Mr. Kelly asked Ms. Verbeck if she had any information about the status of flights to Denver.

Ms. Verbeck responded that she had called Denver International Airport to inquire about the status of flights into and out of the airport. She was told there were no flights cancelled, and all incoming flights arrived on time.

There were no further questions for Ms. Verbeck.

DUE PROCESS HEARING
Re: Dr. Hieu X. Phan, Jr
Cont.

Mr. Snyder told the Board the e-mail Mr. Groshans received from Dr. Phan this morning can be interpreted as a request for a continuance. Mr. Snyder told the Board members the decision to grant a continuance is up to them.

As College Attorney, Mr. Kelly addressed the Board. He indicated the normal process for requesting a continuance would include proper documentation for the request. Dr. Phan has not provided any documentation. Additionally, there has been no communication from Dr. Phan's attorney, an Exhibit List and a list of witnesses has not been provided.

Mr. Kelly reported that he and Dr. Holcomb are requesting the continuance be denied.

Dr. Perkins moved that, after hearing evidence presented by Mr. Groshans and Ms. Verbeck and comments by the College Attorney, the Board deny the continuance and proceed with the Due Process Hearing. Seconded by Mr. Nelson. The vote was, Yes: Leseberg, Marcy, Nelson, Pavlista, Perkins, Shaver, Walworth, Daniels, Klemke, Gramberg. No: None. Absent: Stickney. Motion carried.

Prior to the roll call, Board members inquired when the College received Dr. Phan's e-mail (approximately 8:32 a.m. today) and commented that Dr. Phan would have been notified well in advance of this morning because of the length of time to fly from Kansas City to Denver and the limited number of flights from Denver to Scottsbluff. It was also noted there were no adverse weather conditions, regionally, at this time.

Mr. Daniels moved, pursuant to Section 84-1410(1), of the Reissue of the Revised Statutes, known as the Nebraska Public Meetings Law, that the Board of Governors hold a closed session with Mr. Paul W. Snyder, Mr. Philip M. Kelly, Dr. Todd R. Holcomb, Ms. Coral E. Richards, Dr. Hieu X. Phan and his representative, and respective witnesses of the Board of Governors and Dr. Phan as they are separately called for the purpose of a Due Process Hearing – Re: Dr. Hieu X. Phan, Jr. He further moved this closed session is clearly necessary for the prevention of needless injury to the reputation of Dr. Phan and that Dr. Phan has not requested a public meeting. Seconded by Dr. Perkins. The vote was, Yes; Marcy, Nelson, Pavlista, Perkins, Shaver, Walworth, Daniels, Klemke, Leseberg, Gramberg. No: None. Absent: Stickney. Motion carried.

DUE PROCESS HEARING
Re: Dr. Hieu X. Phan, Jr.
Executive Session
Cont.

Prior to adjourning to the Executive Session, Mr. Groshans tried again to call Dr. Phan. There was no response.

The Executive Session began at 10:39 a.m.

Mr. Snyder declared the Executive Session in recess for lunch at 12:25 p.m.

Mr. Snyder reconvened the Executive Session at 1:18 p.m.

Mr. Snyder declared the Executive Session in recess at 2:57 p.m.

Mr. Snyder reconvened the Executive Session at 3:06 p.m.

Mr. Snyder declared the Executive Session recess at 4:25 p.m.

Mr. Snyder reconvened the Executive Session at 4:35 p.m.

The Executive Session ended at 5:14 p.m.

OPEN MEETING

Dr. Gramberg declared the Open Meeting in session at 5:14 p.m.

DELIBERATION
Executive Session
Personnel Matters
Re: Dr. Phan, Jr.

Ms. Klemke moved, pursuant to Section 84-1410 of the Re-issue of the Revised Statutes, known as the Nebraska Public Meetings Law that the Board of Governors hold a closed session with Mr. Paul W. Snyder, Hearing Officer, for the purpose of deliberation concerning the Due Process Hearing for Dr. Hieu X. Phan. Seconded by Mr. Daniels. The vote was, Yes: Nelson, Pavlista, Perkins, Shaver, Walworth, Daniels, Klemke, Leseberg, Marcy, Gramberg. No: None. Absent: Stickney. Motion carried.

The Board of Governors and Mr. Snyder adjourned to an Executive Session at 5:18 p.m.

The Executive Session ended at 5:33 p.m.

OPEN MEETING

Dr. Gramberg declared the Open meeting in session at 5:33 p.m.

RESOLUTION
Re: Dr. Hieu X. Phan, Jr.

Dr. Perkins moved, pursuant to Section 85-1528 of the Nebraska Revised Statutes that based upon the evidence presented at the hearing held on February 18, 2014, that just cause exists not to renew the teaching contract for Dr.

RESOLUTION

Re: Dr. Hieu X. Phan, Jr.
Cont.

Hieu X. Phan, Jr. He further moved that the teaching contract for Dr. Hieu X. Phan, Jr., not be renewed for the 2014-2015 academic year. Seconded by Mr. Daniels. The vote was, Yes: Pavlista, Perkins, Shaver, Walworth, Daniels, Klemke, Leseberg, Marcy, Nelson, Gramberg. No: None. Absent: Stickney. Motion carried.

Dr. Gramberg thanked Mr. Snyder for his assistance and the Board members for their attendance at the meeting.

COMMUNITY COMMENTS

Dr. Gramberg asked for community comments. There were none.

NEXT REGULAR MEETING

The next Regular meeting of the Western Community College Area Board of Governors will be held on Wednesday, February 19, 2014, at 9:30 a.m., in the Boardroom, Western Nebraska Community College, Scottsbluff Campus, 1601 East 27th Street, Scottsbluff, Nebraska.

ADJOURNMENT

The meeting was adjourned by unanimous consent at 5:35 p.m.

Merlyn L. Gramberg, Chairperson

Coral E. Richards, Secretary