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MEMORANDUM

DATE: March 20, 2013

TO: Bonnie S. Brier, Senior Vice President, General Counsel, and Secretary of the University

FROM: Ted Magder
Chairperson, Faculty Senators Council
A/Y 2012-2013

RE: Faculty Senators Council Resolution recommending the amendment of NYU Bylaws to include provisions for conducting searches for the University President

At the March 14, 2013 meeting of the Faculty Senators Council, the attached resolution was approved.

CC: Diane Yu, Deputy President
Richard S. Baum, Chief of Staff to the President
Carol Morrow, Associate Provost for Academic Operations
Marie Monaco, FSC Vice Chairperson
Mary Ann Jones, FSC Secretary
Raghu Sundaram, FSC Chair-Elect
Christine Harrington, FSC Governance Committee Chair

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Resolution recommending the amendment of NYU Bylaws to include provisions for conducting searches for the University President

Approved 3/14/13

At the March 14, 2013 meeting of the Faculty Senators Council, the Council approved the following resolution:

Background

See document, *Background on Presidential Search Best Practices and Standard Operating Procedures at NYU*.

Resolution

Whereas: Faculty participation in, and consultation on searches to select NYU presidents has historically been the norm, and

Whereas: The most recent search departed significantly from that norm, and

Whereas: The current NYU Bylaws include no detailed provisions for how Presidential searches will be conducted, it is

RESOLVED: The Faculty Senators Council recommends that the NYU Board of Trustees amend Chapter IV, Section 25(b) of the NYU Bylaws to include a new section outlining the composition and responsibilities of a Presidential Search Committee that has significant and meaningful elected-faculty representation.

The Presidential Search Committee and its procedures will be governed by NYU's five principles of Shared Governance, which serve as a framework for ensuring Faculty representation, information, consultation, reasoned justification, and communication (see [The Faculty Handbook](#)).

Background on Presidential Search Best Practices and Standard Operating Procedures at NYU

BACKGROUND

This FSC-GC Report summarizes generally accepted principles and practices that govern Presidential searches at colleges and universities across the United States. It also compares and contrasts these accepted principles and best practices with the procedures followed in the most recent Presidential search at NYU. The goal of this report is to provide a framework for establishing recommendations to ensure that NYU's next Presidential search process is consistent with nationally accepted principles and best practices for R1 universities.

A large number of documents were gathered and examined in preparation for this report, including: bylaws and legislative documents at NYU and other higher education institutions; policy whitepapers and research survey results by university governing boards and faculty interest organizations, statements by higher education search experts, including experts at search firms, as well as the personal experiences of faculty and administrative chairs of presidential search committees; news reports of past and current presidential searches; and information about current and recent presidential searches on university websites.

SECTION 1. NYU Presidential Procedures and Recent Experience

Responsibility for selecting the President rests solely with the NYU Board of Trustees.

A single provision, Chapter IV, Section 25(b) of the NYU Bylaws, governs the selection of the President:

“The President of the University will be elected by the voting Trustees after consideration of the recommendations of a committee established by the Chair.”

Bylaw 25(b) further stipulates that:

“Officers of the University may be elected for a specific term or may be elected without a stated term and serve until such officer's sooner death, incapacity, disqualification, resignation, removal or until the person ceases to be an employee of the University whose employment duties, as determined by the President and Chancellor, correspond to the duties of the office. At the expiration of any term, any qualified officer of the University may be reelected.”

The Bylaws do not include guidelines regarding criteria for who is to be included as a member of the committee, or any procedures governing the committee's process for developing their recommendations for Presidential selection. In fact, a strict reading of

NYU's provision on this matter allows for the possibility that the committee actually conduct a "search," given that the operative committee is not specified to be a "search" committee. Thus, under the current Bylaws, the Board Chairman might charge the extant committee with a mission that does not constitute a "search." For instance, the Board might give the committee the charge to submit recommendations about whether the Board should elect a candidate already selected by the Board.

SECTION 2. Presidential Selection: Recent Practice at NYU

According to public records, the following briefly summarizes the search process for John Sexton, the most recent President selected by the NYU Board:

- Following the March 5, 2001 announcement that former President Jay Oliva would be vacating the office, Chairman of the Board Martin Lipton established a 13-member committee, referred to as the "Committee on the Future of the Presidency." Andrew S. Schaffer, then a Senior Vice President, chaired what reports refer to as a "national search committee." The committee consisted entirely of NYU Board members (the committee's constitution was not known, however, until after the new President was named).
- Less than one month after the announcement that the Board had convened a committee, a senior administration official leaked to the *New York Times* that the committee's sole candidate was John Sexton, then Dean of the NYU Law School.
- On May 8, 2001, the NYU Board announced its appointment of John Sexton as President.
- Faculty across the university spoke out against what they referred to as a "hasty and improper" search and selection process that was conducted "without any meaningful input" from faculty¹. In the wake of the decision, the faculty in two schools, Arts and Science (FAS) and Steinhardt, each passed separate resolutions calling for more faculty input into the Presidential search process. Similarly, the NYU chapter of the American Association of University Professors (AAUP) circulated a petition similarly objecting to the search process and calling for faculty participation input in the presidential search process.
- While the NYU Board of Trustees declined to release any details about the search process, it did state that it had "met some 15 times with elected representatives and other leaders of the various University constituencies – faculty, deans, students, administrators, and senior officers, and alumni – to discuss the search."²

¹ "Law school dean chosen as next NYU president; faculty members cry foul." *University Wire*. (May 9, 2001): 785 words. LexisNexis Academic. Web. Date Accessed: 2013/02/18.

² *Ibid.*

Two conclusions can be drawn from what is known about this most recent Presidential search process:

1. The NYU Board has unlimited authority to select a president as current Bylaw 25(a) reads; and
2. The process and procedures by which the Board conducted its search were not transparent, nor were they accountable to the principles of shared governance.³

However, it appears that this 2001 NYU presidential selection process is an aberration with respect to presidential searches that came before. At least since 1962, NYU faculty participated significantly in the selection processes for all presidents, except for John Sexton. Faculty were involved in the selection processes of former Presidents, including James Hester (1962-1975), John C. Sawhill (1975- 1980), John Brademas (1981-1991), and Jay Oliva (1991-2002).

FSC Senator Emeritus Eric Simon participated on the faculty advisory committee that selected John Sawhill. That committee consisted almost entirely of faculty and, though advisory to the Trustee committee, ultimately joined the trustees in interviewing and deliberating on candidates. Faculty and other members of the university community were also invited to participate in offering input about desired candidate qualifications, as well as nominating candidates.⁴ Similarly, former FSC Chair, Salah Al-Askari, was a member of the search committee that recommended Jay Oliva, where the outcome of faculty feedback, in particular, led to the decision not to conduct a search from outside the university.

SECTION 3. General Principles & Characteristics Governing Presidential Searches

A. Presidential Searches, a Priority for Shared Governance

Faculty participation in presidential selection is the norm in American Colleges and Universities. Since 1966, the American [Association of University Professors \(AAUP\)](#) has regarded presidential searches as “one of the most significant instances of shared governance in the life of a university.”⁵ It also notes, however, that in practice, joint participation in presidential selection is “challenging.”⁶ [A 2009 study](#) published by the

³ See Appendix A for section documentation.

⁴ See Appendix B.

⁵ Muriel Poston, *The Presidential Search Committee Checklist*. Online at: <http://www.aaup.org/issues/governance-colleges-universities/presidential-search>

⁶ Ibid.

TIAA-CREF Institute and sponsored by the Association of Governing Boards of Universities and Colleges, of which NYU is a member, surveyed the degree and tenor of faculty influence and joint engagement between faculty and Trustees at colleges and universities across the country. One of their principal findings was that engagement on presidential search committees was the most substantive form of Faculty-Trustee interaction reported by those surveyed. Participants identified presidential search committees as a more common site of interaction than participation on university governing committees in general, as well as other university activities, such as fundraising and alumni activities. Second only to curricula, 58% of private institutions, 63% of public and 58% of all institutions cited presidential searches as the most common issue that faculty and trustees not only *should* but *do* address together.

B. *Presidential Search Considerations*

While it is generally recognized that governing boards have the institutional and legal responsibility for selecting senior administrators, including Presidents, such boards must take into account, and make decisions consistent with the principles of shared governance with faculty as they seek to conduct presidential searches. Further, governing boards, faculty interest groups, and higher education experts recognize that fulfilling these principles can be accomplished in a myriad of ways. No matter what decisions are made about the following issues, the principles of faculty representation, broad input, and meaningful consideration of faculty recommendations are the foundations that underlie any practical effort to carry out presidential searches. The following are a number of those issues to be considered (largely extracted from AAUP materials found [here](#) and elsewhere):

Committee Composition. While some institutions use a two-tiered committee structure – one representing the faculty, one the board, the most common practice is to appoint a single committee, made up of Trustees, faculty and other university constituencies, where faculty representatives reflect the primacy of faculty concern. However many caution against committees containing more than 13-18 total members. Generally, the faculty members of the committee are given the responsibility for soliciting and communicating the input and interests of the faculty at large. Search committee chairs – almost always a member of the Board, are usually appointed by the Trustees in advance of constituting a search committee. Finally, search committee members representing various constituencies, including faculty, usually name their own appointees to the committee.

Committee Charge. Formulated by the Trustees, in consultation with faculty and other university constituencies, the committee charge outlines the primary criteria of the search in terms of its scope (national, regional, internal), statement of necessary presidential qualities, expectations about whether and to what degree search consultants will be used, the number of candidates that should ultimately be recommended to the board for final decision, and the expected deadline for submission.

Confidentiality. It is generally agreed that the search process will be made public to the university community, and that faculty representatives will keep their constituencies apprised of the progress of the search. However, it is also almost universally agreed that confidentiality is necessary when it comes to search candidates specifically, especially at the early stages of the search process. Such confidentiality is viewed as necessary to attract the best candidates (many of whom will only agree to be considered under such circumstances), and to preserve the integrity of committee deliberations about specific candidates throughout the process. Faculty representation, meaningful consultation, and consideration on the search committee and throughout the search process should mitigate any potential negative impact due to confidentiality.

SECTION 4. Recent Examples of Presidential Searches

Princeton, Yale and Carnegie Mellon have all undertaken presidential searches in recent years. NYU at times regards these as peer institutions, in terms of being private universities with similar governing structures. What we know about their search processes can be considered a model for how shared governance in presidential searches should be undertaken.

Princeton University's Board of Trustees appointed a 17-member committee in the Fall of 2012 to [search for a replacement](#) for outgoing President, Shirley M. Tilghman. The committee includes nine trustees (including the search committee chair), four faculty members, two undergraduates and one graduate student, and one university staff member. At its first meeting, the committee agreed to solicit input, via a survey hosted on its website, from the university community regarding the principal qualities, characteristics, skills and experiences deemed desirable in its next President and comments about the challenges the next president would face. Participants were also invited to submit names of potential candidates to be considered by the search committee. The committee also decided to hold a number of open forums, meetings and other forms of outreach to faculty, students, staff, alumni and its community. The search committee operates a dedicated website that features information about search committee members, the search process (including deadlines, and announcements of all public meetings and forums) and a description of the outgoing President's legacy.

Yale University [initiated a search](#) in the Fall of 2012 to replace outgoing President Richard C. Levin. A publicly accessible pdf document, available on the university's website, provides details of the characteristics it seeks in its next President, a description of the search process (which began with the appointment of a Senior Fellow of the Yale Corporation to serve as the committee's Chair), and the following statement:

“The Corporation and the Presidential Search Committee are committed to using the search process as an opportunity to receive input from and to have conversations with individuals from the wide range of constituencies that are

integral to Yale's continued role as one of the world's leading education and research institutions. To that end, the search process has been designed to permit open and broad engagement across the Yale community, both on campus and around the [world](#).”⁷

Yale's search committee consisted of twelve members, all of whom appear to be Yale Corporation Fellows. Several of the fellows are current Yale faculty members. The Yale Corporation also devised a number of mechanisms for faculty engagement in the search process. It designated specific Trustees as “Trustee Liaisons” to university stakeholders, including faculty, students, staff and alumni. These liaisons were responsible for “ensuring that there are opportunities for wide consultation with each of the constituencies...” Additionally, the Yale Corporation designated a set of “Counselors” for the faculty, staff and alumni to work with the Liaisons in soliciting input. The Liaisons and Counselors are empowered to convey any confidential views or information to the search committee, if deemed necessary. The Yale search committee also maintained a dedicated website that featured announcements about specific outreach and comment events, as well an email address whereby members of the university community could convey comments directly to the search committee.

Carnegie Mellon University's (CMU) [20-page pdf document](#) provides a rich description of the university's history, governing structure (including a statement about shared governance), financial situation and academic achievements. It also includes a description of the university's present and future challenges and opportunities and six primary characteristics it is looking for in its next President. The CMU search committee is comprised of sixteen members, including seven faculty members, each representing the seven colleges and schools at CMU. The CMU search website includes a contact email address and invites “nominations, applications, confidential inquiries and questions regarding the search process.”⁸

The principles of shared governance in presidential searches, the recent practice of peer institutions currently conducting presidential searches, and NYU's historical precedents lead to a number of recommendations that are formulated, separate from this document, into a resolution proposing changes to current NYU Bylaws.

⁷ Yale Presidential Search. Online at: <http://presidential-search.yale.edu/about-search>

⁸ Section documentation included in Appendix C, which is a separate Pdf document.

APPENDIX A.

References

"Law school dean chosen as next NYU president; faculty members cry foul." University Wire. (May 9, 2001): 785 words. LexisNexis Academic. Web. Date Accessed: 2013/02/18.

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