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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

DOMINIC SWAYNE, an individual,

Plaintiff,

vs.

NORTH IDAHO COLLEGE, a
community college in the State of Idaho,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF**

Fee Category: A.A.
Filing Fee: \$221.00

COMES NOW Plaintiff, DOMINIC SWAYNE, and submits this Complaint for
Declaratory Relief against Defendant, NORTH IDAHO COLLEGE.

PARTIES AND JURISDICTION

1. Plaintiff Dominic Swayne ("Dr. Swayne") is a resident of Kootenai County, Idaho.
2. Defendant North Idaho College ("NIC") is a duly formed and existing community college in the state of Idaho.
3. This Court has jurisdiction pursuant to Idaho Code § 10-1201.
4. Venue in this Court is proper under Idaho Code § 5-404.

GENERAL ALLEGATIONS

5. Dr. Swayne is employed as President of NIC and has been so employed since July 2022.

6. Dr. Swayne signed an employment agreement with NIC. A true and correct copy of Dr. Swayne's contract is attached hereto as **Exhibit 1** ("Employment Agreement").

7. Dr. Swayne's Employment Agreement with NIC has a three year term.

8. Dr. Swayne's Employment Agreement provides, in pertinent part, as follows:

12.2 If, during its term, this Agreement is terminated by the President without cause, the termination shall become effective 60 days after receipt of written notice of termination. The obligations of both parties under this Agreement cease when the termination is effective. The Board may, in its discretion, place the President on administrative leave during part or all of the 60-day notice period.

9. Pursuant to his contract, Dr. Swayne may only be placed on administrative leave in the event he decides to terminate the Employment Agreement and after he provides a sixty (60) day notice of termination.

10. The Employment Agreement does not include a term to otherwise place Dr. Swayne on administrative leave.

December 5, 2022 Regular Board of Trustees Meeting

11. On December 5, 2022, the NIC Board of Trustees held a regular meeting. A true and correct copy of the board meeting agenda is attached hereto as **Exhibit 2**.

12. At the December 5, 2022 meeting, Trustee Todd Banducci introduced North Idaho College Resolution 2022-03, which proposed (1) the immediate suspension of NIC policy 7.01.04 (Policy for Awarding Continuous Professional Service Contracts); and (2) to immediately hire Art Macomber, an attorney, as NIC's new legal counsel.

13. Trustees, Greg McKenzie, Todd Banducci, and Mike Waggoner voted in favor of the resolution while Trustees, Tarie Zimmerman and Brad Corkill voted against it.

14. Mr. Macomber immediately sat with the Board of Trustees after the conclusion of the vote.

December 8, 2022 Special Board of Trustees Meeting

15. On December 8, 2022, the NIC Board of Trustees held a special meeting. A true and correct copy of the board meeting agenda is attached hereto as **Exhibit 3**.

16. Trustees, Greg McKenzie (“Trustee McKenzie”), Todd Banducci (“Trustee Banducci”), Mark Waggoner (“Trustee Waggoner”) and Tarie Zimmerman (“Trustee Zimmerman”) were present.

17. Mr. Macomber spoke at the meeting.

18. Mr. Macomber advised the Board of Trustees that Dr. Swayne be placed on administrative leave immediately pending an investigation into the contract negotiations between NIC, the Board of Trustees, and Dr. Swayne.

19. Based upon Mr. Macomber’s advice, the Board of Trustees voted to immediately place Dr. Swayne on administrative leave.

20. Trustees McKenzie, Banducci and Waggoner voted in favor of the motion.

21. Trustee Zimmerman voted against it.

22. On December 9, 2022, Mr. Macomber wrote a letter to Dr. Swayne advising him that he was being placed on leave but not for any “disciplinary process.” A true and correct copy of the letter is attached hereto as **Exhibit 4**.

23. Dr. Swayne has not been disciplined by NIC.

24. Dr. Swayne has not tendered his resignation to NIC.

25. NIC has provided no other justification for placing him on administrative leave.

26. NIC does not have a policy which allows NIC to place the President on administrative leave.

COUNT I
REQUEST FOR DECLARATORY RELIEF

27. Plaintiff re-alleges and incorporates the preceding paragraphs by reference as though set forth fully herein.

28. A real dispute exists between the parties.

29. Pursuant to Idaho Code § 10-1201, Dr. Swayne is entitled to a declaratory judgment that:

- a. The Employment Agreement does not contain a provision allowing Dr. Swayne to be placed on administrative leave;
- b. That Section 12.2 of Employment Agreement provides that Dr. Swayne may only be placed on administrative leave if the employment agreement is terminated by Dr. Swayne without cause, and during the 60 days proceeding notice to the Board of Trustees;
- c. Dr. Swayne has not given notice of resignation to the Board of Trustees; and
- d. Because Dr. Swayne has not given notice of his resignation, NIC cannot place him on administrative leave and Dr. Swayne should be allowed to return to his employment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief.

1. For a declaratory judgment stating that:

- a. The Employment Agreement does not contain a provision allowing Dr. Swayne to be placed on administrative leave;
 - b. That Section 12.2 of Employment Agreement provides that Dr. Swayne may only be placed on administrative leave if the employment agreement is terminated by Dr. Swayne without cause, and during the 60 days proceeding notice to the Board of Trustees;
 - c. Dr. Swayne has not given notice of resignation to the Board of Trustees; and
 - d. Because Dr. Swayne has not given notice of his resignation, NIC cannot place him on administrative leave and Dr. Swayne should be allowed to return to his employment.
2. For an award of attorney's fees and costs pursuant to Idaho Code §§ 12-117, 12-120(3), and 12-121; and
 3. For such other and further relief as the Court determines is just and proper under the circumstances.
 4. For an award of attorneys' fees in the amount of \$5,000.00 in the event of default.

DATED this 16th day of December, 2022.

SMITH + MALEK, PLLC

/s/ Tara Malek
TARA MALEK
Attorney for Plaintiff

EMPLOYMENT AGREEMENT PRESIDENT OF NORTH IDAHO COLLEGE

THIS AGREEMENT is made effective as of August 1, 2022, by and between North Idaho College (“NIC” or the “College”) and Dr. Nick Swayne (“President”). The parties hereby agree as follows:

Section 1. Purpose

This document reflects the agreement between the President and the Board of Trustees of North Idaho College (the “Board”) as to the terms of the President’s employment at North Idaho College (the “Agreement”).

Section 2. Responsibilities

The President is appointed by the Board as the Chief Executive Officer of NIC, reports directly to the Board. The President is authorized and responsible for the administration of NIC and has authority over all matters affecting NIC at the operational level, in accordance with applicable laws as well as the policies, rules and regulations approved and/or sanctioned by the Board. In addition to the foregoing, the President shall also be responsible for carrying out all duties requested by the Board. In carrying out these duties, the President recognizes the need for effective communication with the Board.

Section 3. Term

The term of this Agreement will commence on August 1, 2022 and will continue until June 30, 2025, unless terminated consistent with Section 12. “Annual” for purposes of this Agreement means a fiscal year beginning July 1 and ending June 30 of the following year. The term may be extended by the Board, consistent with Section 4.

Section 4. Renewal and Resignation

4.1 The Parties agree that the President and the Board will review this Agreement before or in close temporal proximity to the end of each fiscal year for the Board and the President to decide and agree whether to extend this Agreement an additional year (with or without additional modification). Neither the initial term of this Agreement nor any extension thereof shall be construed to create or be evidence of contractual continued service or tenure of the President as an administrator under any provisions, policies, or rules extrinsic to this Agreement.

4.2 In the event the President wishes to terminate this Agreement at the end of its initial term, he shall so notify the Board, in writing no later than June 30, 2024. If the President wishes to terminate any extension of this Agreement, he shall so notify the Board in writing,

no later than the June 30th in the year proceeding the year of the desired June 30th termination date.

4.3 NIC has no duty to renew this Agreement at the expiration of the term. This Agreement will not automatically renew. The Board may, in its sole discretion, extend the Agreement for an additional term as determined by the Board.

Section 5. Compensation

5.1 NIC will pay the President an annual base salary of \$230,000, which amount will be earned and payable biweekly.

5.2 NIC will make an annual retirement contribution, equal to 10% of the President's base salary, to the President's supplemental retirement account. Payment into such account will be earned and made biweekly in conjunction with payroll. Any employee payroll taxes resulting from this contribution will be withheld in connection with the President's base salary. There is no right to unearned amounts if this Agreement is terminated prior to expiration of the term.

5.3 The President will have temporary housing provided by the College, at a location and price deemed appropriate by the College, while the President seeks more permanent housing. When the President moves to the more permanent housing the College will provide the President a housing allowance in the amount of \$2,500 per month, starting on the first of the month when the President occupies the more permanent housing.

Section 6. Employee Benefits

6.1 The President shall receive 24 annual vacation days, accruing at a rate of 2 days per month. Accrued vacation days may carry over into the following fiscal year; however, total accumulated vacation time will not exceed 30 days (240 hours). Upon termination of the employment relationship, the President will be paid for any accrued and unused vacation days at a rate equivalent to the President's annual base salary. The President shall notify the Board prior to taking vacation and the Board, in its discretion, may require such plans to be deferred as the Board deems appropriate. The President is entitled to paid holidays recognized by NIC.

6.2 The President is entitled to annual sick leave in accordance with NIC Policy and Idaho Code.

6.3 Subject to Sections 6.1 and 6.2, the President will otherwise be eligible to participate in the NIC programs and other benefits available to NIC employees.

6.4 During the first year of the term of this Agreement the College will pay for the reasonable, actual expenses associated with the President's relocation to Idaho. The President

will provide receipts and other appropriate documentation supporting actual relocation expenses for review and approval by the Vice President of Finance. The College's payment of relocation expenses under this Section 6.4 may be made directly to vendors or via reimbursement to the President for expenses incurred by the President. During relocation, the President may have up to an additional ten (10) business days of non-chargeable leave to facilitate the move.

Section 7. Automobile

The President shall furnish his own automobile, and shall be liable for all maintenance, repairs, insurance, and operating expenses, including fuel costs. The College shall reimburse the President for all in-district and out-of-district travel using his own personal vehicle for College business at the applicable IRS deductible rate in effect at the time of travel.

Section 8. Professional Development

The President shall be eligible to attend and participate in educational conferences, conventions, workshops, seminars, and similar professional activities and events, subject to reasonable review and approval by the Board. The College shall reimburse the President for reasonable out-of-pocket expenses incurred by the President in connection with such approved activities and events consistent with College procedures and practices.

Section 9. Expenses

9.1 The Board agrees that the College will pay the President's reasonable, actual travel expenses, hotel bills, and other actual and necessary travel-related expenses incurred when the President is traveling on NIC business. The responsibilities of the President include attendance (sometimes with spouse) at various community events, hosting events, and entertainment reasonably calculated to promote the College. Reimbursement will be consistent with College procedures, practices and consistent with the College's budget.

9.2 The College will provide the President with appropriate electronic/tech equipment to assist the President in performing his duties.

Section 10. Outside Professional Activities

Subject to the Board's prior approval, which shall not be unreasonably withheld, the President may undertake outside professional activities, including, without limitation, consulting, speaking and writing. Such activities may be performed for consideration provided that they do not interfere with the President's normal duties. The President agrees not to engage in any other employment, activity or enterprise, whether or not for remuneration, that is inconsistent, incompatible, in conflict with, or inimical to the President's duties, responsibilities, functions or the policies of the College.

Section 11. Performance Review

The Board shall review the President's performance annually in accordance with NIC policy. The Board may also elect to have more frequent reviews (for example, semiannual or quarterly reviews) as determined by the Board in its discretion.

Section 12. Termination

12.1 This Agreement may be terminated by mutual agreement of the parties, by the President without cause, or by the Board for cause. Notice of termination must be in writing and delivered to the non-terminating party.

12.2 If, during its term, this Agreement is terminated by the President without cause, the termination shall become effective 60 days after receipt of written notice of termination. The obligations of both parties under this Agreement cease when the termination is effective. The Board may, in its discretion, place the President on administrative leave during part or all of the 60-day notice period.

12.3 This Agreement may be terminated for cause, if a super-majority of the Board (defined as 4 or more Trustees) in its sole and reasonable discretion, determines that: (1) the President has significantly failed or refused to act in accordance with a material provision of this Agreement or any directive or order of the Board; (2) the President has exhibited gross misconduct or dishonesty in regard to his employment; (3) the President is (or has been) convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (4) the President is unable to perform the essential functions of the position; or (5) the President has acted in bad faith to the detriment of NIC.

12.4 In the event of termination for cause, the Board shall provide the President a written statement of its intent to terminate and its reasons for termination. Before the Board makes a final decision, the President is entitled to meet with the Board in executive session, within thirty (30) calendar days of the issuance of the written statement. The President may present any evidence to the Board to rebut the stated reasons for the termination. After the President has had an opportunity to respond to the stated reasons for termination, the Board will make a final decision in writing.

Section 13. Governing Law

This Agreement will be governed, construed, and enforced according to the laws of the State of Idaho.

Section 14. Assignment

This Agreement is personal to the President and is not assignable.

Section 15. Amendments

This Agreement may be amended by mutual agreement of the parties. Such amendments must be in writing signed by the President and the Board Chair, following approval by a majority of the Board.

Section 16. Notification to Board of Application for Outside Employment

The President may, but is not required to, notify the Board Chair if an application for employment is submitted anywhere other than NIC. The President shall notify the Board Chair should the President become a finalist for employment in any capacity.

Section 17. Waiver

The failure or delay of the President or NIC to enforce at any time or to require compliance at any time with any provision of this Agreement, or to take any permitted action under this Agreement, shall in no way be construed as a continuing or future waiver of such provision or of any other provision of this Agreement, shall not affect the right of either party thereafter to enforce each and every provision of this Agreement, and shall not render any such provision(s) unenforceable or invalid.

Section 18. Entire Agreement

This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior or contemporaneous representations, understandings or agreements, whether written or oral, between the parties, and cannot be changed or modified unless in a writing signed by the parties hereto.

Section 19. Severability

The unenforceability, invalidity, or illegality of any provision or clause of this Agreement shall not render any of its other provisions as unenforceable, invalid, or illegal, and such remaining provisions shall be construed in all respects as if the unenforceable, invalid, or illegal provision(s) were omitted.

Signatures on Following Page

DATED this 14th day of July 2022.

NORTH IDAHO COLLEGE

By David A. Wold
David Wold
Chair, Board of Trustees

DATED this 15th day of July 2022.

PRESIDENT

By Nick Swayne
Nick Swayne
President



North Idaho College

EXHIBIT 2

Board of Trustees Meeting
December 5, 2022
Edminster Student Union Building

Amended 12/8/22 to attach
Resolutions 2022-03 and 2022-04

Connect via Zoom: <https://nic.zoom.us/j/87355997862> or by phone: (669) 900-6833 Webinar ID: 873 5599 7862

Mission statement: North Idaho College meets the diverse educational needs of students, employers, and the northern Idaho communities it serves through a commitment to student success, educational excellence, community engagement, and lifelong learning.

This meeting is a business meeting of the Board Trustees and the NIC Administration. The board will take comment on agenda items from members of the public in person at the meeting, and comment will be limited to two minutes per person. A sign-up sheet will be provided in the meeting room. Individuals interested in communicating with the board outside the meeting may send an email to board@nic.edu.

AGENDA

- 6:00 p.m. Lake Coeur d'Alene Room
 Convene/Call to Order/Verification of Quorum Todd Banducci
 Pledge of Allegiance
- SPECIAL BUSINESS**
- Tab 1: Action: Canvass of Trustee Election Sarah Garcia
 Tab 2: Action: Election of Officers/Appointment of External Liaisons Todd Banducci
- Public Comment
 Celebrating Success: New Location for NIC at Sandpoint Christine Callison
- CONSTITUENT REPORTS**
- ASNIC Damian Maxwell
 Faculty Assembly Ben Tschida
 Staff Assembly Keri Simonet
 Senate Neil Doyle
- PRESIDENT'S REPORT** Nick Swayne
- CONSENT AGENDA** Board Chair
 Action for Approval of Meeting Minutes for October 24, 2022
- UNFINISHED BUSINESS**
 None
- NEW BUSINESS**
- Tab 3: Action: Accept NIC Financial Audit for Year Ending June 30, 2022 Sarah Garcia / Barry Weber
 Tab 4: Action: POST Detention Academy Student Fee Tracy Robnett
 Action: Legal Counsel Services/Clarification Gregory McKenzie
 Action: Policy #7.01.04 Continuous Professional Service Contracts Gregory McKenzie
 Action: Trustees' Path to Saving Accreditation, Resolution(s) Todd Banducci
 Action: Amend Previous Minutes Gregory McKenzie

Discuss Upcoming Agenda Topics
Action: New Trustee Onboarding
Action: Board Training
Action: Change Date of December 19, 2022 Board Meeting

Nick Swayne
Gregory McKenzie
Gregory McKenzie
Board Chair

REMARKS FOR THE GOOD OF THE ORDER*

ADJOURN

* Remarks are subject to NIC Policy 2.01.03. Copies are available from the President's Office.

 **North Idaho College**
BOARD OF TRUSTEES MEETING
Edminster Student Union Building
October 24, 2022
MINUTES

Chair David Wold called the meeting to order at 5:30 p.m. and verified a quorum was present. Trustee Goedde made a motion to go into executive session under Idaho Code § 74--206(1)(c) to deliberate regarding an acquisition of an interest in real property. The motion was seconded and roll call vote was taken as follows:

David Wold	aye
Todd Banducci	nay
John Goedde	aye
Pete Broschet	aye
Greg McKenzie	nay

At 5:31 p.m. the meeting was recessed.

CALL TO ORDER AND VERIFICATION OF QUORUM

Chair Wold convened the meeting at 6:00 p.m. and verified that a quorum was present. He next welcomed attendees and led them in the Pledge of Allegiance.

ATTENDANCE

Trustees: Todd Banducci
Pete Broschet
John Goedde
Greg McKenzie
David Wold

Also present: Nick Swayne, President
Sarah Garcia, Interim VP Finance and Business Affairs
Lloyd Duman, Interim Provost
Laura Rumpler, Chief Communications and Government Relations Officer
Marc Lyons, Attorney for North Idaho College

PUBLIC COMMENT

There was no one signed up for public comment.

CELEBRATING SUCCESS

Interim VP Finance Sarah Garcia introduced Sage Stoddard, director of the Area Agency on Aging. Ms. Stoddard provided an overview of the agency and the programs and services they provide.

CONSTITUENT REPORTS

ASNIC

ASNIC President Damian Maxwell reported on student activities, including a recent open house for the ASNIC office suite remodel, the Night at the Library event, strategic planning work, resolutions related to the results of a student survey, and discussions about student club events.

Faculty Assembly

Chair Ben Tschida reported that in the last month, faculty have had mid-term grades to report and during their last meeting, they conducted a first reading of revisions for the Faculty Assembly bylaws and approved immediate implementation of revisions to the Tenure procedure for all faculty on a tenure track.

Staff Assembly

Chair Keri Simonet reported that during the October meeting of Staff Assembly, staff recognized the October employee of the month, Dee Miller. Ms. Simonet also shared that their guest speakers were the ASNIC president, and members of the IT staff, who shared information on the topic of accessibility.

Senate

Chair Neil Doyle reported that during their October meeting, Senate reviewed a revised and more accessible template for policies and procedures documents.

PRESIDENT'S REPORT

Dr. Swayne began by reading, aloud, the college's mission statement and he shared the current goal of increasing for credit enrollment to 5,000 students by fall 2023 and increasing to 6,000 students by the fall of 2025. He continued by sharing that the Metallica Scholars program is in its fourth year at NIC and, to date, the college has awarded \$210,000 in scholarships through this program. He added that a student from the program's first cohort is now employed at Space X and is being recognized during an annual event of the All Within My Hands Foundation. He next reported that the Nursing Program recently hosted an onsite accreditation visit and he shared that the visiting team recognized Associate Dean of Nursing Erlene Pickett for her leadership of the program. He also shared that the NIC Nursing program is ranked number one in the state, and that over the past several years, NIC's Nursing students have had over a 96% pass rate for their national licensure examinations. He next reported that the Surgical Technician program has submitted their application to move from two cohorts of 10 students to three cohorts of ten students. He closed his report by commenting on upcoming events, including the open house and ribbon cutting event for the Meyer Health and Sciences Building expansion and the new dental clinic, upcoming theater performances, athletic program achievements, and an update on searches for open administrative positions.

CONSENT AGENDA

Trustee Goedde made a motion to adopt the consent agenda, the motion was seconded and following discussion, carried with three in favor.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

Property Acquisition

Interim VP Garcia discussed the topic of acquisitions of property on Military Drive, and specifics related to the property known as 737 Military Drive, which appraised at \$620,000. College Attorney Marc Lyons briefly explained the process employed for the college to acquire real property.

Trustee Goedde made a motion for the board to adopt Resolution 2022-02 to enter the appraisal into the record and authorize the president or his designee to execute the documents necessary to purchase. The motion was seconded, and following discussion, carried with Trustees Broschet, Goedde, and Wold voting in favor and Trustees Banducci and McKenzie voting against.

President's Evaluation

Dr. Swayne explained that the evaluation tool presented for the board's consideration is the same tool that had been used for several years, adding his request for the board to adopt a process to

evaluate him quarterly rather than providing a summative evaluation at the end of the year. Following discussion, there were three votes in favor, one opposed, and one abstention.

Upcoming Agenda Topics

Dr. Swayne shared that topics for upcoming agendas would include a recruiting update, an update on efforts to analyze and track enrollment for both credit and non-credit programs, strategic planning, and an update on the website redesign.

INFORMATION ITEMS

Fall Enrollment and Updates

Dean of Enrollment Tami Haft reported that for fall 2022, headcount is 4,299 students, down 6.2% from the Fall 2021 semester. Full-time equivalent, based upon 15 credit hours is 2,573, down 7.2% from the Fall 2021 semester. She shared that dual credit student enrollment is up.

Interim Dean of Workforce Education Doug Anderson shared information on recruiting roadshows scheduled for Region 1 high schools that provide students with hands on exposure to the different career options available to them through NIC's credit and non-credit programs.

Associate Dean of Nursing and Health Professions Erlene Pickett provided an overview of the successes within the Nursing and Health Care programs. She shared information about the needs identified for open positions in these fields, locally, and efforts to meet those needs. She also shared student successes while they attend their courses at NIC and after they complete and are placed in positions in the community.

Athletics Update

Interim Dean of Students Alex Harris provided an update on fall sports programs and individual player achievements. He also provided a preview of winter sports programs and shared community events that players and coaches participated in over the course of the semester.

REMARKS FOR THE GOOD OF THE ORDER

Trustee Broschet expressed his thanks to faculty, staff, students, and the community for the assistance they provided him while he served on the board.

Trustee Goedde commented on a document he had before him.

Trustee Banducci expressed his concerns for Trustee Goedde's remarks.

Trustee McKenzie expressed his concern that Trustee Goedde injects politics into board meetings.

Chair Wold thanked Trustees Broschet and Goedde for their service and he expressed that it has been his privilege to serve as board chair. He went on to express his concerns for comments made by trustee candidates related to the warning issued by the college's accrediting body.

There were no further remarks, and the meeting was adjourned at 8:05 p.m.

Respectfully Submitted,
Shannon Goodrich, Board Clerk

BOARD OF TRUSTEES MEETING
December 5, 2022

TAB 1

SUBJECT

Canvass of the Board of Trustees Election

BACKGROUND

Idaho Statutes require the board of trustees to canvass the trustee election held on November 8, 2022.

DISCUSSION

For the canvass of the election, a copy of the official voting tally will be provided with the results of the election being read into the official record. Following the canvass, the board of trustees should adopt a motion accepting the election results.

COMMITTEE ACTION

None

FINANCIAL IMPACT

None

REQUESTED BOARD ACTION

It is recommended that the board consider a motion to accept the canvass of the election.

Prepared by
Sarah Garcia
Vice President for Finance and Business Affairs

**BOARD OF TRUSTEES MEETING
December 5, 2022**

SUBJECT

TAB 2

Election of Board Officers/External Liaison Appointments

BACKGROUND

This item is included on the agenda to enable the board to take action regarding the election of officers pursuant to North Idaho College Policy 2.01.01, Authority, Appointment and Functions of Board of Trustees and Idaho Code 33-2106.

DISCUSSION

Idaho Code 33-2106 states: "At its first meeting following the appointment of the first board of trustees, and at the first regular meeting following any community college trustee election, the board shall organize, and shall elect one (1) of its members chairman, one (1) a vice-chairman; and shall elect a secretary and a treasurer, who may be members of the board; or one (1) person to serve as secretary and treasurer, who may be a member of the board."

Nominations for Secretary/Treasurer: _____

Vote Carried: Yes _____ No _____

Nominations for Vice Chair: _____

Vote Carried: Yes _____ No _____

Nominations for Chair: _____

Vote Carried: Yes _____ No _____

External Liaison Appointments

KTEC Board Member Name _____

Booster Club Liaison Name _____

COMMITTEE ACTION

None.

FINANCIAL IMPACT

None.

REQUESTED BOARD ACTION

In accordance with Idaho Code 33-2106, the trustees shall elect officers at this meeting. Subsequent to the election of board officers, it is recommended that the board chair-elect conduct the remainder of the meeting. Trustees may also appoint external board liaisons at this meeting.

Prepared by
Shannon Goodrich
Clerk of the Board of Trustees

BOARD OF TRUSTEES MEETING
December 5, 2022

TAB 3

SUBJECT

External Financial Audit for FY2022

BACKGROUND

An annual financial audit report for North Idaho College is prepared by an external audit firm. The college has engaged the Boise firm of Eide Bailly, LLP to perform the audit.

DISCUSSION

Barry Weber, CPA, Senior Audit Manager with Eide Bailly, LLP will present the audit. A detailed audit exit conference will be conducted prior to the meeting by Mr. Weber, Senior Audit Manager, with planned attendance by North Idaho College Board Member Todd Banducci, President Nick Swayne, and Vice President for Finance and Business Sarah Garcia. Questions will be addressed and answered at the board meeting.

COMMITTEE ACTION

None.

FINANCIAL IMPACT

None.

REQUESTED BOARD ACTION

It is recommended that the board consider a motion to accept the FY2022 Audit.

Prepared by,
Sarah Garcia
Vice President for Finance and Business Affairs

BOARD OF TRUSTEES MEETING
December 5, 2022

TAB 4

SUBJECT

Student fees for the POST Detention Academy

BACKGROUND

The North Idaho College Peace Officer Standards Training (POST) Detention Academy was approved through Curriculum Council in early November 2022 and classes will start January 9, 2023. There are student fees involved to support student learning such as ammunition, taser cartridges, physical fitness uniforms, CPR First Aid cards, and Code books.

DISCUSSION

The per student fee is \$710.00, and because the Academy was approved after the student fee deadline, the college requests approval of the student fees at this time in order to provide the best educational experience possible for the Spring 2023 academy.

FINANCIAL IMPACT

If the POST Detention Academy student fees are not approved, the POST Law Enforcement Program will incur the cost which will impact the college's ability to provide other supplies needed that are already factored into the budget.

REQUESTED BOARD ACTION

Requesting the board consider a motion to approve the POST Detention Academy per student fee of \$710.00.

Prepared by,
Tracy Robnett, Division Chair
Business & Professional Programs

**NORTH IDAHO COLLEGE
RESOLUTION 2022-03**

SUSPENSION OF NIC POLICY, AND NEW LEGAL COUNSEL

This Resolution is made this 5th day of December, 2022, by North Idaho College, whose address is 1000 W. Garden Ave., Coeur d'Alene, Idaho 83814 (the "College"), to acknowledge the resignation of Lyons O'Dowd, PLLC under the Legal Services Agreement dated January 29, 2021, to suspend NIC Policy # 7.01.04 indefinitely, and to immediately hire the Law Office of Arthur B. Macomber pursuant to a Fee Agreement presented with this Resolution as set forth below:

RECITALS:

WHEREAS, the College is a validly organized and existing junior college authorized under Title 33, Chapter 21 of the Idaho Code; and

WHEREAS, the Board of Trustees of the College (the "Board") has authority pursuant to Idaho Code Section 33-2107 (1) to adopt policies and regulations for its own government and the government of the college; and (2) to employ legal counsel and other professional and nonprofessional persons, and to prescribe their qualifications; and

WHEREAS, the College is presently under a Warning Status with the Northwest Commission on Colleges and Universities ("NWCCU") requiring certain actions be taken on a strict schedule for the better governance of North Idaho College; and

WHEREAS, the Board of Trustees has received the resignation of its legal counsel, Lyons O'Dowd, PLLC who served North Idaho College, and the Board of Trustees needs to acquire legal counsel to meet the needs of the College toward regaining accreditation compliance on schedule and sustaining such compliance in the long term; and

WHEREAS, the Board of Trustees has identified legal counsel it believes is capable to the accreditation tasks and schedule; and

WHEREAS, the Board of Trustees sees the NWCCU-mandated accreditation schedule as being urgent enough to require immediate suspension of NIC Policy # 7.01.04 (Policy For Awarding Continuous Professional Service Contracts) indefinitely, or until compliance with NWCCU Standards of Accreditation is achieved, or until a date certain to be determined by the Board of Trustees at a later meeting; and

WHEREAS, the Board of Trustees desires to accomplish these goals immediately.

NOW, THEREFORE, it is resolved as follows:

1. That the Recitals cited above are hereby incorporated into this Resolution;

2. That the Board of Trustees hereby accepts the November 25, 2022 resignation of Lyons O'Dowd, PLLC as legal counsel for NIC effective immediately;

3. That Lyons O'Dowd, PLLC is hereby directed to submit a final invoice for uninvoiced charges to NIC within ten (10) calendar days after the date of the signing of this Resolution;

4. That Lyons O'Dowd, PLLC is hereby directed by the letter enclosed herewith to collect its entire NIC document file and NIC records in all forms, including notes, emails, and contact information for past and pending matters and stored as they are in the normal course of business whether electronic or in paper form related to its representation of NIC and, after making copies it deems needed for its records, to make all those documents and records available for pickup by the Law Office of Arthur B. Macomber within ten (10) calendar days after the signing of this Resolution;

5. That NIC Policy # 7.01.04 is hereby suspended indefinitely, or until NWCCU Standards of Accreditation compliance are achieved, or until a date certain to be determined by the Board of Trustees at a later meeting;

6. That the Law Office of Arthur B. Macomber shall be hired immediately to provide legal services to the Board of Trustees and NIC under the Fee Agreement enclosed herewith, exercising all fiduciary duty in the highest esteem for the Trustees and the College to meet the overall goals of the accreditation schedule given the capabilities of North Idaho College;

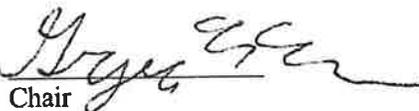
7. That the President and Board chair shall immediately hire the Law Office of Arthur B. Macomber as evidenced by the President's and Board chair's signatures on the enclosed Fee Agreement prior to the end of the meeting during which this Resolution is presented and passed by the Board of Trustees; and

8. That the President shall take such other actions as may be necessary in connection with that hiring, including notification to third parties and College personnel as needed, and the taking of prompt steps to personally establish a relationship with Mr. Macomber to facilitate the effectual pursuit of the schedule for gaining NWCCU accreditation compliance by NIC.

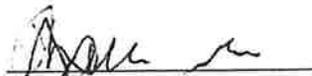
IN WITNESS WHEREOF, this Resolution is duly executed as of the date first written above, and a motion is prepared to be heard on this matter.

BOARD OF TRUSTEES
NORTH IDAHO COLLEGE

By:


Chair

ATTEST:


Clerk

Law Office of Arthur B. Macomber

Arthur B. Macomber, Attorney at Law
P.O. Box 339
Coeur d'Alene, Idaho 83816-0339
Telephone: 208-618-8686
Email: art@artmacomber.com



November 30, 2022

FEE AGREEMENT

Between North Idaho College, its Board of Trustees, and the Law Office of Arthur B. Macomber

Re: Legal counsel for pending NWCCU accreditation process, and other legal matters

Dear Chair of the North Idaho College Board of Trustees,

It is an honor to be considered by North Idaho College ("NIC") for the provisioning of legal counsel during the pendency of the NWCCU accreditation process or later in NIC's discretion. The scope of this Fee Agreement covers (1) our assistance with legal matters for NIC, including the provision of written legal opinions; (2) the drafting of correspondence to third parties, including NWCCU, at your direction and with the pre-approval of the correspondence by the Board Chair or his or her designee, (3) assisting with planning and execution of a plan to reach compliance with NWCCU accreditation standards within the time period required by that institution, and (4) other issues as they may arise with the higher education process.

My provision of legal counsel is to the Board as a body and is not legal representation of any individual Board member or other College personnel, unless allowed with the Board's knowledge and approval by NIC's insurer for a particular event or circumstance. At the direction of the Board, I will communicate with individual Board members in and outside of monthly Board meetings, or the President or members of his Cabinet, or other NIC-related parties toward protecting NIC interests. In each instance, I will share my communications with the Board at its request in executive session or otherwise as directed. As is proper for the College's fiduciary, if I communicate with an individual member of the Board, I will not keep such communications confidential or secret from any other member of the Board.

Rates and Invoicing:

With the Board Chair's and the NIC President's signature on this fee agreement and its return to me, I will begin work. At the Board's direction, I will analyze known facts and law, and then at the Board's direction communicate with third parties to pursue resolution of the scope of this Agreement as stated above. Except under emergency circumstances, I will take no major actions unless you approve of them in writing and in advance. I issue invoices at the end of each month. Please make checks payable to the "Law Office of Arthur B. Macomber." My hourly rate is \$325.00, billed in one-tenth of an hour (6 minute) increments. I reserve the right to change fee rates with thirty (30) days' notice to you.

The above fees do not include out-of-pocket costs for some items, for example, I do not charge you for my costs unless a single instance costs more than \$20.00. I do not charge for postage under \$20.00,

copying costs, or telephone company call charges, but I do charge my hourly rate for time spent on the telephone or processing email. I charge you \$0.50 per mile for miles driven in my personal vehicle (but not for rented vehicles, which are charged separately), in addition to \$100.00 per hour for travel time to and from places outside of Kootenai County, but I charge no other hourly rates for travel. For full days of travel, I bill a flat rate of \$100.00 per day for meal expenses, and I pass through hotel and car rental fees to you on my invoice with copies of receipts. I pass through service of process delivery costs, filing fees, and other costs with no add-on for our office's processing. If more expensive costs are necessary to any legal process or procedure, I will not actually retain experts, schedule depositions, or make expenditures over \$500 until the Board chair or his or her designee has given me the College's written authorization.

You will receive monthly invoices with amounts charged, a detailed explanation of the work performed, and the balance due and owing. At any time that NIC's advance fee payments are in our Trust Account, such funds shall be withdrawn by me only as fees are earned, or expenses incurred. Account balances must be paid within 10 days of your receipt of our invoice. If you decide not to further retain the Law Office of Arthur B. Macomber at any time, give me written notice, and I will promptly stop work and issue an invoice for your payment and records. That final invoice will include accounting of such monies that may then be present in my Trust Account, which monies will be refunded to you after fees and costs due are withdrawn by me. Unpaid balances will be charged a flat rate of interest of 1.5% per month of the amount then due. I reserve the right to withdraw from representation or temporarily stop work if invoice payments are not made promptly upon request. If more than sixty (60) days passes without activity on your account, I may set the legal matter to inactive, and close the legal matter pending final payment from you. The closure of your account means you become a former client. However, your account can be reactivated within that same calendar year by your initiation of activity with me by email or telephone.

If a dispute arises between us related to this Agreement, you and I agree to resolve it first through a voluntary local mediator, and finally if required through binding arbitration under Idaho's Uniform Arbitration Act found at Section 7-901, et seq. of Idaho Code. A mediator or arbitrator must be agreed-upon within ten (10) days of one party receiving notice from the other party that such resolutions are desired.

I will not file a legal complaint or answer a counterclaim in State or federal court without your written approval. A written acknowledgment or the Board Chair's return email to me must be received by me to confirm the handling of litigation for you. Even though my office philosophy is that litigation is a last resort, I may recommend you initiate or respond to a lawsuit. However, since I am your agent, you always have the power to switch direction toward another goal, and I will work diligently toward that goal with cost-effective legal means to protect your interests. My initial work will outline the potential options to reach your goal, and you must remain committed to staying involved in the process as I move forward. You will promptly receive copies of all documents I receive through the court filing system, or from third parties. I will explain the known legal impact of those documents to the Board, so you can decide matters with informed consent for actions I undertake on your behalf.

Trust Account:

Like other Idaho attorneys, our Trust Account monies are subject to the Interest on Lawyers Trust Accounts (IOLTA) program that is administered through the Idaho State Bar. The IOLTA program involuntarily pools bank interest from attorneys' Trust Accounts to generate money that is sent to the Idaho Legal Foundation for use in law-related public interest programs. As in other matters, the rules governing our use of the Trust Account require I act as your fiduciary. As required in Idaho, the Law Office of Arthur B. Macomber carries professional liability insurance.

I will begin work after you have given me your signed copy of this Agreement. Upon receipt of those items, I will sign the Agreement and return a copy to you for your file.

By agreeing to these terms, you agree to participate in the conduct of the College's legal matters and to truthfully and immediately notify me as to any occurrences that might affect it. You understand that for me to proceed on the matter I am relying on the facts you shared with me, plus the due diligence required of any counselor at law. You understand that I cannot guarantee any specific outcome for any matter.

By signing this Agreement, you acknowledge that you have fully read and understand the terms contained in it, that you fully agree to every term contained in it, and that a binding contract between NIC and me is in effect. If this letter properly sets forth the terms of our Agreement, please sign and return it to me. Thank you for your business.

Sincerely,

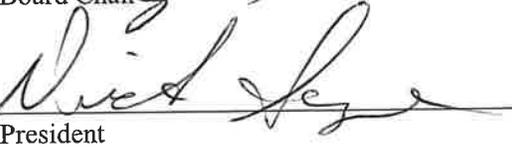


Arthur B. Macomber, Attorney at Law
Law Office of Arthur B. Macomber

Client Acceptance of Fee Agreement:

The above terms for legal services retention are understood and agreed to by the undersigned parties.

Date signed: 2022 DEC 05 
NIC Board Chair

Date signed: 6 Dec 22 
NIC President

**NORTH IDAHO COLLEGE
RESOLUTION 2022-04**

PRESIDENT'S COUNCIL HIRING

This Resolution is made this 5th day of December, 2022, by North Idaho College, whose address is 1000 W. Garden Ave., Coeur d'Alene, Idaho 83814 (the "College"), to delay the hiring of Vice-Presidents, Provosts, Deans, and other members of the President's Cabinet to allow Board of Trustee review of all potential hires into those positions; both for immediate hires in the next thirty (30) to sixty (60) days and for future hires during the current accreditation matters; to suspend if and where needed NIC Policy # 2.02.01 (Presidential Authority), NIC Policy # 2.01.04 (Board and College Governance in Relation to Creation, Revision, or Elimination of College Policy and Procedure), and Policy # 3.02.03 (Filling of New and Vacant Positions) indefinitely with regards to said hiring delays until the Board is given meaningful opportunity and time to review the potential hire's qualifications given the NWCCU accreditation schedule pending before the College as set forth below:

RECITALS:

WHEREAS, the College is a validly organized and existing junior college authorized under Title 33, Chapter 21 of the Idaho Code; and

WHEREAS, the Board of Trustees of the College (the "Board") has authority pursuant to Idaho Code section 33-2107 (1) to adopt policies and regulations for its own government and the government of the college; and (9) to cooperate with any . . . person, firm or association in the conduct of any educational program; and

WHEREAS, the Board has authority pursuant to Idaho Code section 33-2109 to elect a president of the college and, upon his recommendation, appoint such officers, instructors, specialists, clerks and other personnel as it [the Board] may deem necessary; fix their salaries, and prescribe their duties; and

WHEREAS, Section 2 of President Swayne's employment contract dated August 1, 2022 states, "The President is authorized and responsible for the administration of NIC and has authority over all matters affecting NIC at the operational level, in accordance with applicable laws as well as the policies, rules and regulations approved and/or sanctioned by the Board;" and "the President shall also be responsible for carrying out all duties requested by the Board;" and

WHEREAS, the Board, which cannot delegate its fiduciary duties, construes Idaho Code sections 33-2107 (1) and (9), Idaho Code section 33-2109, and the President's employment contract to together allow for reasonable delays in new President's Council hirings to allow Trustee review; and

WHEREAS, in late November 2021, four officials of the President's Cabinet announced their departure from NIC, leaving a leadership vacuum having extreme negative effect on NIC; and

WHEREAS, the College is presently under a Warning Status with the Northwest

Commission on Colleges and Universities ("NWCCU") requiring certain actions be taken on a strict schedule for the better governance of North Idaho College; and

WHEREAS, the Board made or appears to have made certain delegations to the Office of the President and other College personnel under Policy # 2.02.01 (Presidential Authority), 2.01.04 (Board and College Governance in Relation to Creation, Revision, or Elimination of College Policy and Procedure), and Policy # 3.02.03 (Filling of New and Vacant Positions), in addition to those in the President's employment contract related to hiring for new and or vacant positions in the President's Cabinet; and

WHEREAS, the Board must meet its fiduciary duties to the College by gaining assurances that the individuals hired into the President's Cabinet have the requisite qualifications to meet the needs of the NWCCU accreditation schedule, and the business and academic needs of NIC; and

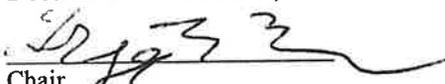
WHEREAS, the Board of Trustees desires to accomplish these goals immediately, and requires the President to assist it in fulfilling their respective duties to NIC.

NOW, THEREFORE, it is resolved as follows:

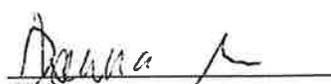
1. That the Recitals cited above are hereby incorporated into this Resolution;
2. That certain delegations to the Office of the President and other College personnel made or appearing to be made under Policy # 2.02.01 (Presidential Authority), 2.01.04 (Board and College Governance in Relation to Creation, Revision, or Elimination of College Policy and Procedure), and Policy # 3.02.03 (Filling of New and Vacant Positions), in addition to those in the President's employment contract related to hiring for new and or vacant positions in the President's Cabinet be and are hereby suspended for a time to be determined by the Board at a later date, and allowing achievement of bullet three (3) below for immediate hires; and
3. That the hiring process for members of the President's Cabinet shall be immediately halted and frozen until the President can bring the potential new hires for that Cabinet before the Board at a Special or Regular Meeting in executive session for confidential review of their qualifications to meet the needs of the NWCCU accreditation schedule, and the business and academic needs of NIC; and
4. That the President shall take such other actions as may be necessary or advisable in connection with that hiring review, including notification to third parties and College personnel as needed, and the taking of prompt steps to alleviate concerns of both the potential hires and College personnel related to that hiring process. A motion is proper on the acceptance of this Resolution.

WITNESS WHEREOF, this Resolution is duly executed as of the date first written above.

BOARD OF TRUSTEES, NORTH IDAHO COLLEGE


Chair

ATTEST


Clerk



Mission statement: North Idaho College meets the diverse educational needs of students, employers, and the northern Idaho communities it serves through a commitment to student success, educational excellence, community engagement, and lifelong learning.

AGENDA

6:30 p.m. Driftwood Bay Room

Convene/Call to Order/Verification of Quorum

Gregory McKenzie

Action: Motion for Executive Session under Idaho Code § 74-206(1)(a)(d)(f)*

Reconvene in Lake Coeur d'Alene Room

Connect via Zoom: <https://nic.zoom.us/j/89951097851> or by phone: (669) 900-6833 / Webinar ID: 899 5109 7851

Call to Order/Verification of Quorum

Gregory McKenzie

Pledge of Allegiance

Action/Discussion: Provost Hiring

Action/Discussion: Security Topic(s)

Action/Discussion: Cyber Incident

Action/Discussion: Board Resolutions

Adjourn

- * Executive sessions may be called for the purposes of considering personnel matters [Idaho Code § 74--206(1) (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general; (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; [Idaho Code § 74-206(1)(c)], deliberating regarding an acquisition of an interest in real property; [Idaho Code § 74-206(1)(d)] considering records that are exempt from public disclosure; [Idaho Code § 74-206(1)(e)] considering preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body; [Idaho Code § 74-206(1)(f)] communicating with legal counsel regarding pending/imminently-likely litigation; [Idaho Code § 74-206(1)(i)] communicating with risk manager/insurer regarding pending/imminently-likely claims.

BOARD OF TRUSTEES MEETING
December 8, 2022

SUBJECT

Executive Session

DISCUSSION

From time to time the board will find it necessary to adjourn to executive session. When an executive session is required, a number of specific steps must be taken. These steps are:

1. Cite Idaho Code § 74--206.
2. Cite one or more specific subsections in the code section and provide sufficient detail to identify the purpose and topic of the executive session but not information sufficient to compromise the purpose of the executive session.
3. Approve a motion to adjourn by two-thirds, roll call vote.
4. Take no action and make no final decisions in executive session.

_____ MOVES THAT THE BOARD, PURSUANT TO IDAHO CODE
§ 74—206, CONVENE IN EXECUTIVE SESSION TO:

- _____ Consider personnel matters [Idaho Code § 74--206(1)(a) & (b)]
- _____ Deliberate regarding an acquisition of an interest in real property [Idaho Code § 74-206(1)(c)]
- _____ Consider records that are exempt from public disclosure [Idaho Code § 74-206(1)(d)]
- _____ Consider preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body [Idaho Code § 74-206(1)(e)]
- _____ Communicate with legal counsel regarding pending/imminently-likely litigation [Idaho Code § 74-206(1)(f)]
- _____ Communicate with risk manager/insurer regarding pending/imminently-likely claims [Idaho Code § 74-206(1)(i)]
- _____ To consider labor contract matters authorized under section 67-2345A [74-206A](1)(a) and (b), Idaho Code.

Purpose/Topic summary: (Provide sufficient detail to identify the purpose and topic of the executive session but not contain information sufficient to compromise the purpose of the executive session.)

SECONDED BY: _____

Roll call: _____ Banducci
_____ Corkill
_____ McKenzie
_____ Waggoner
_____ Zimmerman

CONVENE AT: _____ ADJOURN AT: _____

**NORTH IDAHO COLLEGE
RESOLUTION 2022-03**

SUSPENSION OF NIC POLICY, AND NEW LEGAL COUNSEL

This Resolution is made this 5th day of December, 2022, by North Idaho College, whose address is 1000 W. Garden Ave., Coeur d'Alene, Idaho 83814 (the "College"), to acknowledge the resignation of Lyons O'Dowd, PLLC under the Legal Services Agreement dated January 29, 2021, to suspend NIC Policy # 7.01.04 indefinitely, and to immediately hire the Law Office of Arthur B. Macomber pursuant to a Fee Agreement presented with this Resolution as set forth below:

RECITALS:

WHEREAS, the College is a validly organized and existing junior college authorized under Title 33, Chapter 21 of the Idaho Code; and

WHEREAS, the Board of Trustees of the College (the "Board") has authority pursuant to Idaho Code Section 33-2107 (1) to adopt policies and regulations for its own government and the government of the college; and (2) to employ legal counsel and other professional and nonprofessional persons, and to prescribe their qualifications; and

WHEREAS, the College is presently under a Warning Status with the Northwest Commission on Colleges and Universities ("NWCCU") requiring certain actions be taken on a strict schedule for the better governance of North Idaho College; and

WHEREAS, the Board of Trustees has received the resignation of its legal counsel, Lyons O'Dowd, PLLC who served North Idaho College, and the Board of Trustees needs to acquire legal counsel to meet the needs of the College toward regaining accreditation compliance on schedule and sustaining such compliance in the long term; and

WHEREAS, the Board of Trustees has identified legal counsel it believes is capable to the accreditation tasks and schedule; and

WHEREAS, the Board of Trustees sees the NWCCU-mandated accreditation schedule as being urgent enough to require immediate suspension of NIC Policy # 7.01.04 (Policy For Awarding Continuous Professional Service Contracts) indefinitely, or until compliance with NWCCU Standards of Accreditation is achieved, or until a date certain to be determined by the Board of Trustees at a later meeting; and

WHEREAS, the Board of Trustees desires to accomplish these goals immediately.

NOW, THEREFORE, it is resolved as follows:

1. That the Recitals cited above are hereby incorporated into this Resolution;

2. That the Board of Trustees hereby accepts the November 25, 2022 resignation of Lyons O'Dowd, PLLC as legal counsel for NIC effective immediately;
3. That Lyons O'Dowd, PLLC is hereby directed to submit a final invoice for uninvoiced charges to NIC within ten (10) calendar days after the date of the signing of this Resolution;
4. That Lyons O'Dowd, PLLC is hereby directed by the letter enclosed herewith to collect its entire NIC document file and NIC records in all forms, including notes, emails, and contact information for past and pending matters and stored as they are in the normal course of business whether electronic or in paper form related to its representation of NIC and, after making copies it deems needed for its records, to make all those documents and records available for pickup by the Law Office of Arthur B. Macomber within ten (10) calendar days after the signing of this Resolution;
5. That NIC Policy # 7.01.04 is hereby suspended indefinitely, or until NWCCU Standards of Accreditation compliance are achieved, or until a date certain to be determined by the Board of Trustees at a later meeting;
6. That the Law Office of Arthur B. Macomber shall be hired immediately to provide legal services to the Board of Trustees and NIC under the Fee Agreement enclosed herewith, exercising all fiduciary duty in the highest esteem for the Trustees and the College to meet the overall goals of the accreditation schedule given the capabilities of North Idaho College;
7. That the President and Board chair shall immediately hire the Law Office of Arthur B. Macomber as evidenced by the President's and Board chair's signatures on the enclosed Fee Agreement prior to the end of the meeting during which this Resolution is presented and passed by the Board of Trustees; and
8. That the President shall take such other actions as may be necessary in connection with that hiring, including notification to third parties and College personnel as needed, and the taking of prompt steps to personally establish a relationship with Mr. Macomber to facilitate the effectual pursuit of the schedule for gaining NWCCU accreditation compliance by NIC.

IN WITNESS WHEREOF, this Resolution is duly executed as of the date first written above, and a motion is prepared to be heard on this matter.

BOARD OF TRUSTEES
NORTH IDAHO COLLEGE

By: 
Chair

ATTEST:


Clerk

**NORTH IDAHO COLLEGE
RESOLUTION 2022-04**

PRESIDENT'S COUNCIL HIRING

This Resolution is made this 5th day of December, 2022, by North Idaho College, whose address is 1000 W. Garden Ave., Coeur d'Alene, Idaho 83814 (the "College"), to delay the hiring of Vice-Presidents, Provosts, Deans, and other members of the President's Cabinet to allow Board of Trustee review of all potential hires into those positions; both for immediate hires in the next thirty (30) to sixty (60) days and for future hires during the current accreditation matters; to suspend if and where needed NIC Policy # 2.02.01 (Presidential Authority), NIC Policy # 2.01.04 (Board and College Governance in Relation to Creation, Revision, or Elimination of College Policy and Procedure), and Policy # 3.02.03 (Filling of New and Vacant Positions) indefinitely with regards to said hiring delays until the Board is given meaningful opportunity and time to review the potential hire's qualifications given the NWCCU accreditation schedule pending before the College as set forth below:

RECITALS:

WHEREAS, the College is a validly organized and existing junior college authorized under Title 33, Chapter 21 of the Idaho Code; and

WHEREAS, the Board of Trustees of the College (the "Board") has authority pursuant to Idaho Code section 33-2107 (1) to adopt policies and regulations for its own government and the government of the college; and (9) to cooperate with any . . . person, firm or association in the conduct of any educational program; and

WHEREAS, the Board has authority pursuant to Idaho Code section 33-2109 to elect a president of the college and, upon his recommendation, appoint such officers, instructors, specialists, clerks and other personnel as it [the Board] may deem necessary; fix their salaries, and prescribe their duties; and

WHEREAS, Section 2 of President Swayne's employment contract dated August 1, 2022 states, "The President is authorized and responsible for the administration of NIC and has authority over all matters affecting NIC at the operational level, in accordance with applicable laws as well as the policies, rules and regulations approved and/or sanctioned by the Board;" and "the President shall also be responsible for carrying out all duties requested by the Board;" and

WHEREAS, the Board, which cannot delegate its fiduciary duties, construes Idaho Code sections 33-2107 (1) and (9), Idaho Code section 33-2109, and the President's employment contract to together allow for reasonable delays in new President's Council hirings to allow Trustee review; and

WHEREAS, in late November 2021, four officials of the President's Cabinet announced their departure from NIC, leaving a leadership vacuum having extreme negative effect on NIC; and

WHEREAS, the College is presently under a Warning Status with the Northwest

Commission on Colleges and Universities ("NWCCU") requiring certain actions be taken on a strict schedule for the better governance of North Idaho College; and

WHEREAS, the Board made or appears to have made certain delegations to the Office of the President and other College personnel under Policy # 2.02.01 (Presidential Authority), 2.01.04 (Board and College Governance in Relation to Creation, Revision, or Elimination of College Policy and Procedure), and Policy # 3.02.03 (Filling of New and Vacant Positions), in addition to those in the President's employment contract related to hiring for new and or vacant positions in the President's Cabinet; and

WHEREAS, the Board must meet its fiduciary duties to the College by gaining assurances that the individuals hired into the President's Cabinet have the requisite qualifications to meet the needs of the NWCCU accreditation schedule, and the business and academic needs of NIC; and

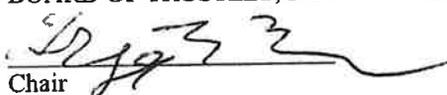
WHEREAS, the Board of Trustees desires to accomplish these goals immediately, and requires the President to assist it in fulfilling their respective duties to NIC.

NOW, THEREFORE, it is resolved as follows:

1. That the Recitals cited above are hereby incorporated into this Resolution;
2. That certain delegations to the Office of the President and other College personnel made or appearing to be made under Policy # 2.02.01 (Presidential Authority), 2.01.04 (Board and College Governance in Relation to Creation, Revision, or Elimination of College Policy and Procedure), and Policy # 3.02.03 (Filling of New and Vacant Positions), in addition to those in the President's employment contract related to hiring for new and or vacant positions in the President's Cabinet be and are hereby suspended for a time to be determined by the Board at a later date, and allowing achievement of bullet three (3) below for immediate hires; and
3. That the hiring process for members of the President's Cabinet shall be immediately halted and frozen until the President can bring the potential new hires for that Cabinet before the Board at a Special or Regular Meeting in executive session for confidential review of their qualifications to meet the needs of the NWCCU accreditation schedule, and the business and academic needs of NIC; and
4. That the President shall take such other actions as may be necessary or advisable in connection with that hiring review, including notification to third parties and College personnel as needed, and the taking of prompt steps to alleviate concerns of both the potential hires and College personnel related to that hiring process. A motion is proper on the acceptance of this Resolution.

WITNESS WHEREOF, this Resolution is duly executed as of the date first written above.

BOARD OF TRUSTEES, NORTH IDAHO COLLEGE


Chair

ATTEST


Clerk



1000 W. Garden Avenue
Coeur d'Alene, Idaho 83814
(208) 769-3300

December 9, 2022

Sent by Email Only To: [REDACTED]

President Nick Swayne
Coeur d'Alene, Idaho

Re: Letter confirming administrative leave from NIC President's position

Dear Dr. Swayne,

As you know due to your attendance at the meeting, on December 8, 2022 the Board of Trustees put you on immediate paid administrative leave to facilitate my investigation of certain governance concerns, and or missteps made by others, either of which may impact your position and contract.

The Trustees initiated the NIC administrative leave process. Today, I contacted Human Resources and requested information on that process. There is no written process to cover this specific situation, so I am using the Procedure # 3.02.31 for a template to guide the College. There are provisions that do not apply, and others that are merely helpful. Working with what is available, the Trustees would like me to convey the following.

For the duration of my investigation and your leave, which will roughly coincide, you are not to come onto campus to discuss or conduct College business, use computer access or other College facilities in your role as President. You are not being put on leave due to any disciplinary process, but the Trustees want to isolate you from the investigative process, so that our findings will be fact-based and not seen as under any influence by you, whether it be good or bad. If Marc Lyons had given me his complete file on NIC workings, I would not have recommended this step to the Trustees, but he has left me in the dark, and so I had to recommend a wall of separation to protect my investigation. Such isolation is required to safeguard you and the investigative process on behalf of the College. Conversely, you are currently not under any disciplinary process or accusation, so if you want to attend Christmas events at NIC or attend basketball or other sports games, you should feel free to do so. The Trustees are taking this action to protect you and the College until my investigation is completed.

Thank you for your patience and understanding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Arthur B. Macomber".

Arthur B. Macomber
Attorney for North Idaho College

Cc: Karen Hubbard, Human Resources
Sarah Garcia, Vice President for Finance and Business Affairs