

MINUTES OF THE BOARD OF REGENTS
OF HIGHER EDUCATION
MONTANA UNIVERSITY SYSTEM

DATE: September 19-20, 1991

LOCATION: Resource Center, Room 159
Helena Vocational Technical Center
1115 North Roberts
Helena, Montana

REGENTS Mathers, Kaze, Boylan, Johnson, Topel, Rebish,
PRESENT: Schwanke
Commissioner of Higher Education John M. Hutchinson

REGENTS None
ABSENT:

PRESIDENTS Dennison, Carpenter, Daehling, Malone, Norman
PRESENT: Provost Easton;

PRESIDENTS None
ABSENT:

The Board of Regents and the Board of Public Education met as the State Board of Education from 8:30 a.m. to 12:00 Noon on Thursday, September 19, 1991 in the Governor's Conference Room, State Capitol, Helena, Montana. Minutes of that meeting can be obtained from the Office of Superintendent of Public Instruction.

Minutes of Thursday, September 19, 1991

Chairman Mathers called the regular meeting of the Board of Regents to order at 1:30 p.m. Roll call was taken and it was determined a quorum was present.

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Consent Agenda

At the Chairman's request, Vice-Chairman Kaze moved adoption of the following items on the Consent Agenda:

- Item 73-100-R0991, Staff; University of Montana
(WITH ADDENDUM)
- Item 73-200-R0991, Staff; Montana State University
- Item 73-300-R0991, Staff; Agricultural Experiment Station
- Item 73-400-R0991, Staff; Cooperative Extension Service
- Item 73-500-R0991, Staff; Montana Bureau of Mines and Geology
- Item 73-600-R0991, Staff; Western Montana College of The University of Montana
- Item 73-601-R0991, Resolution Concerning the retirement of LARRY W. HICKETHIER, Registrar and Assistant Professor of Mathematics; Western Montana College of the University of Montana
- Item 73-700-R0991, Staff; Eastern Montana College
- Item 73-800-R0991, Staff; Northern Montana College
- Item 73-9000-R0991, Staff; Helena Vocational Technical Center

Recission of MUS System Policy 405.1:
Department of Defense Contracts; Montana State University
ADDITIONS TO CONSENT AGENDA:

- Item 73-900-R0991, Staff; Office of Commissioner of Higher Education
- Item 73-9500-R0991, Staff; Missoula Vocational Technical Center

Chairman Mathers called for discussion or comment on any item on the Consent Agenda.

President Dennison, University of Montana, explained the addendum distributed at this meeting by the University requests approval to hire Dr. Robert Kindrick as Provost and Vice President for Academic Affairs and Professor of English to replace Provost Donald Habbe who is leaving the University. Dr. Kindrick's acceptance of the position was not received in time to submit it with the regular agenda items. Dr. Kindrick comes to the University from Eastern Illinois University;

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before that he served at Emporia State, in Kansas and Western Illinois. Dr. Kindrick comes highly recommended and credentialed.

President Dennison noted also that Dr. Kindrick has also asked to be considered for tenure. It was agreed to take that request to the appropriate campus committee and bring it to the Board at the appropriate time. Approval of the tenure request is not part of the item before the Board.

MOTION: Regent Schwanke moved approval of the Consent Agenda be deferred until after the discussion is held on the recission which is scheduled under "Old Business" on Friday's agenda. He explained the Consent Agenda contains salary schedules that he believed warrant further discussion in light of other matters on the Board agenda at this meeting.

Regent Topel spoke to that issue also, noting the Governor has requested the System revert a rather large portion of its general fund budget. There are administrative raises contained in the items on the Consent Agenda. He questioned if these raises added to the across-the-board raises given to administrators in the System at the August 1991 meeting.

President Dennison responses at the University of Montana that would not be the case. There are faculty listed on the item receiving raises as a result of the promotion process. Dr. Kendrick replaces Dr. Habbe who will be on leave for a previously approved period prior to his retirement. The amount needed to hire a replacement for Dr. Habbe was budgeted.

Regent Topel stated his concern was this: If a vacancy existed at the University on June 30 and the equivalent 6% raise was given to those on staff on July 1, was enough money carved out of those dollars awarded on July 1 to cover the raises requested on the staff item before the Board at this meeting. President Dennison responded that was correct.

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Regent Topel asked if this was true at all the campuses. For example, he gave a simplistic example. Assume the 6% increase for all administrators on a campus on July 1 cost \$500,000. Was the full \$500,000 allocated to salaries given on July 1, or was \$70,000 that you knew would have to be spent at a later date sequestered from that amount and now what you are doing is spending that \$70,000.

President Norman, Montana Tech, noted that when reports were made to the Board on the June 30/July 1 increases, vacancies were also reported to which dollar amounts were allocated. It is those dollars which are now being spent as the vacancies are filled.

President Dennison clarified further on one submission on UM's staff item. The increase proposed for Lori J. Morin is a change made in response to the accreditation process at the School of Pharmacy and is part of the money appropriated for response to accreditation requirements.

President Daehling, Northern Montana College, requested approval to withdraw one item on NMC's staff item. Notice was received after the item was submitted to MARK RAJAI listed in the Assistant Professor category, had withdrawn and that proposed hire should be deleted from Item 73-800-R0991 when the item is considered for approval.

Regent Topel then requested that in all future submissions by campuses of administrative increases the Board be informed whether the dollars provided for those increases are part of the money approved for such increases in the budgeting process which approved the July 1, 1991 increases, or whether permission is being requested to spend dollars over those amounts. A poll of the Presidents indicated all increases now before the Board are funded in the manner Regent Topel requested. Future increases requested will provide the information as to source of funds requested by Regent Topel.

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Regent Schwanke spoke to his concern with interim raises for administrators which result in increases to the base salary. Then when the appropriate time comes to provide an across-the-board 6% increase, that increase is based on an inflated figure as a result of the interim raise.

Regent Kaze asked during the course of a fiscal year when an interim raise is given due to change of duties or otherwise, to what extent is that taken into consideration when the average 6% administrative raise is given on the traditional July 1?

President Dennison responded that in establishing what the new salary would be for an individual who has a new assignment, for instance, the person can be told that will be the salary for that position for the coming year as well as the remainder of the existing year. The person is told not to expect another increase. That approach was used this year at the University when recommendations were made with regard to the football coaches. Those salaries did not increase on July 1. The other approach, which has not been used in his term as President of the University but which in negotiations for the position of Provost is to make clear that the salary offered was the salary for any part of the coming year.

President Malone, Montana State University, responded his strategy would be to keep these salaries in close proximity, one to the other. MSU is not interested in playing the game of trying to ratchet one to ratchet the others up. Any mid-year adjustments would be taken into account in the following year's general adjustment.

President Carpenter, Eastern Montana College, noted he had no problem supplying the information requested by Regent Topel. He noted on EMC's campus when a person is appointed on an interim or acting basis, that person generally is appointed at a lesser salary than the person filling the position permanently will receive.

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President Dennison illustrated that point from the UM staff item. Dr. Philip West is recommended on that item to fill the position of Interim Director, Mansfield Center. The former Director's salary was some \$4,000 higher. Dr. West's salary also does not begin until August. In response to Regent Topel's question, President Dennison stated the money saved through filling the position on an interim basis was not reallocated, but was kept within that program.

ACTION: The question was called on Regent Schwanke's motion to defer action on the Consent Agenda until after the discussion on the recission is held which is listed under "Old Business" on tomorrow's agenda. The motion carried unanimously.

CONCURRENT COMMITTEE MEETINGS

Hearing no further discussion, the Board recessed and reconvened immediately in concurrent committee meetings. Certain room changes were noted for those meetings.

EXECUTIVE SESSION

At the conclusion of the concurrent committee meetings, the Board of Regents met in Executive Session. Members of the press present for the meeting objected to the closed session. After brief discussion, the Executive Session of the Board of Regents was cancelled.

MINUTES OF FRIDAY, SEPTEMBER 20, 1991

The Board of Regents reconvened at 9:00 a.m. with the same members present.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

Chairman Mathers called for additions or corrections to the minutes of the previous meetings. Hearing none, on motion of Regent Topel the minutes of the July 31, August 1-2, 1991 meeting and the August 22, 1991 Special Call Meeting were approved.

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COMMITTEE REPORTS

ADMINISTRATIVE COMMITTEE REPORT

Policy Items

Chairman Mathers reported the following two items listed on the submission agenda were received for consideration at the October 1991 meeting:

Item 73-501-R0991, Reorganization of the Academic Administrative Structure; Montana College of Mineral Science and Technology, and

Item 73-001-R0991, Athletic Coaches; Multi-Year Contracts; Montana University System.

Chairman Mathers reported Item 72-801-R0891, Reorganization of the Academic Administrative Structure; Northern Montana College, was discussed by the Committee. Questions were responded to by President Daehling. The item authorizes Northern Montana College to restructure the governance of the academic units to include a School of Business and Technology and a School of Professional and Liberal Studies, each school to be administered by a Dean. The proposal is made to more appropriately focus the efforts of the institution to carry out its role and mission and improve the operational efficiency of the academic units. The Committee recommends its approval.

On motion of Regent Boylan, Item 72-801-R0891 was approved.

Discussion Items and Reports

Plan for Revision of Presidential Evaluation Process

Chairman Mathers reported a document titled "Proposed Revision in Presidential Evaluation - September 19-20, 1991" was distributed and reviewed by the Commissioner (on file). Specifically, the formal presentation of campus accomplishments by each president has been judged by some

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Regents to be unduly time consuming. It was suggested those be submitted in the future in writing and in common format. They would, of course, be available for public scrutiny.

Commissioner Hutchinson noted one problem with discontinuation of the president's review of accomplishments is the reduced opportunity to declare in a public way the outstanding successes of the campus. The Regents should have this input. One possible solution is a revision in the way Campus Reports are conducted during Board meetings. Currently Campus Reports generally consist of serial show-and-tell presentations, much of which is of lesser importance. Perhaps a better approach would be for campuses and centers to request time during the meeting to share a truly exceptional accomplishment of the institution (the opening of a new research/service center, receipt of a large grant, a new and innovative campus/business or campus/community partnership, etc.). It would be rare to have more than one or two such reports at a meeting and, generally, reports would come only after formal request.

Chairman Mathers reported that while the Committee concurred that perhaps the reporting of accomplishments might be shortened, he believed it is important and appropriate that at least once a year the Board learn what has been accomplished on each campus that can be reported with a great deal of pride. It is the recommendation of the Committee that the same procedure be used for presidential evaluations that was used in the past year; that a common format be developed for the presidents to use for written submission to develop a compendium of accomplishments within the System; and that Presidents and Center Directors consider shortening their reports during regular Board meetings, and that those reports be moved to an earlier point in the agenda to highlight the

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importance of those reports, and to assure more meeting participants and the press are present when those reports are made.

Chairman Mathers noted for the record that the discussion item of a proposed bonus plan was set aside by the Administrative Committee for discussion at a future meeting.

Proposed Revision of Master Calendar

At the Chairman's request, Commissioner Hutchinson reported the Committee discussed a proposal emanating from the Commissioner's Office that there may be some wisdom in reducing the number of Regents' meetings held in a given year. Currently, eight meetings are held, plus two workshops. At some meetings, at least in some of the committees, agendas are a bit thin. It was suggested that economies might be realized if the number of meetings were cut back from eight to six each year. The number of workshops would remain the same.

A memorandum from Dr. Toppen dated September 12, 1991 (on file) was used as the basis for the Committee's discussion of this proposal. Summarizing, the memorandum suggests a 1993-94 calendar consisting of meetings in January, March, May, July, September, and October. Certain traditional meeting dates, and meetings of the State Board of education, have been preserved. The Board would also keep as a high priority holding meetings out of Helena so that the campuses, centers, and community colleges would continue to be visited on a regular basis. Only during the legislative session would the priority be to hold meetings in Helena. Special meetings and telephone conference calls would be called to deal with critical issues as has been done in the past.

Chairman Mathers asked for comments from the Board or the presidents. Hearing none, Commissioner Hutchinson was instructed to proceed as he had outlined.

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Recommended Distribution of Deferred Maintenance Funds and System Priorities for Handicap Access Projects

The above agenda item of the Administrative Committee was deferred for consideration at the October 1991 meeting.

ADDITIONS TO THE ADMINISTRATIVE COMMITTEE AGENDA

Collective Bargaining Report

At the Chairman's request, Mr. Rod Sundsted, Director of Labor Relations and Personnel, reported on collective bargaining activities that have occurred since the last formal meeting of the Board.

Nine additional agreements have been settled and ratified by members of the collective bargaining units. Those are:

Non-faculty, represented by AFSME at Northern Montana College;

Electricians at Montana State University/University of Montana/Eastern Montana College

Printers and Pressmen at The University of Montana

Laborers at Montana State University/The University of Montana/Eastern Montana College

Montana Public Employees Association that represents food service workers at The University of Montana

Plumbers at The University of Montana/Montana State University/Eastern Montana College

Vocational technical support staff represented by MFT

Operating engineers representing blue collar workers at the vocational technical centers

Montana Federation of Teachers representing the faculty at the five vocational technical centers.

Mr. Sundsted requested Board ratification of the above agreements. All settlements were consistent with the State pay

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plan and with the legislative appropriation for pay with the possible exception of the vocational technical center faculty agreement. In that contract there was an equity agreement in order to place all vo-tech faculty within one pay plan rather than the differing pay plans they were under as they came out of the local school districts.

Mr. Sundsted reported there are now three non-faculty units that are not settled. Those are the operating engineers, the painters, and carpenters. All are in differing states of negotiation, and have gone back to the membership and not been ratified and need to go back to the table. Four of the faculty units (Northern, Eastern, Western, and The University of Montana) are yet to be settled.

Chairman Mathers called for questions or discussions on the collective bargaining report.

Hearing none he called for a motion for ratification of the nine contracts listed by Mr. Sundsted at the beginning of his report. Regent Schwanke moved the contracts be ratified. The motion carried unanimously.

Site Selection Report, Business Administration Building; The University of Montana

Chairman Mathers reported the Administrative Committee received a written report on the progress of site selection for the new Business Administration Building approved by the 1991 Legislature (on file). The report outlined the reasons for rejection of two proposed sites which had received considerable attention on campus, and identified three other sites still under consideration. Those remaining sites are: 1) the corner of Beckwith and Arthur, 2) the River Bowl, and 3) the parking lot east of University Hall. The report was intended to keep the Regents abreast of planning for this important addition to the campus. Additional reports will be

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provided as the University moves through the planning and actual construction process. No action was requested.

Regents' Professor Policy; The University of Montana

Dr. Dennison distributed and reviewed for the Committee a University of Montana Personnel Policy for awarding the rank of Regents' Professor. No action was requested.

ACADEMIC AND STUDENT AFFAIRS COMMITTEE REPORT

Announcements

Regent Kaze, Chairman of the Academic and Student Affairs, began the report by introducing Dr. Sonia Cowen, Associate Deputy Commissioner for Academic Programs, and newly-appointed Student Regent Kathey Rebish. Both attended this meeting of the Committee for the first time in their official capacities.

Regent Kaze next distributed a resolution in support of a minority doctoral fellowship program proposed by WICHE, and requested its adoption. At Regent Kaze's request, Dr. David Toppen, Deputy Commissioner for Academic Affairs, explained the purpose of the resolution.

Dr. Toppen noted the concerted effort being made by the Montana Systems of Higher Education to entice minorities to become candidates for the professoriate at its various institutions. The difficulty the System has in recruiting minority faculty is not unique to Montana; it is a problem throughout the United States. The Western Interstate Commissioner for Higher Education (WICHE), working with the Southern Regional Education Board and the New England Board of Higher Education, has submitted a major proposal to the Pew Charitable Trusts and the Ford Foundation for a program to increase the numbers of under-represented minority students preparing for college teaching. The goal is to find qualified minorities and take them through the educational process

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leading to the Ph.D., then bring them back into the faculties. This is believed to be one of the most important efforts that can be made to begin to solve the problem of building a minority professoriate. Dr. Toppen urged the Board's adoption of the Resolution.

In response to Regents' questions on costs, Commissioner Hutchinson explained \$12,000 per year will be provided for each of the Scholars by the Pew Charitable Trust. An additional \$2,000 will be dedicated to the department in which that student is pursuing his/her studies for lab purposes, attendance at symposiums/conventions, - a supporting context. The first year of the Pew Scholars program is dedicated basically to planning and putting things in place. Scholars would actually enroll in Fall 1993. The Pew Foundation would pay for all of the first year. Subsequently, the System would be responsible for picking up those scholars' funding for a maximum of three years as a firm obligation.

Dr. Hutchinson reported this proposal has been discussed by the Presidents' Council. Both Presidents Malone and Dennison indicated support. The actual source of funding has not been identified. This Resolution is merely an endorsement of the Board of Regents which allows funding to be pursued; it does not necessarily obligate the Board or the institution at this point.

The following Resolution was moved for adoption by Regent Kaze:

WHEREAS: The Montana Systems of Higher Education have established a position strongly in support of the recruitment and retention of minority students and faculty, and

WHEREAS: The Montana Systems of Higher Education recognize that special efforts are required to attract qualified minority students to the professoriate,

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and

WHEREAS: The Montana Systems of Higher Education recognize their deficiency in the employment of minority faculty members, particularly Native Americans,

BE IT
THEREFORE
RESOLVED:

That the Board of Regents of the Montana Systems of Higher Education endorses the proposal to increase the membership of minority faculty currently being pursued by the Western Interstate Commission on Higher Education in cooperation with the New England Higher Education Compact and the Southern Regional Education Board.

BE IT
FURTHER
RESOLVED:

That the Board of Regents of the Montana Systems of Higher Education supports the efforts of the Commissioner of Higher Education to seek institutional and/or state funds to support a minimum of two fellows in each academic year, beginning in Fall, 1993.

The motion carried.

Regent Kaze noted the Committee was put on notice there will be a discussion at a future meeting concerning the College Preparatory program which will deal with the exemption amounts and the percentages of those exemptions which the System now allows. A report will be made to the Board when that discussion occurs.

Regent Kaze reported also that the College of Great Falls has written to President Daehling, Northern Montana College, to encourage NMC's efforts in post-graduate work through the facilities at the Great Falls Vocational Technical Center. A copy of the letter was distributed (on file).

Regent Kaze reported Northern Montana College has given notice of suspension of two associate degree offerings at Malmstrom Air Force Base site under the Board's existing policy. Campuses are allowed under that policy to suspend

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programs; if they are not reactivated within three years they are no longer deemed to be part of the College's offerings. The programs so suspended are Associate Degrees in Electronics Technology and Automotive Technology at the Malmstrom site. The degrees were suspended at the request of the Air Force.

TWO-YEAR INSTITUTIONS CURRICULUM ITEMS

Submission Agenda:

Regent Kaze reported the following items were received for consideration at the December 1991 meeting:

- Item 73-7501-R0991, Approval of Proposal to Convert the Approved Two-Year Certificate in Automotive Technology to an Associate of Applied Science Degree in Automotive Technology; Billings Vocational-Technical Center
- Item 73-7502-R0991, Approval of Proposal to Convert the Approved Two-Year Certificate in Secretarial Science to an Associate of Applied Science Degree in Secretarial Science; Billings Vocational-Technical Center
- Item 73-9501-R0991, Approval of Proposal to Convert the Approved Two-Year Certificates in Medical Secretarial Technology and Medical Transcription to an Associate of Applied Science Degree in Medical Office Technology; Missoula Vocational-Technical Center

Action Agenda:

Regent Kaze reported the Committee discussed Item 71-9501-R0691, Approval of Proposal to Convert the Two-Year Certificate in Computer Programming to an Associate of Applied Science Degree in Computer Programming; and to Convert the Two-Year Certificate in Microcomputing Applications and Systems to an Associate of Applied Science Degree in Microcomputing Applications and Systems; Missoula Vocational-Technical

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Center. The request conforms with the conversion policy for conversion o such certificate programs to associate degree programs. Staff recommends approval. Hearing no discussion or comments, Regent Kaze so moved. The motion carried.

FOUR YEAR INSTITUTIONS CURRICULUM ITEMS

Submission Agenda:

Regent Kaze noted Item 73-101-R0991, Approval to Establish Departments in the School of Pharmacy and Allied Health Sciences; The University of Montana was received after appropriate review. However, the Committee requests this item be placed on the action agenda of the Administrative and Academic and Student Affairs Committees at the October 1991 meeting rather than following the ordinary schedule for action two meetings hence. This request is made because the item deals with recent accreditation requirements of the School of Pharmacy and involves realignment of the department similar to those considered in today's agenda by the Administrative Committee.

Hearing no objections stated, Item 73-101-R0991 will be placed on the action agenda of a joint meeting of the two committees at the October 1991 meeting.

DISCUSSION ITEMS; REPORTS; OTHER

Regent Kaze reported discussion of Item 73-701-R0991, Minority Achievement Plan; Eastern Montana College was deferred to the October 1991 meeting. It is anticipated that all the campuses' minority achievement plans will be completed for review at that meeting, and the Committee preferred not to discuss them separately.

Report on the Offering of the Honors Program; The University of Montana

Regent Kaze reported a report on the offering of the Honors Program at the University of Montana was made by the

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Academic Vice President of the University. The report was requested by the Committee. The curriculum of the Honors Program is the same in the current year as it has been in the past. A new curriculum is under development, and is anticipated to be brought to the Board for approval in the Spring of 1992. The report was informational; no action was requested or required.

Report on METNeT

Regent Kaze reported the METNET report received by the Committee was identical to that heard by the full Board at the State Board of Education meeting held yesterday in the Governor's Conference Room. Regent Kaze stated in the interest of saving time he would not reiterate that report at this time.

Discussion of the Request for Endorsement of the Recommendations of the Enhanced Higher Educational Opportunities for Great Falls Committee

Regent Kaze reported discussion was held on endorsement of the recommendations of the Advisory Group for Enhanced Higher Education Opportunities for Great Falls. Over a period of time Commissioner Hutchinson and others have been meeting with community leaders of the Great Falls area who have expressed a continued desire for higher education services in the Great Falls community. A Resolution (on file) was presented to the Committee which stated the Advisory Group's primary purposes to be to assess the needs for additional higher educational opportunities in the Great Falls area and to coordinate the provision of such needs by units of the Montana University System and/or the College of Great Falls and the Great Falls Vocational Technical Center. The Resolution also listed the membership of the Advisory Group.

Summarizing, Regent Kaze stated the resolution provides acknowledgement by the Board of Regents of the

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Advisory Group for its services, and states the Board of Regents looks forward to receiving a report of the Group's achievements.

Regent Kaze reported there was discussion in the Committee as to whether expanded educational services in the Great Falls area should be considered at this time. It was the consensus of the Committee, however, that the resolution simply acknowledges the efforts of the Advisory Group and provides for a report of those activities. The Resolution makes no commitment.

Regent Johnson expressed his concern with the possibility that the group in Great Falls might believe approval of the Resolution implies commitment to expanded offerings in Great Falls.

Chairman Mathers, hearing no further discussion, called for action on Regent Kaze's motion to adopt the resolution. The motion to approve carried unanimously.

BUDGET COMMITTEE REPORT

Regent Topel, Chairman of the Budget Committee, reported the order of the Budget Committee agenda was revised to take action first on two program transfer items.

Item 73-003-R0991, Program Transfers; Montana University System, requests authorization for program and appropriation transfers needed to adjust the FY 92 approved operating budgets to meet planned expenditure needs. Under 17-7-501 MCA, Section 9, the Board of Regents is has authority to transfer appropriations between programs within each fund type not to exceed 5% of the total agency appropriation. The Commissioner may approve up to 3% program transfers at fiscal year-end. The item authorizes such transfers for five of the six campuses as set out on attached Schedules A through F.

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Regent Topel reported an addition to the agenda was also considered by the Committee. Item 73-7002-R0991, Program Transfers, FY 1992; Montana Vocational Technical Centers, requests the same authorization for appropriation and program transfers for the five vo-tech centers.

Regent Topel explained action is needed on the two items listed above at this point in the meeting because the budgets the Board will be requested to approve next on the agenda contemplate that these program transfers will occur.

Regent Topel noted the program transfers at some of the units are quite insignificant. However, it should be noted that while the Regents are involved in the Commitment to Quality effort, many of these actions transfer funds out of instruction and into physical plant or support. That raises concerns on the part of some, but there are reasonable explanations. Regent Topel explained that some such transfers are made because of inaccuracies that occurred with placement of some FTE positions by the 1989 Legislature. Some positions were placed in instruction that should have been in academic support, for instance. The units attempted to address this with the 1991 Legislature, but were not successful. Other cases, for example, at WMCUM and Tech, there are certain fixed costs that cannot be avoided. Those institutions do not have as many students so share the fixed costs under the present formula funding. There are no options but to make transfers.

Regent Topel discussed other examples. At Montana Tech in the past dollars were transferred out of physical plant; those dollars were then deleted from the physical plant base, and the expenses continue. The need to address accreditation problems required some transfers at some of the institutions as well. The schedules attached to the items for each of the units and the vo-tech centers which detail the

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transfers and amounts were reviewed by Regent Topel. Regent Topel reiterated, during every legislative session these problems are explained by the units, but are not corrected by the legislature. These transfers will probably continue to be an annual problem unless the legislature makes the needed adjustments to the funding formula.

Regent Topel next called for questions on the program transfers for the vocational-technical centers, explaining the philosophy, methodology, and need for the transfers are the same.

Hearing none, Regent Topel moved that Items 73-002-R0991 and 73-7002-R0991 be approved. The motion carried.

Regent Topel next requested Deputy Commissioner for Management and Fiscal Affairs Jack Noble to review the operating budgets for all units and the community colleges. Before that occurred, however, he referenced a "University System Glossary" of budgetary terminology which was distributed to the Committee. At Regent Topel's direction, copies of the Glossary (on file) were distributed to the Regents not on the Budget Committee. It was Regent Topel's belief that definition of the terms used in budgetary discussion would be useful as the Board moves through the complicated budget documents.

Regent Topel also cautioned, before discussion began on the operating budgets, that it is possible the System will make a decision later in the meeting which would require the return of a percentage of the System's budget to the general fund in compliance with Governor's Stephens' rescission request. If the operating budgets before the Board are approved, that should be done with the possibility in mind that future decisions of the Board may make revisions necessary to those budgets, and they should not be considered to be "cast in stone."

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Regent Topel noted also for the record that regardless of future decisions on rescission, his review of the budget documents with staff disclosed modifications and corrections in various areas that will be made. Any approval of the operating budgets then should be considered as preliminary and made with the knowledge that changes and corrections will occur.

Deputy Commissioner Noble began review of the operating budget documents, calling the Regents' attention to the large red book given to each Regent. The appropriation act of the legislature requires approval of the "all funds budget" of the University System by the Board of Regents, which is the document in the red binder. This includes all current unrestricted funds - essentially the territory to which the Legislature appropriates money. Other monies available to the System are current restricted dollars, primarily federal grant research monies. Auxiliary enterprises is the current fund that incorporates all activities such as food service, dormitories, married student housing, restaurants, etc., on each of the campuses. "Designated sub funds" is the category that accumulates costs and recharges those costs back to the various users. The campus computer centers are an example. In addition, there are loan funds, endowment funds, plant funds, and agency funds incorporated in the "all funds" document. Mr. Noble noted that probably 95% of the time of the fiscal staffs is spent in discussion with the legislature and the Board of Regents on "current unrestricted education and general funds."

Mr. Noble next called Regents' attention to the material in the green booklet - Item 73-002-R0991, Operating Budgets 1991-91; Montana University System. This document provides most of what a Regent member needs to know about higher education financing. Mr. Noble called attention to Schedule 1 in the item: "Comparative Schedules of Budgetary

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Increases by Agency." The schedule shows the budgets by agency in the System; last year actual versus this year budgeted. He noted this is the first year in almost twenty years that the Legislature has allowed the Regents to approve budgets in September. Previously budgets were required to be approved prior to July 1 of each year. This caused the problem of not having actual figures but rather having to use estimated to budgeted. The Legislature was requested to allow the System more time and to go back to a cycle more in conformance with the academic year cycle for several reasons. Campuses had very little time to prepare budget documents and get them in to the central office for summarization. More time is allowed under this method for internal processes of allocation. The Regent Employee Reporting System coming on line has to interface to the operating budget. To make that work the best budget document that could be prepared will be needed, which takes more time than 60 days after a legislative session ends. Unfortunately, as Regent Topel has suggested, this book is probably "dead on arrival." Approval will be sought today because the law requires the Regents approve such a document. It will then be reevaluated, possibly adjusted downward, resulting in a revised document available in December or January 1992 after those adjustments have been made.

Mr. Noble then reviewed the eighteen schedules contained in the item, explaining their purpose and how they can be used by Regents to respond to budgetary and finance questions. Schedule 3, Comparative Schedules of Funding; Current Unrestricted Operating Funds, shows sources of funding for the System. There are really only four major sources left; general fund and millage, the state portions, have moved to encompass 76.3% of the budget, the highest percentage of state funding seen probably in the history of the System. Tuition

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and fees comprise 18.1% of the budget compared to 19.9% last year. Tuition as percentage of budget is probably at one of its lower levels in recent years. The education trust fund interest no longer exists. That fund was appropriated and used by the Legislature to meet shortfalls in recent bienniums. Other funds incorporate some federal monies and miscellaneous collections. Scholarships and fellowships are printed to show the value of the waivers as a revenue source.

Mr. Noble concluded the document is an excellent source of quick information on what was actually expended last year by unit and by category; what is budgeted this year; number and type of employees in the System; and information on fee waivers.

Regent Topel noted he had extensively reviewed all the budget documents before the Board today. He raised many, many questions, almost all of which have been satisfactorily answered. The few remaining financing questions give him no real concern. With that statement, he moved approval of Item 73-002-R0991. Chairman Mathers called for questions or discussion from other Regents or presidents. Hearing none, the questions was called on the motion. The motion to approved carried unanimously.

Deputy Commissioner Noble commented he believed Regent Topel conducted the most extensive review of the budget documents in the System's history. He is probably the first Regent ever who has gone through well over 500 pages of detail in the red binder alone, scrutinizing every account and every transfer. He had some very enlightening questions.

Next Mr. Noble reviewed Item 73-7001-R0991, Operating budgets 1991-92; Montana Vocational Technical Centers. The Centers have the same fund and accounting structure as the University System units. He noted there was

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debate in the last two years regarding handling of the Carl Perkins grant money. It was previously treated as a current unrestricted fund. The Legislative Auditor noted that was an inappropriate classification, and the Legislature should not be appropriating those funds in that category and using it as an offset to support the center budgets. The last Legislature acted on that recommendation, and back-filled the Carl Perkins grant money with general fund money on the Center campuses. The grant money still comes through the Commissioner's Office as shown on Schedule 3. The footnote on that schedule explains the pass through nature of the funds. Incorporating those funds in this book was debated rather strenuously. It was placed in the book this year; next year it probably will be footnoted and not placed in the schedules because it is not an unrestricted fund. While that \$5 million shows up in this book, it should be noted that all postsecondary and some secondary institutions in the state are eligible to receive those grants. The money is not necessarily available within the confines of postsecondary education; the Board should be aware of that in looking at the percentage increases.

Mr. Noble mentioned also the percentage increase of institutional support costs on Schedule 2. That is an administrative component. The major portion of that (over \$127,000) are legislative audit costs for the coming biennium. In addition, a position was reclassified at the Billings Vo-Tech from student services into institutional support. That impacted that program by over \$52,000. When those adjustments are taken into consideration, institutional support is not increasing at a faster rate than any other segment of the Centers' budgets.

Regent Topel stated hearing no further discussion or questions, he moved approval of Item 73-7001-R0991. The motion carried unanimously.

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Mr. Noble reviewed the last operating budget before the Board for approval, Item 73-1001-R0991, Operating Budgets 1991-92; Montana Community College. He called attention to an insert in the booklet which points out the statutory budget process pertaining to community colleges. The data on the right of the insert reflects the numbers the statutes require. The operating budget formats do not disclose this data in the same manner.

Mr. Noble explained the operating budgets for the community colleges are presented in the same format as the vo-tech centers and units of the System. Flathead Valley received the largest percent increase (16.6%); the total increase in funding for the three community colleges is 12.7%. Mr. Noble called attention to Schedule 3, which shows that FVCC is still severely impacted by the I105 limitation. What is before the Board today for approval is an authorized budget for FVCC which that unit probably does not have the resources to fund.

Regent Topel noted for the record that in his review of the budgets on today's agenda, he asked proportionately the same number of questions on the vo-tech budgets and the community college budgets. The answers received were satisfactory.

Chairman Mathers questioned the footnote on Schedule 3 regarding FY 91 revenues exceeding expenditures because Miles Community College had excess tuition and fees of \$106,462 which it carried over into FY92. It was explained that carryover was approved by the Board of Regents, and does not require a budget amendment to obtain spending authority.

Brief discussion was held on the comparative costs of educating students in community colleges versus four year institutions. Chairman Mathers noted it is more expensive for

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a taxpayer in a community college district than it is for other people in the State. As the System moves towards quality enhancement, there will be further eroding of the local tax base dollar as it is used to support the community colleges. He hoped someday to have an opportunity to express that thought to the Legislature.

Mr. Noble noted the average "cost" provided per FTE in the System is \$5,605. You can get a different picture by changing the term "cost" to "support" per FTE. No matter what is provided to a unit of the System or a community college usually will be spent. Support might be a more accurate term than cost. There is no standard procedure to determine what it should cost. In the University System, cost or support per FTE is running 80% of the peers. Without much doubt, the support provided to Montana's community colleges is also running at a much lower level.

Hearing no further questions or discussions, Regent Topel moved approval of Item 73-1001-R0991. The motion carried unanimously.

Report on Negative Fund Balances

Regent Topel reported the report on negative fund balances was received for informational purposes only. The System is required to report annually any negative cash accounts within the System. Regent Topel noted this reporting is not believed to be truly indicative of the health of an entity or account. An individual, for instance, can have an overdraft in a personal account and still have a very substantial net worth. A negative cash account does not reflect matters such as off-setting accounts receivable, etc.

What has been prepared, then, is a report of the System's negative fund balances. In 1990 the System, which includes the vo-techs, had 45 negative fund balances. The

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units have been instructed to correct those. The System now has 22 such accounts. The report to be submitted to the legislature shows those negative fund balances by unit, and the plan to eliminate that balances.

Regent Topel explained the three types of negative fund balances existing within the System and method proposed for their eliminations. Under this methodology, some of the accounts will be eliminated this year; others over the next three years. The report will be submitted to the Legislative Interim Finance Committee.

OLD BUSINESS

Discussion of Recission

At the Chairman's request, Dr. Hutchinson began the recission discussion. The format was explained to be that the Commissioner would lead the discussion; at the conclusion of his presentation the Presidents would be asked to speak; the Regents' would have an opportunity to ask questions; following those questions, there would be very limited opportunity for questions for the audience.

Commissioner Hutchinson noted one of the charges given to him and to his staff at the special call meeting in August was to enter into a set of negotiations with the Governor through his Budget Office. That has been done. Three things have consistently been asked for in those meetings: (1) time to determine the extent of the shortfall as best as can be done; (2) some relief from the overall demand for \$21 million from higher education; and (3) if the System does participate in the recission, some flexibility be granted in how the money is distributed over the biennium. It has been consistently a position of this Board that the System should "do its fair share" if there is a verifiable shortfall. That a good faith effort should be made.

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Commissioner Hutchinson then read the following letter into the record, requesting that following that reading, Chief Counsel Schramm make his remarks before general discussion is held:

Steve Yeakel
Director, Office of Budget and Program Planning
Room 204, State Capitol
Helena, MT 59620

RE: State Budget Cutback

Dear Mr. Yeakel:

We have received the operating budgets of higher education and explored several alternatives for meeting your suggested budget reductions. It is obvious to say that there is not a course of action available that would avoid serious consequences. Meeting targeted reductions in the current year is extremely difficult and we believe it is in the best interest to shift a portion of the target to the second year.

The rationale on which we base our current recommendation is as follows:

Estimated Shortfall	\$73.00 M
Less:	
\$16.7 of the \$18.7 Ending Cushion	<u>16.70 M</u>
Net Actual Shortfall	\$56.30 M
Higher Education's General Fund Percentage	<u>24.24%</u>
Higher Education's Share of Net Shortfall	\$13.65 M
Regent Contribution FY 92	\$ 6.84 M
Regent Commitment FY 93 (Contingent on the Magnitude of a Verified Shortfall)	<u>6.84 M</u>
TOTAL REDUCTION	<u>\$13.68 M</u>

We realize your desire to build in an \$18.7 million ending fund balance to your projections rather than the \$2 million we are suggesting. It is our opinion that we should not commit to bear the burden of the full shortfall of \$73 million at this time. We propose instead to provide a solid commitment to the net shortfall excluding all but \$2 million of your projected reserve. We would, however, have a contingency plan developed

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by next spring that would enable higher education to respond if the economy and the projected shortfall becomes worse.

We would view the involking of any contingency plan that reduces higher education by an additional amount in FY 93 as a last resort measure. We would urge that every other conceivable option be explored by your office.

We plan to impose a tuition surcharge beginning in January, 1992. The surcharge would be dropped at the end of the fiscal year. The regents will review the in-state and out-of-state tuitions charged by our peer institutions in the surrounding states. The board will seriously consider revising our tuition policies in FY 93 to equal but not exceed the charges levied by our peer institutions as part of our FY 93 effort. The adjusted tuition revenue base would carry into next biennium lessening our dependence on general fund. We would ask you to lessen your targeted reduction of the student assistance funds in the central office in return.

We believe this is a fair proposal in response to the economic conditions and revenue shortfall the state is experiencing. However, this offer by the regents to participate in the budget rescission process under the terms stated in no way is intended to be a waiver of any legal rights the board possesses to subsequently contest this or any future rescission. The regents would like to review state revenue projections late next spring before putting any of our contingency plans in action.

Signed: William Mathers, Chairman
Board of Regents

John M. Hutchinson
Commissioner of Higher Education

Commissioner Hutchinson stressed that all that is being done at this moment is offering up an amount of the System's participation in the recission. It is yet to be determined the precise revenue streams that would be derived from the institutions to come up with the \$6.84 million. At the next Board meeting it is proposed the staff bring forward to the Regents a set of options for the Board's consideration that would yield the \$6.84 million. At this point, no one is

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prepared to state where the cuts would come, nor is there a determination of the extent of the tuition surcharge might be, or what the tuition levels might be next fall.

Chief Counsel Schramm distributed copies of his memorandum to the Board of Regents dated September 19, 1991 titled "Legal Aspects of the Gubernatorial Budget Rescission - Memo #2" (on file). He noted the memorandum should be viewed as a supplement to the memorandum he provided the Board on August 2, 1991. One significant legal issue has come to his attention since the last memorandum was prepared. It was first raised by Legislative Fiscal Analyst in a report to the Finance Committee. That is, that the general fund at least for the coming year will be in the black. The problem comes in that the State Equalization Account (School Foundation Program) is in the red, and it can not, by statute, be reduced. The Budget Office then is proposing to transfer general fund to that account. This is the largest single reason for the cuts requested by the Budget Office.

Chief Counsel Schramm then reviewed the statutory requirements which must be met before such a transfer can occur, particularly that requirement that before such transfer can be made there must be "reasonable evidence that the income will be sufficient to repay the loan within a calendar year . . . An accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended."

Dr. Schramm noted all projections of the status of the state equalization account agree that it cannot be said that there is a reasonable evidence the statutory requirement of 17.2-107 can be met.

Dr. Schramm reviewed the second requirement requiring a supplemental appropriation in the second year of

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the biennium be sought to complete the funding of the foundation programs as contained in 20-9-351 MCA. He reviewed the reasons contained in his memorandum that this requirement also cannot be used as justification for a loan from the general fund.

Dr. Schramm briefly commented on other relevant matters, such as the memorandum issued by the Chief of the Legal Services Division of the Legislative Council which among other issues stated that the time is not right to make a rescission for the second year of the biennium because whether or not there will be a revenue shortfall in that year is too speculative.

Dr. Schramm spoke also to the second specific legal issue raised in his memorandum titled "The Department of Administration May Not Rescind Entire Line Items Appropriated For the Benefit of the University System." That issue speaks to funds appropriated by the 1991 legislature to the Department of Administration by line item for specific purposes cited. The Department of Administration, in response to the Governor's rescission order, has proposed totally eliminating both these items which is in direct conflict with the words of the rescission statute which states an appropriation may not be reduced by more than 15%.

Dr. Schramm ended his presentation with the conclusion contained in his memorandum, i.e., that in his memo of August 22, 1991 he concluded that the gubernatorial rescission of higher education funds appropriated by the 1991 legislature is subject to challenge on substantial and legitimate legal grounds. After a month of additional research, no reason has been found to change that opinion.

Regent Topel asked if the Board adopted the staff recommendation, and someone subsequently challenged the

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transfer, what are the ramifications? Dr. Schramm replied even if the Regents choose not to challenge the transfer there are a "raft of other bodies" that might. If that occurs, and the Board has given back the money, what happens if the transfer can not be made. Dr. Schramm agreed that deserves a good bit of thought, but he had no answer at this point.

Regent Topel noted he could not imagine anything much worse than that scenario - students paid more money, the money was returned, and the transfer is deemed illegal. There should be some assurance if the Board of Regents goes forward with the rescission that action should be conditional in some manner that the money will be returned to the University System if the transfer can not occur.

Dr. Schramm responded it is not clear at this time how the money would be returned. It will be rescinded through an accounting procedure so it is unclear exactly where "the shield would be put up." It is a question worthy of an answer.

Chairman Mathers asked Mr. Noble to comment. Mr. Noble responded that the level of a tuition surcharge has not been determined, nor the amount of money that would be generated. It is anticipated depositing that amount of revenue in a designated account which would stay within the purview of the control of the Board of Regents until the very last moment. The portion that would be deemed general fund rescission would certainly be caught up from the onset; it would be gone with no obvious way to prevent that from happening.

Regent Topel asked when the legality of the transfer could be challenged. Dr. Schramm responded the general statute of limitations for enforcing rights given by statute for which no other statute of limitations exist is one year. Under that interpretation, and there is no assurance that would be the

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interpretation, the transfer then might remain vulnerable for one year. Regent Topel suggested filing something on the order of a "protective claim." Dr. Schramm agreed that problem has to be worked through before even the general fund portion is released. That is a problem that can be solved, but it probably a secondary problem to that of whether the University System is going to rescind general fund, and if so, how much.

Some discussion was also held on when the statutory period of limitation would begin to run.

Chairman Mathers agreed the details of these types of questions would have to be worked out before the Board proceeds with determination of where the rescission funds will come from, how it will be raised, etc. However, he believed the question now before the Board is whether the recommendation outlined by the Commissioner and staff is appropriate. Is it appropriate that the Board of Regents recommends that the ending cushion for the State's operations be only \$2 million. That decision must be made by the Board. If that is the decision, then the Board of Regents' understanding is that the University System's share of the general fund percentage is 24.24%. Using the assumption that the cushion should only be \$2 million, the shortfall is reduced to \$56.30, and the System's share if approved by the Regents, would be \$13.65 million. Those two issues need to be addressed.

Regent Johnson noted he had no particular problem with the proposal outlined in the letter read into the record to Mr. Yeakel, if it is understood the System will contribute \$6.84 million this fiscal year, but will reserve its commitment to the \$6.84 million in FY 93 until the shortfall in that year is verified. He based that on the previous unpredictability of future revenue shortfalls. His understanding was that the letter does exactly that.

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Chairman Mathers cautioned that all should be aware that the shortfall in FY 93 might be greater. This letter also states if that is the case the System will do its best to return in greater amount than \$6.4 million in FY 93.

Regent Kaze stated he understood the issue for the Board to decide is whether the \$56.30 million is an agreeable, understandable, realistic estimate of the shortfall facing Montana. Others outside of the System he has talked with believe the shortfall is real, and in that amount. The next question is, what is the System's fair share?

Commissioner Hutchinson noted probably Regent Kaze's figures are accurate. Staff has heard estimates of the shortfall ranging from \$7 million to \$90 million. When the Office of Budget and Program Planning presented its estimate of an approximate \$73 million shortfall to the Legislative Finance Committee there was no substantial controversy about that figure in that meeting. There were comments that it might be a bit premature, but no real objection. At this point the System has to go on faith that this figure is close to reality.

Regent Schwanke noted that faced with the very real crises existing within the System before this rescission was requested, the amount being discussed seems to be more than the System's fair share. He asked whether such a commitment should be made at this particular point in time.

Chairman Mathers reiterated that method by which the System's percentage of general fund shortfall was determined to be 24.24%.

Regent Schwanke stated his point is that the System should commit to shouldering its "fair share" in the first year of the biennium. But he did not agree that the letter should state the System agrees its fair share is \$13.65 million which would include a second payment, not determined, for FY 93.

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Chairman Mathers assured Regent Schwanke the letter is specific that the Regents will have an opportunity to examine revenue projections for the second year of the biennium. At that time there will be opportunity for the second year shortfall to be verified before the amount of the System's contribution is determined. No one knows at this time what that amount might be. Chairman Mathers assured the members of the Board that in his visit with Governor Stephens yesterday the Governor expressed deep concern for the problems of the University System. He has always stressed the importance of education, and is as concerned about the problems facing the System with the recission request. The fact remains, there is a shortfall now. Until the legislature and appropriate branches of government agree that a complete tax overhaul is needed in Montana this type of problem will continue to surface.

Regent Schwanke asked if the System has assurance this offer will be acceptable to the Governor and his staff. Commissioner Hutchinson responded there is no such assurance. The thought process was that this is a good faith effort based on a reasonable set of calculations for the first year only. He echoed the remarks of the Chairman. This offer is only for the first year of the biennium. If the shortfall continues into the second year in the same magnitude, the System would offer no less than the amount of money offered this year. That decision will not be made until at least the Spring of 1992.

Commissioner Hutchinson stated he had assurance under the authority of the Governor's Budget Office that in the event the economy turns around, and in the event the shortfall is less than what is currently projected, the System will not be under the obligation presented today. The figures would be revised downward by the executive branch. There is no intent

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to build a cushion at the University System's expense. Dr. Hutchinson stated he believed the System has to trust the Budget Office in those negotiations. The offer before the Board to meet the recission request is a good faith effort on the part of the System. The Regents may wish to debate whether it is too much or too little. However, it is based on what are considered to be reasonable calculations. There is no guarantee it will be accepted.

Student Regent Rebish asked for clarification of the sentence on the second page of the letter regarding targeted reduction of student assistance funds in the central office. Dr. Hutchinson responded a worksheet from the Budget Office targeted a reduction in the student assistance line. The feeling of staff in the Commissioner's office is that it is certainly not fair to ratchet up tuitions and then leave state dollars going to student assistance at a constant level. The monies appropriated to the Commissioner's office for student assistance are flow-through funds, including funding for the WICHE and WAMI programs. The Commissioner's office believes strongly those funds should not be reduced. Students should not be taxed on one hand, and experience reductions in student assistance on the other. The Governor's recission request does target student assistance funds for an 8% reduction.

Hearing no further comments or discussion from the Board, Chairman Mathers asked for comments or suggestions from the Presidents

President Dennison, University of Montana, stated he understood that higher education is a part of state government, and should make a contribution. He echoed comments by Regent Schwanke, however, that he was not certain what constitutes a fair share particularly in light of what higher education attempts to do and what it does do in this state.

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President Dennison stated he would raise four points, all of which have been raised by others in this discussion. (1) It should be kept in mind as the Commissioner and some Regents have noted that the state is very early in the process to be very firm about estimates. All seem to agree there is a shortfall, but the level is still a difficult to answer. (2) The legal issues, particularly those raised by Regent Topel, seem to indicate the Regents should move very cautiously. (3) What is a fair share? President Dennison stated he was not sure in light of the System's difficulties so well argued by the Regents and spelled out by the Education Commission of the 90's and Beyond. President Dennison stated he understood how the 24.24% was arrived at, which approximates a 5% reduction for the System. He was not sure, however, that in view of the social needs within the state that is the number that should be used. (4) President Dennison closed by saying in view of the situation being experienced at the University, at all other units, this recession will impose severe difficulties on students. Not only the tuition surcharge, but in disruption of the academic calendars. He was not arguing against a contribution; just careful consideration of what constitutes a fair share.

Regent Topel asked President Dennison how he, as a Regent, should determine what constitutes a fair share. President Dennison responded the rationale before the Board is certainly one way. In response to that direct question, he would look at how much underfunding the System has claimed to have and then reduce the amount by something that takes that into account. The final figure might be closer to 2% than to 5%.

President Norman, Montana Tech, stated he would have to echo comments of President Dennison. He had considerable

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reservations about the System's willingness to rush forward and fill the gap of the perceived shortfall without protection against the possibility the situation is overstated, and with no real assurance that all those affected by the general fund will participate in the same degree or percent. Good faith efforts, while laudable, could become quite laughable if in fact the System finds itself participating in a far greater degree than others with less sensitive, or even less critical programs. President Norman stated concern also with what might appear to be setting a precedent which would be difficult to argue away from next year, or later this year. The proposal before the Board, while a good point from which to launch discussion, would in fact likely set the level of commitment for the future. He mentioned Regent Johnson's questions as to what opportunities the System has to limit its liability as it goes forward on this. What is the fair share, as raised by Regent Schwanke. President Norman urged the Board to consider the System's fair share relative to its on-going responsibilities for higher education in the state. Is 24.24%, regardless of the level of shortfall, what is being committed to be returned as more viable data comes forward. If the shortfall is \$100 million, has the System committed to returning \$24 million back to the state. Or as a System of higher education do we say we have on-going responsibilities. The System has a set of real and critical responsibilities to the some 25,000 students in the System and simply cannot return \$24 million, using that hypothetical number. Where are the two sides balanced? He urged the Board not to set a level of liability that binds the System as it tries to go forward because of the uncertainty of the numbers. He also encouraged the Board to look at other alternatives such as some of the statutorily protected agencies which have already said they

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will not participate in a recission. At what point does the System stop paying which might be considered the fair share of some of those other agencies? Some good faith must be demonstrated, but as the System does so President Norman strongly urged that the arguments be couched in the proper language to indicate that flexibility must be provided to set a different course as the data and the participants become known. He noted on most campuses fall registration is now complete; most units are looking at substantial increases in students. Approximately 10% of those students are unfunded by the legislature at Montana Tech. That compounds an already difficult situation. That is a good faith effort on the part of the campuses that they have not requested supplemental appropriations to educate those students. "Good faith" can take many appearances and constitute many different actions. He urged caution on the part of the Board as it proceeds with its response to the recission request to assure the System's fair share is really fair.

President Malone, Montana State University, noted the campuses do have different situations. MSU has already been somewhat "downsized" by the semester conversion. Approximately 270 seniors did not return for the Fall semester. That is a very significant number. Understandably, there are a number of students who in the context of a two-month summer are coming back as part-time students rather than full-time students. Both as a product of the semester conversion and the tuition increase. When the Board visits MSU's campus next month he asked for the opportunity for some of Regent Topel's questions to be answered. One way to provide at least a partial answer is in the comparative mode of formula funding with peers. Inflation nationwide is very low; in academia inflation rates for instance in libraries is still in

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the double digits. He supported the question asked by President Norman - what does priority mean? to what extent is higher education a priority program? If MSU has time to look at strategies, President Malone stated his campus is in a very tender relationship with its students. Tuitions have been raised. When MSU responds on what it can cut, the hydraulic relationship with students must be recognized in that everything that is not cut falls on the students. MSU very much wishes to have a healthy dialogue with students about what it means for students to take yet "a second hit" on a campus whose population has already been constricted by this major transition. President Malone closed by stating that when the Board meets on MSU's campus in October, he hoped some information can be provided to the Board which will help answer some of the questions Regent Topel has asked. Anything that is done will only constrict the campus further, with tuition increases on one side, and cutting one-fourth of the way through the fiscal year.

President Carpenter, Eastern Montana College, noted the anticipated enrollment decline at EMC has occurred, for similar reasons to those stated by President Malone. He agreed with his colleagues who urged a cautious approach; he agreed also with the Regents that participation of the System must occur in the state's shortfall. He suggested additional matters that should be examined in determining the System's fair share. The judicial and legislative branches have indicated they will "more or less pass" on the recission. Speaking to only one of EMC's line item appropriations that may not be reduced, he mentioned the amount that must be paid for legislative audits. One thing he suggested that might be looked at in determining fair share was the amount of pass through money that is appropriated to be paid to other

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designated state agencies. President Carpenter stated he also shared President Norman's concern about making a commitment for FY 93. He was also concerned about the statement in the draft letter to the Budget Office that stated the Board would seriously consider revising tuition policies to equal but not exceed that charged by peer institutions. While not philosophically opposed, he stated the appearance is that the Board is making a decision now on actions it will take in FY 93 without a lot of data. He urged caution about making that kind of commitment at this juncture, and also urged the Board to retain as many options as possible to deal with this difficult situation. He suggested the rate of underfunding of the System be seriously examined - how long that has occurred under the formula funding and does that have a relationship to what the System's fair share should be. Priorities will have to be set; it appeared to President Carpenter that across the board cuts will have to be made. He agreed the System must cooperate with the Governor, but he pleaded that the Board not fix a number, particularly for FY 93, at this time.

President Daehling, Northern Montana College, reminded the Board that when he was interviewed for his presidency the state was facing a projected shortfall, and ended the biennium with an approximate \$70 million surplus. From past history it can be learned there can be substantial swings in revenue. President Daehling noted he believed it unfortunate that students will have to bear the bulk of the burden of providing the recession dollars. It is not possible for units of the System to make cuts in personnel areas of any substance at this time, nor can they be made next year because of notice requirements of faculty and contract professional staff. He hoped the Board would take into consideration some revision of policies in place if a reduction in force is

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necessitated by this call-back, which will occur unless the students pick up the burden.

Chairman Mathers asked the community colleges to comment.

President Kettner, Dawson Community College, spoke to the adverse impact the rescission would have on the community colleges. He spoke specifically to the need for time to adjust the local mill levy, and the necessity to meet notice requirements of existing contracts.

President Fryett, Flathead Valley Community College, echoed the comments of President Kettner, and spoke also to the serious funding situation faced by FVCC already because of the negative effects of I105.

President Flower, Miles Community College, concurred with the seriousness of the situation as expressed in previous statements, noting MCC has the same problems already enumerated.

The Directors of the vocational-technical centers each spoke to the negative impact reducing their budgets at this point would have on programs and existing contracts.

Mr. Kirk Lacy, President, Associated Students of Montana, expressed students' frustration with the state's not meeting its responsibility for the systems of higher education. Much is heard about students paying their fair share; it needs to be said more often that the System faces this dire situation because the state consistently underfunds higher education. If students and the Board of Regents are expected to make a good faith effort to support the Governor's rescission request, then the legislature has to make a good faith effort and begin to assume the responsibility it has to make a commitment to quality education in Montana. The draft letter presented to the Board by OCHE staff discusses a surcharge as early as January 1992, with further increases

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probable in 1993 to equal but not exceed the level of peer funding. Mr. Lacy asked what sense does it make for students to be asked to pay the same amount the peer institutions pay if they are not receiving the same support the peers are receiving. Montana is so far behind in comparison to its peer institutions there should be no talk about students meeting more of their fair share. Mr. Lacy appealed to the Board in the same manner the Board is appealing to the Governor. He asked for time for the students to plan, for relief, and for flexibility. Mr. Lacy discussed the very short summer break many students in the Montana system experienced this year because of changes at some of the units to the semester system. It was not possible to earn money in that short period to pay the tuition already agreed to. Other costs of students' education have gone up in addition to tuition - textbooks, living expenses, etc., and there is no relief from that. Speaking to flexibility, Mr. Lacy acknowledged the option for students to make deferred payments, but units that have converted to the semester system are still operating under the same payment plan that existed under the quarter system. Students have to pay much sooner, and are not able to spread payments throughout the semester as they need to do. He asked Regents to examine those policies and provide flexibility and relief to the students. Many students in the system are non-traditional. They have families and jobs. They can not pay more. Mr. Lacy concluded stating students have made a one year commitment to the Board of Regents and the system - to attend school this year. Last June, when tuition increases were decided for the coming year, the Board was asked to increase tuition an additional 2% over the staff recommendation. The answer to that request was an emphatic no; the issue would be reexamined in 1993 but it was not felt it was warranted to

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raise tuition again until that time. Mr. Lacy noted circumstances have changed, but only for the worst. Students can no "take this hit" this January.

Regent Johnson spoke on the proposal to return \$6.8 million. He stated he would feel better if it were lower, but he did not have another suggestion as requested by Regent Topel. His problem with the proposed letter was that he would rather have the letter prepared in such a way that the dollar amount decided on was limited to the first year of the biennium, and make no mention of the second year. Merely indicate to the Budget Office that participation would occur in 1993 if the facts warranted it. Regent Johnson spoke to the unfortunate fact that certain other branches of government are statutorily excluded, but recognized it is a fact. He indicated general agreement with the draft letter to the Governor's Budget Office.

Regent Schwanke agreed with Regent Johnson's statements. Historically, when the Regents raise tuitions the legislature deletes general fund appropriation in a like amount. He also requested reference to a commitment for FY 93 be deleted.

Regent Topel stated his understanding from discussions with OCHE staff that there is agreement among LFA staff, Budget Office staff, legislators, and others that there would not be much additional information in the next 60 - 90 days that would dramatically alter the situation. Based on the information he has received from staff he believed a decision to cooperate with the recission request should be made at this meeting. He shared the concerns and appreciated the statements made by presidents and others. He asked the letter to Mr. Yeakel offering a return from the System of \$6.8 million in FY 92 be expressly conditioned on the fact that if the shortfall

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does not materialize the System is not obligated to return the full \$6.4 million. If a reduction in the shortfall is anticipated, he would like a guarantee that a reduction would also be made in the amount the System has to return. That should be made very clear. Regent Topel stated he tended to agree with President Norman's statements that if methodology is set out as presently proposed there might be an inference that he did not wish drawn that implies a 24.24% contribution regardless of what occurs. While not doubting the Commissioner's ability to explain to the Governor's Budget Office what methodology was used to arrive at the percentage, Regent Topel stated he believed it more important to obtain an indication the Governor is satisfied with the dollar amount the percentage generates. Regent Topel requested the portion of the letter dealing with the methodology be deleted so there could be no possible misunderstanding of the dollar amount tendered.

With respect to the portion of the letter dealing with the second year of the biennium, Regent Topel stated if it is really necessary to mention that, the letter should simply state if the shortfall is as great as anticipated, the System would make the contribution specified. He preferred no reference in the letter to what would occur if the shortfall is greater.

Regent Kaze stated his concurrence with Regent Topel's remarks, adding he is satisfied a shortfall exists; he is not satisfied that \$6.84 million is the System's fair share in the second half of the biennium. Based on all the information available now, it is the only number he felt he could be "comfortably uncomfortable" with. Regent Kaze recognized the System's obligation need to be good citizen and offer up \$6.84 million the first year of the biennium. He was

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not sure his judgment of the System's fair share next spring would be a like amount. He concurred with limiting the substance of the letter to the first year of the biennium's contribution.

Hearing no further comments, Chairman Mathers requested the Commissioner summarize the discussion thus far. He stated he had heard no objection to the System tendering the sum of \$6.8 million as its fair share of the recission call back. He had heard suggestions that if revenue projections reveal the shortfall will be less in FY 92, then the System's contribution would be less.

Commissioner Hutchinson stated his understanding is there are five changes suggested to be made to the letter to Mr. Yeakel. While he sensed consensus, he believed a vote was necessary as to whether the Board wished to move ahead with the first year offer of \$6.84 million.

The five changes, and some matters may require further legal research, are: (1) Additional language should be inserted that protects the System in the case of a legal challenge on the school foundation transfer; (2) the Board does not appear to wish to offer anything in the letter with respect to the second year of the biennium until those revenue projections are available. The presentation to Mr. Yeakel should be limited to FY 92 only; (3) there was some discussion that no indication of tuition changes be made for the second year of the biennium. Commissioner Hutchinson stated as he reads the letter it states only that will be seriously considered. If it is the Board's better judgment that be deleted it can be done. He noted he was not certain the Board was absolutely bound to a tuition surcharge. Staff felt that possibility should get out on the land if it was a probability; that is probably the only realistic method of a reasonable

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participation in the first year. (4) A fourth suggestion was that presentation even of the \$6.84 million in the first year of the biennium would be contingent upon verifiable shortfall, and if the shortfall is less than what is projected now the System's contribution will be proportionately reduced. (5) The suggestion was made to delete the methodology from the letter; the Commissioner is however authorized to explain that methodology to Mr. Yeakel.

Regent Topel expressed dissatisfaction with the first sentence of the next to the last paragraph of the letter regarding imposition of a tuition surcharge in January 1992. While that may be necessary, he was not comfortable sending the letter stating so emphatically that will occur at this point in time. Mr. Noble stated no objection to changing "plan" to "may", but believed the debate and the consequences of such action has to begin. The Board always reserves the right to revoke decisions, but the debate must begin. Regent Topel agreed with that concept. He believed the number one item on the agenda of the October/November meeting should be how to fund whatever amount of money will be returned under the rescission. One of the options of course will be increased tuition. He realized it is not impossible to impose retroactive tuition increase in January; he also hoped to reach a decision on the entire matter as soon as possible. However, Regent Topel stated he was not prepared to vote today on that particular statement.

Chairman Mathers asked if the Commissioner or staff had comments on deleting mention of the tuition surcharge.

Commissioner Hutchinson stated he believed at this time the Budget Office would be satisfied with a bottom line figure. He believed they do wish to know how the contribution will be made. Regent Topel's objection, and Regent Johnson's

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suggestion that it be deleted, are reasonable; Mr. Noble's point that students must be notified and the debate begun is also very well taken. The students must be notified as soon as possible if a tuition surcharge is to be imposed.

Regent Kaze stated he believed there were two issues for the Board to decide: (1) what is the first year contribution this Board chooses to make to the shortfall; and (2) does this Board choose to make any commitment to the second year of the biennium; if so, is there a number?

MOTION: Regent Kaze then moved the commitment to the Governor's rescission request of the Montana University System will be \$6.84 million in FY 92, conditioned by insertion of appropriate language to protect the System in the event of a legal challenge, and further conditioned on verification of the amount of the state's budget shortfall.

Mr. Noble discussed consequences of not mentioning the second year of the biennium contribution. As the letter was drafted, no firm commitment for FY 93 was intended. However, debate has to begin on the second year. It is too late in the spring of 1992 to begin discussion of moving tuitions to the peer levels. The final decision does not have to be made until June, but there are significant consequences of such an action that preclude postponement of the analysis and debate of such a proposal until June 1992.

Chairman Mathers stated that will be discussed following action on the motion on the floor. The question was called on Regent Kaze's motion. The motion carried unanimously.

MOTION: Chairman Mathers then asked the Board if it wished to address the rescission request for FY 93 now, or at the October/November meeting. Regent Topel made the following motion: The Board of Regents will commit to returning \$6.84 million in the second year of the biennium (FY 93) conditioned on the shortfall being \$73 million for the biennium.

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A roll call vote was taken on Regent Topel's motion. Regents Topel and Johnson voted yes. Regents Schwanke, Boylan, Kaze, and Rebish voted no. The motion failed.

Regent Kaze noted his hesitance and no vote on the motion for FY 93 related to establishment of the \$6.84 million in the second year of the biennium. However, he felt Mr. Noble's earlier comments on the need to begin planning for that second year contribution were entirely accurate.

Regent Johnson again called for amendment of the draft letter to Mr. Yeakel deleting a firm commitment of dollars for FY 93 related to the rescission request. He reiterated his wish that the letter to Mr. Yeakel be revised to delete any and all recommendations to future actions of the Board of Regents regarding tuitions. He was assured that deletion would occur.

Chairman Mathers noted staff should also receive instructions on how to respond to the Governor's Budget Office regarding rescission of an amount appropriated to the Department of Administration for benefit of the University System. He asked how the Board wished staff to respond.

Regent Topel stated to the extent the System loses that money, that is a dollar for dollar reduction of the \$6.84 million the System will return to the general fund in response to the rescission request. He so moved. The motion carried.

Commissioner of Higher Education's Educational Talent Search Senior Achievement and Senior Recognition Awards

Commissioner Hutchinson stated as many present know, in Montana the Educational Talent Search Program is housed in the Office of the Commissioner of Higher Education. Through several different programs, ETS is designed to identify outstanding students and set them on a pathway towards higher education. The Director of Montana's Talent Search Program, who has been recognized nationally for her work, is Rene Dubay Church.

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Discussions between Ms. Church and Dr. Hutchinson earlier this year led to the initiation of Educational Talent Search Awards for outstanding students identified as going into higher education. The award is based upon the selection from sixteen target schools throughout Montana, located in five different regions. The students selected each will receive a fifty dollar cash award, and a plaque acknowledging their accomplishment. The students are selected in part on attaining post-secondary education, and on the degree and the quality of their involvement with ETS, for their academic ability and potential to succeed in higher education, and their overall maturity level in school and community involvement.

With those remarks, Commissioner Hutchinson introduced the three recipients of the award, members of their families who were present with them, and recognized their accomplishments which led to their selection. Those were: J. J. Rock Above, Plenty Coup High School, Prior; Victor Brockie, Great Falls High School, Great Falls; and Kenny Bigback, Coalstrip High School, Northern Cheyenne target area.

Those award winners not able to be present today because they were attending classes were Melanie Augare, Browning High School, currently attending Western Montana College of the University of Montana, and Doug McCollum, St. Ignatius High School, currently attending Montana Tech.

ACTION ON CONSENT AGENDA

At this point, Chairman Mathers stated action would be taken on Regent Kaze's earlier motion to approve the Consent Agenda as presented, with addenda. The motion carried unanimously.

CAMPUS REPORTS

Chairman Mathers stated the order of the agenda would be revised to receive campus reports at this time. He asked if any president had a report.

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President Dennison, UM, reported that Dr. Paul Lauren, formerly Director of the Mansfield Center and now a Regents' Professor at the U of M, has been named as the CASE Professor of the Year for Montana. That will be appropriately celebrated.

NEW BUSINESS

Submission Agenda: Appeals

Chief Counsel Schramm briefly reviewed Regents' policy recently adopted on hearing of appeals. It is now a bifurcated process. The appellants are not present at this meeting because the only matter to be decided by the Regents now is whether they wish to entertain the appeal(s). Relevant material on each of the appeals was forwarded to the Regents with the agenda material. Dr. Schramm noted there are four residency appeals before the Board for determination of hearing. The campus and the Commissioner have denied the appeals.

Dr. Schramm reviewed appropriate portions of Regents' policy which provides for this manner of determination and summarized the appeals, noting the primary reason for denial in each case as follows:

Mandy L. Alvino: Basically Ms. Alvino is still a dependent of her father; he takes her as a tax deduction, intends to do so next year, and he resides out-of-state. The provision of Regents' policy that states a resident of an unemancipated student is presumed to be the resident of the parent.

Regent Kaze moved the Board not entertain the appeal of Mandy L. Alvino. The motion carried.

Jeffrey A. Coop: The first act taken by Mr. Coop to establish residency was on October 22, 1990. His argument is he can be in the state 90 days, under statute, before he has to

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obtain a Montana driver's license. That is correct. However, Regents' policy provides the clock does not have to begin running to establish in-state residency for fee purposes until that license is obtained.

Regent Kaze moved the Board not entertain the appeal of Jeffrey A. Coop. The motion carried.

In response to a question of Regent Johnson, Dr. Schramm explained that if the October 22, 1990 date is used as "the starting of the clock," he might be eligible for in-state status winter quarter. The question the campus will have to resolve is the fact that he waited until August, 1990 to register his car. This factor will be weighed in the campus's determination.

Patrick K. Sayers: Dr. Schramm explained the next two appeals are not similar in circumstance except they both are students who came to Montana under the Western Undergraduate Exchange (WUE) Program. It has been the consistent practice of the Commissioner that WUE students cannot change their residency status as long as they continue to enjoy the benefits of the lower fees offered to WUE students. The benefits accruing to WUE students are contingent on residency in another state.

Dr. Schramm distributed a copy of a letter to Mr. Sayers from the Idaho Certifying Officer dated March 31, 1989 (on file) which states "You will also need to send the institution (MSU) a copy of this letter so they will know that you have been certified as an Idaho resident." To change that status, a student would need to drop out of the WUE program, serve the 12 month waiting period and fulfill Montana's residency requirements. Mr. Sayers situation is somewhat complicated because he is a veteran. Once he becomes a resident, he will be eligible for a complete fee waiver. His

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options are to continue to receive the reduced WUE tuition, which is half way between resident and non-resident, or drop out of WUE, pay non-resident for one year, then be eligible for a veteran's fee waiver and pay no tuition.

Regent Kaze moved the Board not entertain the appeal of Mr. Sayers. The motion carried, with Regent Rebish voting no.

Jennifer Schmidt: Dr. Schramm noted Ms. Schmidt is also a WUE student, but while she was in that status her family moved to Montana. Under those circumstances, the System maintains that if a student is still unemancipated and the parents move to this state for other than educational purposes, the student does not have to serve the 12 month waiting period. Ms. Schmidt can drop out of the WUE program and become a resident of Montana immediately. The problem is that the status of resident or non-resident is set at the beginning of a semester. A change of status has to be applied for within the seven day deadline. Ms. Schmidt argues in the confusion of moving to the state the deadline was overlooked, and she asks that it be waived.

Regent Topel moved the Board not entertain the appeal of Ms. Schmidt. The motion carried.

Missoula YWCA Perkins Grant Appeal: Dr. Schramm referenced his memorandum to the Board sent with the agenda materials dated September 12, 1991 (on file) which contains the facts in the case. Those were briefly reviewed.

Hearing no questions or discussion, the Chairman called for a motion.

Regent Topel moved the Board not entertain the Missoula YWCA Perkins Grant Appeal. The motion carried.

STUDENT REPORTS

Montana Associated Students President Kirk Lacy

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introduced the president and vice president of the student government organization at Dawson Community College.

Mr. Lacy reported on the statewide student government conference held recently. Twelve of the fourteen campuses were represented, with approximately 25 students attending the weekend conference. The focus was the critical issues facing students and the System. A tentative proposal was developed which the organization hopes to present to the Board in October for a new structure for the Montana Associated Students which will officially incorporate the student governments of the vocational technical centers and the community colleges.

COMMISSIONER'S REPORT

Dr. Hutchinson officially recognized Dr. Sonia Cowen, Associate Deputy Commissioner for Academic Programs, and welcomed her to the Commissioner's staff.

Dr. Hutchinson also reported that Mary Ann Wellbank, the System's analyst from the Governor's Office of Budget and Program Planning, has left that position to go to the Department of Institutions. Ms. Wellbank has been a good friend, and will be missed.

He noted also that Pam Joehler, of the Fiscal Analyst's office, has also taken another position. Ms. Taryn Purdy has been assigned to be the System's analyst.

Dr. Hutchinson thanked Dr. Capdeville and his wife Susan for the hospitality extended. He expressed once again his own thanks, that of the Board of Regents, and staff to Dr. Capdeville and the entire staff of the Helena Vocational Technical Center for hosting the Regents meeting.

The Regents' instructional retreat will be held on November 14-15, 1991, in Red Lodge. The retreat will have two components: One will be a presentation on the secondary

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student loan market arranged by the Montana Higher Education Student Assistance Corporation. The second will be an instructional workshop for the Board of Regents led by educational consultant Carl Trendler. Dr. Hutchinson distributed copies of a book titled "The Effective Board of Trustees" which he urged the Board to read prior to that retreat.

Dr. Hutchinson reported the first meeting of the Regents/Legislative Committee was held on September 18, 1991. Regents Kaze and Topel are members of that Committee, as are Representatives Cohen and Swysgood, and Senators Crippen and Jacobsen. Dr. Hutchinson, and Marilyn Miller from the Governor's office, are also members. Representative Swysgood was elected Chairman; Regent Kaze serves as Vice Chair. The first meeting consisted of clarifying the rules under which the Committee will operate and coming to closure on a purpose statement that mirrors the statute that put the Committee into existence. Some time was spent on the System's Commitment to Quality effort. Dr. Hutchinson noted he provided some background on outcomes assessment, and there was some discussion on the recession.

Dr. Jane Karas, Gender Equity Coordinator in the Office of the Commissioner of Higher Education was introduced by Ms. Clack, and welcomed to the staff by Commissioner Hutchinson.

President Daehling asked for clarification on what should be brought to the Board at its next meeting regarding action on the recession request. Dr. Hutchinson stated that within the next week he would issue a set of options which should "cover the universe of possibilities", asking also that the presidents give thought to what would be done on each campus depending on which option is selected.

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Hearing no further matters to come before the Board, the meeting was adjourned at 2:00 p.m.

The next regularly scheduled meeting of the Board of Regents will be held on October 31 - November 1, 1991, in Bozeman, Montana.