

May 1, 2023

VIA E-MAIL

Board of Trustees
Idaho State Board of Education
650 West State Street, 3rd Floor
Boise, ID 83702

Matt Freeman
Executive Director
Idaho State Board of Education
650 West State Street, 3rd Floor
Boise, ID 83702

TJ Bliss
Chief Academic Officer
Idaho State Board of Education
650 West State Street, 3rd Floor
Boise, ID 83702

Re: *North Idaho College Accreditation*

Dear Members of the Idaho State Board of Education, Mr. Freeman and Mr. Bliss,

My name is Tarie Zimmerman and I am a member of the North Idaho College (“NIC”) Board of Trustees (the “NIC Board”). I was elected in November of 2022. During my brief tenure on the NIC Board, it has been controlled by a three-member majority that appear to be determined to destroy NIC. I have worked, to the best of my ability, to combat these efforts, but to no avail. We are at a critical point and without intervention from Idaho State Board of Education (the “Board” or “You”), I believe accreditation will be lost forever.

Thus, this letter is a request to the Board take action to intervene in the governance and affairs of NIC to prevent NIC’s impending loss of accreditation. In this letter I outline two issues, specifically (1) the justifications for Board intervention at NIC and (2) the legal authority for the Board to do so.

I. North Idaho College Accreditation and Governance Issues

As you are likely aware, NIC has been under scrutiny by its accrediting body, the Northwest Commission on Colleges and Universities (“NWCCU”) since March of 2021 due to several complaints filed with NWCCU stemming from actions and conduct by NIC’s Board of Trustees (the “NIC Board”). Recent actions taken by NWCCU against NIC regarding NIC’s accreditation are as follows:¹

1. April 1, 2022 – NWCCU issued a *Sanction of Warning* and *Status of Monitoring* finding NIC out of compliance with NWCCU Standards for Accreditation and requiring NIC to rebuild its administrative and academic leadership teams and submit Ad Hoc reports to NWCCU for continued monitoring of compliance with the Standards of Accreditation.
2. December 17, 2022 – NWCCU issued letter to NIC for “recent and subsequent actions of NIC’s Board of Trustees.” This letter outlined several distinct areas of serious noncompliance with NWCCU Eligibility Requirements and Standards for Accreditation, primarily relating to NIC Board conduct. NWCCU required NIC to respond to the letter to describe how NIC is not out of compliance with these requirements and standards. The risk of an inadequate response or subsequent actions by NIC or the NIC Board to this letter was NWCCU issuing a *Sanction of Show Cause*. NIC provided a response letter to NWCCU on January 4, 2023.
3. February 9, 2023 – NWCCU issued a *Sanction of Show Cause* against NIC due to further dysfunction with the NIC Board and NIC administration. A *Sanction of Show Cause* required that NIC present evidence as to why its accreditation should not be withdrawn, specifically describing improvements addressing each of the identified concerns of serious noncompliance with NWCCU Standards and Requirements and other major institutional risks. NIC submitted its show cause report to NWCCU on March 30, 2023. NWCCU conducted a site visit on April 26 and 27, 2023 and will consider the fate of NIC’s accreditation during its June 20 – 23, 2023 meeting.

The above actions by NWCCU are almost all tied to NIC Board actions taken prior to issuance of these sanctions and actions taken subsequent to these sanctions. In no particular order, these NIC Board missteps include, but are not limited to:

- The NIC Board firing permanent presidents and hiring interim presidents in their place without any input from college stakeholders, leading to significant liability risks. Specifically since 2020, the NIC Board:

¹ For a more detailed and comprehensive summary, with supporting documentation, you may visit NIC’s website describing the recent issues with accreditation and communications with NWCCU here: <https://www.nic.edu/websites/default.aspx?dpt=159&pageId=3633>.

- Fired President MacLennan without cause (a subsequent lawsuit by President MacLennan and settlement thereafter caused ICRMP to non-renew its insurance coverage of NIC, leading to a major increase in its premium);
 - Installed NIC's wrestling coach as interim president;
 - Hired Dr. Swayne as permanent president through a national search;
 - Placed President Swayne on administrative leave (not for any misconduct) by creating a manufactured crisis as to President Swayne's hiring process and contract (leading to a lawsuit by President Swayne for reinstatement);
 - Hired an interim president, Dr. South, essentially creating a situation where NIC has two presidents and were paying both;
 - Reinstated President Swayne because of court order;
 - Placed Interim President South on administrative leave with pay instead of terminating his contract; and, most recently
 - Nullified President Swayne's contract, likely in violation of the aforementioned court order.
- The NIC Board consistently inserting itself in NIC administrative matters contrary to NIC policies and procedures, including:
 - Not following or suspending college policies;
 - Circumventing (past and current) presidential authority in college operations by violating college policies in communication with employees, thus costing NIC in time-wasted by failing to go through proper channels and demoralizing employees.
 - The NIC Board hired legal counsel without (1) going through any process as to the evaluation of qualifications, (2) communicating with the entire NIC Board or president, or (3) assessing legal counsel's experience and legal expertise relevant to NIC or community college operations.
 - The NIC Board has violated Idaho Open Meeting Laws on numerous occasions, many of which have been recognized by the NIC Board or reported by various media outlets (although there may be more I am unaware of).

The foregoing list of recent NIC Board conduct is simply an example of a broader issue of incompetent governance that has spurred the Sanction of Show Cause by NWCCU. Communications from NWCCU to NIC during the past year have identified many of these actions, as well as other major institutional and financial risks that the mismanagement of NIC has caused (including two active lawsuits against NIC).

I am gravely concerned that the NIC Board, acting through its current three-member majority, has failed to act in a manner that is commensurate with the direness of the situation at NIC. I fear that without your intervention, the NIC Board will continue down its path of intentional destruction of NIC and ultimately cause NWCCU to withdraw NIC's accreditation. The impact of losing accreditation will cause major ripple effects and be destructive to the North Idaho community.

I am specifically asking the Board to take action to intervene at NIC by exercising its oversight authority to temporarily manage the affairs of NIC during the pendency of NWCCU's accreditation review under the *Show Cause* sanction. By taking this step, you can take the necessary remedial actions to hopefully bring NIC into compliance with NWCCU's accreditation Standards and Requirements and bring some much-needed stability to NIC operations. I understand such action is unprecedented in Idaho, however I submit that you have sufficient legal authority to take such actions as you see fit, including my request.

II. Legal Authority for Board Intervention

The Board has broad legal authority and oversight over Idaho institutions of higher learning, including community colleges such as NIC. The Board is tasked with the "general supervision of the state educational institutions" under the Idaho State Constitution and in its governing statute its purpose is stated as "for the general supervision, governance and control of all state educational institutions . . . including public community colleges."² The general powers and duties of the Board include:

1. Having the general supervision, through its executive departments and offices, of *all entities of public education*;³
2. Determining "whether to accept academic credit at public postsecondary educational institutions in Idaho" with the caveat that "academic credit shall not be transferred into any Idaho public postsecondary institution from a postsecondary educational

² Idaho Const. Art. IX § 9; Idaho Code § 33-101.

³ Idaho Code § 33-107(3).

institution or other entity that is not accredited by an organization recognized by the [Board]”;⁴

3. To submit budgets for state educational institutions to the budget director of the state and to direct and control all funds appropriated to said institutions;⁵ and
4. To require community college boards of trustees to submit an annual audit and “such other reports as the [Board] may from time to time require.”⁶

The Board has a vested interest in the accreditation of NIC as a community college under the supervision and authority of the Board, and the foregoing Board powers reflect the wide-ranging manner in which the Board may exercise such “supervision.” The Idaho Supreme Court has recently stated: “[T]he Board is ‘the *single* constitutionally mandated board of authority to act as a whole body *on all educational issues.*’ . . . [it] sets educational policy for the state and holds the authority of “general supervision” over the state educational institutions and public school systems. . . .”⁷

The Board can take whatever actions it deems necessary to fulfill its constitutional duty to act as the primary authority over public education in the state of Idaho.

As you are aware, this is a complex issue because NIC, as a public community college, is governed by its elected Board of Trustees⁸ rather than the Board acting directly as the governing authority in the case of state universities and colleges.⁹ Board policies typically vest power in community colleges (including NIC) to operate in accordance with the policies established by their respective boards of trustees, except for state appropriations requests and other matters governed by the Board.¹⁰ Nonetheless, the Board is specifically created not only for the “governance and control” of state educational institutions for which it acts as the governing board, but for education at all levels. Section 33-101, Idaho Code specifically states:

⁴ Idaho Code § 33-107(6)(b).

⁵ Idaho Code § 33-111.

⁶ Idaho Code § 33-2114.

⁷ *Ybarra v. Legislature by Bedke*, 166 Idaho 902, 912, 466 P.3d 421, 431 (2020) (citing *Evans v. Andrus*, 124 Idaho at 10, 855 P.2d at 471) (emphasis added by Court).

⁸ Idaho Code § 33-2106.

⁹ Idaho Code §§ 33-2802, 3003, 3012 & 4002.

¹⁰ Idaho State Board of Education, Governing Policies and Procedures § I.A.1.

For the general supervision, governance and control of all state educational institutions, to wit: University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, . . . and any other state educational institution which may hereafter be founded, and *for the general supervision, governance and control* of the public school systems, *including public community colleges*, a state board of education is created.¹¹

While the Board typically exercises the fullest extent of its supervisory and governing authority over “state educational institutions,” it does control appropriations for community colleges,¹² is responsible for the approval of a petition to form a community college district,¹³ has the power to “define the limits of all instruction” in the educational institutions supported by the State (including community colleges),¹⁴ and exercises substantial oversight over postsecondary programming and general education curriculum.¹⁵ Specific to the situation with NIC at hand, the Board also uses its authority to specifically require all state universities and colleges, including community colleges, to be evaluated by NWCCU as the accrediting body for all eight postsecondary institutions governed by the Board.¹⁶

Thus, while current Board policies and rules are more limited in prescribing standards and procedures for community colleges, as opposed to the public state education institutions, the foregoing examples demonstrate the Board’s interest in NIC and its accreditation and potential loss of that accreditation. The unprecedented nature of the NIC Board’s actions leading to an impending loss of accreditation at NIC presents an incredibly rare situation that the Board is uniquely positioned to address. There is no other legislative body, executive, or judicial authority within the state that possesses the level of oversight and authority that the Board does to prevent further damage to NIC and its students. Nor is there another institution with same *duty* to promote the welfare of this State’s citizenry through education – and the welfare of citizens of North Idaho will be diminished greatly with a loss of accreditation. The current majority on the NIC Board, if left unchecked, will undoubtedly cause the loss of accreditation. The Board is broadly empowered and must take such actions as it deems necessary to adequately manage NIC and prevent accreditation loss and further damage to NIC.

¹¹ Idaho Code § 33-101 (emphasis added). *See also, Evans v. Andrus*, 124 Idaho 6, 10, 855 P.2d 467, 471 (1993). (“Idaho Const. art. 9, § 2 clearly vests in the Board of Education governance over all state educational institutions and the public school system of Idaho.”)

¹² Idaho Code § 33-111.

¹³ Idaho Code § 33-2101, 2103 and 2014.

¹⁴ Idaho Code § 33-113.

¹⁵ *Id.* *See also*, Idaho State Board of Education, Governing Policies and Procedures § III.G and III.N.

¹⁶ Idaho State Board of Education, Governing Policies and Procedures §§ III.M.

Idaho State Board of Education
May 1, 2023
Page 7

As a Trustee for NIC, I implore you to do what is right on behalf of the students and staff of NIC and the North Idaho community and exercise your power to save NIC. Please reach out if I can be of assistance.

Sincerely,

Tarie A. Zimmerman

Tarie A. Zimmerman

