

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

DATE: January 30, 1984
LOCATION: Conference Room
Montana University System
33 South Last Chance Gulch
Helena, Montana
REGENTS PRESENT: Morrison, Pace, Hurwitz, Keck, Knight, McCarthy, Redlin
Commissioner of Higher Education Irving E. Dayton
REGENTS ABSENT: None
PRESIDENTS ATTENDING: Bucklew, Carpenter, DeMoney, Erickson, Thomas, Acting President
Knapp
PRESIDENTS ABSENT: Tietz

Chairman Morrison called the regular meeting of the Board of Regents to order at 10:40 a.m. on Monday, January 30, 1984. He stated that the record should reflect that the Board met earlier in the morning with the Board of Public Education as the State Board of Education. Also, the Regents met in executive session from 9:50 a.m. to 10:35 a.m. to discuss collective bargaining and litigation.

Roll call was taken and it was determined that a quorum was present. Chairman Morrison called for additions or corrections to the minutes of the last meeting. None were stated, and the minutes of the December 15-16, 1983 meeting were ordered approved.

Chairman Morrison stated that without objection the full Board would hear all items on the committee agenda. Separate committee meetings will not be held.

Steven Brown, of Garrity, Keegan and Brown, Helena counsel for the Board of Regents in the matter of the Missoulian vs. Board of

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Regents, presented a report on the recent Supreme Court decision in that case. On January 23, 1984 the Supreme Court issued its decision unanimously upholding the 1982 decision of Judge McCarvel in District Court, finding for the Board of Regents. At issue in the lawsuit was the balance of competing demands of public disclosure and personal privacy in presidential evaluations conducted by the Board of Regents. Mr. Brown noted that while the Supreme Court's decision authorized the Regents to continue to conduct professional evaluations in private with the assurance of confidentiality, caution should be exercised in future evaluations. Mr. Brown stated that the Regents won the lawsuit because the performance evaluations were properly conducted, and were not used as a subterfuge to go into executive session. Mr. Brown also stated that the Board should read the Supreme Court decision and the District Court decision together, because the Supreme Court upheld the lower court's decision including certain charges to the Board involving release of materials and public discussion of certain portions of the evaluations.

Chairman Morrison expressed the Board's appreciation to Mr. Brown both for his legal expertise and the outcome of the lawsuit and appeal.

Budget Committee

Jack Noble, Deputy Commissioner for Management and Fiscal Affairs, reviewed Item 42-801-R0184, Budget Amendment, Northern Montana College. On motion of Regent Hurwitz, the item was approved.

Capital Construction Committee

William Lannan, Director of Special Projects, reviewed the explanations on each of the following items, and recommended they be approved:

Item 42-101-R0184, Authorization to Repair and Apply Seal Coat to Family Housing Parking Lots and Drives; University of Montana

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Item 42-102-R0184, Authorization to Plan and Construct a new Food Serving Bar at the Lodge Treasure State Dining Room, University of Montana

Item 42-103-R0184, Residence Halls Emergency Power; University of Montana

On motion of Regent Hurwitz, the items were approved.

Mr. Lannan next reviewed Item 42-105-R0184, Kitchen Renovation at Lubrecht Forest Station, University of Montana, an addition to the agenda. He explained that the original authorization for this project was under \$25,000, and under Regents' policy did not require Board authorization. When the bids were opened on January 26, 1984 it was realized that the project authorization needed to be increased to \$33,300. Projects of that amount do require Regent authorization. Because of normal contract bidding processes and the time frame of the next meeting of the Board, this item was submitted on an emergency basis and not held for consideration at the March 1984 meeting of the Board. On motion of Regent Hurwitz, the item was approved.

Item 42-701-R0184, Purchase of Real Property; Eastern Montana College was reviewed by President Carpenter. The property is within the area for purchase as outlined in the Long Range Campus Plan submitted to the Board in December 1972. The required appraisals and earnest money receipt and agreement to sell and purchase were presented to the Board for review. On motion of Regent Hurwitz, the item was approved.

Regent Redlin requested that a report be prepared by Eastern Montana College showing what use is being made of properties purchased under the 1972 Long Range Campus Plan, and what properties Eastern Montana College anticipates purchasing in the future under that authorization. President Carpenter will prepare such a presentation at the March meeting of the Board.

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Item 42-701-R1283, Appointment of an Architect to Plan Improvements of and additions to the Student Union Building at Eastern Montana College (REVISED) was reviewed by the Board. It was explained that the revision was made at the request of the Department of Administration, Architect and Engineering Division, who asked that the authorization be expanded to include planning of a new student union at Eastern Montana College, and not be limited to improvements and additions to the present facility as originally submitted. On motion of Regent Hurwitz, the revised item was approved.

By-Laws and Policy Committee

Submission Agenda

Item 21-003-R0778, Appeals; Montana University System (REVISED), and Item 21-002-R0778, Hearings, Montana University System (TO BE REPEALED) were reviewed by Chief Counsel LeRoy Schramm. He explained that the proposed amendments broaden the Commissioner's discretion in handling appeals. They allow him more latitude in looking at materials and in formulating remedies.

Item 21-002-R0778 is proposed for repeal because it is too detailed, "due process" complaints can be handled under the general appeals policy, and its presence confuses people as to which appeal procedure is the appropriate one to use.

Both items will be on the Board's action agenda at the March 1984 meeting.

Action Agenda

Item 41-004-R0681, Holiday Exchanges, Montana University System (REVISED) was reviewed by Commissioner Dayton. He stated that after discussion in the Council of Presidents an "Alternate Revision" was prepared which would allow the Christmas and New Year's exchanges to be

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permissive rather than mandatory. If the Alternate Revision is adopted by the Regents, campuses wishing to implement the policy would request prior authorization from the Regents. The other choices before the Board were to adopt the mandatory policy submitted at the December meeting, or reject the revisions and not allow any of the holiday exchanges except the Veterans' Day/Friday following Thanksgiving exchange, which is already in place.

The presidents were asked their views on the proposed revisions. Presidents Carpenter and Erickson stated they did not support the additional holiday exchanges. The problems that would be created with collective bargaining agreements, academic calendars and classroom and laboratory disruptions in their view outweighed the possible advantages of the policy revision. Four campuses indicated they would probably implement the policy if the permissive alternate revision was adopted. President Bucklew strongly supported the revision.

Terry Minow, representing the Montana Federation of Teachers and the Northern Montana Federation of Teachers asked that the record reflect those organizations' opposition to the idea of holiday exchanges. Mike Stoeckig, President, ASMSU, spoke in opposition to any additional holiday exchanges other than the Veterans Day exchange.

The question was raised whether it would create governance problems to have differing holiday schedules on the various campuses. The general opinion was that it would not, in that the units do not have standard calendars now and there is no intent in the System to move in that direction. In this discussion it was agreed to amend the alternate revision under "Board Policy", Section 2., line 2, by deleting "for all employees" following "implemented". This amendment would allow campuses to implement the policy but exclude employees covered by collective bargaining contracts with specific lists of holidays.

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On motion of Regent McCarthy, the alternate revision of Item 41-004-R0681 was approved as amended.

Item 42-003-R1283, Television Policy, Montana University System, was discussed. This policy was developed by the Council of Presidents and the Commissioner in response to the Regents' request to develop a television policy for the system. While this item was prepared with the understanding that the Regents wished to reaffirm statements made in 1980 concerning Public Broadcasting facilities and the University System, some Regents questioned if changing conditions might not warrant modification of the previous "hands-off" position of some years ago. It was the consensus of the Regents that the policy be sent back to the Council of Presidents to be rewritten. The revised proposal will be placed on the agenda for discussion at the March meeting of the Board.

Discussion was held on an Abstract of Public Telecommunications Grant Application (on file) submitted by Northern Montana College. The application proposes installation of equipment on the campus of Northern Montana College for reception of Public Broadcasting for distribution to the community of Havre through Havre Cable TV. President Erickson explained that the application is conditional on reaching the necessary agreements with Havre Cable TV. If successful, it would provide an important service to the Havre area which is not served at this time by any public broadcasting service. The Regents expressed no objection to Northern Montana College's pursuing the grant application as presented.

Item 18-005-R1077, Fee Waivers; Montana University System (REVISED) was discussed. The revisions were made to deal with changes in federal regulations governing Title IV financial aid, and have been reviewed by the Council of Presidents and the financial aid officers. Chairman Morrison asked if any students present wished to comment, and received no response. On motion of Regent McCarthy, the revised item was approved.

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Commissioner Dayton reviewed the revision of Item 41-003-R0983, Post-retirement Employment: Montana University System (REVISED) before the Board for action. He stated this revision was based on discussions at the December meeting of the Board and in a subsequent meeting of the Council of Presidents. It is believed this revision is operational, clean and unambiguous. It does not limit the length of the contract, but clearly identifies where a person under this type of contract would fall under retrenchment. The question is, does it do what the Regents want it to do? Regent Keck called for comments.

Chief Counsel Schramm reported that the University of Montana requested an amendment to the policy on page two, under "Terms and Conditions", Section D, line 5, following "applied", to delete the words "to the continuation decision". Dr. Schramm endorsed the suggested amendment, stating this amendment would insure that special conditions and criteria relating to other than the continuation decision are also spelled out as part of the employment contract.

There being no further discussion, Regent Keck moved that Item 41-003-R0983 be amended as recommended by Dr. Schramm, and approved as amended. The motion carried.

The meeting recessed at 12:00 noon, and reconvened at 1:00 p.m. with the same members present.

Curriculum Committee

Action Agenda

Item 42-2001-R1283, Dawson Community College Request for Regent Authorization to Continue Educational Agreements with Fort Peck Community College at Poplar, Montana, was reviewed by Mr. Lannan. The requested authorization clarifies the relationship between the community colleges. Under long-term agreements, a combination of educational courses/programs

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and/or related services are provided to Fort Peck Community College by Dawson. Adoption by the Regents of Policy 220.1, Community College Education Center Policy, has raised questions as to how this long-term relationship should be defined.

President Donald Kettner, Dawson Community College, spoke in favor of continuing the agreements and of Dawson's commitment to continue such assistance until FPCC is able to obtain accredited status.

Marilyn Ridenhower, Acting President of Fort Peck Community College spoke in favor of continuation of the educational agreements, and read a resolution in support passed by the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (on file).

On motion of Regent Pace, Item 42-2001-R1283 was approved.

Commissioner Dayton introduced two other community college presidents present: Janine Pease-Windy Boy, President, Little Big Horn College, and President of the American Indian Higher Education Consortia consisting of nine states and twenty tribally controlled community colleges, and President Judson Flower of Miles Community College.

Item 41-202-R1083, Authorization to 1) Terminate the Degree of Bachelor of Science in Agriculture and Bachelor of Science in Agricultural Land Resources and 2) Grant the Degrees of Bachelor of Science in Agricultural Economics, Bachelor of Science in Agronomy, Bachelor of Science in Animal Science, Bachelor of Science in Horticulture, Bachelor of Science in Mechanized Agriculture, Bachelor of Science in Range Science, and Bachelor of Science in Soils at Montana State University was reviewed by Dr. Krause as set out in his memorandum to Commissioner Dayton dated January 10, 1984 (on file). Changes in these degree titles will result in little programmatic change, but will more accurately reflect the disciplines in which the students are being prepared. On motion of Regent Redlin, the item was approved.

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Chairman Morrison announced that it was the time stated on the agenda for the Sandy Mitchell grievance appeal to be heard, if it was the Board's pleasure to do so. He called for a motion. Regent Pace moved that the appeal be heard. The motion carried.

Attorney Mike Meloy was present representing the grievant, Sandy Mitchell. Counsel for the University of Montana, Mary Elizabeth Kurz, represented the University. The procedure for the hearing was explained. One hour was allotted for the hearing. Each attorney was allotted fifteen minutes for presentation of facts. Each attorney was allowed to reserve some time for rebuttal. The remaining half-hour was reserved for questions and discussion by the Board. Copies of the Commissioner's Decision, the Grievant's Memorandum, and the Respondent's Memorandum had been provided to the Board with the Agenda material.

Grievant was terminated on February 22, 1983 from her position as Accounting Supervisor 1 in the Controller's Office of the University of Montana. The termination letter cited examples of recent unsatisfactory work. Grievant protested that decision through the on-campus grievance procedure and to the Commissioner of Higher Education.

On December 21, 1983, The Commissioner's Decision denying the grievance and upholding the decision of the President of the University of Montana was issued. The final administrative remedy available to the grievant was an appeal to the Board of Regents. Ms. Mitchell is appealing to the Board of Regents requesting that the matter be remanded back to the campus for hearing before a new committee based on her claim of substantial defects in the process of the original hearing, and that the committee's finding that just cause existed for the termination was made without a factual foundation.

After presentations on the issues by both attorneys, the Board discussed the matter at length. Central to the discussion was grievant's contention that she was denied a fair hearing because she was not allowed to cross-examine her employer during the grievance committee hearing.

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It was also Mr. Meloy's belief that a mediation attempt prior to the committee hearing should not have been discussed by the committee because it could be construed as an admission of some sort of guilt on the part of the grievant. It was pointed out to the Board that in the campus grievance procedure, if the grievant does not request counsel, then the University is not represented by counsel. This is accepted practice. Ms. Kurz explained that the hearing was less formal than a courtroom setting. At issue before the Committee was the matter of unsatisfactory performance. The Chairman of the Committee was attempting to limit the questions to the issues before the Committee. In the Commissioner's decision, an offer was made to remand the matter of cross examination back to the original committee, or to allow cross examination before the Commissioner. Both offers were refused by the grievant. The University believed Ms. Mitchell had waived her right to cross examination by those refusals, and urged that the campus decision be upheld.

Commissioner Dayton spoke briefly on the subject of campus grievance hearings, noting that the experience has been that these committees are careful, thorough, and understand the work environment because the committee members work in the institution. Regarding his decision, he believed there was sufficient evidence on record to substantiate dismissal for cause on the record of performance, and that there was not a sufficient defect in procedures to say the campus decision should be overturned.

Commissioner Dayton explained that while there are tape recordings of the procedure, they have not been transcribed, but are available for review and have been used in that manner. The attempt has been to not escalate this into that type of hearing.

Regent McCarthy stated her belief that people who agree to follow campus procedure and decline representation by counsel must understand that they risk a less formal procedure. She asked if Ms. Mitchell could have had legal counsel if she wished, and was told that she could have. Mr. Meloy stated he understood the grievance committee had counsel. Ms.

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Kurz responded that she did not represent the Chairman or the committee prior to the hearing. She was not involved with the committee nor with presenting evidence. Mr. Cotton was advised on presentation of documents. Ms. Mitchell had the same right. She chose not to have counsel present.

Chairman Morrison asked if the procedures set out in the manual at the University of Montana for this type of hearing were followed and was told that they were. Regent Knight noted that there was interpretation by someone on cross examination rights afforded under these procedures. Commissioner Dayton stated that if the System is to have informal hearing procedures where both parties go forward not having counsel, it must be recognized that these may lack some procedural precision. If you retrospectively fault these types of hearings for lack of that procedural precision, then the informal grievance procedures should perhaps be discontinued.

Chairman Morrison stated that in conducting hearings of this type the System should go the extra step to assure that an untrained person participating in this type of procedure is made aware of all their rights. He added that in this type of setting people within the university structure may have a slight advantage, while for the grievant it is a "one time thing." Regent Pace asked how the committee could be considered more qualified than the grievant since they are there to hear the case and are the grievant's peers in this instance.

Regent Knight asked that Chief Counsel Schramm speak to the issues.

Dr. Schramm explained the makeup of the grievance committee. It consists of seven members drawn from students, classified personnel and members of faculty and administrators. It represents a broad cross section of the institution. While the committee asks some questions, mostly the procedure is that the grievant stands before the committee and tells what happened, and calls some witnesses. In this instance Mr. Cotton made the same sort of monologue. Dr. Schramm noted that since he was involved

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with the Commissioner in going over the material he was not unbiased in this instance. In listening to the tapes of the hearing it was clear that as far as just cause is concerned, there was a wealth of material. Mr. Meloy has shifted the emphasis and claims procedural defect. Dr. Schramm stated he had difficulty seeing those defects as that great; in fact, believed they are relatively minor.

Regent Knight asked Dr. Schramm if he was correct in understanding that Dr. Schramm's opinion having heard the record is that he would not envision anything materially different on substantive issues in the course of a new hearing. Dr. Schramm responded that it was his opinion there was enough on the record to arrive at the decision.

Chairman Morrison stated that the Board had three choices: (1) uphold the Commissioner's decision; (2) reverse the Commissioner's decision, or (3) remand the matter back to the campus for rehearing. He called for a motion.

Regent Redlin stated that on the basis of what she believed would be accomplished on reverting back through the same channels, she moved that the Commissioner's decision be upheld. The motion carried with Regents Keck, Pace, Redlin, Hurwitz and McCarthy voting yes. Regents Knight and Morrison voted no.

Residency Appeals

Dr. Larry Weinberg presented the residency appeal of Pamela Austin Newbern for the Board's consideration. It was the consensus of the Board that the appeal be heard. Ms. Newbern was present. Dr. Weinberg explained that Ms. Newbern was denied in-state residency classification because of her absence from the state during the period April to September, 1983. The absence of 6 months was considered to be in violation of the Regents' 12-month residency requirement.

Ms. Newbern agreed with Dr. Weinberg's statement of the facts. She spoke to the problems faced by students trying to obtain employment in

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Montana during the summer months to finance their education. She also reviewed the material presented to the Regents in her letter of December 15, 1983 (on file) which set out the steps she had taken to establish and maintain Montana residency.

Chairman Morrison expressed the Board's appreciation for Ms. Newbern's situation. He explained that the Board has had to reject many residency appeals where the students had been out of the state for much shorter periods than Ms. Newbern's. This is difficult for the Board to do because it does appreciate the students' difficulties. However, deviation from the policy would create unfair situations for the students, and for this reason the residency requirements have to be strictly adhered to. He encouraged Ms. Newbern to continue to pursue the various student loan programs available which are utilized by many students in Montana facing the situation of financing their educations.

Regent Pace moved that the Commissioner's decision denying in-state residency classification for fee purposes be upheld. The motion carried.

Dr. Weinberg next presented the residency appeal of Ronald Lund for the Board's consideration. It was the consensus of the Board that the appeal be heard. Mr. Lund was not present.

Dr. Weinberg reviewed the facts in the appeal, noting that Mr. Lund was denied in-state residency classification because of his failure to file Montana state income tax as a resident for tax year 1982. After discussion, Regent Hurwitz moved that the Commissioner's decision denying in-state residency classification for fee purposes be upheld. The motion carried.

Presidential Project

Commissioner Dayton briefly reviewed the communication received from President William Tietz, Montana State University, outlining a proposed presidential project to be pursued by President Tietz in the

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coming four months. (on file). Commissioner Dayton noted that President Tietz will submit interim and final reports, and added his belief that what President Tietz learns as a result of this project will be of considerable value to the System. On motion of Regent McCarthy, the presidential project was approved.

Agreement between Western Montana College and Western Montana College Foundation

Item 42-602-R0184, Approval of an agreement between Western Montana College and Western Montana College Foundation regarding the Birch Creek Outdoor Education Center was discussed. President Thomas reviewed the proposal as set out on the item (on file), concluding that the proposed agreement represents a more formal understanding of the relationship between the two entities in the utilization and the management of the Outdoor Education Center. This formalization is desirable because of anticipated scope of the facilities and their extended use. On motion of Regent Pace, the item was approved.

Commissioner's Report

At the Commissioner's request, President Donald Kettner, Dawson Community College, reported on a gift to the College of \$100,000 to expand vocational programs and increased facilities at Dawson Community College. President Kettner also reported on other funds raised by the community to support various activities at Dawson Community College. Commissioner Dayton noted that this is an outstanding example of the community support President Kettner has generated in the Dawson area.

President Bucklew reported that Katherine Richards was selected as the 22nd Rhodes Scholar from the University of Montana. This selection places the University of Montana within the top twenty such institutions in the United States. The number of Rhodes Scholars from the University of Montana exceeds that from such institutions

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as the Universities of Minnesota, Texas, Oregon, Johns Hopkins, Duke, Columbia, Pennsylvania, Berkeley and Cornell. President Bucklew expressed his congratulations to Ms. Richards and to the University on this accomplishment.

Commissioner Dayton stated he would like to call the Board's attention to recent accomplishments of staff of the Talent Search Program. Barbara Aubert, Talent Search coordinator since the inception of the program, was recently appointed to the Board of Regents of the Blackfeet Community College. Lucille Other Medicine, Talent Search coordinator since February of this year, was recently elected to the Crow Tribal Education Committee. That committee administers all Crow Scholarship funds given to students. Commissioner Dayton introduced Rene Dubay, Director of the Talent Search Program, and congratulated her on attracting and retaining that kind of staff.

Dr. Michael Malone, Montana State University, reported on a video satellite teleconference entitled "Strategies for Success: Beyond Computer Literacy in Higher Education" to be held at Montana State University on April 24, 1984. He reviewed the focus of the teleconference and encouraged any other units of the System who would be interested in participating to contact him.

Next Commissioner Dayton reported on two segments on ABC's "20/20" show which featured events in Montana. Montana State University's dinosaur project at Choteau was presented on January 5, and a program on rural education presented on January 26 was prepared with the assistance of faculty and staff at Western Montana College.

Commissioner Dayton reported that staff in the Commissioner's office are continuing meetings with members of the Faculty Association and making progress in defining and dealing with concerns of that organization. These meetings will continue, and will probably result in a policy item to be brought to the Board.

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Commissioner Dayton called the Board's attention to the "Shakespeare in the Parks" art exhibit on display in the Regents' conference room. The exhibit is provided through the courtesy of Montana State University. The program has completed eleven seasons and last year was seen by approximately 20,000 people in the state. Commissioner Dayton noted this is yet another good example of the cultural outreach programs in the University System.

Commissioner Dayton commented briefly on the state-wide "School Night for Excellence" scheduled on February 14, 1984. Over 100 school districts are participating in the meetings. Regents, Board of Public Education members, presidents, Commissioner Dayton and Commissioner's staff and others will also attend the meetings throughout the state. It appears the meetings are attracting wide interest and will provide first-hand feedback on educational issues.

The Council of Presidents, Office of Public Instruction, Board of Public Education and Faculty Association had no reports.

Dallas Curtiss, Chairman, Student Advisory Council, reported on the recent Quality in Education meeting in Bozeman, and thanked Regent Pace and Board of Public Education member Harriett Meloy for attending that meeting. He reported that the SAC is beginning its budget process, and will hold elections for officers soon.

Darrel Bowers, ASMT President, reported that on February 24-25, 1984 Montana Tech will hold the first annual management and leadership conference, with over 200 schools invited to participate.

David Bolinger, ASUM President, distributed copies of the newly compiled "ASUM & YOU, a Comprehensive Guide to Your Student Government." Mr. Bolinger explained that the handbook is designed as a guide to the role and scope of ASUM and the operations used to fulfill them.

At the conclusion of the SAC report, Chairman Morrison stated that the Board would like the Commissioner's office to prepare a report on student governments in the System. The report should include fees,

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budget, requirements as to number of credits required to run for office, and to hold office, and GPA requirements, and provide a general overview of student governments in the System.

Regent McCarthy reported on a meeting of the SLATE organization which she attended as the Regents' representative. The board reports to the Governor and has the on-going responsibility to develop ideas and information regarding technology education in Montana.

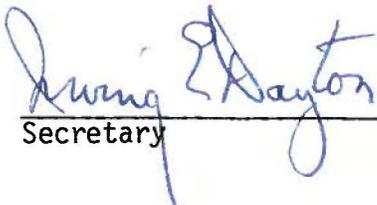
Regular Agenda

On motion of Regent Keck, the following items were approved:

- Item 42-100-R0184, Staff, University of Montana AS AMENDED
- Item 42-104-R0184, Resolution Concerning the Death of Cynthia Schuster, Professor of Philosophy, University of Montana
- Item 42-200-R0184, Staff, Montana State University
- Item 42-201-R0184, Retirement of Ira K. Mills; Montana State University
- Item 42-300-R0184, Staff, Agricultural Experiment Station
- Item 42-400-R0184, Staff, Cooperative Extension Service
- Item 42-601-R0184, Staff, Western Montana College
Western Montana College 1982-84 Faculty Roster
(Submitted for Information Purposes Only)
- Item 42-700-R0184, Staff, Eastern Montana College
- Item 42-800-R0184, Staff, Northern Montana College
- Item 42-900-R0184, Staff, Office of Commissioner of Higher Education
(ADDITION TO AGENDA)

The meeting adjourned at 3:35 p.m. The next regularly scheduled meeting of the Board is March 1-2, 1984 in Billings, Montana.

APPROVED:


Secretary


Chairman, Board of Regents of Higher
Education, Montana University System