

New York Coalition



For Open Government, Inc.

Advocating for timely access to information & meaningful citizen participation

www.nyopengov.org

August 24, 2020

Dr. Merryl H. Tisch
Chair
SUNY Board of Trustees

Re: The Public Has Been Left In the Dark Regarding the Selection of a New SUNY Chancellor

Dear Dr. Tisch:

The New York Coalition For Open Government is a non-partisan, not-for-profit organization dedicated to addressing transparency in government issues. The fact that the SUNY Board of Trustees have selected a new Chancellor at a salary of \$450,000, plus a housing allowance of \$60,000 per year without soliciting applications or conducting any interviews is tremendously disturbing.

On June 8, 2020, it was publicly announced that Chancellor Kristina Johnson was resigning her position. On June 29, 2020, the SUNY Board of Trustees met and a motion was made to go into executive session, without providing a reason for the executive session. At the June 29th meeting there was no public discussion about the process to select a new Chancellor.

At subsequent SUNY Board of Trustee meetings which occurred on July 21st, August 11th, August 18th and August 21st, there were no public discussions about the process to select a new Chancellor, nor were there any discussions about posting the position or conducting interviews for the position. At every meeting since Chancellor Johnson's resignation was announced there have been executive sessions held. It appears that the entire discussion about what process to use for selecting a new Chancellor has occurred in private, behind closed doors with the public being excluded.

The selection of a SUNY Chancellor responsible for overseeing the 64 school state university system should not be done in a back room process which excludes the public. The recent series of executive session meetings held by the SUNY Board of Trustees prompted our organization to review how SUNY Board of Trustee meetings have been conducted in 2020.

Limited Advance Notice of Trustee Meetings

It is important that the public be adequately notified in advance of SUNY Board of Trustee meetings, so that those who are interested in the agenda items can observe and follow the meeting discussions. The SUNY Board of Trustees bylaws require that seven days' notice be provided to Trustees for Board meetings, unless such notice is waived by a majority of the Board.

The SUNY Board of Trustees has met eleven times so far in 2020. In eight of the eleven meetings held the seven days notice requirement was waived by the Board. A majority of Trustee meetings are being held with four days or less notice.

The New York Coalition For Open Government, recommends that the SUNY Board of Trustees follow their bylaw requirement of providing seven days' notice to Trustees and the public of all Board meetings.

Executive Sessions Are Being Done Incorrectly

Nine of the eleven Board meetings held in 2020 have had an executive session, where the Board meets in private without any members of the public present. Executive sessions under Section 105 of the Public Officers Law are limited to certain subjects. A motion to conduct an executive session must be made in an open meeting, with the subject matter sufficiently described, and upon a majority vote of the members.

A review of the executive session motions made at SUNY Board of Trustee meetings determined the following:

1/28/20 – A motion to discuss the appointment of a particular person was correctly made.

3/17/20 – A motion was made to go into executive session under provisions of section 105 of the Public Officers Law. This is not a correct motion, as it does not identify specifically what type of item is being discussed. Just generally referring to the statute without more specificity is not sufficient under the Open Meetings Law or as determined by opinions of the New York State Committee on Open Government.

3/26/20 – The same incorrect motion that occurred on 3/17.

5/6/20 - The same incorrect motion that occurred on 3/17.

6/29/20 – A motion for executive session was made without stating any reason for the motion. Such a motion deprives the public the reason for meeting in private.

7/21/20 – A motion was made to go into executive session to discuss “proposed, pending or current litigation”. When going into executive session to discuss litigation the name of the litigation should be identified. Simply stating litigation does not sufficiently inform the public of what litigation is being discussed. The New York State Committee on Open Government has rendered opinions on this issue.

8/11/20 - A motion to discuss the appointment of a particular person was correctly made.

8/17/20 – A motion for executive session was made without stating any reason for the motion. Such a motion deprives the public the reason for meeting in private.

8/18/20 – A motion to discuss the appointment of a particular person was correctly made, however the Board did not vote on the motion.

The process being used for executive session motions should be reviewed and changed so that the requirements of the Open Meetings Law are met. The fact that we are currently dealing with a health pandemic is not a justifiable reason to hire a SUNY Chancellor in secret. The New York State Legislature declared the following in the Open Meetings Law statute:

“It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.”

It is extremely unfortunate that the SUNY Board of Trustees has not conducted the hiring of a Chancellor in an open and public manner. Conducting public business behind closed doors is not how the SUNY Board of Trustees, should be operating.

Sincerely,

Paul W. Wolf, Esq.

President

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