

## **JNCL-NCLIS Board of Directors Meeting**

February 7, 2013

### **Attending:**

Martha Abbott, ACTFL  
Jayne Abrate, AATF  
Yea-Fen Chen, CLTA  
John Carlino, NYSAFLT  
Ray Clifford, BYU-CLS  
Keith Cothrun, AATG  
Dan E. Davidson, ACTR  
Peter Krawutschke, ATA  
Aleidine Moeller, NFMLTA  
Mary Pendergraft, NCLG  
Patrick Raven, CSCTFL  
Antonia Schleicher, NCOLCTL  
Emily Spinelli, AATSP  
Amanda Seewald, FLENJ  
Terry Wiley, CAL  
Elizabeth Welles, AATI

### **JNCL-NCLIS Staff:**

Dr. Bill Rivers  
Ms. Crystal Goldie  
Ms. Rachel Hanson

### **Excused:**

Rebecca Kline, NECTFL  
Rita Oleksak, NADSFL, NNELL

## **Proceedings**

### **Introductions**

After Introductions, the President, Dr. Ray Clifford, and the Executive Director, Dr. Bill Rivers, expressed the thanks of JNCL-NCLIS to the Center for Applied Linguistics for hosting the meeting and providing refreshments and lunch

### **Review and Approval of Agenda**

The agenda (attached) was approved.

## **Report on JNCL-NCLIS Activities, July 2012-February 2013**

Dr. Rivers reviewed the engagement of the Staff and Delegates with the following entities:

-State Department

- DLNSEO
- Intelligence Community-StarTalk
- re-educating Congress on the importance of language in the 21<sup>st</sup> century
- improving communication and functions
- transparency in governance
- supporting members when they want to lobby or save programs/need help

#### Small Accomplishments

- Assisted Congress in language of the authorization of the National Language Service Corps
- Developed an informal international FL and International Education staff study group from the offices of 30 members of Congress; coordinated by the office of Representative Sam Farr, a longtime supporter of FL
- Developed support in Congress for restoring FLAP
- Recruited 6 new members to JNCL-NCLIS
- Established financial controls
- Re-established the position of JNCL-NCLIS as one of the “go-to” organizations for information on foreign language
- Developed a formal response to the US Department of Education International Strategy- final pdf was sent February 3<sup>rd</sup>.
- JNCL-NCLIS was interviewed in several media outlets, including The Huffington Post, VoXXI Online and the National Review
- In the last month we have raised awareness of language and worked with the office of Science and Technology
- We are engaged with the sequestration and advocating to reverse it, as teaching, research and development are coming under unprecedented attack
- we’ve met with program officers throughout the Executive Branch
- We are giving the state and local level the tools they need to advocate for language; it is part of our long term agenda with ACTFL and state organizations- providing support for members at the local level and co-branding the ACTFL Advocacy website
- We developed a policy for Capitol Hill meetings – in essence; if you are in town and want to attend, or if you have issues you need raised with your Senators and Representatives, let us know.
- We are currently assessing how many members speak FLs by contacting members to see what FL skills they possess.
- We are co-sponsoring the 2013 Smithsonian Folk Life Festival, co-curated by Dr. K. David Harrison, on endangered languages

#### Discussion

US Department of Education: FL is a fundamental 21<sup>st</sup> century skill; it's a new argument. We must shift to this broader definition and be careful about being drawn into a discussion of the apparent USED position that language learning is an elitist enterprise; Foreign Language ought to be available to everyone.

Our policy needs to be to get ESEA reauthorized. Parents are far more ahead than decision makers in seeing the importance.

### ***Legislative Strategy:***

ACTFL has assembled state advocacy teams using the Grass tops strategy. The Grasstops are composed of 5-7 people per state. These 5-7 people get the message out to the rest of the state. The Grasstops form connections with state representatives and motivate the grassroots.

### ***JNCL-NCLIS membership growth***

Concordia Language Village has returned. We have seen a 10% growth since July. Other members in negotiation include Kent State, which is deciding if the whole school will come in as a member or just the Institute of Applied Linguistics, and CUNY-Queens College, which may come in under the aegis of the because the whole CUNY system.

We have commitments from 22 prospective members in the language industry to join; they have agreed to come in when we agree to take in private members. Their interest stems in part from their concerns about the US educational system vis-à-vis the language industry. They need skilled workers-they look at the American education system with some concern. Some are small businesses, run by entrepreneurs who have kids in the school system that are not being taught a foreign language. We will get support for education advocacy from them. They have industry-specific issues as well. For example, the Bureau of Labor Statistics claims that the medium wage for a T&I worker is \$27,000 but it's actually \$80,000.

There is a great desire to get teachers and students excited about foreign language. We could approach the non-language industry but that will be a little bit down the road. A suggestion is to approach EBAY-which moved to Utah for a reason – the skilled language workforce.

What are we doing on the academic side? Foreign Language must be treated as a profession, like a medicine or law.

## **Finances Committee and Treasurer's Report**

### ***Treasurer's Report***

We have a definitive understanding of the finances. Historically we would bring in more than \$350,000 a year, now we are bring in \$250,000 a year. Regional organizations financially can't pay as much anymore. We have seen a \$100,000 reduction in dues. The 5 regional organizations plus MLA pay less than \$7,000. Our revenue sources need to be replaced. When Dr. Rivers took over the financial records were in disarray. Expenses weren't accounted for, FY11 taxes weren't filed and as a result, JNCL-NCLIS were assessed more than \$11,000 in penalties (which have subsequently been abated.)

The dues structure dates to the mid 90's and it made sense then. State and regional organizations can't afford \$1,500. We have much larger associations that have chosen to pay a small amount. The Dues proposal addresses the need for transparency and equity in the dues structure.

### ***Finance Committee and Dues Proposal Report***

Dr. Krawutschke reported that the finance committee has proposed a more equitable and transparent dues structure.

\$1.50 was selected as the membership fee per capita for our membership-based organizations. Membership levels will be reported by members; the consensus of the Board is that we must trust each organization as to what category they will fall under and as to their membership levels.

The Board voted unanimously to accept the Finance Committee's proposed dues structure.

### **Delegate Assembly Planning**

Dr. Rivers led a discussion of the Delegate Assembly for 2013. We will look for sponsorship for the Delegate Assembly- for rooms, reception and for lunch. We want to make the registration fee as low a cost as possible. We want to make the DA more participatory with JNCL-NCLIS activities and advocacy. We will have a list of all delegates and their cell phone number distributed to all delegates.

Actions:

- Find a space
- Send reminders about the DA. Create a deadline for registration if delegates want to see their representatives and senators.
- Do research and find organizations (e.g., NHA, COSSA) that have similar events and find out how much they charge.
- do research on space availability and cost
- send out early registration poll to see who is coming and reminder about the Delegate Assembly

## **By-Laws Committee**

### *Committee Report*

Dr. Schleicher reported on the activities of the By-Laws committee (see **minutes of the By-laws committee, attached**).

### *Legal Analysis*

Dr. Schleicher summarized the legal analysis prepared by Counsel (Mr. Webster). Among the key points were the following:

The by-laws accommodate what we are expecting for the new private sector. The board should approve the nominating committee. Voting of members will be done by e-voting. The president will serve for 2 years with no re-election. And the vice president position will become that of president elect. There will be two at-large elected positions. The secretary will serve for 2 years and can be re-elected once. The treasurer will serve for up to 6 years. The current at-large members will finish their terms in 2014. Members elected to the executive committee from the board relinquish their board seats, but retain privileges and voting rights on the board; this potentially opens up additional board seats. The revised by-laws will spell out the role of the President, President-elect and Executive Director and how he/she is selected. The executive director should be given voting rights on the Executive Committee and the Board. Dr. Rivers has legislative and policy expertise that the executive committee and the board don't have so therefore he should be allowed to vote.

### *Discussion and Prioritization*

The Board then discussed the report and certain of the proposed changes to the by-laws, most significantly, the composition and selection of the Board. The board will be composed of 9 significant contributors and historical members-these 9 are not elected. There will be 9 others on the board for a total of 18 board members. These board members will serve for 3 years, rotating every year. 6 members will be on the executive committee. Now we are addressing a new variable, "for profit folks" will change that balance, we will get more significant contributors. The nominating committee will be responsible for ensuring representativeness of the Board.

The legal consultant suggests that we have an additional provision concerning removing members. We must also have a conflict of interest policy. The Board will develop a transition resolution if the revised by-laws are approved

## **Report on Member Services and Social Media**

### *Logo*

It shows interconnectedness, forward motion, and diversity. It looks like the Olympic rings. We can use a type-face logo. We should show the connection to Washington-and use the capital image because it's important. The board would like to see other choices. The logo has to work in black and white and on different scales.

Dr. Ali Moeller (NFMLTA) volunteered to provide additional options.

## **Board Actions**

### *Nominating Committee*

There are 2 open board seats and the secretary position coming up. At the annual DA a nominating committee must be selected. Board service starts June 1<sup>st</sup>, 2013.

## **JNCL-NCLIS Board of Directors: Semi-annual meeting AGENDA**

### **February 7, 2013**

#### *Hosted by:*

The Center for Applied Linguistics  
4646 40th St., NW, Suite 200  
Washington, DC 20016

#### **AGENDA**

9:00 Introductions

9:15 – 9:25 Review and approval of Agenda

9:25 – 10:15 Report on JNCL-NCLIS Activities, July 2012 – February 2013 (See Attachment A)

10:15 – 10:45 Discussion

- Legislative strategy

- JNCL-NCLIS membership growth

10:45 – 11:00 Break

11:00 – 12:00 Finance Committee and Treasurer's report

- Treasurer's report (see Attachment B)

- Finance committee and dues proposal report (see Attachment C)

12:00 – 1:15 Working Lunch

- Delegate Assembly planning (see Attachment D)

1:15 – 2:30 By-Laws Committee

- Committee report
- Legal analysis (See Attachment E)
- Discussion and prioritization

2:30 – 2:45 Break

2:45 – 3:15 Report on Member Services and Social Media

- SCOLA
- Link to Learn
- Capwiz
- Logo

3:15 – 3:45 Board Actions

- Nominations Committee
- New Business
- Action Items

3:45 – 4:00 Summary and adjournment

## **Joint National Committee for Languages – National Council on Languages and International Studies**

### **By-Laws Committee Meeting Minutes- February 6, 2013**

#### **Attending:**

Dr. Ray Clifford, BYU

Dr. Antonia Schleicher, NCOLCTL Secretary and Chair, By-Laws Committee

John Carlino, NYSAFLT

Emily Spinelli, AATSP

Hugh Webster, Webster, Chamberlain & Bean, LLP, *Counsel*

JNCL-NCLIS Staff:

Dr. Bill Rivers

Ms. Crystal Goldie

#### **Proceedings:**

1. Introductions
2. Approval of Agenda (attached)

- A suggestion was made to discuss Development of work plan and timeline first as opposed to last. Everyone concurred and agenda was then approved.
3. Development of work plan and timeline:

March 12<sup>th</sup> - conference call of the by-laws committee

March 29<sup>th</sup> –final draft from Mr. Webster-the draft will be forwarded immediately to the executive committee.

Tuesday April 2<sup>nd</sup> –By-laws committee will make a final decision

Thursday April 4<sup>th</sup> –the revised by-laws will be sent to the executive committee

April 9<sup>th</sup> –executive committee meeting, for EC to concur with the changes and forward the by-laws to the Delegate Assembly for balloting.

The committee recommends that the Executive Committee share the timeline with Delegate Assembly, and provide them with the old and new by-laws when these are ready.

Delegate Assembly is May 9-11<sup>th</sup>, during which the by-laws will be represented and explained.

Voting will take place electronically after the Delegate Assembly, with a closing date of Monday, May 27<sup>th</sup>.

4. Report of Counsel on the JNCL-NCLIS by-laws (attached). Mr. Webster reported on the by-laws and a discussion ensued:

a.) Legal review

#### **Status as an Unincorporated Association**

The advantage of being unincorporated is that it provides more leeway in what you can do - you can vote by email, and have whatever quorum you want. It seems that it was intentional for JNCL-NCLIS to be unincorporated.

#### **Liability of Directors and Officers**

The by-laws can limit the liability of the directors and officers. A Directors and Officers insurance liability policy was recommended. You

can put a dollar amount (\$100,000) or eliminate it entirely; adding language to that effect.

### **Fiduciary Obligations of Directors and Officers**

The law looks at individual people and not organizations as the holders of offices in non-profit organizations. This needs to be highlighted in the by-laws and Board policy.

### **Approval of New Members**

A general consensus emerged that approval of new members should be delegated to the board. The current arrangement is unusual and logistically awkward, which awkwardness will increase as we add members.

### **Membership Dues**

Membership dues levels are currently approved by the delegates. Mr. Webster recommended that approval of membership dues should be done by the board. The delegates should: constitute by-laws changes and similar significant governance changes.

### **Governance**

We need to make the duties of the Executive Committee, Board of Directors and the Delegates clear. The name “Executive Committee” can be changed to “Steering Committee”. The duties of the Executive Director need to be clarified as well, he/she is responsible for the day-to-day duties. Who supervises the Executive Director? How is salary negotiated?

### **Meetings of the Delegate Assembly**

There is no notice requirement when the meetings will be held-this could tie ones hands. This decision will be left to the wisdom of the organization

### **Board Eligibility**

The statement “a significant level of financial support for” allows members to have a board seat indefinitely. Does JNCL-NCLIS want to continue that principle? If so, the Board will need to define this level of support.

A consensus emerged that there needs to be a balance between members who have a historical status, large financial contributors, and those new members who are small.

Board terms: Board members should be limited to two 2-year terms as at present, and these should be staggered on a three year rotation, to provide greater continuity.

### **Terms of Office**

When board members are elected to an officer's position, they should relinquish the Board seat, although as officers they retain voting rights on the Board.

### **Officer Position Descriptions**

The officer position descriptions are good for a volunteer organization. The descriptions may need to be updated to reflect what the officers actually do.

### **Miscellaneous**

Section 6:1 states officers are said to "serve without compensation." There is no similar statement regarding board members or executive committee.

Add Executive Officer as an officer, and voting member of the board.

We should create a conflict of interest policy.

The JNCL-NCLIS FY is unusual. The finance committee recommended a change from FY to calendar year.

### ***6 Points from the Executive Committee***

1.) Should we have two-by-laws or not?

Mr. Webster stated that we could have one set of by-laws but we must maintain two separate bank accounts. The distinctions between the two organizations should be made clear in the by-laws.

2.) Role of Executive Director, Executive Committee and the Board

Role of Executive Committee: term of president will be 2 years. Will the vice-president then become president (in other words, serving as president-elect)? Do we need a secretary? Do we need a by-laws committee? We will keep the secretary and by-laws committee for right now.

Role of the President: Attend all meetings, establish agenda, and chair the executive committee meetings.

Role of the President Elect: In training to become the president, works with the president in establishing the agenda.

Terms: After a two year term, the past president does not stay on board as such.

The Executive Committee will serve up to two 2 year terms, except that the treasurer will serve up to 6 years, will be elected and not appointed and must have a financial background. The secretary will serve a 2 year term with the option for 2 year continuation.

There will be two at-large members who will serve a 3 year term, but it will be staggered so they aren't leaving at the same time. Dan and Marty will finish their at-large terms in 2014.

3.) Terms: Terms will be January-December. There will be a one term reelection option, 2 year term.

4.) Responsibility of Delegate Assembly:

- 1.) To attend the delegate assembly
- 2.) Review Treasure's Report
- 3.) Review Secretary's Report

Members on the board who are not major contributors, how do we de-nominate them?

5.) Member dues and composition:

The Finance Committee has proposed the following fee structure:

Public Sector-\$1.50 per person per year  
Foundations/University centers-\$1,500  
Private sector/large business-\$7,500  
Small Businesses-\$2,500  
Very small businesses-\$1000  
Start-Up- \$250 or \$500 (broad-scope)

How do we represent this member composition in the by-laws?

6.) Board of Directors:

9 rotating, at large seats  
9 seats for significant contributors and historical status  
The maximum will be 22 for the board (this includes certain of the officers)

At-large on Executive Committee-can be any member organization's delegate, not necessarily from JNCL-NCLIS board.

Joint National Committee for Languages – National Council on Languages and International Studies

By-Laws Committee Agenda

Date: Wednesday, February 6<sup>th</sup>, 2013

Location: American Councils for International Education

1828 L St., NW, Suite 1200

Washington, DC 20016

9:00-12:00

Agenda

1. Introductions
2. Approval of Agenda
3. Report of Counsel on the JNCL-NCLIS by-laws
  - a. Legal review
  - b. Best Practices Review
4. Discussion of Executive Committee and By-Laws Committee priorities for Review (see Attachment A)
5. Development of work plan and timeline
6. Adjournment

**MEMORANDUM**

**TO:** William Rivers

**FROM:** Hugh Webster

**DATE:** February 5, 2013

**RE:** Bylaws Review

---

As requested, I have reviewed the Bylaws of the Joint National Committee for Languages and the National Council for Language and International Studies. I have the following comments.

**Status as an Unincorporated Association**

As an initial point, both organizations are unincorporated associations and therefore governed by the District of Columbia Unincorporated Nonprofit Association Act (the “Act”). Historically, the chief disadvantage of unincorporated status has been that members, as well as officers and directors, may be liable for the debts of the association. This is because an unincorporated association was not considered to be a legal entity separate and apart from its members and governing leadership. That rule is no longer the case, however, in the District of Columbia; unincorporated associations are considered to be separate legal entities.

Presently, the most significant disadvantage of unincorporated status relative to incorporated status is in the area of statutory protection from liability. Specifically, under the D.C. Nonprofit Corporation Act, volunteers and employees are, generally speaking, immune from civil liability to third parties absent “willful misconduct” on the part of the volunteer or employee. There are other exceptions, but that is the primary one. Unincorporated associations must rely on the Federal volunteer protection statute, and that includes an exception not only for willful misconduct but also lesser types of wrongdoing, specifically, gross negligence and recklessness. The Federal statute also protects volunteers only, not employees. Further, under DC law nonprofit corporations cannot be held vicariously liable for the conduct of volunteers or employees, while unincorporated associations do not have this same protection.

These protections from liability are important, but are not as significant as they may appear. Unincorporated associations of course can protect themselves and their volunteer and paid personnel through liability insurance. Further, the actual effect of liability protection statutes will vary from case to case. For example, if a volunteer of a D.C. nonprofit corporation is sued in New York for an injury occurring in New Jersey; it is questionable whether a D.C. statute will be applied.

Probably the greatest advantage to unincorporated status is that there is more flexibility in internal operations, including with respect to electronic voting, actions by governing bodies, approvals of the corporate actions, etc. Essentially, an unincorporated association can establish whatever rules it wishes in this regard, while a nonprofit corporation is more restricted.

If JNCL or NCLIS wished to become incorporated, while it is a fairly straight forward corporate transaction, there is a level of administrative burden. In particular, reapplication to the IRS for tax-exempt status would be necessary.

### **Liability of Directors and Officers**

Related to the above, under the Act, a organization may include in its Bylaws a provision that limits or even eliminates the financial liability of an Officer or Director to the association itself and to members of the association (but not to outside third parties), under certain

circumstances. There are important exceptions, such as for improper distributions, breach of duty of loyalty, and criminal conduct, but this still can provide some measure of protection.

### **Fiduciary Obligations of Directors and Officers**

Under the Act, Directors and Officers have important fiduciary obligations to JNCL and NCLIS. Specifically, the Act requires such persons to act “in good faith, in a manner [he or she] reasonably believes to be in the best interests of the association, and with such care, including reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar circumstances.” This is similar to the standard for Directors and Officers of nonprofit corporations.

It is important to know that these legal obligations attach to individuals, not organizations, even with respect to individuals who are designated representatives of member organizations. It is the individuals themselves who the law considers to be Directors and Officers and who may liable for neglect of their obligations.

### **Approval of New Members**

New members must be approved by the Delegate Assembly, but there are no stated membership requirements beyond “subscribing to the purposes” of JNCL or NCLIS. (Section 4.1). This raises the question, on what basis are the members voting to approve or not approve? This allows for each individual member to apply its own criteria, which can result in arbitrary and inconsistent results. Alternative approaches include allowing membership applications to be handled by staff as an administrative matter, or establishing specific, published membership criteria that can be applied in a fairly objective and even-handed manner. Even then, JNCL-

NCLIS may want to have decisions made by a membership committee rather than the Delegate Assembly.

### **Membership Dues**

Membership dues levels must be approved by the Delegate Assembly (Section 4.1). It is unusual to give a membership this authority. Typically, that decision is made by a governing board. While members of a governing board themselves are members or member representatives, they have important fiduciary obligations to the organization, unlike regular members who are generally free to act in a purely self-interested manner.

### **Meetings of the Delegate Assembly**

It appears that the Delegate Assembly is limited to one meeting per year. (Section 4.3). Typically there would be a provision allowing for special meetings to be called if necessary, such as by the President or the Executive Committee.

## **Board Eligibility**

One class of Directors is delegates from member organizations that provide “a significant level of financial support for” either JNCL or NCLIS and have a “commitment to the purposes and activities” of either or both organizations, “as determined by the board.” (Section 5.1). While it is permissible, generally speaking, to select Board members based on financial contributions, on the theory that such persons may be particularly invested in the proper management of the organization, it is important for the board to have a *documented* standard as to what is considered a “significant level of financial support” and to apply that criteria diligently, including by removing board members whose organization no longer meets that test.

## **Voting by the Board and Executive Committee**

There should be provisions for quorums for meetings of the Board and Executive Committee.

Also, Section 5.3 says: “In the event of pressing decisions, the President may poll the Board of Directors.” It would be helpful if this were expanded upon, e.g., voting via email. More important, there is no similar statement regarding the Executive Committee, which implies that the Executive Committee can only act at a formally called meeting.

## **Terms of Office**

There are some ambiguities with respect to terms of office. For example, if a board member is elected as an Officer, is that person’s term as an Officer is concurrent with his or her term as a Director, such that if they cease being a Director due to term limits or other reason, they also automatically cease being an Officer? A similar issue concerns at-large members of the Executive Committee and whether their terms on the Executive Committee are concurrent with their terms on the Board.

## **Officer Position Descriptions**

The Bylaws Committee should consider addressing the position descriptions for Officers. For example, the Secretary is obligated to “maintain the records” of JNCL/NCLIS (Section 6.4), which I assume is a function performed by staff. More significant, the Treasurer is to “have general supervision over the fiscal affairs” of JNCL/NCLIS (Section 6.5), which likely overstates the actual role of the

Treasurer. Even the President's authority of "general supervision over the affairs" of JNCL/NCLIS may need refining, especially in relation to the Executive Director.

### **Miscellaneous**

There are several additional, relatively minor Bylaw provisions that raise some questions. For example:

- Officers are said to "serve without compensation." (Section 6.1). There is no similar statement regarding Board members. Does this suggest Board members may be compensated?
  
- Members of the Finance, Nominating, and Bylaws Committees must be member organization representatives "when nominated" to those positions. (Section 8). This implies that if they cease to be a member organization representative while on the Committee, they remain on the Committee. Presumably is not the intent.
  
- Section 9.2 states: "The President, Vice President, Treasurer and the Executive Director are authorized to make withdrawals from ...any bank account of" JNCL/NCLIS. If this gives such authority to each Officer individually, that would not seem to be consistent with effective internal controls.

### **Additional Provisions that May be Considered**

There are a number of provisions that typically appear in nonprofit organization Bylaws and which JNCL/NCLIS may want to consider. For example:

- Reasons and procedure for removal of Directors and Officers;
- Termination of members;
- Indemnification of Directors and Officers;
- Job description for the Executive Director.