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Delta College District
Board of Trustees
Special Meeting
Bylaws Subcommittee
September 22, 2009
Delta College Board Room
11:30 a.m.

Board Bylaws Committee Members Present: R. Emrich, R. Stafford

Board Bylaws Committee Members Absent: J. MacKenzie

Others Present: T. Brown, D. Giuliani, J. Goodnow, M. Haynes, K. Higgs, L. Lawrason, L. Myles-Sanders, R. Pfeiffer, K. Randolph, A. Ursuy

Call to Order: Bylaws Subcommittee Chair, R. Stafford, called the meeting to order at 11:37 a.m.

R. Stafford called for public comments.

K. Randolph, FEC Chair, made a comment on behalf of D. Hill, faculty member, from Bay City. She expressed her opposition to the college giving the President the authority to hire employees. The only reason that she has heard of is that it would help with speeding up the hiring process. This has already been achieved by the purchase of an on-line application process which allows the hiring committee to review applications on-line. She feels this is a move in the opposite direction of shared governance. K. Randolph as a representative of the faculty noted that the faculty wanted their voices heard.

R. Pfeiffer, faculty member, noted his unhappiness with the proposed change in allowing the President to hire faculty and staff. If this is changed it will make the review process unnecessary or no longer required. It allows for no questions, no justification or reason and is a permanent delegation. He feels this is an extreme thing for the board to do in removing their review. The checks and balances system currently built into the process would be eliminated. The right of the public to know about and review these hires is being moved out.

M. Haynes, faculty member, noted that the hiring of faculty is a huge factor to the college. They are a treasure. She likes the college and the president but is concerned about the quality of hiring and firing.

K. Higgs explained the rationale for the proposed change in the bylaws. He noted his experiences with governmental and business situations. He said that the board members don't work with or interview any of the applicants. Board members only get information on the final candidate, which includes recommendations from the administration and a resume. Board members don't have the time to review all the applications for each position. They are responsible for the result but applicant review is not a role of the board. Under statute the Board has the authority to delegate powers to the President.

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K. Randolph said that one of the issues that faculty have is the way that we view the college in an academic model compared to K. Higgs's business model. By delegating this power it creates a missing link to the community. She suggested a compromise in terms of the board still knowing who has been hired.

D. Giuliani, faculty member, noted that as a recent hire of Delta College, the hiring process was a lengthy but good one. The board approval meant something to her. She doesn't see board review as a hardship of the hiring process. When it comes to the tenure and promotion process the faculty member is held accountable because of the review by the press and the college. She also voiced the fact that Delta College is not the same as a city/state government. Because of the size of the board she believes there is more room for flexibility and ability to adapt compared to a government entity. She is mostly concerned about the perception.

R. Stafford thanked the public for their comments. The committee's charge was to review the current bylaws and update them as needed. He believes the college's board is a policy making board. The board's number one priority is to make sure that the leadership is moving the college in the right direction. In his past experience Delta's hiring process is very rigorous. He explained that for the recommendations that he receives each month in regards to the hiring of new employees, many times there are no questions asked at the meeting, and sometimes when questions are asked the answers are in the packet that the Board has received. He votes for the interests of the college. During his time on the board there has been no case where a candidate was voted down. The committee wants to provide the mechanism to hire good faculty and staff. This change would allow the president to make the hire official without having to wait for the next board meeting.

R. Emrich said he knew this would be an issue for faculty. He has received communications from other college employees that are in favor of this change. He agrees with R. Stafford and K. Higgs about the change. He also noted that the President will have to report monthly on hiring. The board will continue to evaluate her on how she does this job.

L. Lawrason, faculty member, noted the important difference there is between Delta College and government. She also said the faculty are concerned about academic freedom.

R. Emrich pointed out that the President did not lobby for this change. She will be held responsible for all hiring of faculty and staff. K. Higgs noted that the best safeguard for the faculty would be the review in the termination and grievance policies. The decision is made through these processes and the board is not involved. R. Pfeiffer noted a case where a faculty member was turned down for promotion and tenure. He said that this individual then appealed to the board and the decision was overturned. R. Emrich noted that there will be no changes to the appeal process. K. Randolph noted that the Senate handbook would have to be changed to reflect the change in hiring. R. Stafford said that this would be the only step that would be changed. There will still be a monthly report to the Board from the President as to who is being hired by the college.

R. Stafford called for the acceptance of the minutes of the September 8, 2009, meeting of the Bylaws Subcommittee. R. Emrich moved to accept the minutes. R. Stafford seconded the motion. The minutes were unanimously accepted as written.

R. Emrich stated that the Bylaws as presented at the last Board meeting will be voted on at the next meeting. The chair will ask for any amendments/changes. L. Myles-Sanders gave the committee some

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alternative language for Article XIV, Indemnification, due to some concerns brought up at the last meeting. K. Higgs opposed the last sentence because it delegates authority to someone other than the Board. L. Myles-Sanders noted that this was her language and that it did not come from the President. R. Emrich agreed with K. Higgs that authority should not be delegated to outside counsel, or to the President or Vice Presidents.

J. Goodnow noted that the last college she worked for, not in Michigan, did have a policy to refer conflict of interest issues to outside counsel. R. Emrich noted that he thinks the board could make the decision to consult with outside legal counsel if needed to make a decision in a conflict of interest case. J. Goodnow noted a particular case at Compton Community College in California. The entire board was considered in a conflict of interest in the sale of land and the state intervened. R. Emrich noted that he believes this area needs more discussion. Since the bylaws can be amended he suggested using the new language proposed by L. Myles-Sanders and striking the very last sentence until the issue is resolved. R. Emrich moved that the Bylaws Subcommittee seek an amendment with the change to the indemnification statement in the proposed bylaws. Stafford seconded the motion. The motion was approved. There will be no other amendments by the committee being proposed.

The committee moved on to the review of the operating parameters. R. Emrich asked if the ethical standards came from ACCT. L. Myles-Sanders responded that they did. K. Higgs asked if they had been altered at all or changed since the last time they were presented. L. Myles-Sanders said that ACCT had recently made some changes. She modified the ACCT's language to name Delta College. She pointed out that the ACCT language is available on the ACCT website.

K. Higgs noted that he does not support the conflict of interest policy because he feels it is overly broad. He doesn't believe that is consistent with federal law, or the Michigan statutes. L. Myles-Sanders said that the conflict of interest policy started as a recommended draft from the IRS with the new form 990, amended to simplify it. K. Higgs distributed another IRS recommended conflict of interest policy, saying that a number of organizations have adopted this as a starting point for their policy. L. Myles-Sanders explained that the IRS is necessarily concerned about financial issues, but that the College is about more than money. As an example, the entire Board for the University of Illinois has recently been forced to resign over a scheme which gave special preference to student applicants who were supported by Board members. Therefore, she has added language about non-financial conflicts of interest. K. Higgs's main concern is that he feels the proposed language about other conflicts of interests is not specific. J. Goodnow noted that there can be conflicts of interest dealing with grades, hiring or wait lists. K. Higgs noted that he thought those items are addressed in the ethical statement. L. Myles-Sanders pointed out that the Michigan statutes on ethics do include non-financial issues, such as confidentiality.

R. Emrich suggested adding the IRS and state statute examples. He asked if the Foundation's recent conflict of interest statement is similar. Both J. Goodnow and L. Myles-Sanders noted that it was. R. Emrich asked what the problem was since K. Higgs voted for the approval of the Foundation's conflict of interest. K. Higgs said at that time he had not reviewed all of the documentation. L. Myles-Sanders also pointed out that in the Michigan Community College Act there is specific language giving the Board implied powers needed to do what is necessary. R. Emrich asked if any other colleges have such a broad conflicts of interest policy. J. Goodnow noted examples such as Kirtland Community College, Northwestern Community College, Grand Rapids Community College and Mott Community College. R. Emrich suggested reviewing the differences between the proposed policy and the one adopted by the Foundation, and incorporating examples of conflicts of interest. He said that the Board should be able to

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take action on breaches of the ethics and trustee roles and responsibilities policies as well as the conflicts of interest policy. He asked J. Goodnow and L. Myles-Sanders to review the ethical statements and the conflict of interest.

K. Higgs had no objections to the conflicts of interest disclosure form but said he does not think that it is consistent with the conflicts of interest policy. R. Emrich noted that the same processes should be used for violations of the ethical statements and the conflict of interest statement. K. Higgs suggested that the definition of family members should be expanded to include those listed in the IRS code.

The committee moved to consideration of the grievance procedure that had been moved from Bylaws to the proposed Operating Parameters. K. Higgs said that he does not see a problem with allowing outside counsel to be present. L. Myles-Sanders said that our process provides more than the due process that is required by law and Supreme Court rulings. K. Higgs agreed with L. Myles-Sanders in that allowing counsel to be present is not legally required. R. Emrich noted that during the grievance appeal the board only determines if the process was followed correctly or not. K. Higgs noted that the Board should have the authority to reverse the President's decision. It would allow for protection for the faculty. R. Emrich noted that this would require a change in Senate Policy. He suggested leaving the policy as is.

L. Myles-Sanders noted that the Board of Trustees Scholarships Policy was also moved from the bylaws to the operating parameters with no changes. She said that the language which formerly described how board materials are to be delivered to board members was moved from bylaws to the operating parameters, with some updates. A. Ursuy said that delivery of board materials was updated to reflect the ability to use fax and e-mail, which probably were not available when the last Bylaws were written. R. Stafford said that he would prefer to receive materials via e-mail.

Under Section VIII, Guidelines for Board Committees, the committee agreed to changes allowing the Board to decide which committees will exist, and the Board chair to determine which board members will serve on the committees. R. Emrich moved for this change. R. Stafford seconded the motion. The motion was approved.

K. Higgs suggested striking the IX. Open Meetings Act Requirements from the operating parameters. J. Goodnow noted that this would be used as a reference for board members who don't have a legal background. R. Stafford said that he liked the inclusion.

The committee agreed to meet again before the next board meeting, on October, 20, 2009, at 3:30 p.m.

Meeting adjourned at: 2:08 p.m.

Respectfully submitted,

Leslie Myles-Sanders, Board Secretary

Talisa Brown, Recording Secretary