

APPROVED MINUTES OF INFORMATION SESSION OF THE BOARD OF TRUSTEES OF THE COMMUNITY
COLLEGE DISTRICT OF THE COUNTY OF MACOMB

An open information session of the Board of Trustees of the Community College District of the County of Macomb was held Wednesday, August 15, 2018 at 6:00 p.m., in Room 109 of the University Center, Professional Development Center, Center Campus, 44575 Garfield Road, Clinton Township, Michigan.

1.0 CALL TO ORDER

The meeting was called to order by Chairperson Haase at 6:00 p.m.

2.0 ROLL CALL

Present: Jennifer Haase, Chairperson
Frank Cusumano, Vice Chairperson
Katherine Lorenzo, Secretary
Kristi Dean, Trustee

Absent: Roseanne DiMaria, Treasurer
Joseph DeSantis, Trustee
Vincent Viviano, Trustee

Also present: James Sawyer, President
Elizabeth Argiri, Vice President, Business
Sharon Kowal, Executive Administrative Assistant to the President
Deborah Mende, Director, President's Office
Jeffrey Steele, Associate General Counsel, Office of General Counsel
William Tammone, Provost/Vice President, Learning Unit
Jill Thomas-Little, Vice President, Student Services
Casandra Ulbrich, Vice President, College Advancement & Community Relations
Denise Williams, Vice President, Human Resources

3.0 APPROVAL OF AGENDA

MOTION by Lorenzo, supported by Dean, to approve the agenda as presented.

Motion carried.

4.0 AUDIENCE PARTICIPATION

None.

5.0 REVIEW OF AGENDA ITEMS AND MATERIAL

Trustee Cusumano indicated he had questions about the police vehicles. Is there a ten-year cycle on the vehicles? How large is the fleet? Is it cheaper to lease? If it were a ten-year cycle, how many miles are on the vehicles? Trustee Cusumano also asked if the used vehicles are donated to high schools like the vehicles in the automotive program. Ms. Argiri responded that these vehicles will be sold. The Purchasing Department handles the sale of any obsolete equipment. Trustee Cusumano asked Ms. Argiri to walk him through the process.

Ms. Argiri stated that the Purchasing Director has a process he uses with a variety of different avenues in an attempt to sell the vehicles. If, after some time, the equipment does not sell, it is scrapped.

Trustee Cusumano asked if there is a written process, procedure, or policy for certain types of assets that are being retired, such as automobiles. Ms. Argiri said the Purchasing Department maintains and follows a process when getting rid of aged assets.

Trustee Cusumano asked if the proceeds go back into the general operating fund. Ms. Argiri said yes, the proceeds are deposited in a Macomb miscellaneous revenue account.

Trustee Cusumano also had questions about the president's contract. He asked what the problem with the process was and was the contract drafted in-house? How was the original flawed contract drafted? How did the person who was involved experience difficulties in that regard and what confidence do we have that we are not creating another problem for Dr. Sawyer down the road?

Dr. Sawyer stated the contract as written was duplicated from President Jacobs's contract, except for the numbers the basic format was the same. When President Jacobs retired, he ran into problems with the Office of Retirement Services (ORS) interpretation of his compensation. Dr. Sawyer had a subsequent conversation with Dr. Lorenzo, Dr. Jacobs's predecessor, and he too had a problem with their interpretation. Dr. Lorenzo shared with Dr. Sawyer that the issue he had was the ORS was saying that two items were not compensation because they appeared under benefits. After hearing that, Dr. Sawyer moved those two items under the compensation section in his contract.

Ms. Argiri explained the ORS had a number of issues with President Jacobs's final average computation for his pension. The first of which was their interpretation of the terminal leave paid plan. The ORS interpreted that under the plan, Dr. Jacobs had received compensation for unused vacation before his termination. They completely misinterpreted that provision in his contract and it took a long time to get it resolved.

Ms. Argiri continued saying the ORS has become very difficult when reviewing contracts and FACs and they put the burden on the member rather than the employer. We had to work extensively with President Jacobs to help clarify the intent of that language and to prove that he did not receive compensation for unused vacation prior to his termination. The ORS has a very long section in the reporting instructions manual in terms of what is considered reportable compensation and non-reportable compensation and unused vacation is not reportable in the pension calculation. Ms. Argiri said the revisions she proposed be made to President Sawyer's contract simplify that language. The provision, as it was stated, in President Jacobs contract included a lot of information contained in the terminal leave paid plan and it did not need to be duplicated in the president's contract, the plan stands on its own. She hopes that through clarification of that there is no confusion upon Dr. Sawyer's contract when he retires.

Trustee Cusumano asked if there was a process that we could have the contract reviewed by someone and get an opinion letter. Ms. Argiri said that would be great but she does not think the ORS would ever do that. Ms. Argiri did speak with the Macomb Intermediate School District recently and they agreed to provide her language that they have in their executive contracts that states that the ISD and their Board understand the provisions of the contract and their

interpretation as it relates to calculation of the pension. That would be something we could consider incorporating later when she gets the language from the ISD. We would then amend his contract and incorporate that language in there. Trustee Cusumano asked if it was possible to do some advisory note or addendum to the contract to clarify the language so that Dr. Sawyer does not wind up with the same situation as his predecessors. Mr. Steele stated that he is somewhat aware of Dr. Jacobs's situation and in working through that he thinks that the way it was handled deals well with the ORS's issue. The ORS came back to us several times. Sometimes saying that certain monies were a bonus and certain monies were extra compensation that should not be included in basic compensation. He thinks we need to, and have done, is to look at the language and use our best judgement to think that this is going to work. If we receive any further guidance or information from the ORS that suggests we need to make additional modifications, he thinks we do so.

Trustee Cusumano asked if there is any way we can make sure we do it right the first time. For example, is there a president at another community college who has recently retired and the ORS did not challenge their language. Trustee Cusumano added that he comes in here as a trustee and has to ask many questions about something he has no idea what the intricacies and the nuances are. These are fundamental questions, what are we doing wrong, what was the problem, identifying the problem, correcting the problem, so systemically it doesn't occur again. Ms. Argiri said she is aware that the ORS has a compensation threshold and once someone gets above that threshold, those contracts are reviewed in detail.

Ms. Argiri said she received a call from the recently retired president of North Central Michigan College who was having trouble with the ORS upon her contract review because her contract included base compensation and then goal attainment. The North Central Board did that intentionally so that she would receive the extra compensation when she achieved her goals. The ORS looked at that as a super longevity payment or a bonus payment and that is not what her Board intended. The best thing that we can do is be aware of these issues when they arise and advise the Board and our president as to what we are seeing and how to avoid some of those pitfalls we know the ORS is taking issue.

Mr. Steele added that we removed the language that the ORS seized upon in Dr. Jacobs' contract. In that contract, the ORS looked at the phrase "employer paid annuity," and claimed that this was not compensation, but rather a bonus. We have removed this contract language from Dr. Sawyer's contract and substituted in the phrase paid time off (PTO) to make it clear that this is a form of compensation and not a bonus. We can never guarantee how someone later is going to interpret a contract. We used our best judgement in trying to revise it so it will not be misinterpreted again.

Trustee Cusumano asked to be directed to what exactly was stricken out of the contract. Mr. Steele said on page 62, at the top, in section e – "the College agrees to provide a deferred 403(b) Employer Contribution (commonly called an Employer Paid Annuity, or EPA)." That was changed to make it clear that PTO is compensation not something that would be considered a bonus. Trustee Cusumano asked if it would be beneficial to Dr. Sawyer in the long term, if the Board explicitly vote as a finding of fact that this was our intention and state that in the minutes. Or do you think the contract language is clean enough now that there is no room for them to give him a hard time down the road. Mr. Steele said that he thinks the ORS will look to and rely on the contract language.

Dr. Sawyer congratulated and recognized Trustee Cusumano for his five years of service with the Michigan Community College Association.

Dr. Sawyer gave updates on the following:

Closed Session: Legal issue update, update on labor negotiations and the president's self-evaluation.

Athletics: An investigation of the athletic area was conducted. The existing Athletic Director resigned. The posting is up for a new athletic director. Our former Athletic Director, Margaret Cadieux, has come back on a part-time basis to fill in. As far as coaching next year, we have retained the existing coach and assistant coach for one more year; Kim Renas will coach women's cross-country and track for 2018/2019. Mr. Renas has been with the College a long time and is a very accomplished coach. Daswell Campbell will be the men's head coach for cross-country and track. He has worked with Coach Renas for a number of years and this will also be his last year.

Through the course of our investigation, we discovered an NJCAA violation. One of our student athletes did not take enough classes at Macomb to be eligible to compete. Some of the classes he took were at another college, which violates NJCAA rules. We have an ongoing audit going back a few years to make sure we do not have any other issues. We have self-reported this issue to NJCAA.

We talked previously about some financial issues in the athletic department. There wasn't any criminal activity, but some budgetary issues that were not handled well. We have put steps in place to be more thorough with the budgets.

Trustee Cusumano asked whether there was a procedure for calculating the number of community college credits athletes were taking. Is that something ad hoc that the Athletic Director did on his own without any oversight or review? Dr. Sawyer responded that it is the Athletic Director's job to keep track. Trustee Cusumano asked if there was any other discretionary authority that's given that could run afoul of the NJCAA rules and regulations? For example, we talked about athletes having community college credits used to calculate their eligibility, is a roster sent to a governing athletic association. Ms. Thomas-Little said the regulation states an athlete must have at least 12 credit hours at the institution that they are participating with. While the student had 12 credit hours at community colleges, nine were at Macomb for fall and eight for winter and the others were from OCC. The 12 credits have to be taken at the institution the athlete is playing for. When eligibility is submitted to NJCAA it is an online system and the credit hours are entered then. She is not 100 percent sure it was submitted to NJCAA. We were doing our own internal audit and waiting to hear their response. There is a system in place to ensure that credit hours are in, but it is our responsibility to ensure that the college is properly submitting the information. Trustee Cusumano asked how this issue came up. Ms. Thomas-Little responded that one of the people interviewed during our investigation of the athletic department said they had heard that this individual was taking classes at OCC. We investigated and found it to be true.

Trustee Cusumano asked if everything has been identified and dealt with in the Athletic Department as of today's date. Dr. Sawyer confirmed that. He added that as of today we do not know the consequence for this violation. Trustee Cusumano asked what are the possible consequences? Ms. Thomas-Little responded that it could lead to sanctions of the current team not being eligible to compete. It would affect men's cross-country and track for the next year. Along with that, we would have to send letters to any of the schools the team competed against during the timeframe the student participated indicating this violation. This would impact the current team. Trustee Haase asked if she thought the fact that we reported it to them will hold any weight in their deliberations? Ms. Thomas-Little answered in the affirmative, adding that self-reporting and taking swift action frequently reduces the sanction and that the applicable regulations require more severe sanctions if a school is reported by another school. Ms. Thomas-Little added that our previous Athletic Director's experience has been that the NJCAA looks at the impact on the current students and whether they had anything to do with what happened. They don't want to adversely impact our students.

Power Outage: Center Campus lost power on July 19 and 20. The cause of the problem was a contractor, 123Net, cutting through our main power line on Garfield. It was a major problem and we are unhappy about it. However, the positive thing is our insurance carrier is going to pay for the cost of the repair. Ms. Argiri is collecting all the information and sharing it with the insurance carrier, as far as who is at fault.

Renovation Updates: As the term is about to start, Center Campus E building is reopening. However, there has been a last minute problem with the elevator. The hydraulic jack needs to be replaced. This is a major problem and it will take several weeks to get parts and make the repair. The elevator will not be operational when classes begin on Monday and that affects what we are able to do on the second floor. In lieu of that, several of the programs and staff will stay in the areas they relocated to during the renovations until the elevator repair is completed.

The other renovations are still on track:

Center Campus M Building (Macomb Center for Performing Arts) will be ready in October. South Campus F and J and Center Campus L buildings will be operational in January.

A formal presentation to the Board will be made next month to discuss renovations in general as well as the current market conditions and the impact they have had on the estimates done in 2015.

Trustee Cusumano said is it a fair statement that to maintain ADA compliance we are going to wait until the elevator is fixed or will classes be going on. Dr. Sawyer responded the only program running classes on the second floor is the physical therapy assistant program. They are aware of the issue and don't have any students enrolled that would encounter any problems. In fact, part of their program is to teach people how to navigate the stairs. The second floor will not be full scale until the elevator repair is complete.

Enrollment: As of this morning, credit hours were down 4.4 percent. We had forecasted a 2 percent decline. We are a little concerned, but students are still enrolling as we lead up to the start of classes. Trustee Cusumano asked if the 4.4 percent was going to be offset by out-of-district students which softened that decline in previous semesters. Dr. Sawyer said yes, to some extent but we don't know the final numbers yet. Trustee Cusumano asked if anyone has projected what the loss of revenue is anticipated to be if that trend continues at a 4.4 percent decline. Ms. Argiri stated that for every 1 percent it is about a half million dollars. Classes start on Monday and students are still registering and we have late start classes as well, so it is not over yet.

Comedy and Cocktails will be held on October 19. We are extending the invitation for you and a guest to attend. Once again, the arts and culture area will be the recipient of the proceeds from our primary fundraiser of the year.

Faculty Development Day is August 16. This is an important day for the College because we welcome our faculty back to campus.

The Hall of Fame dinner is August 23. A couple of the trustees will be attending.

The **Jimmy John's Employee Appreciation baseball game** is August 24.

The **8th Annual Employee picnic** is August 25 at Center Campus behind UCI.

Trustee Cusumano asked if the increase in property values is increasing revenue stream and if so, by how much to offset. Ms. Argiri stated that when the initial budget was brought to the Board in May, she believes it was about a \$3 million increase with the millage and the increase in property values. Trustee Cusumano asked if there was anything new from Lansing regarding increased funding. Dr. Sawyer said the average for all community colleges was one percent. Macomb's actual allocation was an increase of .8 percent or \$260,000. Ms. Argiri added that was not incorporated into the initial budget because legislative action had not been taken yet. That increase will be incorporated into the budget revision in December.

6.0 ISSUE AND UPDATES

1. MCCA Summer Conference

Dr. Sawyer said the Michigan Community College Association's Summer Conference was very good. There were several good speakers. Dr. Sawyer and Trustee Lorenzo attended. The conference is always a great opportunity to interact with presidents and trustees from the different colleges.

One of the more significant outcomes of the meeting was developing a tentative legislative slate for the MCCA. The legislative committee of the MCCA will determine their priorities. Trustee Haase is a representative on that committee and issues will come out over time. Trustee Haase said they have called an extra meeting for this coming Monday. She is sure that is one of the agenda items.

Dr. Sawyer said 21 presidents out of the 28 community colleges, participated in this session. The priorities that were rated the highest by most of the presidents were:

- Mandate associate degree for transfer with junior standing
- Funding for new workforce programs
- BSN/Baccalaureate's allowed to be granted by community colleges
- Strengthen transfer among community colleges
- Partnerships with K-12

Macomb has strong connections to universities and partnerships with K-12, but that is not true of all community colleges. More information to follow as to what the priorities for the MCCA will be.

2. Language for Notification to the Board

Dr. Sawyer stated that we have spent time developing language around notifying the Board of Trustees of issues of concern. (The language was handed out). Dr. Sawyer explained that Trustee Lorenzo had expressed concern that the prior draft contained no specific wording related to sexual harassment or sexual misconduct. To address that concern, the sentence in red was added to the language previously provided. Dr. Sawyer asked for feedback from the Board.

Trustee Cusumano asked if this is a Board policy or Administrative policy? Dr. Sawyer answered that it would be an Administrative policy. As an Administrative policy it is not necessary to have a formal vote. We want to be attentive to the Board's needs and concerns and make revisions if necessary, otherwise we will put this in place.

Trustee Haase asked if this language addresses some of the concerns and gives Administration more guidance. Trustee Dean asked what it means to "require Board approval under existing college policies." Trustee Cusumano asked for examples of that. Mr. Steele said that statement is designed to identify matters, which currently require Board approval, such as large purchases – i.e., things we already bring to the Board's attention.

Trustee Lorenzo said she realizes that they have been apprised of everything they needed to be apprised of. There is no problem with that at all, she is not suggesting that. Her concern in the beginning was she simply wanted to know whenever there was an issue brought that had to do with sexual allegations, does not matter if it is credible or not. She didn't mean any of the other stuff. She questioned why is that so difficult, there must only be a very few that come forward a year. Mr. Steele responded that he doesn't think it is difficult, but he thinks we want to be somewhat sensitive to the rights of all involved. This is a public session. Trustee Lorenzo said she doesn't mean providing names, just to say that a claim was made in Arts and Sciences of sexual harassment.

Dr. Sawyer said he and Mr. Steele talked quite a bit about this and that is the reason the term "credible" was added because there is nothing that enables us to go into closed session to discuss recently made, but uninvestigated allegations, we are forced to discuss that in a public setting. If in fact nothing had occurred, it could be harmful to the person wrongfully accused. That was the thought process behind the word "credible."

Trustee Lorenzo said she wants to be clear that her intent was never to give any additional authority to the Board, but rather it was to allow our employees to know we have their back. We really care about their concerns and that we know about them and they can trust us. When this all started she just wanted the employees to know that if they bring forth a complaint the Board will know. We won't know names, but we will know that a complaint was filed. Trustee Haase added so employees know that things are taken seriously and that the Board is listening and watching and wants to know and be proactive as well.

Trustee Cusumano stated that he thinks that is part of the oversight function of the Board of Trustees as the elected officials of the community to oversee this. He thinks this is self-policing and self-correcting because any one of these individuals has the right to go before the Board and then there would be the devil to pay if it was revealed that this Administrative policy wasn't followed. He is not so concerned it being a Board policy versus an Administrative policy for that reason. He is in support of it as written. Trustee Lorenzo said she is as well.

3. Board Representative on MCCA Academy for Fundraising Excellence

Dr. Sawyer said we made the decision to participate in a new endeavor by the Michigan Community College Association. For the first time they are running an academy for fundraising excellence. This is great timing for us since we are preparing for our next campaign. The MCCA recommends the president, foundation director, a member of the foundation board and a college trustee be part of the team. Currently on our team, we have Dr. Ulbrich, Christina Ayar, me, Ms. Argiri and Maria Silamianos, our foundation chair. We are hoping to get a board member to volunteer. The dates for each session are in your packet. There are three in-person sessions a Thursday evening and a Friday day. There are four conference calls on Mondays for an hour as well. Trustees Cusumano and Lorenzo volunteered. Trustee Haase asked if we could send two people. Dr. Sawyer said he would check and let them know.

4. Update on ORS, MPSERS and PA328

Dr. Sawyer said back in April, Ms. Argiri and he shared with the Board that they had testified before a senate sub-committee on MSPERS and how it applies to students. The good news is that legislation has passed on a go forward basis, but now the question is in past liability. We are currently in the process, at the State's request, of pulling together information on the last four years. Ms. Argiri added that the Governor signed Public Act 328 on July 2. PA328 includes the community colleges reporting all part-time students that also work on a part-time basis at the college for the last four years. Financial Services has been working on that report since July and we will have it done and submitted to the ORS by August 31. At that point, the ORS has thirty days to produce a report to the legislature in terms of what the overall impact may be for all the community colleges.

Ms. Argiri continued that the issue is the ORS has not been consistent in their guidance with respect to reporting of students by the majority of all community colleges. Macomb is not alone. There are 16 community colleges that were not reporting students that were also exempt from FICA per the IRS guidelines. Looking back to early 2000, 23 of the 28 community colleges fall into that group. There could be a significant impact. While we are uncertain as to what the impact will be, there is this four-year look back period. In addition, it has yet to be determined what the next steps will be in terms of the process. Because of that, she convened a group of community colleges on July 19 to talk through, if we were to join as a group, what type of action we could take proactively in anticipation of the outcome of the ORS study. We have been discussing that

and we have some positions that we think are pretty strong; excluding federal work study students from the study, as well as, the waiver of any penalties or interest that may be applied. While there are many unknown factors at this point, it is possible we will have to accrue an estimated liability in the audit report that is yet to be determined. That is just an awareness that it could be a possibility. It is going to depend on the final amount of wages, the estimated employer contribution on those wages for the four-year period, as well as, the auditors' interpretation of materiality for the College financial statement.

Trustee Dean asked why are they going back four years? Ms. Argiri said she is not sure why they chose four years. There must have been discussions between the legislature and the ORS, and maybe even the MCCA that a four-year period was a reasonable amount of time for a look back period to assess the magnitude of the students that had not been reported to the MSPERS system. The ORS has hinted that they could go back even as far as 2001 when the system was fully funded. That would be difficult for us to do, for many reasons. That is nearly twenty years' worth of information – these students come in and out and they might be a federal work study who has been working at the college for a period of time and then taking classes and their status could change too. Even to do the last four years it has taken a lot. We had to have the IT department create a custom report and then we have to look at the terms that were defined by the ORS. In some cases, they do not make any sense. For example, one of the terms was just the date of June 30, 2017. What student would be enrolled for class on June 30? There is some overlap and it takes a lot of time to go through each student record as it is reported from our IT system and massage the information so that it is meaningful to the ORS and to us. She thinks the four-year look back period was a period of time they felt was reasonable to accumulate the information. The ORS has also signaled that they may give students the option to elect into the system, which will create another potential issue because depending on how far back they go we may not have current address information for these students. While the report will be produced by the ORS, she thinks it will be some time before it becomes certain of what the next steps will be in coming to a resolution for this issue. Trustee Haase asked if the four years is in the legislation? Mr. Argiri confirmed that it is.

Trustee Cusumano asked whether the exposure was created by a change in the law. Mr. Steele said there is the public act that created the retirement system and the RIM, which are guidelines that help guide people identify what is reportable. He thinks what Ms. Argiri is saying is that, for years, it was accepted that colleges did not have to report income from students who took a certain number of credit hours. That was a practice followed by many community colleges throughout the State without any push back from the ORS. In some cases, there was validation that this was the appropriate way to report. The ORS is now saying well community colleges should have reported all of these student employees. That poses all kinds of problems, not only financially, but in terms of finding these people to ask whether they want their income reported to the retirement system or not. It was a practice for years that the community colleges followed and suddenly the ORS wants to change it.

Trustee Cusumano asked if it was isolated to community colleges. Ms. Argiri stated it is just the community colleges and K-12 in that retirement system. The universities opted out of the system in the early 90's. Trustee Cusumano asked who does this affect. Ms. Argiri said community colleges. It could pertain to K-12 with students who work in the district but with respect to the credit hour question, it is not applicable to K-12 districts.

Trustee Cusumano asked if any declaratory judgment action has been contemplated by a group or consortium of community colleges saying that it didn't apply. That there was reliance on the previous advice and pattern and practice. Ms. Argiri said that is what the group she convened is doing. It is a subset of the 28 community colleges and we are gathering evidence or communication that we received from the ORS that would help prove, to whomever we need to prove to, that we were following their guidance. In some cases, we have information from the ORS that says that it is the college's decision to determine who to report as a student. As we look back, there were changes made in the reporting instruction manual during this period and we are gathering the information on the language that was changed with respect to students.

Trustee Cusumano asked if there is an estimate of the exposure. Ms. Argiri said no, not yet. This issue began when the auditor general audited Southwestern Michigan College on reporting of students to MSPERS. Southwestern was using the same methodology that Macomb was using and their exposure going back to 2010 (2010-2017) was \$328,000 in back contributions. It really depends on any given year how many students we have employed and what we reported to the ORS and what we had not reported. By the end of August, when our report is complete she feels she will be able to provide a better estimate at least to those four years. Mr. Steele added that, to his knowledge, there has been no formal declaratory judgment action filed. He is not aware of anything being currently put together, but that is not to say that it hasn't been considered.

7.0 Closed Session

MOTION by Lorenzo supported by Cusumano to move into Closed Session for an update on a legal issue concerning the Jacobson case, labor negotiations and the President's evaluation.

ROLL CALL VOTE:

Ayes: Cusumano, Dean, Lorenzo, Haase

Nays:

Absent: DeSantis, DiMaria, Viviano

RECESS

The meeting recessed at 6:58 p.m.

RECONVENE

The meeting reconvened at 8:24 p.m.

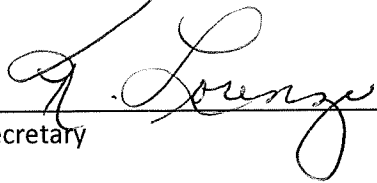
8.0 ADJOURNMENT

MOTION by Cusumano, supported by Dean, to adjourn the meeting.

Motion carried.

The meeting adjourned at 8:24 p.m.

COMMUNITY COLLEGE DISTRICT OF THE COUNTY OF MACOMB BOARD OF TRUSTEES


Secretary