

**BOARD OF TRUSTEES
FREDERICK COMMUNITY COLLEGE**

**October 20, 2021
Regular Meeting**

The Board of Trustees of Frederick Community College met in regular session on Wednesday, October 20, 2021 in the Student Center (H202/203). A virtual option to participate was provided due to the COVID-19 public health emergency. Participating in person were: Trustees Tom Lynch, Chair; Carolyn Kimberlin, Vice Chair; Gary Fearnow; Theodore Luck; Dr. April Miller; and Dr. John Molesworth. Trustee Ellis Barber was unable to attend.

Also attending in person were Interim President Dr. Thomas Powell, Secretary/Treasurer of the Board; Janice Spiegel, Director of Education and Special Initiatives; Jerry Boyd, Special Assistant to the President for Institutional Effectiveness; Dr. Nora Clark, Vice President (VP) for Learning Support; Lewis Godwin, Chief of Operations; Dr. Tony Hawkins, Provost/Executive Vice President (EVP) for Academic Affairs, Continuing Education, and Workforce Development (AACEWD); Dr. Cathy Jones, VP for Finance and Human Resources; Joseph McCormick, Chief Information Officer (CIO); Deborah Powell, Executive Director for the Office of Institutional Advancement and the FCC Foundation; Caroline Cole, Director of Communications to the President; Edmund O'Meally, PK Law, College legal counsel; Graylin Smith, Client Service Partner, SB & Company; and Kari Melvin, Recording Secretary.

Participating virtually were Dr. Perry Wood, Chair, Faculty Association (FA); Frank Seidel, Vice Chair, FA; Laura Cordova, Treasurer, FA; Evan Evans, Chair, College Senate; Robin Shusko, Vice Chair, College Senate; Shelby Carmon, Support Staff

Association (SSA) Executive; Karen Santelli, SSA Executive and College Senate Secretary; Kelly Stewart, Administrative Staff Association (ASA) Executive; Alan Whelan, President, Student Government Association (SGA); Dr. Jacob Ashby, Assistant Dean, Assessment and Articulation; Dr. Candice Baldwin, Associate Vice President (AVP) for Student Success; Theresa Dorsey, Administrative Associate II, President's Office; Fred Hockenberry, Executive Director of Auxiliaries; Dr. Sandy McCombe Waller, AVP for Academic Affairs/Dean of Health, Business, Technology & Science; Patricia Meyer, AVP for Continuing Education and Workforce Development; Adam Reno, Associate Chief Information Officer; and Kevin McManus from WFMD.

CALL TO ORDER

The meeting was called to order by Board Chair Lynch at 5:30 p.m.

ESTABLISHMENT OF QUORUM

Interim President Powell confirmed the presence of a quorum of the Board.

APPROVAL OF MINUTES

The Chair called for approval of the minutes of the September 22, 2021 board conversation and regular meeting.

On a motion made by Trustee Molesworth and seconded by Trustee Luck, the Board approved the minutes 6-0-1, as presented, with Trustee Barber absent.

CHAIR'S REPORT

Chair Lynch began by stating that the Board has received a number of communications regarding COVID-19 and vaccinations. He made it clear that the topic of vaccination protocols is on the agenda this evening for discussion only. College legal

counsel is in attendance this evening to ensure the Trustees understand the legal parameters that exist today.

Chair Lynch then presented a plaque to CIO McCormick in appreciation for his outstanding senior leadership of Information Technology at Frederick Community College. CIO McCormick thanked the Trustees for the opportunity to have served as the first Chief Information Officer for the College and their investments in technology and the team.

Chair Lynch then asked Vice Chair Kimberlin to provide an update on the presidential search. Vice Chair Kimberlin reported that the search went live on October 4, 2021 with advertisements to media outlets and the posting of the presidential profile and search timeline on the College website. All applications are sent directly to the search consultants. As of October 18, 2021, there have been 15 applications received. She noted that this was only in the first two weeks. Interested parties have until November 29, 2021 to apply. The search committee will meet with the consultants in November to receive training. Semifinalists will be identified in December.

Chair Lynch reported that Interim President Powell and CIO McCormick joined him during the Interagency Internal Audit Authority (IIAA) meeting this morning. The FCC Financial Transactions report was presented and approved unanimously. He commented that this was a tremendous work-product. Chair Lynch distributed a background document on the IIAA to each Trustee. He said it has been a tremendous learning experience to serve on the IIAA and he invited a volunteer to replace him. Any Trustee who is interested can let him know after the meeting.

Chair Lynch then said he received a beautiful thank you card from Dr. Amy Coldren, Director of Veteran and Military Services, for the opportunity for students to share their experiences with Trustees last month.

Chair Lynch thanked Trustee Luck on behalf of the entire Board for attending the annual Association of Community College Trustees Leadership Congress this month.

Trustee Luck said he appreciated the opportunity and it was quite a learning experience.

Chair Lynch invited Trustee Luck to share what he learned at a future meeting.

INTERIM PRESIDENT'S MONTHLY REPORT

Board members received the Interim President's written report in their meeting packet. Also included in the President's written report were: Higher Education Emergency Relief Fund (HEERF) Update and the CIP Construction Projects Update.

Interim President Powell reported that he and the Senior Leadership Team are beginning the process for the FY 2023 budget. Every morning, he receives two reports about COVID cases on campus: one for students and one for employees. We have very few active cases right now. A pandemic coordinator has been hired who will begin on November 1, 2021, to assist the campus with management of the COVID-19 pandemic and provide a liaison with the Frederick County and State Health Departments. Interim President Powell said his first meeting with the FCC Foundation Board of Directors was wonderful. He thanked Executive Director Powell for all of her work. Interim President Powell reported that VP Clark is taking the lead on discussions with Frederick Health to establish more health and wellness on campus for students, faculty, and staff. He continued that we have begun the work on the next 10-year Facilities Master Plan and the new Telework Policy continues to move through the review process.

INFORMATION/DISCUSSION ITEMS

Review of Audited Annual Financial Statements for Period Ending June 30, 2021 –

Graylin Smith, Client Service Partner, from the College auditors, SB & Company provided a presentation on the results of the audit. There were no findings and the College was issued an unmodified opinion on the financial statements. Additionally, the Annual Financial Report to the Maryland Higher Education Commission (CC-4 Report) was issued with no exceptions. There was an overall increase in net position of \$2,905,955. An assessment of internal controls and financial statement highlights were included in the presentation. A copy of the presentation is available from the President's Office.

Trustee Fearnow asked for clarification on deferred revenue as a current liability. Mr. Smith said there are two ways deferred revenue is represented. The first is if a student pays tuition for a class in advance. The College would have the cash, but the revenue would not be recognized until the class started. The second relates to grant revenue received in advance, but plans are to spend them soon.

Chair Lynch noted a decline in nonoperating revenue (expense) investment income over the past few years. Mr. Smith said this is due to changes in the market and most of the investments are with the FCC Foundation. This is just cash and market return. Trustee Fearnow asked if fees are deducted from investment income. Mr. Smith answered yes.

Interim President Powell asked if the Board has to formally accept the results of the audit. VP Jones answered that a vote is not usually taken. The results of the audit have already been submitted to the state. Interim President Powell recommended that the Board accept the results by a vote. Chair Lynch agreed this has been his experience with other organizations.

Chair Lynch asked for a motion to accept the audit report as presented.

On a motion made by Trustee Luck and seconded by Vice Chair Kimberlin, the Board accepted the audit report 6-0-1, as presented, with Trustee Barber absent.

Quarterly Financial Report for Period Ending September 30, 2021 – VP Jones presented this item and went through the report in detail with the Board. A copy of the report is available from the President’s Office.

This item was presented for information only – no action was taken or requested.

Discussion of College Financial Procedures for Small Procurements – Interim President Powell presented this item. The Code of Maryland Regulations (COMAR) now defines a small procurement to be \$50,000 or less. All State agencies have the authority to make awards of small procurement contracts, regardless of the method of source selection (i.e., competitive, sole source, or emergency procedures). The guidelines state that procurements may not be artificially divided in order to use the small procurement method and circumvent requirements applicable to procurements exceeding \$50,000. In all small procurements, competition should be sought to the extent practical considering factors such as availability of vendors, dollar value of the procurement, cost of administering the procurement, and time available to make the procurement including delivery time.

COMAR previously identified a small procurement as \$25,000 or less. Effective August 13, 2018, an update to the regulations changed the definition of “small procurement” from \$25,000 to \$50,000. At the time, the College chose to keep the Board approval threshold at \$25,000. However, as the cost of technology, facilities, contracted services, and numerous other procurements have increased, aligning the College financial

procedures with COMAR regulations would reduce the administrative burden of remaining at the lower threshold.

Interim President Powell recommended that the College follow the Code of Maryland Regulations Section 21.05.07 for Small Procurements to require full Board approval of procurements over \$50,000. Procurements of \$50,000 or less should be approved by the President. It would save a considerable amount of time for both staff and the Trustees.

The Trustees asked for some data on what the other community colleges in Maryland do in regard to the COMAR limits on their campuses. This data will be gathered and presented to the Trustees and they may consider this request at a future meeting.

Discussion of Vaccination Protocols – Interim President Powell presented this item. He shared with the Trustees his work on a vaccine mandate since the last Board meeting. It was noted that while various campus committees, affinity groups, and the College Senate are considering the proposal for a vaccine mandate, the review process has been slowed down to get a better sense of support for a mandate and incentives from the Trustees.

A survey conducted in August revealed that, of the faculty and staff responding to the survey, 95% reported being fully vaccinated.

Interim President Powell shared with the Trustees that four Maryland community colleges have vaccine mandates and two community colleges provide incentives for those receiving vaccines.

Provost/EVP Hawkins shared the work of the COVID Advisory Group, which was formed last month. Notes of their meetings are posted on the College website. He

commented that faculty have expressed support for having students vaccinated and they would feel more comfortable returning to campus in the spring semester.

Executive Associate Melvin distributed the external comments (emails and phone messages) from members of the public voicing opposition to any vaccine mandate.

The Trustees discussed the pending federal regulations on vaccines to be issued by the Occupational Safety and Health Administration (OSHA). Mr. O'Meally detailed the standing of the pending regulations and how it would likely be implemented in Maryland. He also noted that a student has filed a lawsuit against the University System of Maryland about the University's mandate. That case is now in US District Court.

Trustee Molesworth commented that he would like to wait for the OSHA regulations. Trustee Miller expressed complete opposition to any incentives or a mandate for students given the possible side effects of the vaccine for that age group, which may be worse than having COVID-19. She continued that she would like to hear from Dr. Barbara Brookmyer from the Frederick County Health Department and have an open forum to obtain public comment. Vice Chair Kimberlin said she questions whether mandates will do any good given that those who are vaccinated can still pass the virus on to another person. She asked Provost/EVP Hawkins about what data faculty considered in their support for a mandate. Provost/EVP Hawkins answered that it was not a data-driven process. Faculty are generally in favor of vaccinations for spring semester. Registration for spring begins in November and vaccination status will determine course formats. Trustee Luck commented that if it becomes law, there is no question FCC has to follow it. The number of cases reported on campus does not indicate a sense of urgency to take action quickly. Director

Spiegel added that Frederick County decided to start with an incentive for employees. Once OSHA announces regulations, they can no longer offer an incentive.

The consensus was that FCC should wait on any consideration of a vaccine mandate until the OSHA regulations are reviewed and how they may apply to colleges. Should there be a law and/or regulations, there may be no need for a vaccine mandate. The Trustees would also like to learn the results of the University System of Maryland lawsuit.

Chairman Lynch asked Mr. O’Meally to keep the Trustees posted on these two areas.

Trustee Miller asked that the Board make a public statement to clarify its position on a vaccination mandate. Chair Lynch said the clarification for this evening is that the Board is not making any decision.

This item was presented for information only – no action was taken or requested.

CONSENT ITEMS

Pursuant to the Board of Trustees Bylaws, the Board may make one motion and hold one vote for all items designated as consent items on the monthly Board agendas. Any Board member, who for any reason, wants to discuss an item or needs to recuse themselves from voting on an item, may remove the item from the consent list and it will be dealt with as a regular action item. The following items were submitted as consent items and distributed to the Trustees in their meeting packet:

- Approval of Piggyback Contract with Microsoft for State and Local Government – Premier Support Services in the amount of \$47,792.00; Piggyback of the Maryland Education Enterprise Consortium (MEEC) Contract #U8720739;**
- Approval of Piggyback Contract with Dell Inc. for Computing and Business Technology (CBT) Career Program laptops in the amount of \$45,236.05; Piggyback**

of the Maryland Education Enterprise Consortium (MEEC) Contract #UMD-972016; and

- Approval of Piggyback Contract with Evergreen Solutions, LLC in the amount of \$55,500 for a Classification and Compensation Study.

Chair Lynch asked for any discussion or a motion for approval.

On a motion made by Trustee Molesworth and seconded by Trustee Luck, the Board approved the consent items 6-0-1, as presented, with Trustee Barber absent.

TRUSTEE COMMENTS

Trustee Miller read into the record a letter she received in opposition to a vaccine mandate:

Dear Members of the FCC Board of Trustees,

It has come to our attention that you intend to discuss “vaccination protocols” at this month’s Board meeting being held today, October 20, 2021, at 5:30 p.m. on campus. We understand that this meeting is not open for public comment at the campus meeting but rather is accepting input from the public via virtual call-in only. Further, we understand this agenda was made public just last Friday. This is simply not enough time to provide proper public notification for public input to meet the concerns of the community, staff, students, and funders.

The controversial nature of the data and the VAERS reporting of negative outcomes, including myocarditis, blood clotting, menstrual irregularities, anaphylaxis, infertility, miscarriages, heart attacks, shingles, and other medical crises, makes it imperative to have public comment on any proposed protocols or mandates for medical vaccinations. There is much controversy due to the withholding of information about proven treatment and prophylactic protocols. Therefore, the lack of information and the forcing of vaccinations on individuals including students and staff at FCC, must be null and void. There simply is insufficient information to constitute “informed consent” and thereby violates the U.S. Constitution and Nuremberg Code. Therefore, it cannot stand that any educational institutions be given the power and authority to subvert medical decision-making of the individual affected.

As of 10/8/21, VAERS reports 16,766 deaths attributed to medication therapies by Pfizer, Moderna and J&J given as a vaccination against COVID-19. Many

medical doctors are clear that the death rate of our youth as a result of COVID-19 does not warrant the risk and damaging effects of the vax. Given the low mortality rate of youth from COVID-19, the risk of the vax far exceeds the risk of the illness.

Further, the legal ramifications to the institution for issuing such mandates for controversial medical treatments that result in severe injury or death could be staggering. The cost of litigating this case, which will undoubtedly arise, will lead to excessive costs to the institution, its funders, staff, and students in the form of higher cost of education. Currently, cases are in process across the nation and some have already been litigated and lost. Cases include:

- *NYC Teacher Vax Mandate*
 - *overturned*
- *Western MI University Student Athlete Mandate (6th Circuit Ct. of Appeals)*
 - *case thrown out.*
- *Northern Texas Public Health Professionals v. FDA*
 - *in process*
- *University of Maryland Students, Staff throughout the University System*
 - *class action lawsuit in process*

Given the agenda was published last Friday, there is insufficient public notification to confront the issue with full transparency. Given the magnitude of this potential medical mandate and concerns across the county and community of the dangers to our youth and staff, we respectfully request that discussion be moved to a public forum with live public comment sufficient to deal with this issue properly, effectively, and transparently. Lastly, we request that full medical data and information on the vaccinations, treatment and outcomes, as well as other treatment protocols be brought forth for discussion so that individuals may make an informed decision about their health care.

Frederick Community College and its representatives including the Board of Trustees, is hereby put on notice that any mandate will not stand.

Respectfully submitted,

Linda Diefenbach, Walter Charlton, Esq., CPA, Natalie Abbas, Jennifer Charlton, and Angela McIntosh

Vice Chair Kimberlin thanked Interim President Powell for his latest op-ed in the Frederick News-Post. She said it was outstanding and received good comments from the public. Chair Lynch echoed her comments.

Chair Lynch thanked Interim President Powell for making the Trustees think and seek to improve the institution.

CLOSED SESSION

At 7:42 p.m., the motion was made by Vice Chair Kimberlin to convene in closed session. The motion was seconded by Trustee Luck and approved by the Board 6-0-1, with Trustee Barber absent.

This action was taken in accordance with Maryland’s Open Meetings Act, Section 3-305(b)(1) to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals; Section 3-305(b)(7) to consult with counsel to obtain legal advice; Section 3-305(b)(9) to conduct collective bargaining negotiations or consider matters that relate to the negotiations; and Section 3-305(b)(13) to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter. In attendance: Trustees Tom Lynch, Chair; Carolyn Kimberlin, Vice Chair; Gary Fearnow; Theodore Luck; Dr. April Miller; and Dr. John Molesworth. Trustee Ellis Barber was unable to participate. Also present were Interim President Dr. Thomas Powell, Secretary/Treasurer of the Board; Edmund O’Meally, PK Law, College legal counsel; and Kari Melvin, Recording Secretary.

The Board reviewed closed session minutes from September 22, 2021 pursuant to Section 3-306(c)(3)(ii) of the General Provisions Article of the Maryland Annotated Code. The Chair called for approval of the closed session minutes. One revision was identified.

On a motion made by Vice Chair Kimberlin and seconded by Trustee Luck, the Board approved the September 22, 2021 closed session minutes 6-0-1, as revised, with Trustee Barber absent.

The Board obtained legal advice on matters related to potential unionization and collective bargaining; discussed the salary, benefits, and compensation for the next president and obtained legal advice on the presidential search, the search process, and timeline; discussed personnel issues and obtained legal advice related to potential retirement package options for eligible personnel; and obtained legal advice regarding modifications to shared governance. No action was taken.

On a motion made by Trustee Luck and seconded by Trustee Molesworth, the Board approved 6-0-1, with Trustee Barber absent, to adjourn the closed session at 9:21 p.m.

ADMINISTRATIVE FUNCTION

Interim President Powell provided updates to the Board of Trustees regarding his observations on fiscal issues.

NEXT MEETING

The next regular meeting of the Board will be held on Wednesday, November 17, 2021.

**Dr. Thomas Powell
Secretary/Treasurer**

Prepared by Kari Melvin
Office of the President
Frederick Community College