

Bristol Community College  
Fall River, Massachusetts

Board of Trustees  
Trustee Training Minutes

January 29, 2018

A. Convening

The Bristol Community College Board of Trustees had a Board of Trustees Training with General Counsel Kenneth Tashjy on Monday, January 29, 2018, at 4:00 p.m. in Room D209 of the Hudnall Administration Building, on our Fall River Campus at 777 Elsbree Street. Chair Joan Medeiros called the training session to order at 4:09 p.m.

Trustees present: Joan Medeiros, Chair; Frank Baptista; Samir Bhattacharyya; Keith Hovan (by remote participation); Lynn Malasi; Kylie Pasternak; Anthony Sapienza; Sandra Saunders, Esq.; and Diane Silvia, Vice Chair.

Trustees absent: Steven Torres, Esq.

B. Information from the Chair

Newly-appointed Chair Joan Medeiros welcomed all to the meeting. She said that Trustee Keith Hovan will be participating remotely for the reason of geographic distance. All votes taken during the meeting must be by roll call vote. Chair Medeiros then introduced General Counsel Kenneth Tashjy to the Board of Trustees.

C. Trustee Training – General Counsel Kenneth Tashjy

General Counsel Kenneth Tashjy welcomed all to the training. He introduced himself and said that he works on behalf of all 15 Boards of Trustees, the administrations and community colleges. Each community college contributes 1/15 of the salary for his office. Everyone at each community college receives the same legal counsel. He said he has been in the General Counsel Office since 2000 and works closely with the Attorney General's Office.

General Counsel Tashjy then conducted the training (see attached presentation).

D. Adjournment

After the training was completed and there were no further questions from the Board, Chair Medeiros declared the meeting adjourned. The time was 5:10 p.m.

Respectfully submitted,

  
Kathleen Wordell, Recording Secretary

3/5/18  
Date Approved

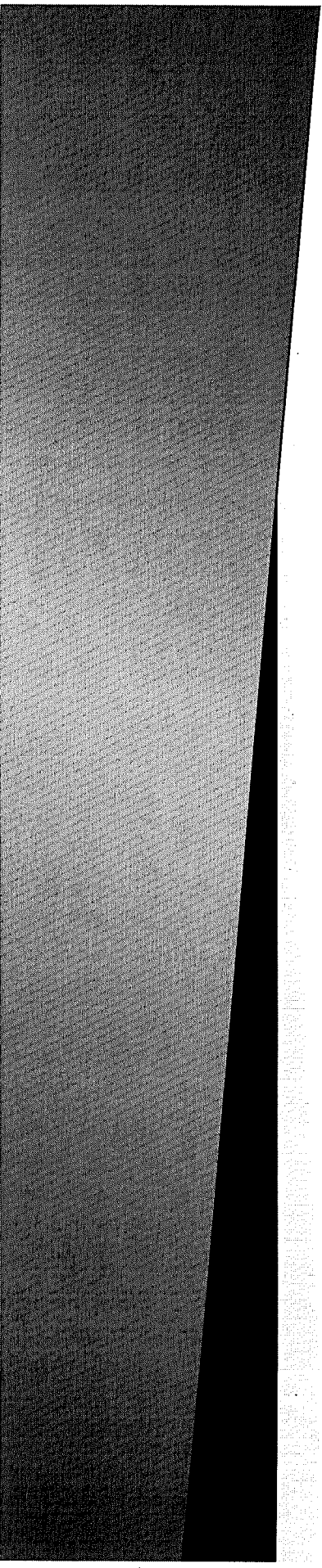
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**MASSACHUSETTS COMMUNITY COLLEGES**

Kenneth Tashiy, General Counsel

Winter 2018

**BOARD OF TRUSTEES TRAINING**



## Training Overview

- **History of the Massachusetts Community Colleges**
- **Current Public Higher Education Governance Structure**
- **Chapter 15A – BHE and Local Board's Duties and Authorities**
- **Delegation of Authority to President**
- **Immunity & Indemnity Protections**
- **Open Meeting Law**
- **Public Records Law**
- **State Ethics Law**
- **College Foundation**
- **Questions**

## HISTORY OF THE MASSACHUSETTS COMMUNITY COLLEGES

**1958 - Acts and Resolves of 1958, Chapter 605** (Approved - October 3, 1958)

Established Massachusetts Board of Regional Community Colleges ("MBRCC")

- 15 members
- Commissioner of Education, President of the University of Massachusetts, President of a state teachers college, President of a Massachusetts technical institute, and eleven members appointed by the Governor, at least one of which was to be the President of a private college, university or junior college in the Commonwealth
- Established Regional Community College System

**1980 - Acts and Resolves of 1980, Chapter 329** (Approved - August 1, 1980)

- General Court enacted a comprehensive reorganization of public higher education
- Dissolved:
  - MBRCC
  - Board of Higher Education
  - Secretary of Educational Affairs
  - Segmental Boards for the State Colleges, University of Massachusetts, University of Lowell and Southeastern Massachusetts University
- Created:
  - 15 Local Boards of Trustees
  - Board of Regents (BHE)

## HISTORY OF THE MASSACHUSETTS COMMUNITY COLLEGES

1991 – Chapter 142 of the Acts and Resolves of 1991 (Approved July 11, 1991)

- Dissolved:
  - Board of Regents
- Created:
  - Higher Education Coordinating Council

### 1992 Reorganization Commission Report

- In 1991, Governor William Weld established a commission to review the “mission, purpose, financing, and governance of Massachusetts’ state colleges and community colleges and to make specific recommendations for the future of these colleges.” The resulting report included the following recommendation:

“[T]he mission, program, and financial goals to which the state colleges and community colleges should aspire can best be achieved through strong campus boards of trustees. Governance by segmental boards has already been tried and found wanting: it prevailed for these colleges until 1980, and proved inimical to institutional mission and program differentiation, as well as to flexible, proactive financial management. National experience, too, shows centralized segmental authority tends to promote uniformity within a system, and to stifle innovation and initiative. There is no reason for Massachusetts to return to a failed structure requiring large new bureaucracies, with all that implies in terms of cost and rigidity.”

# Current Public Higher Education Governance Structure

## BOARDS OF TRUSTEES

- 11 voting members
- Board duties – Ch. 15A, Sect. 22
- Delegation authority to President
- Fiduciary Responsibility
- Fiscal Autonomy
- Personnel Authority
- Governance Authority

## BOARD OF HIGHER EDUCATION

- 13 members
- 3 from Public Higher Education
- Board Duties – Ch. 15A, Sec. 9
- Delegation authority to Commissioner
- Fix and approve CEO compensation
- Establish guidelines for search, selection, appointment, compensation, evaluation and removal of Presidents
- 1 Pres. Search Committee Rep.
- Establish Office of Trustee Relations

## GOVERNOR

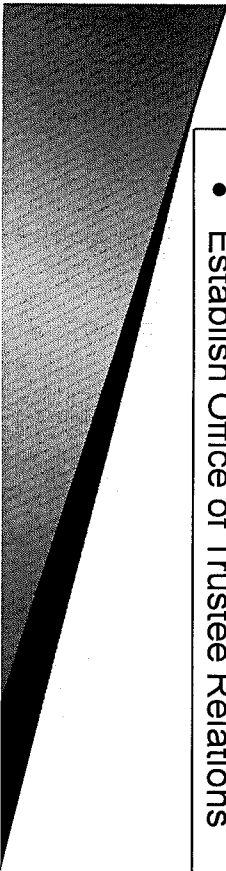
- Appoints 10 of 11 Trustees
- Appoints Board Chairs

## EXECUTIVE OFFICE OF EDUCATION SECRETARY OF EDUCATION

- Appointed by the Governor
- Serves at pleasure of Governor
- Oversees:
  - Dept. of Early Education & Care
  - Dept. of Elem. & Sec. Education
  - Dept. of Higher Education

## DEPARTMENT OF HIGHER EDUCATION COMMISSIONER OF HIGHER ED

- Appointment recommended by BHE
- Appointment approved by Secretary
- Commissioner serves at pleasure of BHE
- Commissioner serves as Chief HE Official



## **EXECUTIVE OFFICE OF EDUCATION**

### **M.G.L. Chapter 6A, Section 14A**

- EOE under control of a Secretary of Education
- Secretary's duties and powers:
  1. Analyze the present and future goals, needs, and requirements of public education
  2. Review and approve mission statements and 5-year master plans encompassing each sector of the public education system
  3. Approve appointment of Commissioner of the Department of Higher Education
  4. Make recommendations to the Secretary of A&F and governor concerning funding of education and assist in preparing budget proposals to be put before the legislature
  5. Serve as governor's educational advisor and on governor's cabinet
  6. Serve as ex officio voting member of the BHE and the board UMASS

### **Chapter 15A Section 15 - Ordinary Maintenance**

- Secretary in consultation with the BHE shall prepare and submit to Budget Director an estimate on ordinary maintenance for public higher education

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

**M.G.L. Chapter 6A, Section 16**

**BY COMPARISON:**

- The EOHHS shall include: Department of Elder Affairs; Department of Public Health; Department of Mental Health; Division of Medical Assistance; Department of Children and Families; Department of Transitional Assistance; Department of Youth Services; Child abuse Prevention Board; Office for Refugees and Immigrants; Department of Developmental Services; Massachusetts Rehabilitation Commission; Massachusetts Commission for the Blind; Massachusetts Commission for the Deaf and Hard of Hearing; Department of Veterans' Services; Managed Care Oversight Board; and Health Facilities Appeals Board.
- The Secretary of health and human services shall serve at the pleasure of the governor and shall act as the executive officer in all matters pertaining to the administration, management, operation, regulation, planning, fiscal and policy development functions and affairs of the departments, commissions, offices, boards, divisions and other agencies within the executive office.



**BOARD OF HIGHER EDUCATION**  
**Selected Functions and Duties**  
**MGL Chapter 15A, Section 9**

- 13 Members (3 Higher Education Representatives)
- Recommend Commissioner to the Secretary
- Delegation of Authority to Commissioner
- Approve/deny new academic programs
- Confer power to grant degrees
- Approve appointment of Community College Presidents
- Establish guidelines for CEO search, selection, appointment, compensation, evaluation & removal
- Classify student charges as tuition or as fees
- Establish guidelines for student charges
- Develop a statewide tuition plan
- Establish residency standard for in-state tuition
- Develop funding formula
- “Employer” under MGL Chapter 150E for collective bargaining
- Establish in the Department of Higher Education an Office of Coordination
- Establish trustee recruitment, training and accountability initiatives

## LOCAL BOARDS OF TRUSTEES

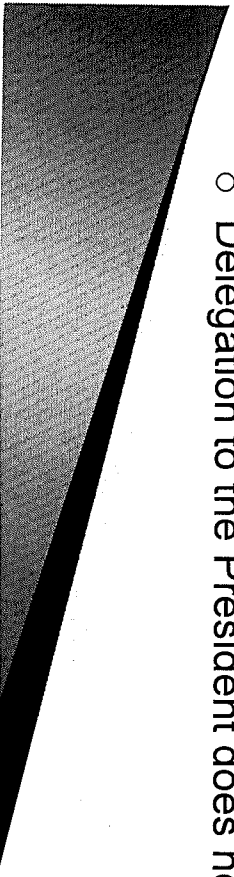
- **Fiduciary Duty**
  - Trustees act as fiduciaries of their institutions
  - Trustees are charged with acting in the best interest of their institution
  - “Fiduciary” comes from the Latin word for “trust”
- **Three Standards of Board Responsibility**
  - **Duty of Care** - A Board member acts reasonably, competently, and prudently when making decisions on behalf of the institution and in managing its assets (Personnel, Fiscal, and Reputational Assets). A Board member must set aside competing personal or professional interests when exercising his/her duty of care.
  - **Duty of Loyalty** - Requires Board members to put the interests of the institution before all others. It prohibits a Board member from acting out of self-interest.
  - **Duty of Obedience** – A Board member’s obligation to advance the mission of the College and the Board, including an expectation that Board members will act in conformity with Board policies and practices.

**LOCAL BOARD OF TRUSTEES**  
**Selected Functions and Duties**  
**MGL Chapter 15A, Section 22**

- **General Authority**
  - The Boards of Trustees are responsible for “the administrative management of personnel, staff services and the general business of the institution under its authority”
- **Personnel Authority**
  - Appoint, transfer, dismiss, promote & award tenure to all personnel
  - At its pleasure and with the approval of the BHE appoint and remove the chief executive officer of its institution
  - BHE Guidelines for search and selection of CEO
- **Fiscal Authority**
  - Establish all fees
  - Retain fees in a revolving fund or funds
  - Expend fees as the Board of the institution may direct
  - Authority to transfer funds within and among subsidiary accounts as allocated by the BHE
  - Line item appropriations

**LOCAL BOARD OF TRUSTEES**  
**Selected Functions and Duties**  
**MGL Chapter 15A, Section 22**

- **Academic Authority**
  - Award degrees in fields approved by the BHE
  - Institutions may conduct summer and evening programs at no expense to the Commonwealth
- **Policy Development**
  - Implement and evaluate affirmative action policies and programs
  - Establish, implement and evaluate student services and policies
- **Delegation Authority**
  - “The Board of Trustees of each institution may delegate to the President of such institution any of the powers and responsibilities herein enumerated”
  - Delegation to the President does not relieve the Board of its statutory responsibilities



## **IMMUNITY & INDEMNITY PROTECTIONS**

### **IMMUNITY PROTECTIONS - CHAPTER 258**

- **Immunity from Liability for Personal Injury, Property Damage or Death**
  - Negligent or wrongful acts or omissions, including gross negligence
  - Arises out of activities performed within the scope of the Trustee's official duties
  - Employer Liability is capped at \$100,000.00 per plaintiff
  
- **No Immunity Protection Resulting**
  - Civil rights violations
  - Breach of Contract
  - Intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations

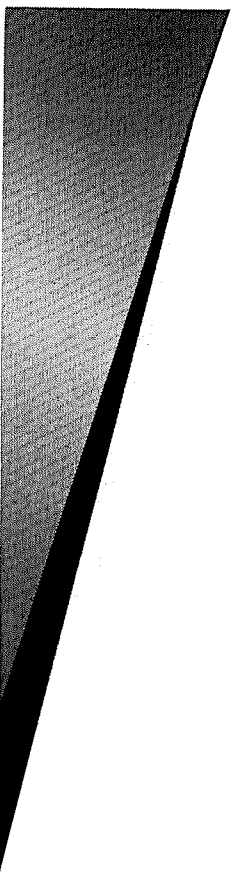
## IMMUNITY & INDEMNITY PROTECTIONS

### INDEMNIFICATION PROTECTIONS - CHAPTER 258

- **Trustees/Employees May Receive Indemnification Protections**
  - For intentional torts or a civil rights violation
  - May be indemnified up to one million (\$1,000,000.00) dollars
  - Trustee was acting within the scope of his/her official duties
- **No Indemnification Protection**
  - Trustee/Employee was not acting within the scope of his/her official duties
  - Civil rights violation resulting from gross negligent, willful or malicious conduct
  - Breach of Contract

### INDEMNIFICATION PROTECTIONS - CHAPTER 15A, SECTION 22

- **Trustees Shall be Indemnified by the Commonwealth**
  - For any claim arising out of any judgment, decision, or conduct of a Trustee
  - Must have acted in good faith and without malice
  - Defense or settlement made by the attorney general
  - No limit on indemnification established



## OPEN MEETING LAW

### Important Definitions

- **Meeting** – deliberation by public body on matters within its jurisdiction
- **Deliberation** – oral/written communication among or b/w quorum on Board business
- **Executive Session** – closed session conducted in accordance with the law

### General Rules

- Meeting posting requirements
- Board and Sub-Committees of Board are subject to the law
- Minutes must be maintained in open and executive sessions
- Remote participation
- Follow the “Table Rule”

### Communication Issues

- Quorum required for “deliberation”
- Multiple communications between individual Board members when taken together could constitute a quorum
- Do not hit “Reply All”

## PUBLIC RECORDS LAW

- **Presumption**
  - All documents created or maintained by a state agency are Public Records
- **Public Records include:**
  - All books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data
  - Regardless of physical form or characteristics (paper or electronic record)
  - Made or received by any officer or employee of any agency or board of the Commonwealth
- **Exemptions from Disclosure**
  - 18 exemptions from disclosure exist under the law
  - Personnel and medical records, personal notes, investigatory materials, proprietary information, contract proposals, real estate appraisals, etc.
- **Email**
  - Email sent by a Board member on Board business is public record information
  - Regardless whether sent/received on college-issued or personal devices



## STATE ETHICS LAW

### General Rules

- Trustees are Special State Employees
- Subject to the State Ethics Law (MGL Chapter 268A)
- An impropriety or an appearance of impropriety can violate the law

### Prohibitions

- Cannot use influence to gain a benefit for yourself or others
- Cannot act on employment matters involving an immediate family member
- Cannot act on matters involving a personal or business financial interest
- Cannot use public resources for political or private purposes
- Accepting Gifts
  - NO to gift/\$ if offered to influence you
  - NO to gift/\$50 or > from s/o you have official dealings with
  - NO to gift/\$100 or > if from Lobbyist **REGARDLESS** of reason or friendship
    - Ask yourself: **WHY ME?**
- Political Fundraising
  - **NONE** from supervisees, vendors or those under your regulatory power

## COLLEGE FOUNDATION

### What is a College Foundation?

- Established pursuant to MGL Chapter 15A, Section 37
- MGL Chapter 180 not-for-profit corporation
- Federal tax exempt status – Chapter 501(c)(3)
- Serves as the fundraising arm of the institution it supports
- Organized and operated exclusively for the benefit of the institution it supports

### Board of Trustee Certification

- A Foundation is certified by the Board of Trustees of the institution it supports to be operated in a manner consistent with the goals and policies of the institution

### Lack of Certification

- A Foundation which is not certified or whose certification has been revoked by a Board of Trustees, shall not use the name of such institution for fundraising without written permission of the Board or in the name of such Foundation

### Memorandum of Agreement

- Many Boards and their Foundations have executed MOAs outlining respective duties and responsibilities

## COLLEGE FOUNDATION

### Membership of Foundation Governing Board

- A Foundation shall have a governing board to oversee its operation
- In no event shall institutional trustees and employees constitute one-half or more of the voting members of a Foundation's governing board
- The governing board of such Foundation shall annually file a list of its members and officers with the institution's Board of Trustees

### Authorized Use of College Facilities and Personnel

- The Board of Trustees is authorized to permit the Foundation to use without compensation College facilities and personnel services
- In no event shall an employee of the institution spend more than twenty-five (25%) percent of his/her work hours engaged in services for a Foundation

### Accepting Gifts from a Foundation

- All gifts from a Foundation to an institution shall be approved for acceptance by the Board of Trustees in accordance with applicable institutional policies

### Audits

- A Foundation's financial statement and accounts are subject to audit by the State Auditor

## Current Hot Topic – Free Speech Rights on Public College Campuses

- The William F. Buckley Jr. Program at Yale University surveyed 800 students at in 2015 about their attitudes concerning free speech on college campuses.
  - **95%** say protecting free speech rights is personally important to them – BUT ...
  - **33%** could not identify the 1<sup>st</sup> Amendment as the part of the Constitution that dealt with free speech
  - **35%** said the 1<sup>st</sup> Amendment does not protect “hate speech”
  - **72%** think that any student or faculty who uses language that is “otherwise offensive” should be subject to disciplinary action
  - **51%** favor speech codes to regulate student and faculty speech
  - **63%** favor requiring professors to employ “trigger warnings” to alert students of discomfiting class materials or discussion
- Very narrow segment of speech is unprotected on a public college campus
- Examples: Defamation, threats, harassment, material interruption/riot/violence
- Hate, offensive and politically incorrect speech is protected speech
- No 1<sup>st</sup> Amendment right to a “heckler’s veto”
- Public College Campuses are intended to be the “Marketplace of Ideas”

**Questions?**

**Resignations?**

