MINUTES: April 9, 2010

MEETING: DAYTONA STATE COLLEGE
DISTRICT BOARD OF TRUSTEES

PLACE: DAYTONA STATE COLLEGE
DAYTONA BEACH CAMPUS’ THEATER CENTER
BUILDING 220, ROOM 102
1200 W. INTERNATIONAL SPEEDWAY BLVD.
DAYTONA BEACH, FLORIDA

PRESENT: Dr. Kent Sharples, Corporate Secretary/President
Dr. Mary Bennett, Chairperson
Mr. John Graham, Vice Chairperson
Mr. William Davison
Mrs. Mary Ann Haas
Mrs. Forough Hosseini
Dr. Steven Miles
Mr. Joseph Petrock
Mr. Edward Schatz
Mr. Gregory Smith

Dr. Bennett called the meeting to order at 11:10 a.m.

Distributed President’s Employment Contract. Made an official part of the minutes as Supplemental A: 4/9/10.

Public Participation
Dr. Bennett inquired if there were any members from the public that requested time to appear before the Board. No requests had been received.

Resolution of Cooperation
Dr. Bennett explained the Resolution of Cooperation was discussed at the retreat and asked if there was an interest by the Board to move forward with the adoption of the resolution.

MOTION: (Davison/Petrock) That the District Board of Trustees adopt the Resolution of Cooperation incorporating Mrs. Haas’ revision below. Carried unanimously.

WHEREAS, Daytona State is seeking authorization to offer additional baccalaureate degrees in Engineering Technology and other areas identified by the community; and

Baccalaureate in Engineering Technology
Dr. Sharples recommended the Board reaffirm their commitment to pursue the Baccalaureate in Engineering Technology degree as discussed during the retreat.
MOTION: (Smith/Haas) That the District Board of Trustees reaffirm and approve Daytona State College’s submission of the Bachelor of Science in Engineering Technology (BSET), with concentrations in Engineering Technology, Electrical Engineering Technology and Information Systems Technology, to the Florida Board of Education. Carried unanimously.

Collaboration of BSET Degree
Dr. Sharples explained he recommended the Board commit to the collaborative agreement with the other institutions as discussed during the retreat and recommended approval.

MOTION: (Haas/Miles) That the District Board of Trustees approve and endorse the collaboration efforts with the College of Central Florida, Lake Sumter Community College, Seminole State College of Florida, and Valencia Community College, including Brevard Community College and St. Johns River Community College. Carried unanimously.

President’s Contract
Dr. Bennett asked Mr. Graham to review the President's contract. Mr. Graham presented an overview of the contract. He shared at the last Board meeting the Board extended the President’s contact by one year to April 2013 and a potential Board action at this meeting was to extend the President’s contract for another year make it through April 2014. He shared traditionally the contract has been on a rolling four year basis for the past nine years. He explained the President's salary is currently $285,000 annually plus a housing allowance of $25,000 annually. He explained the Board approved the Finance Committee’s recommendation of a 2% salary increase for faculty and staff, retroactive to the beginning of this fiscal year, and how the Committee contemplated doing the same for the President. He explained the President would be treated in the same manner as faculty and staff, as he was last year where he and the faculty and staff received no permanent salary increase but did receive a one-time $1,000 payment. This year the Finance Committee recommended a 2% increase which would bring the President's annual salary to $290,700 and indicated the housing allowance would remain the same.

Mr. Graham explained there were no changes to the contract with regards to paid vacation, auto allowance, cell phone, hospitalization and medical, spouse’s healthcare, and retirement contributions by the College. He shared in section fourteen where in the event the President is discharged with cause, the President shall be entitled to his salary and benefits up to the date of dismissal, which may be also true if he were to resign. He said further in this paragraph it states in the event the President is discharged without cause he shall continue to be paid his total compensation and all benefits through the end of the contract term, which is currently through April 2013, and an action item for consideration at this meeting was for the Board to extend the President’s contract through April 2014. He added that the rationale for having a contract out into the future is to assure a quality president at an institution that there is some cushion if he was discharged without cause and that was the purpose for this clause. He explained there are eleven out of the twenty-eight state college presidents that have four year or five year contracts.
Mrs. Haas raised concerns she had shared previously about the amount of money related to dismissing the President without cause and felt if this language was in the contract then it could be feasible. She understands this is for the President’s protection and believes a person in this position needs protection. She shared she was uncomfortable justifying to the taxpayers four years of compensation should the Board vote to dismiss the President without cause.

Mrs. Hosseini echoed Mrs. Haas concerns and shared how some Board members were upset that the President’s contact had not been extended after last year’s retreat and took full responsibility for this as she was the chairperson at that time. She referenced at the April 2008 meeting the Board gave the President a great evaluation and how she could not find in the minutes where the Board approved extending the contract for four years and how the contract had been signed by the chairperson at that time, Mr. Petrock. She explained before moving forward she wanted to make sure that contract was legal so she could move forward on future contracts and asked legal counsel if the 2008 to 2012 contract was legal.

Dr. Miles indicated in reference to the length of the contract how in his field when a person is asked to move from one job to another those contracts have periods of time longer than one or two years because a successful individual is being asked to move from one place to another and how when you find a successful person you do everything you can to keep them. He explained if the President was dismissed with cause he would get nothing and how this provision would only be acted upon if the Board dismissed the President without cause. He believes when the Board goes to recruit a successor at some point in time, this candidate would also want the same provisions and security. He urged the Board to keep that term in the contract to allow the College to retain a successful person.

Mrs. Haas shared she understood having someone relocate and believed a two year contract for someone in a public position was sufficient and felt four years was excessive if the Board voted to dismiss a president without cause, especially when so many people are unemployed. She believed this was a lot of money to place into contract language.

Mr. Peter Heebner, outside legal counsel, explained rollover contracts are very consistent with heads of organizations because it allows the cushion if a rogue board comes in and improperly removes someone for reasons unrelated to performance.

Mr. Graham clarified Mrs. Hosseini’s question for legal counsel and how she was unable to locate in the Board minutes where the Board acted to extend the contract for an additional year, extending the contract from 2008 through 2012.

Dr. Bennett asked legal counsel if the last vote the Board took in March 2010 would override the previous contract and if that would supersede the action taken by the Board in 2008. Mr. Heebner indicated it would.

Mrs. Hosseini explained if the contract was not legal in 2008, were subsequent agreements legal, and how there were changes to the clauses between 2007 and 2008.
Mr. Heebner explained the Board has the ability to move, by majority vote, any contract they wish with the President at any time. He did not see in the 2008 minutes where the actual contract was increased or extended by one year but believed the Board’s action recently, or the action taken at this meeting, will override any prior motion by the Board.

Mrs. Hosseini understood and believes there was a break in the process because the minutes do not reflect the extension and the contract was signed by the chairperson at that time and would like to make sure this does not happen again.

Mr. Heebner indicated he could only rely on the minutes and agreed the contract signed by the chair has to be the contract that was approved by the Board. He also clarified if a previous Board chooses not to extend the President’s contract for a year this does not preclude a subsequent Board from extending the contract.

Mrs. Hosseini was concerned if the term of the contract was not legally extended and the recent action taken by the Board, were the dates of the contract correct. She shared if there was no legal action and the contract was signed by the chairperson at that time what were the consequences to the Board and the College. Mr. Heebner explained if the contract signed by the chairperson at that time was not the contract that was approved by the Board then that would have to be corrected, but would still not preclude the current Board from curing this by simply approving a new contract. He shared there was no reason why this Board could not come in after the fact and cure that as they did last month by approving a new contract that was executed by the chairperson.

Dr. Bennett asked Mr. Graham if he recalled discussing the term of the contract during his presentation to the Board in 2008 but he did not. Dr. Bennett asked legal counsel how this is cured if it did or did not happen. Mr. Heebner explained it had already been cured by the Board’s action in March 2010 extending the President’s contract to 2013 and to catch up the Board would accept the motion by Mr. Graham to extend the contract through 2014.

Mr. Schatz recalled discussing the extension of the contract at the April 2008 meeting and how there are times the minutes condense lengthy Board conversations to a few paragraphs and it would not be surprising or inconceivable if this language did not make it into the minutes verbatim.

Mrs. Hosseini agreed with Mr. Schatz that it was possible that by condensing the conversations this language may not have made it into the minutes and suggested having Mrs. Mercer or a court reporter prepare verbatim of this portion of the meeting.

Dr. Bennett explained if it was the Board’s intent to extend the President’s contract, the Board can vote the motion up or down, and how Mrs. Hosseini has brought forward a legal issue, which has been interpreted by outside legal counsel, and how the Board can fix whatever may or may not have happened at a former Board meeting.

Mrs. Hosseini explained the question she asked legal counsel was if the term extension was not brought to the Board, and some of those terms changed, having the Board chair sign the contract indicates something in the process was not perfect. She
suggested outside counsel not affiliated with Board members or the College, or the State Board of Education could suggest someone, provide a legal opinion on this matter.

Dr. Bennett explained there is a motion on the floor that requires a vote or the item can be tabled, but the proceedings must continue.

Mrs. Hosseini understood and wanted to bring this up so she could receive an answer. She shared how she agreed with Mrs. Haas concerns about a four year contract and where the College would get four year’s worth of compensation. She explained when a person is hired you want to give this person a long contract to make sure it is worth uprooting their family, but once a person is here it is not necessary to keep repeating the lengthy term. She referenced state statute where the College can only pay for one year of salary and how would the College come up with the other three years if the president was dismissed without cause.

Mr. Heebner explained the recent amendment to that particular statute reflects on the compensation for presidents of community colleges and was enacted subsequent to the President’s contract and legislative acts cannot impair existing contracts. He explained the second part of that statute is based on the fact that compensation is paid from state funds, and shared Dr. Sharples compensation is not exclusively paid from state funds but is paid from student tuition and other income.

Mrs. Hosseini clarified that all of the President’s compensation comes from student tuition and Mr. Heebner confirmed the President’s compensation comes from funds that are not all deemed state funds.

Dr. Miles asked if either Mrs. Hosseini or Mrs. Haas saw a situation where they would consider dismissing the President without cause and did not understand why they would dismiss someone who was doing a good job because the contract clearly stated if the President was not doing a good job and was terminated he would only receive compensation up to the date of his termination.

Mrs. Hosseini stated she asks these questions because it is a contract and asked if Dr. Sharples sees himself leaving the institution or not. She explained each of the College employees work on one-year contracts and believes this should apply all the way up through the President.

Dr. Bennett asked Mr. Graham to restate the motion, which he did, and discussion continued.

Mr. Schatz asked legal counsel if Mr. Graham’s motion clears up any past issue related to the President’s contract and Mr. Heebner indicated it did. Mr. Schatz confirmed the motion is to extend the contract to 2014 regardless of what happened in the past and Mr. Graham confirmed that was his motion.
MOTION:  (Graham/Schatz)  That the District Board of Trustees extend the term of the President’s contract by one (1) year updating the contract term to April 9, 2010 through April 8, 2014. Motion carried by the following recorded vote:

- Bennett - Yes
- Miles - Yes
- Davison - Yes
- Petrock - Yes
- Graham - Yes
- Schatz - Yes
- Haas - No
- Smith - Yes
- Hosseini - No

Mr. Graham explained the Finance Committee discussed treating the President’s annual salary increase the same as what the Board approved for faculty and staff and made the following motion.

MOTION:  (Graham/Haas)  That the District Board of Trustees approve a two percent recurring increase, bringing the President’s annual salary to $290,700, retroactive to July 1, 2009.

Mrs. Hosseini inquired about the $1,000 one-time non recurring payment the faculty and staff also received and asked if the motion could be amended to include this. Mr. Graham appreciated this recommendation as the idea was to treat the President similar to the faculty and staff and amended his motion.

Mrs. Haas mentioned faculty and staff were addressed and wanted to make certain the administrators were not being left out. Dr. Sharples explained administrators also received the increase approved by the Board for faculty and staff.

AMENDED MOTION:  (Graham/Haas)  That the District Board of Trustees approve a two percent recurring increase, bringing the President’s annual salary to $290,700, retroactive to July 1, 2009, plus a $1,000 one-time non recurring performance payment. Carried unanimously.

Dr. Sharples thanked the Board on behalf of he and his wife for the extension to his contract.

Dr. Bennett thanked Mrs. Hosseini for bring up her concerns and how the Board must be vigilant about important things being placed into the minutes and how the Board was able to correct any possible misconception.

Mrs. Haas clarified not voting for the President’s contract extension was due to concerns with item fourteen of the contract where it discusses obligations of the Board if the President is dismissed without cause. She did not want anyone to think, including Dr. Sharples, that she would not want him to stay four years.

Mr. Davison congratulated Dr. Bennett on being elected the Board’s Chairperson last month and liked the feeling that the Board was moving forward.
Mrs. Hosseini mentioned about doing everything legally and would like legal counsel to review the law in regards to the President’s contract being extended and signed with no motion or legal action by the Board and how this would affect the College and the Board. She shared her job is to be fiduciarily responsible and it may seem like she is looking for things but these were a few issues she has looked into and felt the Board has to be vigilant with taxpayers dollars. She shared her concern about Mrs. Haas’ request for information on how much it would cost if the President’s contract was extended and how this information has not been received yet.

Mr. Petrock explained he is excited about the Mike Curb project and the growth of the College. He shared Mr. Bobby Thigpen has been selected as the new Foundation Board President and how the College’s Foundation has a great team in place for fundraising initiatives.

Mr. Smith congratulated Dr. Sharples.

Dr. Bennett adjourned the meeting at 11:59 a.m.

**Date of next regular scheduled meeting: April 15, 2010.**