Board of Trustees Special Meeting
June 2, 2012
Minutes

A. Open Session
  1. Call to Order, Roll Call, Adoption of Agenda
     A special meeting of the Board of Trustees of the Marin Community College District was
called to order by Board President Conti at 9:03 a.m. on June 2, 2012, in the Staff
Lounge, Student Services Building on the Kentfield Campus.

     President Conti welcomed new Student Trustee, Scott Blood.

     Trustees Conti, Namnath, O’Brien, Kranenburg and Treanor were present. Also in
attendance were Student Trustee Blood, Superintendent/President Coon, and Nancy
Klein from School & College Legal Services.

     M/s (Treanor/O’Brien) to adopt agenda. Motion passed 5-0 plus an advisory aye vote
from Student Trustee Blood.

     Trustee Long arrived at 9:40 a.m. Trustee Dolan arrived at 9:53 a.m.

  2. Public Comment
     Riley Hurd, representing COM Foundation on agenda items 4.a. and 4.b.

     Recess to closed session 9:06 a.m.

B. Closed Session
  1. CONFERENCE WITH LEGAL COUNSEL – Section 54956.9 (b)(2)
      Meeting to decide whether a closed session is authorized pursuant to subdivision (b)(1)
of Section 54956.9.

C. Reconvene to Open Session
  1. The Board reconvened to Open Session at 11:05 a.m. and President Conti called the
meeting to order.

  2. Report from closed session: President Conti reported that the Board has concluded that
that there is a significant exposure to litigation at this time based on a letter received by
the District on May 24, 2012 from Riley F. Hurd III, Attorney at Law, objecting to the
action the Board took at closed session on May 15, 2012, and stating if the action is not
rescinded within 30 days, the College of Marin Foundation reserves all rights to conduct
a civil action. President Conti asked Clerk Namnath to read the vote. The vote was 4-3
with Trustees Namnath, Long and Dolan voting no.
Trustee Namnath stated that he did not agree the item should be heard in closed session and would not be participating in the closed session. He left the meeting at 11:10 a.m. Trustee Dolan stated that she believed we are in violation of our constitution, that there are ramifications and we have rights that are protected and preferred this to be a more peaceful alliance. Trustee Dolan left the meeting at 11:12 a.m. Trustee Long noted that she had to leave, since the meeting was scheduled to end at 11:00 and she had another appointment. Trustee Long left the meeting at 11:12 a.m.

Recessed to Closed session at 11:15 a.m.

D. Closed Session

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
   Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9.
   One (1) potential case.

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
   Initiation of litigation pursuant to subdivision (c) of Section 54956.9
   One (1) potential case.

E. Reconvene to Open Session

1. The Board reconvened to open session at 12:00 p.m. and President Conti called the meeting to order.

2. Report from closed session:
   President Conti reported that no action was taken at closed session.

3. Information Item
   a) Superintendent/President’s Report re: Marin Community College Foundation
      (College of Marin Foundation)

      The Marin Community College Foundation, also known as the College of Marin Foundation is a separate 501(c)3 non-profit corporation. One of the primary purposes of the Foundation is to raise funds, which are used to enable our students to succeed in their educational goals. Over the years, funds have been allocated for a variety of District programs and direct student scholarships. The District also receives gifts directly from donors to support specific programs or student scholarships. As of May 2012, the Foundation had approximately $3.8 million in assets. Of that amount, approximately $1.8 million are District funds, funds that have been donated to the District and entrusted to the Foundation for management purposes only. The Foundation’s long-time bookkeeper has informed me that he has a number of serious concerns about the fiscal practices and management of the Foundation. He came to me with these concerns after what he said were multiple failed attempts to discuss them directly with the President of the COMF Board of Directors. Community support for student scholarships and college programs has been critical to the success of fulfilling our academic mission. Responsible stewardship of gifts made for the benefit of the District and its students is an utmost
priority. Given the seriousness of the concerns that have been raised, I believe that the District should take appropriate precautionary measures at this time.

4. **Action Items**

   **Public Comment: Riley Hurd, Representing COM Foundation on Items 4.a. and 4.b.**

   In reference to item 4.a., Mr. Hurd referenced the letter he sent, and understood that the Board had all received copies of it.

   In reference to item 4.b., Mr. Hurd noted that both Boards have a shared goal, which is the support and advancement of the College of Marin. He further stated that this was important to remember as we proceed and that we should work as a team. He explained that the current COM Foundation Board has a duty to its donors and the departments that have given money to the Foundation, that they take their finances seriously, and have hired the firm KPMG, to perform a full, third-party, objective audit of the Foundation’s finances. Mr. Hurd informed the Board that the Foundation Board found the letter from the President counterproductive because it was not supported by actual evidence or facts. He stated that he had been requested to convey the message that the Foundation Board looks forward to resolving this issue in a way that respects the source of the Foundation’s funds and best serves the students of the College of Marin.


   **M/s (O’Brien/Treanor) to rescind the action taken in closed session on May 15, 2012, due to the typographical error on the agenda.** Motion carried by unanimous vote of 4-0.

   Mr. Hurd asked for clarification of the actions rescinded. President Conti clarified that the Board passed one resolution, which was read aloud in open session.

4.b) Consider action regarding future management of the District Funds and Annual Audit of Marin Community College Foundation.

   Trustee Treanor suggested starting with a motion and then having discussion, and to some degree respecting what Mr. Hurd said in terms of 4.b., due to the long-standing partnership of College of Marin and College of Marin Foundation, hoped to resolve this matter short of litigation. Based on information the Board received, the Board seeks the return of the District Funds.

   **M/s (Treanor/O’Brien): Motion to direct Superintendent/President Coon to do the following:**

   1) To send a letter to the College of Marin Foundation to return College District funds entrusted to the Foundation for management purposes only – and to include in that communication all the minutes of the Board’s meetings that reflect that transfer for management purposes only, and

   2) To direct auditors to commence the annual audit of the College of Marin Foundation, which is our typical annual audit and no different than what we have done.
President Conti requested clarification from Superintendent/President Coon about the College of Marin funds that are currently being managed by the College of Marin Foundation. Superintendent/President Coon stated that there is approximately $1.8 million dollars as a result of a number of large gifts given to the College in the late 1990s/early 2000s, that were then transferred to the Foundation for the purposes of investing and management. He further clarified for President Conti that these were not funds given directly to the Foundation. Trustee O’Brien asked whether there were investment restrictions on any of the funds and Dr. Coon stated there were not. Trustee Kranenburg noted that individuals are concerned and we have a responsibility to make sure that funds entrusted to us are being managed properly and that since the funds were given to the College initially, it was our right request those funds back. Trustee Treanor noted it would be a breach of our fiduciary duty if we did not investigate the allegations that have been presented. She clarified that it is hoped this can be resolved without litigation, but it is realized that by the action being taken today, that litigation may occur. She appreciated that fact that the Foundation will be doing their own independent audit, and hoped the results of the audit would be shared with the College. She clarified that the annual audit of the Foundation by the College is part of normal business every year as required by GASB 39. Trustee Treanor echoed Mr. Hurd’s comments that it is hoped we are able to move forward in a partnership mindful of our goals for the institution and our students. President Conti added that she shared the sentiments of fellow trustees and is optimistic that we can move forward in a mutually beneficial way from here.

Trustee Treanor clarified that under item C., while we hope to resolve the issue with transparency and good communication, and while we hope not to go to litigation, we recognize by the action we are taking today, that there is the potential for future litigation if we cannot have the transparency and good communication that we hope to be able to accomplish together.

Motion carried 4-0.

M/s (O’Brien/Treanor) to adjourn the meeting. Motion carried 4-0.

Meeting adjourned at 12:15 p.m.