

**DESERT COMMUNITY COLLEGE DISTRICT
SPECIAL BOARD MEETING
43500 MONTEREY AVE.
PALM DESERT, CA 92260
MONDAY, DECEMBER 31, 2012
MINUTES**

I. Chair O'Neill called the meeting to order at 8:30 a.m. and asked Trustee Stefan to lead the pledge of allegiance.

President Kinnamon called the roll:

Present: Michael O'Neill
John Marman
Mary Jane Sanchez-Fulton
Bonnie Stefan

Not Present: Becky Broughton
Andrew Campbell

II. CONFIRMATION OF AGENDA:

Motion by Bonnie Stefan, second by John Marman, to approve the agenda of the Special Meeting of December 31, 2012 as presented.

Discussion: Trustee Marman commented he understands we cannot change the agenda but is concerned as the members are being asked to make a decision on a personnel item. Before making that decision he wants to be fully informed and feels this should be discussed in a closed session. He does not wish to participate in a side-show without knowing everything about it. He feels it would be a disservice to put this circus on in front of everyone. He will not participate in this matter in open session. He asked if this matter can be discussed in closed session.

The Board's attorney, David Erwin, said when a special meeting is noticed only the items on the agenda can be discussed. Nothing can be added. Since the agenda was not noticed for closed session it cannot be added.

That being the case Trustee Marman said he chooses not to participate.

Trustee Sanchez-Fulton also expressed concerns as she doesn't feel she has enough data or hard evidence. It is hard economic times for everyone and this is people's livelihood. She had requested additional information and received some but feels she needs more information to make a good decision.

Dr. Kinnamon asked to provide additional information when the item comes up for a vote.

Trustee Marman commented that we have someone here that is supposed to be a specialist in telling the board what they can and cannot do. He asked him if we are permitted to go into closed session to discuss this personnel matter. Carlos Maldonado, the board's appointed Parliamentarian, said since a closed session was not agendized it cannot be added. He also stated that the item being discussed now is to approve the agenda in order to proceed.

Vote

Yes: Michael O'Neill, Bonnie Stefan
No: None
Absent: Becky Broughton, Andrew Campbell
Abstain: John Marman, Mary Jane Sanchez-Fulton*

*Trustee Sanchez-Fulton "Declined to State"

Motion carried.

III. PUBLIC COMMENTS :

Dr. Edwin Deas requests to address the Board during each of the agenda items. He also commented in regards to AP 2345 and given the seriousness of item 4BI he respectfully requests a time extension to 10 minutes be granted. Chair O'Neill responded the Board will discuss the request at the time the item is being discussed.

Dean M. Gray addressed the Board and expressed his concerns about the terrible things that have happened at the college. He reference specifically the football program, public safety academy and financial irregularities. He expressed concern regarding these outrageous scandals.

IV. ACTION AGENDA**A. BOARD OF TRUSTEES**

1. Approval for Trustee Becky Broughton to teleconference

Motion by John Marman, second by Mary Jane Sanchez-Fulton, to approve the temporary assignment as presented.

Discussion: Chair O'Neill asked the Board's attorney, David Erwin, to respond to this subject first. Mr. Erwin does not think this falls under the "Sudden, unforeseen circumstance" as referenced in Administrative Procedure 2310 Regular Meetings of the Board as it relates to teleconferencing.

Trustee Marman commented that he and Trustee Broughton have worked together for a number of years in various capacities and he respects her opinion. He reference the procedure which talks about "regular meetings" and since this is not a regular meeting it shouldn't be allowed.

Trustee Stefan commented she is torn as she wasn't able to attend an emergency meeting last year when she was Chair because she was out of state and she would have liked to attend. In an attempt to remedy this type of thing the Board revised the policy and procedure to allow for emergency situations. She thinks it important that all members are able to participate.

Trustee Sanchez-Fulton said we are elected to serve and to be here. She thinks everyone should be allowed to be here and should have some type of procedure to allow it.

Trustee O'Neill agrees with all the points made. The Board developed the policy because we were intent upon Trustees fulfilling their obligations as elected officials.

Dr. Deas addressed the Board. "He believes the special meeting may be against the rules because Government Code section 54956B states "notwithstanding any other law a legislative body shall not call a special meeting regarding the salaries, salary schedule, or compensation paid in the form of fringe

benefits of the local agency executive as defined in subdivision D of section 3511. He contends that the discussion today will clearly affect his salary, compensation and fringe benefits and suggests the meeting is inappropriate.”

He continued that “the meeting does not meet the requirements in terms of notification. Sending an email to district employees on the Saturday of a holiday period does not constitute appropriate notice as will be evidenced by the number of notices received back saying “we are not checking our email, we are on holiday.” Secreting the notice of the meeting in the bowels of the website does not constitute appropriate notice of a special, unscheduled meeting to the public. Who would know to look there for a meeting. The timing of the meeting is suspect. December 31 is a mandatory vacation day for all employees and this campus is closed as per the college website. Attendance at an open meeting appears not to be encouraged. The location of the meeting is suspect. The President’s Board Room holds no more than 20 persons. That has been changed now but it showed the intent.

And now to the teleconferencing. In addition to what Trustee Marman said, the Board policy 2310 and Administrative procedure 2310, which were approved in September, and by the way they are not on the college website so nobody can find them, I knew where to look, clearly states that teleconferencing is only permitted in emergency situation as defined at a regular meeting. It makes no comment about a special meeting. And the regular emergency would be an act of God or a sudden, unforeseen circumstance and I would question which applies today.

Trustee Marman said it seems obvious this policy needs some work. It doesn’t really do what we intended in all cases. Dr. Deas continued that your policy and administrative procedure 2310 also state that in a teleconference situation at a regular board meeting, the member teleconferencing must connect to the meeting prior to the start of the meeting. He asked if Trustee Broughton is connected and she is not.

Trustee Sanchez-Fulton asked for a copy of 2310 and reviewed it. She then read it aloud. She voiced her concern that the policy specifies the member teleconferencing must connect prior to the start, but it doesn’t say the start of the meeting. It could be interpreted to mean the start of the consent agenda. She suggested something needs to be done about this.

Trustee O’Neill said the title of the policy is “Regular meetings of the Board”, so the title alone would prohibit it happening today.

Trustee Marman commented that in the past we knew in advance if someone was going to teleconference and they were plugged in from the start of the meeting. He thought to come in part way could affect the decision of those present.

Vote

Yes: None
No: John Marman, Mary Jane Sanchez-Fulton, Michael O’Neill, Bonnie Stefan
Absent: Becky Broughton, Andrew Campbell
Abstain: None

Motion failed.

B. HUMAN RESOURCES

1. Non-Renewal of Contract- Leadership

Motion by Bonnie Stefan, second by Michael O'Neill, to approve the non-renewal of contract as presented.

Discussion: Dr. Kinnamon explained he is in the process of reviewing the organizational structure of the college and like all new President's it is important to determine and make recommendations regarding personnel and other business matters deemed in the best interest of the college. At the last board meeting the Board acted on an item in open session to approve non-renewal of a leadership employee, which is the process we use. The employee being recommended today was also on the draft agenda that was to come to the board at the last meeting. He met with this employee who raised questions about their contract. Due to these questions he postponed the recommendation and asked the Board attorney and District Counsel to review the contract. After consulting with counsel he is recommending non-renewal of this contract in accordance with the terms and conditions outlined and agreed upon by all parties. This requires Board approval today, December 31, 2012, or the contract is automatically extended. This action provides the greatest flexibility for COD in terms of any reorganization in the coming months.

Trustee Marman is concerned that we take a close look at what this says. It says to approve the non-renewal of contract. It does not say to terminate this person. Under the current circumstances, with everything going on, it could be perceived that this person was responsible. That is not why this is being done. The President has every right to choose who he wants to work with and how he wants to restructure the college. It does not mean this person couldn't be retained in the same or another position. If the Board approves this item today it does not mean this person will be terminated.

Trustee Stefan commented that everyone on campus is overworked and one of the reasons we get stuck on things and find that things are not done to the satisfaction of the Board and the community is because we are overworking people. She agrees that restructuring needs to happen and that we have the time to do it properly. This position is crucial to the functioning of the college and needs to be restructured in such a way as to allow the person to be able to pay attention to every minute detail of the position, but maybe things need to be separated. There has been nothing to implicate this Vice President in any wrong-doing and it needs to be clear that this is not the reason for this non-renewal.

Trustee O'Neill commented that both Trustee Marman and Trustee Stefan addressed the critical issues of this discussion. The Board did authorize the President to make any changes necessary to increase efficiency and in order to do that he needs to have a free hand. He reiterated this is not a termination – it is not renewing this particular contract so as to allow President Kinnamon to move forward. The Board takes all of this very seriously and it is important for them to allow the President to do what he feels needs to be done to meet the needs of our students.

Trustee O'Neill invited Dr. Deas to speak. He asked if there were any objections to giving Dr. Deas 10 minutes. There were no objections.

Dr. Deas “differed with the Board on the affect of this decision. He said they have been backed into a corner with only 15 hours left in the year. They have no ability to say they need additional information or any ability to say we can cancel this position and come up with another position. I think the law is pretty clear it's make up your mind time. It doesn't have to be December 31, it could be September 1, November 1, you've been asked to do it on December 31. If you approve the recommendation I don't think you should be in any doubt that my employment is terminated in the future.

I also want to address Dr. Kinnamon's only comment which was with reference to the agenda of the previous special meeting. He didn't quite get it right. I said to Dr. Kinnamon in my regular meeting with him, which was about an hour before the agenda was due to be posted, that I hadn't seen the agenda and

was there anything he wanted to talk to me about and he said no. And I asked him a second time and he said no. And so I then asked about my contract and got a very vague response about uncertainty, didn't quite know what to do, didn't quite know what my rights were and I extended something of an opinion, not a full opinion, as to what I thought my rights were. It appears now that as a result of that meeting my number was taken off the agenda in the last 20 minutes and unfortunately it wasn't done in quite 20 minutes so it was delayed in being posted and therefore the meeting had to be delayed by ½ hour.

The circumstances leading up to this meeting. Dr. Kinnamon contacted me about 4 hours after publicly posting the agenda and that was the first time he had told me of his intent to what I would say terminate my position and recommend non-renewal. In the 6 months of his tenure he has never once initiated a discussion with me about my contract. Note the word initiated. As a senior executive with a multi-year contract and an exemplary performance record I have no reason to expect anything other than a renewed contract. I've never had it conveyed to me that it would be anything other than that. So you can imagine today is something of a surprise to me. He is well aware I have played no active part in the FTES miscalculation story, nor did any of the departments report to me. The evidentiary emails reveal one instance where I posed a question to then President Patton and I would be happy to share that with the Board and I would be happy to share all I know about the FTES story because to date I have not had such an opportunity.

As I said earlier, the recommendation of non-renewal of my contract could easily have been done in the regular December 14th agenda or the special December 20th agenda, but no, it is being left to the last day and I think the Board should ask itself why it's been backed up, now 14 hours 55 minutes to make a very important decision. I share with you my serious concerns about the legalities of this meeting. And now I want to go on and identify two premises for considering this recommendation to be unfair in the extreme. The first relates to performance. There aren't many reasons why a contract wouldn't be renewed so one of them is performance. In almost 5 years at COD I have received only exemplary evaluations that are on record and available to you if you should choose to look at them. During the last 6 months however I have had no feedback whatsoever from the President about my performance and whether any renewal of my contract was in question when I raised the topic, as I mentioned earlier he has never raised the topic.

I am inclined to believe that the President's attitude toward me for the entire 6 months amounts to some form of discrimination, which I will be prepared to articulate at a later time. My performance over the last 5 years is also a matter of media and internal record. I have been associated with most of the successful bond projects, including the development of 4 new sights. In addition, I have led the quest for new partnerships and alternative funding sources with success. Most, if not all, of the awards attained by this college have been associated with my projects and my endeavors. In spite of what the state continues to throw at us, COD is recognized internally and externally for its fiscal stability, due in large part to the multiple year budget process I developed. I do not think my performance record warrants termination of my employment, but rather the opposite and I implore the Trustees to bear this in mind when considering the recommendation. I will know the terms of the emerging nightmare of the FTES miscounting. During the last 6 months the board has not received any reports from anyone who was actually around the college during the period 2004 – 2011. Although nobody remains that had a direct role, there are several current employees, myself included, who have information. I provided that information to FCMAT when they did their investigation. I provided my information to them, but it was not included in the final report, presumably because it did not fit the desired conclusions. It is obvious that the state intends to make a unique and perhaps unprecedented example of COD and not other districts because of the actions of a whistleblower and the media. At the request of the former President I was instrumental in obtaining several legal opinions that could have mitigated, if not eliminated, the then fiscal penalty being considered by the state. The Board approved our attorney engaging the state attorney in an exploration of the legal concerns. As you may recall that request to the state was ignored. That perhaps, the only obstacle to a legal statute of limitations in position on the state is the proof of fraud. Much as has been

said about that. FCMAT and the state declare only that fraud may have occurred, it is as yet unproven. Dr. Kinnamon himself has confirmed that no personal gain has been derived from the miscounting. Normally a key to the proof of fraud. Over the last 6 months the District's response to the state has been what I would describe as submissive. And coincidentally, the fiscal penalty has increased almost three-fold.

In spite of the fact that all employees directly involved have since left the employment of the college, Dr. Kinnamon has alluded in the media to possible firings and probations. In addition, I personally have witnessed a statement made by Foundation associates that seems to predict that heads will roll. I can only construe this recommendation by Dr. Kinnamon as a retaliation against me and my involvement in the past and can articulate more of that at a later date if necessary.

Be aware I totally refute any wrongdoing in the FTES miscounting. I was not here for the first 4 years and thereafter was involved in only two or three discussions at Cabinet. Neither I, nor any departments that report to me, had the opportunity or have the opportunity to affect FTES numbers or indeed their correction. It is simply outside of their and my perview. I would remind you, that in addition, the legal concerns that were provided to the state were requested by the President, provided by the colleges attorney at my invitation and approved by the Board before we submitted it to the state. If part of the District's response to the state is to provide a sacrificial lamb then lamb ought not to be me and ultimately will not be me. The timing of this recommendation has allowed the media to join up the not too well concealed docs and to cause consideration, potential harm to my career and my reputation.

I call on the Board to consider that there is not a shred of evidence to warrant discipline against me and termination of my employment when it considers this recommendation. And finally, my expectations of the Board, as Trustees, Trustees sometimes say that is only a fiscal role – it is not. You are expected to uphold fairness, integrity, and values and the reputation of this college and to protect all of its employees while they are acting in good faith. If you approve this recommendation today you will leave me no choice other than to also pursue the not one, but two occasions in 2011 when the then President and the board may have erred in law in arbitrarily reducing some administrative contracts, including mine. I ask you to take into account the highly dubious circumstances of time and occasion that I have described to you today. I ask you to bear in mind my record and reputation, I ask you to bear in mind that absence of performance issues and the absence of evidence of wrong doing and to strike down this recommendation and consequently award me a new 3-year contract.

In addition, in doing so I demand that the appropriate comments be provided by this board to the media to my satisfaction that would exonerate me from any wrong doing and discipline. Be aware, in spite of the hatred, the hooded attempt to make this a confidential transaction I was called by the Desert Sun yesterday and told 'we're sorry to hear the news, would you like to talk about it?'. Thus far I've declined."

Dr. Kinnamon stated that he has worked with District's counsel and the Board's counsel on both establishing this meeting so that it's in accordance with the laws of the State of California and development of this recommendation based on the contract of the employee that's in this recommendation. And again, this was an item that was to come to the Board at the last meeting but with questions raised about the contract we wanted to make sure that your counsel and District counsel had an opportunity to provide feedback. Based on that feedback we scheduled this meeting for today and are recommending non-renewal of this contract.

Trustee Marman pointed out that on the FTES that at the last regular Board meeting we had the auditors here. He asked the auditors at that meeting where in the documents provided to the Board would he find FTES fraud or inaccurate numbers. The auditor said it wasn't there. We knew eventually there was a

problem, but it was sugarcoated, we may not owe anything, by the President at that time. The Board asked that President many times where the college stood on the FTES. That information would never have gotten out if there hadn't been someone that knew what had gone on.

Trustee Stefan said as far as we know Dr. Deas is not responsible for the FTES. We don't know who is, that is not for us to decide and that is not we are deciding here. Her vote will be based on the reorganization structure that the President is working on. Everyone is overworked and reorganizing this position will help alleviate some of that. The President needs flexibility and options. She thinks there is a place for Dr. Deas but thinks the load is too large for one position. She respects Dr. Deas but believes it is a burden and too much for any one person to do.

Trustee O'Neill stressed again this is not a termination, this is a non-renewal of a contract. It also doesn't mean it cannot change between now and June 30. What we are discussing is the reorganization and the survival of COD. We are not accusing anyone of anything with regard to FTES. That is being investigated by the proper authorities and we will take the proper action when that information is presented to the Board. We are looking at the opportunity to reorganize the college and this is part of that process. We have suspended other contracts temporarily, other contracts have been added by a year or two, not every contract. This is how we proceed.

Trustee Marman commented that there were positions that came up for 2 year renewal and the Board said no. He does not like that this came to him at the last minute.

Trustee Sanchez-Fulton agreed with Trustee Marman in that she doesn't like surprises. She needs the proper research. She just received the information in the last couple of days. She thinks there should be a procedure in place in order to be a little more precise. She feels uncomfortable doing something like this at the last minute.

Trustee Marman also thought these types of things should be in closed session, not to hide it but to discuss it. And then report out.

Vote

Yes: Michael O'Neill, John Marman, Bonnie Stefan
No: None
Absent: Becky Broughton, Andrew Campbell
Abstain: Mary Jane Sanchez-Fulton*

*Declined to State

Motion carried.

V. Meeting adjourned at 9:26 a.m.

By: John Marman, Clerk

Request to Address Board

Special Meeting December 31, 2012

Dr. Edwin Deas requests to address the Board on the following agenda items:

- The legality of the meeting and Agenda item IV A 1
- Agenda Item IV B 1

Furthermore, under AP 2345 and given the seriousness of item IV B 1, the Board is requested to extend the time for address to 10 minutes.

ADDRESSING THE BOARD OF TRUSTEES

1. Complete a "Request to Address the Board of Trustees" form (see below) and present it to the Board Executive Assistant prior to the beginning of the meeting at which you wish to address the Board.
2. You will be called to speak at the section set aside for PUBLIC COMMENTS. Each speaker will be allowed a maximum of three (3) minutes per topic. Fifteen (15) minutes shall be the maximum time allotment for public speakers on any one subject regardless of the number of speakers at any one Board meeting. *(per Board Policy 2350)*
3. You will be asked to state your name and appropriate affiliation for the record before your statements to the Board.
4. The Board Chair may rule members of the public out of order if their remarks do not pertain to matters that are within the subject matter jurisdiction of the Board or if their remarks are unduly repetitive. *(per Board Policy 2350)*

**For the complete text of Board Policy 2350 www.collegeofthedesert.edu – "Community", "Board of Trustees", "Board Policies and Procedures".*

(DETACH HERE AND RETURN THIS PORTION TO THE BOARD ASSISTANT)

REQUEST TO ADDRESS THE BOARD OF TRUSTEES

BOARD MEETING DATE: DEC 31, 2012

NAME: DEAN M GRAY
(Please print legibly)

AFFILIATION: PUBLIC STAFF _____
FACULTY _____ STUDENT _____

IF SPEAKING TO AN AGENDA ITEM PLEASE INDICATE THE ITEM TO WHICH YOU WISH TO SPEAK:

AGENDA ITEM NO. IV B

TITLE HUMAN RESOURCES