

**Massachusetts Board of Higher Education
Fiscal Affairs and Administrative Policy Committee Meeting
June 11, 2019**

The June 11, 2019 meeting of the Fiscal Affairs and Administrative Policy (FAAP) Committee was held in the Large Conference Room on the 14th floor of One Ashburton Place, Boston, Massachusetts.

Committee Members Present: Committee Chair Tom Hopcroft; Paul Mattera; Tom Moreau (designee for EOE Secretary James Peyser); Paul Toner; and Commissioner Carlos Santiago, non-voting ex-officio member.

Committee Members Absent: Board Chair Chris Gabrieli; J.D. La Rock

Department Staff Present: Thomas Simard; Stephen Anastas; Patricia Marshall; Michael Murray; Richard Nunes; Ellen Osborne-Smith; Dena Papanikolaou; Joe Wallerstein; Ashley Wisneski

I. CALL TO ORDER

Committee Chair Hopcroft called the meeting to order at 1:01p.m.

II. ACCEPTANCE OF MINUTES

On a motion duly made and seconded, the minutes from the March 15, 2019 meeting of the Fiscal Affairs and Administrative Policy Committee were unanimously approved.

III. REMARKS

No remarks were offered by Committee Chair Hopcroft. Commissioner Santiago mentioned that the Lumina Foundation has contacted the DHE about submitting planning grants related to equity and the closing of opportunity and achievement gaps in higher education, as well as institutional closures. Commissioner Santiago also discussed the draft regulations that will be brought before the full Board around institutional closures. He noted that he and Board Chair Gabrieli had been meeting with both public and private boards and presidents about the proposed regulations and that, after the public comment period scheduled over the summer, he expected approval of regulations at the September Board meeting followed by adoption and implementation by December 2019.

Commissioner Santiago remarked on what he felt was an enthusiastic response to a white paper he drafted on the topic of how an equity agenda fits within Massachusetts public higher education and how the DHE can align itself with this agenda. He noted that the dual focus on

the equity agenda and performance measurement was well received by the state universities, presidents, CFOs, and senior staff, and he commended the leadership of the public campuses for their efforts.

Committee Member Paul Toner asked whether there was active, pending legislation regarding the DHE's role in institutional closures. EOE Secretary Designee Tom Moreau commented that legislation had been filed by the governor and was being reviewed by the Joint Committee on Higher Education. Chief Legal Counsel Dena Papanikolaou noted that a critical component of the pending legislation was ensuring confidentiality of the DHE's work in this area so as to avoid untimely disclosures. Chief Counsel Papanikolaou indicated that in the interim, the DHE intended to claim the protection of certain statutory exemptions (deliberative process and investigatory) that would shield the DHE from precipitously disclosing any information in connection with the financial review and risk management process.

Committee Member Paul Mattera noted that he was struck by the number of regulators that are becoming involved because it creates the impression that they could come into conflict with each other. Committee Member Mattera asked Chief Counsel Papanikolaou to comment on how the DHE is addressing the issue of multiple regulatory entities working on the same issue at the same time. Chief Counsel Papanikolaou noted the different roles of the members of the regulatory triad – the accreditors, the state authorizing agency, and the US Department of Education – and that all three regulators have related but separate responsibilities. She added that both the US Department of Education and the accrediting bodies rely on the DHE's authority to approve programs for certain purposes, and *vica versa*. Chief Counsel Papanikolaou noted that even if there is some overlap between the authority exercised by the other two oversight entities, the draft regulations being developed give the DHE sufficient authority to coordinate and collaborate with the regional accreditor to share data and to otherwise help achieve efficiencies.

Committee Member Mattera followed up by asking if agency staff had made some progress rationalizing these different approaches. Commissioner Santiago stated that representatives from NECHE and DHE have been in discussion about how best to collaborate on this work and fulfill their respective responsibilities. Chair Hopcroft recommended that board members review the draft regulations and return comments in accordance with the rules and regulations that govern the BHE's voting authority.

IV. OTHER BUSINESS

Chair Hopcroft turned meeting over to Deputy Commissioner for Administration & Finance Thomas Simard who introduced key members of the DHE's administration and finance team and commented on their responsibilities and current initiatives.

Briefing on the Optional Retirement Program

Deputy Commissioner Simard turned the meeting over to the Director of the Retirement Plans Group Richard Nunes to provide an overview of the retirement plan group's work. Mr. Nunes began by discussing the eligibility requirements for employees to participate in the Board's optional retirement program (ORP). He touched on the portable aspect of the plan, noting that it had seen the most growth among IT professionals at the campuses. Mr. Nunes also briefly described the Board's 403(b) supplemental retirement benefit plan.

Mr. Nunes explained that in the upcoming fiscal year, the DHE's focus will be to modernize the ORP's practices by consolidating plan administration functions in accordance with statutory guidelines. He stated that the ORP intended to terminate its contract with one of the current providers (VALIC) but would continue its business with TIAA and Fidelity. In addition to consolidating the number of plan provider options offered by the ORP, Mr. Nunes suggested that the ORP would explore the possibility of converting to a single administrator for the two plans with the goal of reducing administrative overhead and improving customer service, since a centrally administered plan would have one touchpoint for participants. Mr. Nunes said he expected that this would offer additional operational efficiency as well as enhance the ORP's efforts to educate participants, as the DHE is working to develop a consistent financial education platform.

Mr. Nunes continued to explain how the ORP is modernizing its database program through a contract with AI.gov. The new system will identify potential new enrollees and automatically contact them with the information they need to decide between enrolling in the traditional state pension or the ORP.

Mr. Nunes also mentioned that the ORP completed an audit with Grant Thornton who noted the ORP was running three different programs and that there were efficiencies in how the ORP was identifying new potential enrollees.

Committee Member Toner asked why K-12 didn't have an ORP and why one would be created for higher education employees. Mr. Nunes explained that he only knew the history of the creation of the ORP and that most states offer higher education employees a similar defined contribution retirement options as alternatives to defined benefit plans. Committee Member Mattera asked if there were other Massachusetts state agencies that had an ORP. Mr. Nunes answered that the SMART plan was developed as a defined contribution plan for state employees, and that during the late 1980s/early 1990s there was pressure to offer a higher education employer-funded retirement plan for recruiting purposes. Committee Member Mattera asked if choosing to participate in the ORP was an irrevocable choice or could a participant switch to the state pension. Mr. Nunes noted that an employee has 180 days to make a choice about which option s/he would select. Commissioner Santiago asked if the retirement advice given to individuals would come from the centralized administrator. Mr. Nunes answered that participants could work with their individual provider and that the campus education component could be contracted out.

Briefing on the Status of Collective Bargaining Agreements

Deputy Commissioner Simard introduced Director of Employee & Labor Relations Michael Murray to provide a status update on the DHE's collective bargaining agreements (CBAs). Mr. Murray indicated that Massachusetts Community College Council (MCCC) day unit CBA had been settled and that there are no ongoing negotiations. Mr. Murray reported that he expected the MCCC day unit contract would be ready for review by the Governor by the end of the summer. He noted that the contract includes the development of a new student tool used to evaluate faculty.

Committee Member Toner asked about the extent to which the assessment of a faculty member relies on student evaluation. Mr. Murray replied about 30%. Mr. Murray continued to say that the MCCC day unit contract included a faculty salary grid approved by that segment's CFOs because it provided greater certainty and the ability to project future liabilities. He noted that faculty seemed to like it because they could more easily identify incremental salary adjustments.

Mr. Murray further noted that the issue surrounding the mandatory use of the learning management use system, specifically student advising, was resolved. A demonstration program was settled upon, and it would be used systemwide. Mr. Murray continued to explain that staff would only be given faculty service credit hours for the work they've done. He noted that the student advising software seems to have value because it allows for the tracking of faculty notes. Mr. Murray expects that the demonstration would be coupled with user surveys and additional stakeholder engagement to ensure appropriate opportunities for feedback to inform the next round of contract negotiations.

Committee Member Toner asked Mr. Murray to comment on any faculty resistance to the initiative. Mr. Murray noted that the newer faculty seemed more receptive to it than some of the older faculty. Committee Member Toner noted that in Cambridge's K-12 schools, there was initial resistance, but at this point it is accepted. He also noted it unexpectedly resulted in teachers no longer wishing to meet with parents.

Mr. Murray continued on to note that MCCC and all of the collective bargaining units' vacation accruals align with DHE guidelines. Mr. Murray noted an amendment to the tuition waiver language resulted from a significant arbitration win in summer 2018: the ruling stated that, rather than being eligible for full tuition remission, MCCC members would be eligible for a credit equal to the previous tuition amount. Mr. Murray noted that the arbitrator validated DHE's argument that legislation trumps contract language.

Mr. Murray continued to note that the Massachusetts State College Association (MSCA) contract that was initially rejected by the Commonwealth's Office of Employee Relations and the Department of Administration and Finance resulted in a renegotiation that ended successfully in April 2019 and was approved for funding but that the authorization of that funding is pending before the legislature. In addition, Mr. Murray noted that the MSCA faculty vacation accrual and evaluation policies were updated. In the renegotiation, DHE received

relief on the 15% cap on the employment of adjunct faculty which included a concession that the 15% limit would be applied schoolwide and not by department.

Mr. Murray added that there is pending litigation in the Supreme Judicial Court (SJC) on the issue of the 15% cap on the employment of adjunct faculty. Chief Legal Counsel Papanikolaou noted that the provision was negotiated decades ago, but the legal question is whether DHE had the right to bargain a term that could deny an opportunity for management to exercise its administrative discretion. She also noted that the SJC took the extraordinary step of accepting the case for direct appellate review rather than waiting for a ruling from the Appeals Court. Committee Member Mattera asked whether the 15% rule would be overturned if the DHE prevails. Chief Legal Counsel Papanikolaou confirmed that it would.

Mr. Murray said that all contracts will expire in June 2020. Mr. Murray anticipates that the economic parameters for the next round of negotiations will be similar to the most recent round. Mr. Murray said he anticipates that the increase in the FTE contribution to the Health & Welfare trust fund will be an important consideration in the next round.

Committee Member Toner asked if the DHE had improved its ability to identify how many adjunct faculty members are working other jobs. Mr. Murray answered that 10-15% of adjunct were working in other positions, adding that the paid family medical leave act is an ongoing issue. Impact bargaining has increased at the community college level. Deputy Commissioner for Academic Affairs & Student Success Patricia Marshall asked about the online addendum for the MCCC day contract. Mr. Murray replied that it would be included in the bargaining during the next contract negotiation.

Commissioner Santiago added that he wanted to mention personnel changes in the DHE's Administration and Finance Unit. Deputy Commissioner Simard announced that Ellen Osborne-Smith would become the Assistant Commissioner for Administration and Finance and Joe Wallerstein would become the Budget Director.

Briefing on the FY20 Operating and Capital Budgets

Deputy Commissioner Simard reviewed the FY20 budget beginning with the scholarship account. He noted that the MassGrant Plus program was not expanded beyond the community college segment, but that the DHE would continue to advocate for this as part of its affordability initiative. He discussed MassGrant Plus payments for FY19, noting that OSFA will work to allocate remaining funds.

Deputy Commissioner Simard continued by mentioning that the State Authorization Reciprocity Agreement (SARA) would be fully self-sustaining financially in FY20. He added that there was an additional \$40K set aside for an IT solution to help manage the SARA funds. Deputy Commissioner Marshall asked if the DHE had hired a full-time coordinator to

administer the SARA program. Chief Legal Counsel Papanikolaou answered that Alex Nally would be promoted into a full-time role as the SARA Coordinator.

Deputy Commissioner Simard continued by discussing other items in the budget, including Bridges to College and the doubling of funding for the Community College Workforce Grant. Commissioner Santiago asked about the status of the Nursing and Allied Health Trust. Deputy Commissioner Simard answered that it had been transferred to the Executive Office for Health and Human Services (EOHHS), but that DHE staff were working with their colleagues in EOHHS to ensure a smooth transition of accounts and funding.

Deputy Commissioner Simard continued to add that the PACE funding was restored to the budget through the advocacy of the Massachusetts Community Colleges Executive Office. He remarked that the formula funding line items were included, but only at 1% of the prior year base appropriations. He further noted that funding for collective bargaining increases were included in the budget, but in amounts that were less than the full cost to the campuses. According to Deputy Commissioner Simard, there are different methodologies that could be used to calculate such costs, and that the one used for the current budget includes all incremental state supported costs in proportion to the current cost share between the state and the campuses for the existing contracts. He noted that M.G.L. Chapter 150E allows for differing interpretations of how incremental increases should be funded. Deputy Commissioner Simard added that year end revenue was expected to exceed benchmark forecasts that there would be many conversations about how to allocate the surplus.

V. ADJOURNMENT

Having no further business, Chair Hopcroft called for a motion to adjourn, which was seconded. The meeting adjourned at 2:18 p.m.