

## ***Attorney-Client Privileged***

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**VIA EMAIL:** collinsj@cod.edu

Dr. Joseph Collins  
Interim President  
College of DuPage  
425 Fawell Blvd.  
Glen Ellyn, IL 60137

**Re: Board Governance Issues**

Dear Dr. Collins:

This follows our recent discussions regarding the resignation of Trustee Hamilton, former Chair of the Board, and the impact of her resignation on Board governance. This will also confirm that you have engaged us to provide you with an opinion and options on seeking a resolution of this matter. Specifically, at issue is whether the Board's Vice Chair automatically assumes the position of Chair because of the Chair's resignation or whether the Board must elect a new chair from its membership. Also at issue is how the agenda for board meetings can be set in the absence of a chair.

### **I. Introduction**

In providing you with an opinion, we understand that one of the Board's legal counsel has opined that the Vice Chair automatically succeeded to the office of Chair upon the resignation of the Chair. We further understand that the Illinois Community College Trustee Association ("ICCTA") has communicated a contrary position -- that the Vice Chair does not automatically assume the office of Chair upon resignation of the Chair, but rather an election must be held for a new Chair. Based on our review of the Illinois Public Community College Act (the "Act"), the Administrative Rules promulgated by the Illinois Community College Board ("ICCB") and College of DuPage Board Policy, we opine that the Vice Chair did not automatically succeed to the office of Chair upon the resignation of former Chair Hamilton. Rather, we believe the Board must hold a new election for the office. Our opinion is set forth below.

### **II. The Vice Chair Only Has Authority in the Absence of an Existing Chair Not in Lieu of a Resigned Chair**

First, Board Policy 5-65, which addresses the duties of the chair and vice chair, states that the vice chair will serve as chair in the chair's "absence." Similarly, Section 3-10 of the Act (110 ILCS 805/3-10) states that "the chairman shall preside at all meetings and shall perform such duties as are imposed upon him by law or by action of the board. The vice chairman shall serve in the chairman's absence." There is no other language in the Act pertaining to the duties of the vice chair and no language as to what happens when the chair resigns. We do not equate the word "absence" in either the Act or the Policy with permanent separation from the Board based on resignation. In other words, we believe that the vice chair only has authority in the absence of an existing chair, not in lieu of a resigned chair.

It is important here to compare the language of Section 3-10 of the Act with Section 2-3 of the Act, which pertains to the state community college board (or ICCB) and its officers. Section 2-3 contains the same language found in Section 3-10 pertaining to the vice chair acting in the “absence” the chair. However, unlike in Section 3-10, Section 2-3 further provides that “in the event of the death or resignation of the chairman, the vice chairman shall assume the chairman’s duties...” Thus, a clear distinction has been drawn in Section 2-3 of the Act between absence and resignation and the role of the vice chair thereafter. Under the rules of statutory construction, the comparison of these two sections of the same Act supports the position that for local district boards, an absence of a chair is not the same as a permanent removal of the chair from the board based upon death or resignation. If the drafters of the legislation had intended there to be succession of the vice chair upon the resignation of the chair in a local district board, they would have included language similar to Section 2-3 in Section 3-10.

Based on this analysis, we believe that the Vice Chair does not assume the duties of the Chair upon the resignation of former Chair Hamilton. This means that the Vice Chair did not assume the duties that pertain to the setting of the Board’s agenda as provided for in Board Policy 5-130. Moreover, as the office of vice chair only has authority to act relative to an existing chair, the current Vice Chair has no authority to perform any actions on behalf of the Board until a new chair is selected. Thus, the status quo is that no current Board member possesses the ability to act as the Chair as defined under Board Policies<sup>1</sup>. In essence, all six of the remaining trustees are equal with respect to their authority to act on behalf of the Board.

### **III. The Need for an Election**

Given that there is no trustee with the ability to act as Chair, the Board must meet to elect a new Chair from its current membership. As noted, Board Policy does not address what the College should do upon the resignation of a Chair. Board Policy 5-75 provides that all officers elected at the annual organizational meeting serve until the next organizational meeting unless unable to do so due to the resignation. While Board Policy 5-75 specifically addresses how to involuntarily remove an officer before the next organizational meeting, it does not address how to select a Chair on the resignation of the Chair. Similarly, the Act does not specifically address how the Board is to proceed with the selection of a new Chair upon the resignation of the Chair.

Notwithstanding the absence of either statutory or policy provisions on the replacement of a resigned chair, the only logical conclusion is that the Board must meet and conduct an election of a new chair. We believe that the term of the office for the newly elected chair would be until the following annual organizational meeting.

### **IV. The Setting of a Meeting, the Setting of an Agenda, and the Conduct of the Election**

As noted there is also an issue with who has the authority to set a Board meeting, set the agenda for a meeting and preside over the meeting. We believe that the President of the College has the authority to call for a meeting to facilitate the election of officers and to set the agenda for such. Board Policy 5-130 (amended in May 2015) provides that the chair “with advice and counsel from the vice chair” prepares the agenda for each meeting. However, in this case, there is no chair and

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<sup>1</sup> Consistent with the Act, Board Policy 5-20 provides that no trustee has individual authority to act in the name of the Board and that “Trustees have authority for official Board action only when acting in concert as Board of Trustees legally in session.”

as stated above the vice chair has no authority to act because there is no chair. Again, all of the remaining six trustees are equivalent with respect to their authority to act on behalf of the Board.

At the same time, Board Policy 15-205 (which defines the President's duties) specifically provides that the President prepares the agendas. While this duty of the President is to be exercised consistent with the direction of the Board chair and vice chair, again, there is no chair currently and no vice chair with authority to act. As such we believe that the President has the authority to set the meeting and the agenda provided he acts consistent with the Board Policy and the Act. We further believe that the President has the authority to conduct the mechanics of the election during such a meeting. Board Policy 15-205 provides the President with broad administrative powers to facilitate the operations of the College. Facilitating a Board election where there is no chair is entirely consistent with the duties of the President.

Alternatively the organizational meeting could be called by any three (3) Board members. Section 3-8 of the Act provides that special meetings of the board "may be called by the chairman or by any three members of the board by giving notice thereof in writing stating the time, place, and purpose of the meeting." This provision also provides the authority to the three trustees calling the meeting to set the agenda based on the reference in Section 3-8 to stating the "purpose" of the meeting. If the meeting is initiated in this fashion, we again believe that the President would have the authority to conduct the election during the course of the meeting.

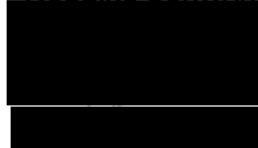
## **V. ICCB Advisory Opinion**

As noted above we have also reviewed the Administrative Rules issued by the ICCB, the agency which enforces the Act. While there are no Administrative Rules which specifically address the issues discussed here, we do note that the Rules state that the ICCB is empowered with the ability to issue advisory opinions. Specifically, Section 1501.105 of the Administrative Rules of the ICCB provides that "the ICCB will provide advisory opinions regarding interpretations of the Act to community colleges upon request of the president or chair of the board and with the approval of the ICCB Chair and President/CEO." While there may not be sufficient time to acquire an advisory opinion for the Board to move forward with necessary business, we recommend that such an advisory opinion be requested in the event that there is a challenge to any of the Board's actions moving forward relative to the resignation of former Chair Hamilton.

Once you have the opportunity to review the above I would be happy to conference with you to discuss the College's options moving forward.

Very truly yours,

**ROBBINS SCHWARTZ**



By: Joseph J. Perkoski

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