

### **Public Session Minutes**

The special meeting of the Morgan State University Board of Regents was called to order by Chairman Kweisi Mfume at 12:06 p.m.

**Present:** Hon. Kweisi Mfume, Chairman, Regent; General (Ret.) Larry Ellis, Vice Chair, Regent; Hon. Tracey Parker-Warren, Secretary, Regent; Dr. Linda Gilliam, Regent; Dr. Shirley Malcom, Regent; Mr. Stanley Nwakamma, Student Regent; Mr. Wayne Resnick, Regent; Ms. Shelonda Stokes, Regent; Dr. Marquis Walker, Regent; Mr. Winston Wilkinson, Regent

**Absent:** Rev. Dr. Harold Carter Jr., Regent

**Staff:** Dr. David Wilson, President; Dr. Kevin Banks, VP for Student Affairs; Ms. Tara Berrien, Assistant VP for Diversity and EEO; Mr. Sidney Evans, VP for Finance and Management; Mr. Thomas Faulk, Principal Counsel for Morgan State University, Office of the Attorney General; Mrs. Cassandra Grogan, Executive Administrator to the Board of Regents; Ms. Sherita Harrison, Interim General Counsel; Mr. David LaChina, Deputy CFO; Ms. Kim McCalla, Associate VP for Facilities, Design and Construction Management; Mr. Jeffrey Palkovitz, Senior Counsel for Real Estate, Office of the Attorney General; Dr. Kim Sydnor, Dean of the School of Community Health and Policy; Dr. Kara Turner, VP for Enrollment Management and Student Success; Dr. Don-Terry Veal, Chief of Staff; Dr. Lesia Young, Provost and SVP for Academic Affairs

**Guest:** Ms. Kimberly Min, Esq. – Whiteford Taylor & Preston, LLP

The Chairman offered an overview of the agenda and stated that the Board would be guided by our attorneys should the need arise that requires the Board to reconvene in Closed Session.

#### **Chairman's Remarks**

The Chairman opened the meeting by welcoming the Regents, the University administration and members of the public in attendance. He especially thanked Regent Gilliam for participating on her birthday, and wished her many happy returns on behalf of the full Board. On a sad note, he reported the unfortunate death of Morgan student, Joseph Graham, who was killed in a tragic explosion yesterday in Northwest Baltimore.

#### **Approval of Minutes**

Chairman Mfume opened the floor for a motion to jointly adopt the minutes from the August 4, 2020 Board meeting and the August 7, 2020 Emergency meeting. It was MOVED by Regent Wilkinson and SECONDED by Regent Walker to adopt the minutes. THE MOTION CARRIED unanimously.

#### **Student Housing Capital Structure**

Chairman Mfume yielded the floor to Regent Malcom, Chair of the Finance and Facilities Committee, to lead the discussion and provide an overview on the student housing capital structure item, which will be voted on by the committee of the whole.

Chairwoman Malcom stated that it has been a long time since any new housing has been erected on campus. The University has worked to determine how best to finance the construction of the proposed new student housing project. The administration presented four (4) options consisting of different types of financing arrangements to include collaboration with the Maryland Economic Development Corporation (MEDCO), utilization of the authority to borrow from the HBCU Capital Financing Program as well as the pros and cons associated with each scenario. A draft report was provided to Regents, and the Board is being asked to consider the recommendation which includes: (1) joint financing by MEDCO and MSU with cross-collateralization of Morgan View resulting in a loan by the HBCU Capital Financing Program in an amount not to exceed \$37.5M;

(2) refunding/refinancing the Morgan 2012 bonds; and (3) borrowing from the HBCU Capital Financing Program to fund Morgan's portion of the student housing project and refinance current HBCU capital financing obligations (Public Safety Building (\$15M) + deferred maintenance (\$8.5M) + closing costs (\$1.5M) at a lower cost of capital. These debt consolidations total approximately \$85M, which would result in savings to the University in the form of much lower interest rates. She added that the second request is to begin the process of raising the University's debt ceiling. The current ceiling is \$88M and it has been the same for the past 15 years.

President Wilson commented that the new student housing project is not growth housing but rather replacement housing. The University is seeking to move as many students currently residing in off-campus leased housing into the property on campus, thereby resulting in cost savings. He added that we cannot get the state to provide additional dollars to build new housing; therefore, this is the most economical and feasible way for us to bring about new housing.

There was a brief discussion with regard to the four financing options: (1) full financing by MEDCO; (2) joint financing by MEDCO and MSU; (3) full financing by MEDCO with cross-collateralization of Morgan View; and (4) joint financing by MEDCO and MSU with cross-collateralization of Morgan View. The administration provided rationale as to why option four is the best choice to pursue and responded to questions about the current debt capacity.

The Chairman asked Dr. Wilson and Mr. Evans to provide an assessment, at the next Board meeting, regarding the financial impact of COVID-19 on the institution and to ascertain from S&P, what effect if any, it would have on our next credit rating review.

Chairwoman Malcom stated that Board approval is being sought for two different requests – one relates to the borrowing/refinancing and the other relates to increasing the debt ceiling. Chairman Mfume opened the floor for a motion to approve the student housing capital financing requests.

- Chairwoman Malcom MOVED to approve the Thurgood Marshall Student Housing and Dining Project Financing and the additional aspects needed in order to move the plan forward. It was SECONDED by Regent Stokes. The MOTION CARRIED unanimously.
- Chairwoman Malcom MOVED to approve the actions required to move forward with raising the University's debt ceiling from \$88M to \$120M. It was SECONDED by Regent Gilliam. The MOTION CARRIED unanimously.

### **Revisions to Sexual Harassment and Prohibited Conduct Policy and Code of Student Conduct**

Chairman Mfume yielded the floor to Regent Gilliam, Chair of the Academic and Student Affairs Committee, to lead this discussion. Chairwoman Gilliam stated that the revisions are being presented as a result of federal changes to the Title IX Policy, which takes effect on August 14th. She asked Dr. Wilson and staff to provide a brief overview on the proposed revisions.

Dr. Wilson stated that the University brought forth modifications to the existing policy to be compliant with state law requirements, which was approved by the Board last August. At that time, the University advised that the U.S. Department of Education would be releasing new Title IX federal regulations with regard to sexual harassment that would take effect this year (2020). As such, the University is now seeking Board approval, once again, to bring our policies in alignment with the new federal regulations that go into effect on Friday, August 14th.

Dr. Banks shared the PowerPoint presentation prepared by Ms. Berrien, the new Assistant Vice President for Diversity and EEO, who was experiencing some difficulty with her audio/video. He summarized the major new changes to include: definitions, the requirement to respond to sexual harassment that occurs in a MSU education program or activity, live administrative hearings, just to name a few. Ms. Harrison noted that the new regulations would impact any matters of alleged incidents that occurred on August 14th or anytime thereafter.

Chairwoman Gilliam MOVED to approve the revisions to the Sexual Harassment and Prohibited Conduct Policy and Code of Student Conduct. The Chairman asked that the final vote be held to provide Ms. Berrien an opportunity to share her thoughts and observations as the Title IX Coordinator. In light of continued technical challenges, he asked that she be present at the next Board meeting to provide some insight with regard to this very sensitive issue.

A lengthy discussion ensued with regard to the new Title IX regulations. The attorneys addressed questions about the legal recommendation and legal consequences of being non-compliant. Mr. Faulk stated that, in

addition to ensuring we complied with the new requirements, the policy was reviewed to ensure that students were protected from behaviors that were previously covered under Title IX. Ms. Harrison commented that a footnote had been added to the policy related to the current challenges with the new regulations.

Ms. Berrien joined the discussion and advised that the University would lose federal funding if the policy was not adopted. She emphasized that while the Title IX definition and process for sexual harassment has narrowed a great deal, the University is still using the broader definition of sexual discrimination from the previous policy, which would enable Morgan to move forward in addressing pervasive matters and those occurring abroad.

There was reservation and unreadiness expressed by some members of the Board to adopt the policy at this time. Regent Malcom indicated that she would be abstaining and noted strong concerns about the new regulations which she feels do not align with best practice research on how to handle Title IX cases. Although some agreed with Regent Malcom's concerns, others were concerned about the institution's potential loss of federal funds.

Chairman Mfume asked whether an extension has been requested based on the fact that the issue is being adjudicated in the courts. He noted that if an extension had not been sought, what prevents us from requesting one from either the Department of Justice or the Department of Education based on pending litigation by several Attorneys General across the country. Mr. Faulk stated that he was not aware of any institution being granted an extension. He indicated, however, that he would step away momentarily to contact the Office of Attorney General and seek an answer to the question.

The Chairman expressed concern about the Board being placed in the uncomfortable position of having to make a decision due to an impending deadline without the benefit of sufficient time to properly review the materials.

There was further discussion about the possible way forward. The vote was deferred pending additional feedback from Mr. Faulk by way of the Office of the Attorney General.

### **President's Proposal on Fall 2020 Operations**

Chairman Mfume provided a brief overview with regard to the reopening plan that the President presented to the Board on August 4th. He noted that there was a great deal of push back and unreadiness regarding issues of liability, testing protocols, and number of students expected to reside in on-campus housing. Subsequently, the President presented a modified proposal on August 7th, which resulted in a lengthy discussion to include a number of questions raised by members of the Board. He then yielded the floor to the President to discuss his proposal.

President Wilson thanked the Board for exercising its duty of care. He stated that he obtained a list of the questions raised by Regents during the meeting on August 7th from Mrs. Grogan. Those questions were answered and provided to the Board electronically, and served as the bases for minor refinements to the proposal to include: a defined positivity trigger rate; reduced housing capacity (from 400-600 to 350-400); the elimination of all face-to-face instruction (with a few exceptions); and a rethinking of the Student Community Acknowledgement Form.

The Chairman asked whether approval of the proposal would create other matters to be considered by the Board in terms of the Fair Labor Standards Act, OSHA regulations and collective bargaining agreements. Dr. Wilson stated that the University has established a relationship with colleagues in the collective bargaining unit and employees have expressed a desire to be tested. He added that the first round of testing occurred on August 6th and 7th and will continue with the same level of regularity as students.

President Wilson and Dr. Banks responded to questions about arrangements for students residing in off-campus leased housing and the use of the additional rooms secured at the Sheraton Hotel.

Chairman Mfume emphasized the need for an immediate reporting to the Board if and when the 5% positivity rate is reached. The Board, as a committee of the whole, along with the President would then convene to discuss the issue and plan forward.

Dr. Wilson responded to additional questions related to tuition, the anticipated fiscal impact and forecasting through the end of the fiscal year. He stated that tuition will not increase for the 2020-2021 academic year, adding that the fiscal impacted is projected to be \$35M.

Chairman Mfume opened the floor for a motion to adopt the President’s Proposal on Fall 2020 Operations. Regent Gilliam MOVED to approve the President’s Proposal. The proposal is to offer remote-only instruction (excluding nursing and ROTC students) with limited operations and some campus housing for students of predetermined priority groups facing extenuating circumstances. It was SECONDED by Regent Wilkinson. The MOTION CARRIED unanimously.

The Chairman thanked Dr. Wilson, the Provost, faculty and Cabinet members for all of their hard work in getting us to this point. He noted that it was definitely a team effort.

### **Action on New Title IX Regulations**

Chairman Mfume yielded the floor to Mr. Faulk to share any factual information he was able to gather. Mr. Faulk reported that he spoke with Katherine Bainbridge, Chief of the Educational Affairs Division in the Office of the Attorney General, who indicated that there is no current plan in the State of Maryland with any of its public higher education institutions to seek an extension nor was she aware of any process with the Department of Education by which an individual institution would be able to seek an extension of the regulations from their effective date of August 14th. There are several cases currently pending with respect to institutions and/or states seeking injunctive relief as it relates to the case that was recently resolved on August 9th in the southern district of New York.

Mr. Faulk provided detailed information regarding the establishment of Title IX law. In response to the Chairman’s earlier question, he indicated that there is currently no process for seeking an extension. He further outlined the various remedies that the Department of Education could seek against the institution, which ultimately could result in the loss of federal funds as well as non-governmental actions that could be taken against the University for failing to comply with federal and state law. He concluded that we would be subject to significant legal jeopardy if we did not take action to ensure that our policies and procedures comply with the new federal regulations.

The Chairman deferred to the Board for any additional comments. Regent Malcom reiterated her intent to abstain, but urged those Regents comfortable with this policy to vote to support it, and also urged a review of the policy with regard to the University piece to ensure that protections are in place. Regent Gilliam noted that the Board did not have proper time to fully vet the policy, and suggested the possibility of revisiting this issue to ensure that it works for Morgan State University.

Chairman Mfume stated that while the matter is being considered by the committee of the whole, he is remanding the subject back to the committee of jurisdictional oversight (the Academic and Student Affairs Committee), which is free and encouraged to have further discussion on ways to improve Morgan’s policy beyond what is required by the federal government.

The Chairman opened the floor for a motion to adopt the Title IX regulations. It was MOVED by Regent Gilliam and SECONDED by Regent Walker to adopt the new regulations. Regents Malcom and Parker-Warren<sup>1</sup> ABSTAINED. The MOTION CARRIED.

President Wilson expressed his appreciation to all of the team members at Morgan – faculty, staff, students, and alumni – who have been there every step of way. He acknowledged that the decision regarding fall 2020 operations will likely disappoint many students; however, he asked that students understand that the decision was made with the best interest of everyone in mind.

Before moving to adjourn, the Chairman, again, acknowledged the death of Joseph Graham, a 20 year old rising junior, who was unfortunately killed in an explosion that occurred yesterday in Northwest Baltimore, and called for a moment of silence in his memory.

### **Adjournment**

Chairman Mfume called for a motion to adjourn the Public Session. It was MOVED by Regent Gilliam and SECONDED by Regent Walker. The MOTION CARRIED unanimously.

The Public Session adjourned at 2:33 p.m.

Footnote:

<sup>1</sup> Regent Parker-Warren participated by telephone and her abstention vote was not initially noted due to mechanical/telephonic error.