



THE UNIVERSITY OF TENNESSEE
BOARD OF TRUSTEES

MINUTES OF THE SPECIAL MEETING

November 20, 2020

Knoxville, Tennessee

A Special Meeting of the University of Tennessee Board of Trustees was held at 8:30 a.m. (EST) on Friday, November 20, 2020. Following continuing guidance from the U.S. Centers for Disease Control and Prevention (CDC) regarding COVID-19 and in compliance with the Tennessee Pledge and other state and local guidelines, the meeting was held virtually with Committee members participating electronically or by telephone. The meeting was hosted from the University of Tennessee, Knoxville campus.

I. Call to Order and Roll Call

The Chair of the Board, John C. Compton, called the meeting to order. Board Secretary Cynthia Moore called the roll, and the following members of the Board were present: John C. Compton, Chair; Bradford D. Box; Leighton Chappell, Student Trustee; Charles Hatcher, Commissioner of the Tennessee Department of Agriculture; Decosta E. Jenkins; Amy E. Miles; William (Bill) C. Rhodes III; Donald J. Smith; Kim H. White; Alan D. Wilson; and Jamie R. Woodson.

Others present included: President Randy Boyd and General Counsel Ryan Stinnett.

Ms. Moore addressed requirements for meetings conducted with members participating electronically and announced the presence of a quorum. The meeting was webcast for the convenience of the University community, the general public, and the media.

II. Consent Agenda

Chair Compton thanked everyone for making time to attend the meeting. He indicated that there is only one item of business, which is the consideration of the Consent Agenda. Chair Compton asked Ryan Stinnett, General Counsel, to review the items listed on the Consent Agenda.

Mr. Stinnett reminded the trustees that, on August 4, 2020, the Board adopted four emergency rules to implement changes to the student codes of conduct for each campus in response to the U.S. Department of Education's revised Title IX regulations. In addition, at the Annual Meeting held on June 26, 2020, the Board adopted an emergency rule allowing the University to require students, subject to certain exceptions, to have the flu immunization and/or any other immunizations that may be recommended by the U.S. Centers for Disease Control and Prevention (CDC) or the Tennessee Department of Health deemed to aid in preventing, controlling, or monitoring the spread of COVID-19. He noted that emergency rules expire within 180 days of adoption.



On the Consent Agenda for consideration are: (i) four permanent rules, one for each campus, to adopt the Title IX revisions to the student codes of conduct; and (ii) a permanent rule to adopt a student immunization rule pertaining to the flu immunization and a COVID-19 vaccination should one be developed and approved for use, along with additional immunizations for other diseases (e.g., mumps, measles, chickenpox, meningitis) as further specified in the rule.

Mr. Stinnett stated that, in accordance with the Tennessee Uniform Administrative Procedures Act, the Board held public rulemaking hearings on each of these rules on October 23, 2020. No comments were received on any of the proposed permanent rules at the hearings. Further, the University has received no written comments on the changes proposed to the student codes of conduct rules. Only a limited number of written comments on the student immunization rule were received. Mr. Stinnett advised that these comments can be classified into two primary themes. The first relates to advocacy for recommending, but not requiring, immunizations, and the second pertains to permissible exceptions associated with the immunization requirements. A summary of these comments and management's responses was included in the meeting materials circulated to the Board in advance of the meeting. Mr. Stinnett indicated that it is management's recommendation that there be no revision to the immunization rule, as the issues raised in the comments were considered previously when the emergency rule was approved by the Board and/or reflected in the proposed permanent rule.

Chair Compton asked whether any trustee wanted further clarification on any of the items set forth on the consent agenda. Trustee Rhodes expressed his interest in reviewing the proposed student immunization rule in more detail. In this regard, the trustees had an in-depth discussion, which among other things, included the following topics: (i) the distinction between recommending or requiring immunizations; (ii) the exemptions contemplated under the proposed rule and how they would be enforced; (iii) the price and estimated availability of any COVID-19 vaccine; (iv) the limited, available information on the safety and efficacy of potential COVID-19 vaccine; (v) the efficacy of the flu vaccine; (vi) the connection between the flu vaccine and the COVID-19 pandemic; and (vii) the Board's role with respect to immunization requirements.

Additionally, Mr. Stinnett explained that the proposed student immunization rule does not mandate the COVID-19 vaccine, but provides the University with the regulatory authority to do so in the future. He discussed the rulemaking process and the time period involved in promulgating rules in the ordinary course (approximately 6 months). He noted that, if the rule is adopted, the University would have the flexibility to require the vaccine and the ability to respond to the pandemic more quickly, as conditions may warrant to prevent, control, or monitor the spread of COVID-19.

In response to a question raised regarding the level of urgency associated with proceeding with the proposed rules, Mr. Stinnett confirmed that the revisions to the student codes of conduct are required to comply with the requirements of Title IX. The adoption of the permanent student code of conduct rules is necessary as the emergency rules will expire. Failure to comply with the Title IX regulations could potentially result in the loss of federal funding. Mr. Stinnett also advised that there are certain



statutory and/or other state requirements associated with the other immunizations (e.g., mumps, measles, chickenpox, meningitis) contained the proposed permanent rule, unrelated to COVID-19 vaccine or the flu immunization. In the event that the Board chooses not to proceed on the student immunization rule, rulemaking for these other immunizations would still be necessary and the process may need to start over.

Mr. Stinnett also confirmed that the proposed permanent, student immunization rule reads that the University “*may require ... immunizations ... deemed to aid in preventing, controlling, or monitoring the spread of COVID-19.*”

Upon motion duly made and seconded, a roll call vote was taken, and the Board adopted **Resolution 072-2020** approving all of the items set forth in the Consent Agenda, subject to the student immunization rule being conditioned upon the administration obtaining the Board’s approval prior to proceeding with any mandate that requires students to receive: (i) a COVID-19 vaccination, or (ii) a flu immunization beyond the current academic year.

An update on the status of the pandemic and the administration’s plans with respect to immunization requirements (COVID-19 and flu) will be included on the agenda for the Annual Meeting of the Board of Trustees scheduled to be held in June 2021.

III. Adjournment

With no further business to come before the Board, the Chair adjourned the meeting.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Cynthia C. Moore".

Cynthia C. Moore
Secretary and Special Counsel

Approved Consent Agenda Items

- The student code of conduct rules for The University of Tennessee, titled:
 - “Chapter 1720-02-05: Student Code of Conduct” (UTC)
 - “Chapter 1720-003: Student Rights and Responsibilities” (UTHSC)
 - “Chapter 1720-04-03: Student Code of Conduct” (UTK)
 - “Chapter 1720-05-01: Student Rights and Responsibilities” (UTM)
- The student immunization rule for The University of Tennessee, titled “Chapter 1720-01-17: Student Immunization Requirements”