

**MINUTES OF THE BOARD OF TRUSTEES OF  
STATE INSTITUTIONS OF HIGHER LEARNING  
October 25, 2021**

**BE IT REMEMBERED**, That the Mississippi Board of Trustees of State Institutions of Higher Learning of the State of Mississippi met in a special called meeting held via teleconference at the Board Office in Jackson, Mississippi at 1:00 p.m. on October 25, 2021, and pursuant to notice in writing, to each and every member of said Board. The following members participated via phone: Dr. Ormella Cummings, Dr. Steven Cunningham, Mr. Tom Duff, Ms. Teresa Hubbard, Ms. Jeanne Carter Luckey, Mr. Bruce Martin, Dr. Alfred E. McNair, Jr., Mr. Chip Morgan, Mr. Gee Ogletree, Mr. Hal Parker, Mr. Gregg Rader, and Dr. J. Walt Starr. The meeting was called to order by Dr. Walt Starr, President.

**In accordance with Miss. Code Ann., §25-41-5, as amended, all votes taken during this teleconference meeting were recorded by name in a rollcall. The meeting was held to discuss issues related to President Joseph R. Biden, Jr.'s Executive Order on mandating the coronavirus vaccines.**

For reasons including the success of COVID-19 prevention methods at the Institutions Higher Learning in the State of Mississippi, the IHL Board of Trustees on August 27, 2021 and September 17, 2021 provided direction to the Mississippi universities that encouraged vaccination but prohibited a requirement of vaccination except for institutional clinical settings (the "Prior Board Direction"). Since the August action by the Board, President Joseph R. Biden, Jr. issued Executive Order 14042 on September 9, 2021 ("President Joseph R. Biden, Jr.'s Executive Order 14042") imposing federal COVID-19 vaccine mandates for federal contractors anticipating later guidance would clarify the Order. The IHL Board does not support the federally imposed COVID-19 mandate, has been and is supportive of medical and religious exemptions to the mandate and chose to wait for further and more definitive federal clarification before considering revisions to the Prior Board Direction. Following the September action of the Board the Safe Federal Workforce Task Force on September 24, 2021, issued written guidance "COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors" (the "Guidance") providing definitions, explanations, and answers to frequently asked questions. The Board is required to act quickly based upon the new information provided it, since the vaccination schedule imposed by President Joseph R. Biden, Jr.'s Executive Order 14042 would require a patient to receive the first Moderna vaccine by October 27<sup>th</sup>, the first Pfizer vaccine by November 3<sup>rd</sup>, the second required Moderna or Pfizer vaccine on November 24<sup>th</sup>, and the Johnson and Johnson vaccine by November 24<sup>th</sup> - the day before Thanksgiving.

Based upon the new information in and the federal requirements imposed by President Joseph R. Biden, Jr.'s Executive Order 14042 and the Guidance, Trustee Gee Ogletree made the following motion regarding the Prior Board Direction.

The Board finds:

1. Since the Prior Board Direction, Guidance has been issued resulting in IHL reviewing and revising the Prior Board Direction in order to comply with federally-imposed COVID-19 vaccine mandates required by President Joseph R. Biden, Jr.'s Executive Order 14042.
2. All institutions governed by IHL are or during the effective time of President Joseph R. Biden, Jr.'s Executive Order 14042 are likely to be recipients of Federal Government

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Contracts or contract-like instruments (“Federal Contracts”) so as to be a prime contractor or subcontractor to the federal government (“Covered Contractor”).

3. At the present time, IHL institutions have approximately 120 Federal Contracts having at least a present combined value of \$271 million dollars.
4. All institutions governed by IHL having Federal Contracts have a number of employees working on or in connection with Federal Contracts as described in President Joseph R. Biden, Jr.’s Executive Order 14042 and defined in the Guidance.
5. Under the Guidance, the Biden vaccine mandate applies to all full-time or part-time employees working on or “in connection with” a covered contract or at a “covered contractor workplace”. An employee works “in connection with” a covered contract even if the employee’s work is not called for under the contract, as long as the work is “necessary to the performance of the contract.” The Guidance explains that employees working in support functions for the federal contracts, including, but not limited to, areas such as human resources, billing, and legal review, meet the “in connection with” standard.
6. Under the Guidance, a “covered contractor workplace” is any location controlled by the contractor where even one contractor employee working on or in connection with a covered contract is likely to be present during the contract period of performance. Indoor and outdoor work locations are included in a covered contractor workplace.
7. Under the Guidance, where the covered contractor employee works on only one floor of the contractor’s building, or in one building on the contractor’s campus that has multiple buildings, all employees working at that building or campus are covered by the federally imposed COVID-19 vaccine mandate unless the university/contractor can affirmatively determine that the covered contractor employee will not come into contact with or have an interaction with non-covered employees during the period of the covered Federal Contract, even in common areas of the campus, including, but not limited to, stairwells, elevators, parking garages and dining areas.
8. Because of the risk to an institution of making an erroneous determination of separateness of Covered Employees and non-covered employees, the risk of inconsistent determination and application by the institutions, and the administrative burden to the institutions to begin again the process of determination of separateness as Federal Contracts are expanded or new Federal Contracts are granted, the Prior Board Direction is revised as follows:
  - a. The Prior Board Direction remains in effect as related to a condition of student enrollment and university employment for those employees who are not Covered Employees and who do not go onto the university campus or onto any other university-controlled property subject to the Order and the Guidance as the same may be amended, modified, or clarified (“an Exempt Remote Workplace”).
  - b. All university employees except those working exclusively from an Exempt Remote Workplace who are not working on or in connection with a Covered Contract shall comply with federally-imposed vaccine mandates under President Joseph R. Biden, Jr.’s Executive Order 14042 and the Guidance as the same may be amended, modified or clarified, with each university to provide accommodation to such employees as provided by law, including but not limited to medical and religious exemptions.

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- c. Should the federally-imposed subject COVID-19 vaccine mandate under President Joseph R. Biden, Jr.'s Executive Order 14042 be stayed, delayed or revoked, this Direction shall be stayed or revoked accordingly.

Trustee Hal Parker seconded the motion regarding the Prior Board Direction as stated by Trustee Ogletree and shown above.

Pursuant to Board Policy 301.0510 Meeting Rules of Order section C. Quorums, Agenda, Rulings of the Presiding Officer, and Delay, subsection 4. Delay Board Consideration, Trustee Hubbard requested to delay consideration of the motion regarding the Prior Board Direction as stated by Trustee Ogletree and shown above.

A motion was made by Trustee McNair and seconded by Trustee Ogletree to proceed with considering the motion regarding the Prior Board Direction as stated by Trustee Ogletree and shown above. The motion to proceed passed on a 7 to 5 vote. Trustees voting for the motion to proceed were Dr. Steven Cunningham, Mr. Tom Duff, Mr. Bruce Martin, Dr. Alfred E. McNair, Mr. Gee Ogletree, Mr. Hal Parker, and Dr. Walt Starr. Trustees voting against the motion to proceed were Dr. Ormella Cummings, Ms. Teresa Hubbard, Ms. Jeanne Luckey, Mr. Chip Morgan, and Mr. Gregg Rader.

The vote on the motion regarding the Prior Board Direction as written above passed on a 9 to 3 vote. Trustees voting for the motion regarding the Prior Board Direction were Dr. Ormella Cummings, Dr. Steven Cunningham, Mr. Tom Duff, Mr. Bruce Martin, Dr. Alfred E. McNair, Mr. Chip Morgan, Mr. Gee Ogletree, Mr. Hal Parker, and Dr. Walt Starr. Trustees voting against the motion regarding the Prior Board Direction were Ms. Teresa Hubbard, Ms. Jeanne Luckey, and Mr. Gregg Rader.

**ADJOURNMENT**

There being no further business to come before the Board, on motion by Trustee McNair, seconded by Trustee Rader, all Trustees legally present and participating voted unanimously to adjourn the meeting.



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President, Board of Trustees of State Institutions of Higher Learning



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Commissioner, Board of Trustees of State Institutions of Higher Learning