

**Maryland 529  
Board Meeting Minutes**

**April 28, 2022**

**9:30 AM – 11:15 AM**

**Held via: Zoom Video Conference**

**Board Members/Designees Present via  
Conference Call**

Peter Tsirigotis, Board Chair  
Geoffrey Newman, Secretary of Higher  
Education's Designee, Board Vice-Chair  
Ellen Herbst, Chancellor of University  
System of Maryland's Designee, Secretary  
Carol Beatty, Secretary of Maryland  
Department of Disabilities  
Laura Atas, Designee for the State Treasurer  
Justin Dayhoff, Designee for the  
Superintendent of Maryland State  
Department of Education  
Capathia P. Campbell  
Jessica McClain  
Joanna Pratt

**Staff, Representatives and Guests**

Erin Layton, Executive Director  
Janaki Kannan, Director of Finance  
Bette Ann Mobley, Director of ABLE  
Dan Rambert, Director of Investments &  
Cash Management  
Michelle Winner, Director of Marketing  
Meghan Marek, Assistant Attorney General  
Maria Dodge, Executive Assistant  
Glenn Ross, Marquette Associates, Inc.  
Luis Sierra, Marquette Associates, Inc.  
Diana Kendall, T. Rowe Price  
Dave McAvoy, T. Rowe Price  
Heather Chisholm, Intuition  
Maria Padin, Intuition  
Pat Galley, Intuition

**Board Members/Designees Absence**

Justin Hayes, Maryland Comptroller's  
Designee  
Sam Gallo

**Maryland 529 Board Meeting**

Mr. Tsirigotis called the meeting to order at 9:35 AM. He welcomed the new Board Members and Mr. Dayhoff and Ms. Campbell introduced themselves.

• **Approval of Minutes**

Mr. Tsirigotis asked for comments on the minutes from the February 23, 2022 Board meeting's open session. There being no discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED**, that the minutes for the February 23, 2022 Board meeting's open session are hereby approved.

Mr. Tsirigotis asked for comments on the minutes from the March 24, 2022 Board meeting's open session. There being no discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED**, that the minutes for the March 24, 2022 Board meeting's open session are hereby approved.

### **Chair Updates**

Mr. Tsirigotis reported that, as the new Chair, he has received a number of positive comments regarding the Plans. He wanted to mention this as the Board is often dealing with negative comments and it is good to know that families are being helped.

Mr. Tsirigotis has received and reviewed comments regarding Board Committees and would like to thank everyone for their participation. The Committees members will be:

1. Administration, Personnel & Finance Committee – Ellen Herbst (Chair), Geoff Newman, Secretary Carol Beatty, Justin Hayes
2. Investment Committee – Joanna Pratt (Chair), Ellen Herbst, Sam Gallo, Justin Dayhoff
3. Audit & Governance Committee – Jessica McClain (Chair), Justin Hayes, Geoff Newman, Ellen Herbst

Ms. Campbell noted that she would like to serve on a Committee but wants to establish herself on the Board before choosing. Mr. Tsirigotis suggested she attend several Committee meetings before deciding.

There was a discussion regarding future meetings being in person, virtual or a hybrid combination. It was decided that for the summer meetings would remain virtual and in the fall a decision would be made taking current health advisories into account. The baseline for the future would be to have in person Board meetings with virtual attendance available and virtual Committee meetings.

### **Administration, Personnel & Finance Committee Report**

Ms. Kannan presented the ABLE Cost Allocation method that will be applied for indirect expenses going forward. This method will apply shared costs pro-rata across the three Maryland 529 programs based on their percentage of overall program assets (with ABLE currently accounting for 3% of assets overseen). The Agency will still be able to determine the true cost of running the ABLE Program.

The ABLE startup loan was also discussed, including whether to request loan forgiveness from the State and the ramifications of such a request being denied. Ms. Herbst noted that, in principle, it is necessary to know what it takes to run the Program and to ensure accurate future funding requests. She also noted that from an accounting perspective, the loan needs to be accounted for in the financial statements. There was also discussion that this internal allocation does not affect account holders.

Ms. Layton reported that having an accurate and complete representation of the costs will also assist with her next recommendation that ABLE seek forgiveness of the original State loan for ABLE startup costs. It was discussed that legislation would be needed for the forgiveness, and

that by changing the cost allocation method, the annual appropriation request will increase with the FY24 operating budget. The Agency should work over the summer to educate everyone on the funding needs.

Secretary Beatty left the meeting at this time.

Ms. Layton noted that the ABLE startup costs on not listed on the State's financial records as a debt owed. Similarly, the costs have never been included as a line-item on the Maryland ABLE Annual Report, as the prior auditor did not believe it needed to be included, though the costs were consistently mentioned in the Reports' discussion section. Ms. Marek noted that there should be clarity regarding whether or not just the FY 2017 allocation was considered the startup loan or if all subsequent appropriations since FY 2017 should also be included as startup. Whether the loan is to be forgiven or not, we need a common understanding of the total amount of funds under discussion.

Ms. Layton reported that while the Prepaid Program also received a startup loan that was repaid to the State, the ABLE Program and college savings are vastly different. ABLE has things that work against a repayment including a limited population for account holders who need qualifying disabilities for participation (plus the age of onset before 26 years old) and annual limits on contributions. In addition, while college savings plan opened, their target market would tolerate enrollment and annual program fees as a cost of doing business. ABLE programs nationwide have adopted very low fees in comparison, as the target enrollment audience has less capacity to absorb those costs. Also, the MPCT was able to repay the loan with revenue received following the inception of the College Investment Plan. There being no more discussion and upon motion duly made and seconded, with a vote of seven to one, it was

**RESOLVED**, that the Board approves the ABLE Program seeking clarification and potential forgiveness of the start-up loan from the State of Maryland.

Mr. Newman voted against the motion based on his experience with the MPCT repaying its startup loan and not knowing whether or not ABLE will ever become self-sufficient.

### **Executive Director Update**

Ms. Layton presented the Evaluation Committee's recommendation that the Board approve the hiring of an annual auditor. Ms. Kannan and Ms. McClain reported that both Mitchell Titus ("MT") and UHY US ("UHY") bid in response to the Annual Auditor Request for Proposal. They noted that the Committee assessed the technical proposals and presentations, including responses regarding cost overrun challenges and becoming a valued partner with UHY grading higher than MT and having a better overall presentation. It was noted that MT did have a lower financial proposal. There was a discussion that all criteria were considered, including the firm size and MBE status. The Committee's recommendation is to select UHY to perform the audit services. There being no more discussion, and upon motion duly made and seconded, it was unanimously

**RESOLVED**, that the Board approves the hiring of UHY US to perform audit services.

Ms. Marek noted that the contract will be signed by UHY and herself and then go before the Board of Public Works. Ms. Layton reported that the pre-audit meeting will be the beginning of July, which allows plenty of time for UHY to get up to speed. Ms. Herbst indicated that this has been an item on the Audit & Governance Committee's to do list and, as the previous Chair, she would like to thank everyone for getting this done.

**Executive Director Update**

Ms. Layton provided background for moving into Closed Session. She has been in contact with the Board Officers regarding an MPCT earnings calculation error that in the recordkeeping transition to Intuition within the MPCT and that requires correction. There was an account holder issue that brought this to her attention. Actions taken so far include calculations on earnings being stopped. Account Holders are still able to receive distributions, but any earnings attributable are being withheld until this issue is resolved. Ms. Marek suggested moving into closed session to discuss the matter as related to this particular account holder and to seek advice of counsel. There being no more discussion, and upon motion duly made and seconded, it was unanimously

**RESOLVED**, that the Board move into closed session to discuss the details of an earnings calculation error with respect to a specific account holder and to seek advice of counsel on same.

Secretary Beatty and Mr. Gallo joined the meeting. Ms. Mobley, Ms. Winner, Mr. Rambert, Mr. Ross, Mr. Sierra, Ms. Kendall and Mr. McAvoy left the meeting.

The Board moved back into open session and Ms. Marek summarized that while in closed session additional information was provided to the Board on specific account holder calculation changes and programming errors and the that Board approved using a first in and first out methodology to correct the calculation error with regard to prior usage in an account and how earnings would be applied on balances.

The Board also heard details of an appeal for a different rollover calculation using the pre-November 1 calculation method and denied the request as no paperwork had been received prior to November 1 requesting a rollover, and to date, no forms had been submitted by the account holder.

There being no further business and upon motion duly made and seconded, it was unanimously

**RESOLVED**, that the meeting be adjourned at 11:15 AM.

Approved:  \_\_\_\_\_ Date: 7/12/2022  
Ellen Herbst, Board Secretary

Exhibits:

- 1A- Agenda
- 1A1- 2/23/22 Open Session Minutes
- 1A2 – 3/24/22 Open Session Minutes
- 3A1- ABLE Start Up Funding
- 3A2- ABLE Cost Allocations
- 4- Annual Auditor RFP Evaluation Summary