

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

May 11, 2017
Open Session

The Regents of the University of California met on the above date by teleconference at the following locations: Northridge Room, Covell Commons, Los Angeles Campus; 1111 Franklin Street, Lobby One, Oakland; Student Center, Aliso Beach B, Irvine Campus; Mosher Alumni House, Santa Barbara Campus; 777 South Figueroa St., Suite 4050, Los Angeles; 3750 University Avenue, Suite 610, Riverside; 1130 K Street, Suite 340, Sacramento; and 1776 Grant St., Denver, Colorado.

Present: Regents Brody, De La Peña, Elliott, Lozano, Makarechian, Napolitano, Newsom Ortiz Oakley, Pattiz, Pérez, Ramirez, Reiss, Schroeder, Sherman, Torlakson, Varner, and Zettel

In attendance: Faculty Representative Chalfant, Secretary and Chief of Staff Shaw, General Counsel Robinson, and Recording Secretary McCarthy

The meeting convened at 1:15 p.m. with Chair Lozano presiding. She explained that notice had been given in compliance with the Bylaws and Standing Orders for a special meeting of the Board of Regents.

1. PUBLIC COMMENT

There were no speakers wishing to address the Regents.

2. AUTHORIZATION TO RETAIN AN INDEPENDENT CONSULTANT TO INVESTIGATE CERTAIN ISSUES RELATED TO THE STATE AUDIT REPORT ON THE UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT ADMINISTRATIVE BUDGET

The Chair of the Board recommended that the Regents authorize her to retain an independent external law firm or other consultant to assist the Regents in reviewing actions undertaken by the Office of the President with respect to surveys issued by the California State Auditor, and campus responses to those surveys, as part of the recent audit of the Office of the President budget and administrative expenditures.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Chair Lozano remarked that the Board of Regents would hear a thorough discussion of the California State audit report issued on April 25, including its findings, conclusions, and recommendations, as well as a presentation by State Auditor Elaine Howle at its meeting the following week. The report had raised several issues concerning the level of transparency surrounding the Office of the President's budget process, as well as some

University policies. The audit report's recommendations for the Office of the President and for the Board were constructive, and when adopted would make the University more efficient, transparent, and accountable. The President of the University had committed to implementing these recommendations. On behalf of the Board, Chair Lozano had committed to legislative leaders that the Board would be actively engaged in the oversight of this effort and would ensure that implementation is pursued expeditiously and within the time frames recommended. All of this would be discussed fully at the Regents meeting the following week.

Chair Lozano advised that one audit report finding, however, merited immediate attention and action by the Board. The California State Auditor found that the Office of the President interfered in the audit process by previewing campus responses to surveys issued directly to the campuses by the Auditor. The audit report concluded that this interference rendered the survey responses unreliable. Chair Lozano stated that these allegations were serious and that President Napolitano and her office had stated that there was no improper motive in the review, but acknowledged that in retrospect her office should have handled matters differently and apologized for the actions taken. Proper exercise of its fiduciary duty dictates that the Board gain a better understanding of the circumstances surrounding this review of the survey responses. Chair Lozano said she had committed to the Legislature on behalf of the Board that the Regents would undertake a fact-finding review of the alleged interference by the Office of the President. To that end, Chair Lozano said she had established a working group of Regents to undertake this review. The working group consisted of Chair Lozano, and Regents Kieffer, Pérez, Reiss, and Zettel. Chair Lozano was requesting that the Board authorize her to retain an external law firm or other consultant, independent of the Office of the President, experienced in these types of matters, to assist the Board in determining the facts. She emphasized the need for the Board to send a strong signal to its many constituents that the entire Board is fully engaged in this effort and committed to full transparency and accountability. Chair Lozano anticipated that the consultant would have a report available to the Board at its July meeting or earlier.

President Napolitano said she welcomed quick action by the Board to retain an independent consultant to review the State Auditor's contention that the Office of the President interfered with campus responses to surveys from the audit team. She acknowledged that it was clear in retrospect that her office's efforts to coordinate campus responses to the surveys should have been handled differently. There would be no such coordination of efforts in the future. Campus audit directors would communicate directly with any State audit team. She expressed hope that whoever was retained would look at all the circumstances in which the surveys were being conducted and the confusion that resulted. She affirmed that, like the Regents, she and the Office of the President take the findings of the State audit report and the concerns of State legislators very seriously. The important work of implementing actions in response to the audit lies ahead and President Napolitano looked forward to cooperating fully with the Regents on this matter.

Regent Makarechian asked for clarification of the scope of the fact-finding. Chair Lozano responded that the working group would meet the following day and would better define

the scope, which was presently narrowly confined in concept to an evaluation of the circumstances surrounding the surveys that were distributed to the campuses and the contention that there was interference by the Office of the President in the survey responses. Regent Makarechian asked if external consultants other than law firms would be considered. Chair Lozano said the external consultant would most likely be a law firm. Criteria were being developed currently with the assistance of the General Counsel to determine the best-qualified consultant. A small group of finalists would be interviewed and she would act quickly to retain the consultant. Regent Reiss added that it would be important that the external consultant be highly respected with unimpeachable integrity, since the goal was to obtain an accurate, unbiased factual determination that would be reported back to the Regents. Regent Makarechian asked if the external consultant would have a set budget and time frame, so that the fact-finding was not overly prolonged. Chair Lozano said the goal was that the external consultant would conclude its fact-finding in advance of the July Regents meeting.

Regent Pattiz asked if the external consultant would be chosen by Chair Lozano or by the working group. Chair Lozano responded that the working group was advisory, but that her goal was that the external consultant would be chosen collectively through consensus of the working group. Regent Pattiz expressed support for the recommendation.

Regent Newsom asked why there seemed to be a preference for engaging a law firm. Chair Lozano said the recommendation would authorize her to retain an external law firm or other consultant. The working group would identify those believed to be the most highly qualified. She welcomed any recommendations.

Regent Newsom asked who the audience would be for the conclusions of the fact-finder. While the fact-finder's report would be to the Regents, it would also help to develop a sense of trust with the public and the Legislature. Chair Lozano stated that the external consultant's report would be for the Regents, but would also be for a much broader public and the findings would be reviewed in public at the July meeting. Regent Reiss added that, based on the report of the fact-finder, the Regents would determine if any further actions or policy changes should be taken.

Regent Newsom asked if a maximum budget had been set for the external consultant. Chair Lozano said the working group has not yet viewed any proposals, but affirmed her desire to be expeditious, and to obtain the best advice with the highest integrity. She stated that she would provide Regent Newsom with an estimated budget when the working group had an opportunity to meet to consider the audit report and review prospective consultants' proposals.

Regent Makarechian asked if the external consultant would be asked to be only a fact-finder or if it would be asked to draw conclusions from the facts. Chair Lozano responded that the consultant would be engaged as a fact-finder; the Board of Regents would evaluate the facts and would determine if any additional actions, including review of procedures, Bylaws, or expectations of conduct, needed to occur as a result of the facts. Regent Reiss added that the fact-finding would be as broad as possible with regard to the

alleged improper interference with the campus surveys, including review of all personnel involved and their communications. Chair Lozano agreed.

Regent Pérez suggested an amendment to the recommendation to add that the Regents authorize the Board Chair “in consultation with the working group” to retain the external consultant. Given that the Board would not be fully briefed on the audit report and the response of the Office of the President until its meeting the following week, Regent Pérez suggested that the Board of Regents reserve the ability to inform the working group further on items that should be within the scope of the external consultant’s fact-finding. He expressed agreement with Regent Newsom that, while the main audience for the external consultant’s fact-finding was the Regents, it would be important that the public value the product and process of the fact-finding.

Regent Varner asked if the working group would receive the report of the fact-finder and make recommendations for action to the full Board, or if only the found facts would be reported to the Board, which would consider any actions. Chair Lozano stated that at the current time the charge is to conduct the fact-finding and to report that back to the full Board. The Board would then take up the question of any additional actions.

Regent Torlakson asked if the scope of the fact-finding pertained only to the handling of the campus surveys and if other independent consultants would be retained to consider the broader issues raised in the audit report. Chair Lozano responded that, because of the critical nature of the alleged interference in an audit process itself, this action is specific to that particular allegation. At their meeting the following week, the Regents would consider a broader set of recommendations regarding actions to be undertaken in response to other issues raised by the audit report.

In response to a question from Regent Pattiz, Chair Lozano said the presentation at the Regents meeting the following week would include the audit report, the 33 recommendations made to the Office of the President, the recommendations made to the Regents, and the recommendations to the Legislature. Regent Pérez asked that Secretary and Chief of Staff Shaw send the Regents an internet link to the testimony of Chair Lozano and President Napolitano before the Joint Legislative Audit Committee.

Regent Elliott expressed support for reviewing questions relating to the handing of the campus surveys separately and expeditiously.

Upon motion duly made and seconded, the Regents approved the Chair of the Board’s recommendation as amended, Regents Brody, De La Peña, Elliott, Lozano, Makarechian, Napolitano, Newsom, Ortiz Oakley, Pattiz, Pérez, Ramirez, Reiss, Schroeder, Sherman, Torlakson, Varner, and Zettel voting “aye.”

The meeting adjourned at 1:40 p.m.

Attest:

Secretary and Chief of Staff