

Office of the Secretary and Chief of Staff

TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

INFORMATION ITEM

For Meeting of November 16, 2017

REPORT ON PERSONNEL ACTIONS RELATING TO THE STATE AUDIT REPORT TAKEN IN CLOSED SESSION

In its closed session, the Board approved the following recommendations:

- A. A public statement by Chair Kieffer on behalf of the Board of Regents admonishing President of the University Janet Napolitano as shown in Attachment 1.
- B. Require a public statement by the President of the University Janet Napolitano accepting responsibility and apologizing as shown in Attachment 2.
- C. Disciplinary actions were to be recommended regarding Chief of Staff to the President Seth Grossman but are now moot due to his resignation.
- D. Disciplinary actions were to be recommended regarding Deputy Chief of Staff Bernie Jones but are now moot due to his resignation.

BACKGROUND

In May 2017 the Regents authorized then Chair Lozano to retain an independent external law firm or other consultant to assist the Regents in reviewing actions undertaken by the Office of the President (UCOP) 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. Justice Carlos Moreno and the law firm of Hueston Hennigan were retained for this work. Chair Lozano also appointed a working group of Regents to review the findings of the outside consultants and make recommendations to the Regents. Members of the working group are Chair Kieffer, Vice Chair Pérez, and Regents Lozano, Reiss, and Zettel. The fact-finding report is provided in Attachment 3.

Individual Actions

President Napolitano

The working group concluded, based on Justice Carlos Moreno and Hueston Hennigan's findings of fact, that the President of the University bears ultimate responsibility for the interference in campus survey responses to the State Auditor, whether intentional or not. The President is responsible for the conduct of her direct reports, including her Chief of Staff and Deputy Chief of Staff. The President also is responsible for setting an appropriate tone from the top and fostering a culture of transparency and accountability on behalf of the University, which operates as a public trust for the State of California.

While Justice Moreno and Hueston Hennigan found that there is insufficient evidence to conclude that President Napolitano knew and approved of the full range of Chief of Staff Seth Grossman's and Deputy Chief of Staff Bernie Jones' conduct, and insufficient evidence to conclude that President Napolitano knew or approved of any plan to suggest revisions to campus survey responses, the evidence did show – and the President has admitted – that she directed or caused to be directed responses to be sent through Chancellors and to the Office of the President for review. While legal counsel advised that there was no legal impediment to such review, and the President appeared to act on that advice, it was still wrong under commonly-accepted audit principles and inconsistent with the obvious intent of the surveys to obtain candid feedback from the campuses about the Office of the President. The President's decision to have responses sent through her office set in motion a course of conduct that ultimately resulted in more serious interference in the campus survey responses by her direct reports – for whom the President bears ultimate responsibility – and fell below the expectations of the Regents, who have charged the President with “establishing a University environment that is conducive to compliance with law, regulation, policy and ethical principles.” Regents Bylaw 30 (President of the University).

The working group noted the lack of trust between UCOP and the State Auditor based on perceived uncorrected inaccuracies in an earlier audit. But these circumstances do not excuse the interference in the State Auditor's survey process. Concerns about factual inaccuracies in the State Auditor's draft report should have been brought to the attention of the State Auditor through the appropriate process – and if corrections were not made to the satisfaction of the President or the Board of Regents, further concerns should have been directed to the Joint Legislative Audit Committee.

The President's directive represents a serious error in judgment. However, it must be viewed in the foregoing context and the context of her full performance as President, where she has made substantial contributions to the welfare of the University, its students and faculty, and to the State. President Napolitano has successfully guided the University through numerous significant challenges, and the working group supported her continued leadership of the University. Nonetheless, after evaluating the findings of fact, the context in which this conduct occurred, and the context of the President's full performance as President, the working group recommended the following actions, which are intended to communicate the Regents' serious disapproval of the conduct that occurred and to deter future recurrence: a public statement by Chair Kieffer on

behalf of the Board of Regents admonishing the President, as shown in Attachment 1; requiring a public statement by President Napolitano accepting responsibility and apologizing, as shown in Attachment 2.

Chief of Staff Seth Grossman

The record shows that Grossman participated in the review and comment process alongside Bernie Jones, who was most closely involved in the direct interactions between the campuses. The record also shows that Grossman knew, or should have known, of Jones's flagging of negative responses and suggesting that campus officials revise responses that were initially unfavorable to UCOP. The working group had determined it would recommend serious disciplinary action, but such actions are now rendered moot by Grossman's departure from the University.

Deputy Chief of Staff Bernie Jones

The record shows that Jones directly interfered with campus survey responses – not just by overseeing the initial plan to require that survey responses be drafted by the Chancellors and sent through UCOP, but also by flagging negative responses and suggesting that campus officials revise responses that initially were unfavorable to UCOP. The working group had determined it would recommend serious disciplinary action, but such actions are now rendered moot by Jones's departure from the University.

Attachments:

1. [Statement by Chair Kieffer](#)
2. [Statement by President Napolitano](#)
3. [Report of Justice Moreno/Hueston Hennigan](#)