

The Regents of the University of California

COMPLIANCE AND AUDIT COMMITTEE

January 16, 2019

The Compliance and Audit Committee met on the above date at UCSF–Mission Bay Conference Center, San Francisco.

Members Present: Regents Anguiano, Cohen, Elliott, Estolano, Makarechian, Morimoto, Park, Pérez, Tauscher, and Zettel; Ex officio member Kieffer; Advisory members May and Weddle; Chancellors Block, Gillman, Leland, and Yang; Staff Advisor Main

In attendance: Regents Kounalakis and Sures, Secretary and Chief of Staff Shaw, General Counsel Robinson, Chief Compliance and Audit Officer Bustamante, Vice President Andriola, and Recording Secretary Johns

The meeting convened at 10:35 a.m. with Committee Chair Elliott presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of November 14, 2018 were approved.

2. **UPDATE ON IMPLEMENTATION OF RECOMMENDATIONS FROM STATE AUDIT OF UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT 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.]

Systemwide Deputy Audit Officer Matthew Hicks provided an update on implementation efforts related to the State audit of Office of the President (UCOP) administrative expenditures. In October 2018, the University submitted its latest updates to the California State Auditor’s office and had anticipated that the State Auditor’s assessments of these updates would be completed prior to this meeting, but these assessments were still in progress. As a courtesy, the State Auditor had shared some preliminary analysis of the recommendation implementation status but had asked that the details of this analysis not be discussed. The State Auditor indicated that it would be acceptable to share information on the anticipated percentage of completion, based on preliminary analysis, as well as key points explaining why the State Auditor has determined that certain recommendations had not yet been fully implemented. This information had been included in the background materials provided; Mr. Hicks noted that this information was preliminary and subject to change.

Regent Pérez asked if the admonition against sharing information pertained to the Board of Regents or the public. He recalled that this issue had arisen with the State Auditor on an earlier occasion. Mr. Hicks explained that the University had asked if the information could be shared in this open session meeting and that the State Auditor's office had communicated that it would not be comfortable with this information being shared in open session. In response to another question by Regent Pérez, Mr. Hicks reported that the University had not asked about sharing this information in closed session.

Regent Pérez stated that it was problematic if the Board and this Committee were not able to have as much information as possible and in a timely manner in order to make the best possible decisions. He hoped that, in the future, the University would ask about presenting information in closed session.

General Counsel Robinson noted that the State Auditor had been somewhat inconsistent on this point in the past. On other occasions, the State Auditor's office had indicated to the Office of the General Counsel that it did not matter if information was shared in open or closed session. As a policy matter, the University might wish to take up this matter again with the State Auditor. He believed that there was a difference between sharing information about an ongoing audit and sharing information about the implementation of recommendations after an audit has been completed. He was not aware of any legal prohibition or any basis for taking the position that information about the implementation of recommendations cannot be discussed or shared with the Regents.

Committee Chair Elliott remarked that the University was trying to continue to improve its working relationship with the State Auditor's office in areas where there were sometimes disagreements. He stated that it would be desirable to give the State Auditor's office time to better understand the University's implementation actions.

3. **UPDATE ON IMPLEMENTATION OF RECOMMENDATIONS FROM STATE AUDIT OF SEXUAL HARASSMENT CASES**

[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.]

Interim Systemwide Title IX Coordinator Suzanne Taylor provided a six-month update on the University's response to a report by the California State Auditor released in June 2018 ("The University of California: It Must Take Additional Steps to Address Long-Standing Issues with Its Response to Sexual Harassment Complaints"). The State Auditor had reviewed the University's response to cases of sexual harassment involving faculty and staff respondents. The recommendations resulting from the State Auditor's review focused on a few key areas: more structure for the informal complaint resolution process, timeliness of formal investigations, ensuring that UC policies align with law and best practices, maximizing the use of available data, promoting consistency in qualifications and training of Title IX staff, ensuring timeliness and consistency of discipline for faculty and staff respondents, and clarifying the mission and authority of the Systemwide Title IX Office. President Napolitano had accepted all of these recommendations, and the University had

been working on implementing them. Most of the recommendations would be due in July. One recommendation, the creation of a strategic plan for the Systemwide Title IX Office, was due and completed the previous month.

Ms. Taylor recalled that the Systemwide Title IX Office had been formed in 2017. This Office is not required by law, as the Title IX offices on the campuses and UC locations are. The creation of the Systemwide Office was an active measure by President Napolitano to strengthen the University's response to sexual harassment and to ensure consistency across the UC system. The State Auditor found that the Office would be more effective if it had a clear mission and authority and noted that the Office should play a central role in setting policy, analyzing data, and overseeing the campuses. The Office's mandate was to create a strategic plan that would delineate how the Office would approach achieving consistency systemwide and ensure that the Office has an appropriate role in all key areas. The Systemwide Office worked collaboratively with the campus Title IX officers over several months to create a plan. The strategic plan that was developed helps promote consistency across the UC system, outlines the role of the Systemwide Office in reviewing policies and procedures, discusses the Systemwide Office's oversight role with regard to the campus offices, and addresses the question of how to maximize the value of data gathered from the campuses. The creation of the strategic plan had been a worthwhile exercise, and the result was a plan that is practical and meaningful.

Ms. Taylor then discussed the State Auditor's other recommendations, which would be due in July. Several of these recommendations concerned the creation of more structure for UC's informal complaint resolution process and more consistent adherence to protocols developed to ensure timeliness of formal investigations. The University had taken a number of actions to implement these recommendations. UC has put in place detailed interim procedures to ensure that the changes recommended are being implemented immediately, and would be evaluating the effectiveness of these interim frameworks and refining the process in order to issue formal guidance in July. The University also drafted revisions to its systemwide Sexual Violence and Sexual Harassment Policy (Policy). The Policy had undergone informal review during the past summer and a 90-day formal review that ended before the end of 2018. UC was reviewing the comments resulting from the formal review and would finalize revisions in the coming weeks. The next step would be to submit the revised Policy to the U.S. Department of Education's Office for Civil Rights pursuant to a resolution and agreement between UC Berkeley and the Office for Civil Rights. The University has assumed that the Office for Civil Rights would approve the Policy in the spring and that UC would issue the Policy over the summer so that it would be in place at the beginning of the next academic year. There was a caveat to this assumption. The U.S. Department of Education had published proposed Title IX rules in November 2018 that were currently open for public review and comment. These rules, if issued in their current form, would significantly change the University's policies and procedures. It was not known when these rules would be issued, what their requirements would be, and how they might affect UC's proposed revised Policy. The University has discussed this matter with the State Auditor, who was aware that there were forces beyond UC's control that would affect how the University implements the State Auditor's recommendations.

Another recommendation by the State Auditor concerned maximizing the use of data gathered from the campuses. The University had refined and expanded the criteria used in collecting campus data and had reported this to the State Auditor. Ms. Taylor anticipated that this step would improve the accuracy of the data that UC collects, allow UC to better identify systemwide trends, and assess consistency and compliance.

Other recommendations pertained to the qualifications and training of Title IX staff. The goal of these recommendations was to ensure that campuses hire and retain the most qualified individuals to perform Title IX functions. The University had modified its Policy to reflect the fact that there would be systemwide expectations in this area. The Systemwide Office would be working with campus offices and Human Resources in the coming months to develop guidelines to ensure implementation of that recommendation.

There were also recommendations related to the timeliness and consistency of discipline for faculty and staff respondents. Revisions had been proposed to the Policy and to disciplinary frameworks to implement the recommended changes. These changes concerned ensuring that the Title IX officer is consulted before final discipline is decided for faculty and staff respondents and establishing a timeline for chancellors to make final decisions about discipline, following receipt of recommendations from the Academic Senate's Privilege and Tenure Committee. The University would be finalizing these changes and issuing the Policy and procedures in the coming months, with the caveat mentioned earlier about the Department of Education Title IX rules. The State Auditor also recommended that the Regents ensure that the Academic Senate modify its procedures to specify exact timelines for the Privilege and Tenure Committee phase of the disciplinary process. The Academic Senate had drafted revisions to its Bylaws which were on track for approval by July, as recommended by the State Auditor. Once these changes are in place, the Systemwide Office would begin annually reviewing disciplinary outcomes for all faculty respondents, to assess whether timeliness had improved; this was the final recommendation due in 2020.

Regent-designate Weddle remarked that the State Auditor's recommendations were focused on the response to sexual violence and sexual harassment. She asked what actions the University was undertaking systemwide to prevent sexual violence and sexual harassment, especially with regard to faculty and staff. Ms. Taylor observed that the Title IX offices have many priorities related to response; at the same time, they must not lose sight of prevention. There is mandatory training for every member of the UC community on a regular basis. Each campus has its own prevention programs, using its Campus Assault Resources and Education (CARE) advocates, Title IX staff, and peer educators. There are systemwide and campus-specific initiatives for prevention.

Regent-designate Weddle referred to one of the State Auditor's recommendations, namely, that the University's Policy should apply to third parties, and stated her understanding that the Policy now applies to students, faculty, staff, and third parties. She asked if the Board of Regents itself falls under the Policy. Ms. Taylor responded that the Regents would fall under the Policy as third parties. She noted that, although this was one of the State Auditor's

recommendations, the University had always extended this Policy to third parties in fact and in practice. This point would be made very clear in the revised Policy.

Regent Pérez noted that the Regents receive sexual harassment prevention training, as do faculty and staff. General Counsel Robinson stated that the Regents are subject to the substantive provisions of the Policy. There are process provisions unique to the Regents if an allegation occurs or if there is a need to undertake any review. Ms. Taylor underscored that the Policy protects every member of the UC community from sexual harassment, regardless of the person who is engaging in the behavior.

Regent Park referred to the Department of Education Office for Civil Rights Title IX rules and how these rules might require changes to UC's Policy. She asked in which areas the University's Policy would have to conform to Office for Civil Rights rules and in which areas the University would have discretion. Ms. Taylor responded that one of the most significant changes would be a Title IX rules requirement that the University hold live hearings to resolve complaints of sexual harassment. UC currently had an investigative model rather than live hearings. The Title IX rules would also narrow the definition of sexual harassment and limit the University's ability to respond under its formal grievance procedures to behavior that met that definition. Allegations would have to concern conduct that occurred in the context of a University program or activity. Currently, UC would accept an allegation about an event that occurred outside a University program or activity if it was alleged to be creating a hostile environment or limiting the student's access to a program or activity. The complainant would have to overcome certain hurdles to meet the threshold of what the Department of Education would characterize as a Title IX violation, and only then could the University activate its grievance procedure. This possible change would limit UC's ability to respond as thoroughly as it currently does.

Regent Estolano asked if UC could continue its current or proposed practices under a different authority derived from the State of California. Ms. Taylor responded that the Department of Education has stated that the University could use a different process to adjudicate behavior that falls outside of the Department's definition of sexual harassment. The Department envisioned parallel processes. She stressed that UC had put much effort and thought in developing its process to be fair and humane and to reflect best practices. It would not be desirable to create a parallel process for behavior that is essentially equivalent to the Department's definition of sexual harassment.

Regent Estolano asked if the rules for faculty being proposed and currently circulated would address a concern mentioned in the public comment period about a 2009 incident at UC Santa Cruz. Ms. Taylor responded that the amendments to the Academic Senate Bylaws would impose timelines for the Privilege and Tenure Committee phase of the process. The case referenced earlier was a complex case. Faculty Representative May commented that he was not familiar with the facts of the case mentioned and did not know where the slowdown had occurred. In its current policy, the Academic Senate had guidelines of 90 days from the time that charges are filed by the chancellor or designee to the time that a Privilege and Tenure hearing commences. The new rules under Senate Bylaw 336, which governs disciplinary hearings for violations of the Faculty Code of

Conduct, would set this period at 60 days and require that no more than 30 days elapse between the conclusion of the hearing and the issuance of the hearing committee's findings to the chancellor. These would be rigid deadlines. He noted that the Academic Senate part of the adjudication process is only one stage in that process and that delays can occur in other stages of the process as well.

Regent Sures asked about trends. He asked if reports of harassment were increasing or decreasing for specific subgroups of faculty, and why reporting might be increasing or decreasing. Ms. Taylor responded that the State Auditor found that reports of sexual harassment by faculty and staff had increased. The State Auditor attributed this to positive, active measures that the University had taken, such as increased training for all community members, responsible employee obligations, and increased outreach to students. The percentage of cases involving faculty respondents was small but had increased.

Regent Sures asked Ms. Taylor if she felt she had appropriate numbers of staff to address the new level of reporting. Ms. Taylor responded that, as part its strategic planning process, the Title IX Office intended to carry out a thorough assessment of staffing at each location, including the Office of the President to ensure that this was the case.

Regent Cohen asked about the quality of campus sexual harassment prevention programs. He asked if there had been an assessment of their quality and how Regents could know that these programs were appropriate and effective. Ms. Taylor responded that her office had been in existence for only a short time and had not yet undertaken such an assessment.

Regent Cohen asked if there were any provisions in the strategic plan to ensure that the campuses were operating effective prevention programs. Ms. Taylor responded that the strategic plan did not address prevention but did include the goal of improving consistency across the UC system in terms of the expectations under the Policy; the Policy itself addresses training on campus. Regent Cohen asked why the strategic plan ignored prevention measures. Ms. Taylor explained that the strategic plan focused on recommendations and observations by the State Auditor. Regent Cohen stated that he would have expected the Title IX Office to think more broadly about its overall mission when developing its strategic plan, not only about responding to the State Auditor. Ms. Taylor observed that there was not an absence of assessment on the campuses; the strategic plan reflected actions taken at the systemwide level.

Regent Kounalakis asked how UC policies and procedures might affect communication and engagement with law enforcement in situations when complaints arise about criminal activity and the University decides that it needs to work with local or State law enforcement. Ms. Taylor responded that the University's Title IX process is a separate process. Any complainant has the ability to report complaints to law enforcement as well. UC Title IX offices inform complainants about this right, facilitate that contact, and support complainants through that process. The UC Title IX process is a separate process that can operate parallel to the criminal process or on its own if the complainant does not pursue a criminal process. Regent Kounalakis asked if anyone advises complainants about other avenues and provides recommendations about whether or not to pursue a criminal process.

Ms. Taylor responded that Title IX office employees were knowledgeable about these avenues. Every campus also had confidential advocates to support complainants, and these individuals were also knowledgeable. It was important to ensure that complainants have agency and the ability to decide which avenue to pursue. The University strives to honor their wishes in this process, provide information so that complainants can make an informed decision, and then support complainants in that decision.

Mr. May referred to Regent Sures' question about staffing levels. The new policies and changes would affect the Academic Senate, which is responsible for conducting Privilege and Tenure hearings. He anticipated that there would be challenges for the campus Academic Senate divisions to find staffing to support Privilege and Tenure hearings in these cases. The Academic Senate faced logistical problems in getting through these cases in a timely manner, especially now that the guidelines would be rigid. The Academic Senate had been surveying staffing needs at the campuses to support Privilege and Tenure hearings, and hoped that the campuses and the Office of the President would provide assistance.

Regent Pérez noted that this discussion concerned only one aspect of the University's approach to dealing with sexual violence and sexual harassment issues, namely, the University's response to recommendations made by the State Auditor. He suggested that the full Board have a more holistic discussion at a future meeting. Such a discussion would cover the full range of UC's actions to address sexual violence and sexual harassment and might allow for additional refinement. Committee Chair Elliott stated that such a discussion would be beneficial for new members of the Board. Ms. Taylor remarked that the University had a history of strong initiatives that she would be happy to report on.

Committee Chair Elliott asked when the University expected to receive feedback from the State Auditor about UC progress. Systemwide Deputy Audit Officer Matthew Hicks responded that this typically takes one to two months. The University had submitted its report in December, and he hoped that UC would receive a response by February.

Committee Chair Elliott asked if the University was on track to meet the State Auditor's July 2019 deadlines. Ms. Taylor responded in the affirmative. These tasks were ambitious and there were many new developments in the Title IX realm that would require attention. The Title IX Office had just completed its strategic plan, a significant item, on schedule. The Office had a roadmap for implementation of the remaining recommendations and was making steady progress. She anticipated that the recommendations would be fully implemented by July.

Committee Chair Elliott asked if there was any reason to believe at this point that the State Auditor might disagree with the University's assessments of its work and progress of the last six months. Ms. Taylor responded that she felt confident that UC had satisfied the recommendation due in December 2018 and another recommendation that was completed ahead of schedule. She did not have concerns in this regard.

Regent-designate Weddle expressed support for a broader discussion with the full Board on Title IX issues and sexual violence and sexual harassment. She asked how the Title IX Office was approaching transparency issues and how an average UC community member could remain informed about Title IX issues. Ms. Taylor identified two aspects of transparency. One was ensuring that parties involved in the process have transparency, and this was built into the University's process. Complainants and respondents are informed, updated, and provided their rights throughout the process. This includes complainants' ability to have a say in what will happen when an allegation is substantiated and to be informed about any discipline that results. The second aspect of transparency concerned what the University shares with its community. There was a balance between the privacy of the parties involved and the community's right to know. A complex analysis was needed to determine whether the benefit to the community of revealing certain information would outweigh the harm to the individuals involved. The Office of the General Counsel has an evaluation procedure for cases when the University receives requests for information as well as to determine whether the University will release information proactively. General Counsel Robinson confirmed that this process balances privacy rights with the benefit of disclosure to the community.

Regent-designate Weddle asked if transparency and expectations for each campus were included in the strategic plan. Ms. Taylor responded that ongoing data collection would allow the Title IX Office to use this information to share with the community the types of allegations that were being reported, how long it takes to process complaints, how many complaints are substantiated, and information about typical sanctions. Providing this information in the form systemwide data would address privacy concerns.

Mr. May referred to Committee Chair Elliott's question about meeting the State Auditor's deadlines. He reported that Academic Senate Bylaw 336 was currently out for systemwide review and would be brought to the April Academic Council meeting. Presuming approval there, it would go to the Assembly of the Academic Senate, which must approve all amendments to Senate Bylaws, in June. He fully expected this Bylaw amendment to be on time and compliant with the request from the State Auditor.

The meeting adjourned at 11:10 a.m.

Attest:

Secretary and Chief of Staff