

Additions shown by underscoring; deletions shown by strikethrough

Regents Policy 1112: Policy on Review of Allegations of Board Member Misconduct

Approved March 16, 2017

Amended [date], 2020

This policy (“Policy”) provides procedures to address any allegation that a member of the Board of Regents (“Regent”) “has not fulfilled [his or her] duties as set forth in University Bylaws, policy or applicable law” and to “implement appropriate response(s) when such allegation is found to have merit” as required by Bylaw 21.11. This Policy concerns only the investigation of misconduct and the administration of sanctions, and it should not be interpreted as modifying or expanding the duties or responsibilities of a Regent as set forth in other University policies or Bylaws.

Section I addresses the Policy’s purpose and scope. Section II provides procedures for the investigation of alleged misconduct. Section III provides options for sanctions. Section IV provides special procedures for alleged misconduct involving complaints under the University’s Sexual Violence and Sexual Harassment (“SVSH”) Policy.

Section I – Introduction and General Policy

1. Purpose

The Board of Regents of the University of California (the “Board”) holds the University in trust for the people of the State of California. In this role, members of the Board are expected to conduct themselves ethically, honestly, and in a manner that strengthens the public’s trust and confidence; to exercise their powers and duties in the interest of the public, the University, and the Board; and to preserve and enhance the assets and reputation of the University for the education and betterment of current and future generations.

2. Applicability

This Policy applies only to the eighteen gubernatorial-appointed Regents, the ex-officio Regents, and any non-student Regents-designate. The Policy does not apply to the Student Regent or any faculty representative or staff advisors to the Regents.

3. Free Speech and Academic Freedom

Members of the University community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This Policy is intended to protect the reputation and integrity of the University, not to regulate protected speech. It is intended that the sanctions listed in this Policy be imposed and enforced for the protection of the University community and for the maintenance of the reputation and integrity of the University. No provision of this Policy shall be interpreted in a manner that results in a violation of any person’s rights of free speech and association or other fundamental rights.

Section II – Procedures for Investigation of Allegations and Imposition of Sanctions

The Board shall have the authority to censure or sanction a Regent who is found by the Board to have violated the Regent's fiduciary or ethical duties to the University.

In order for the Board to censure a Regent, the Regent must be found by a preponderance of the evidence to have violated the ethical principles or breached his or her duties as set forth in the University Bylaws, policy, or applicable law. Such a finding shall be made ~~by the Board~~ only after an investigation directed by the ~~Office of the General Counsel~~ Complaint Resolution Officer. The Complaint Resolution Officer shall be a neutral third party retained by the Board to serve for an established period of time, except as provided in Section IV. The Complaint Resolution Officer ~~Office of the General Counsel~~ shall, as provided herein, consult with a three member panel ("the Regent panel") comprising the Chair of the Board, the Vice Chair of the Board, and the Chair of the ~~Governance Compliance and Audit~~ Committee; provided that, if one of the members of the panel cannot, in light of the allegations or for any other reason, appropriately serve, the other two members of the panel shall jointly select a third panel member. The investigation must include an opportunity for the Regent to respond to the allegations.

A Regent's acts or omissions in his or her non-official capacity shall not be the basis for sanctions except as provided in Section IV ~~unless the acts or omissions (a) constitute a violation of the University's Statement of Ethical Values and Standards of Ethical Conduct, the University's Sexual Violence and Sexual Harassment Policy, or another policy that expressly applies to a Regent's non-official conduct and (b) affect the University's reputation, integrity, or policy objectives.~~

The Complaint Resolution Officer shall consult with the appropriate University policy owner during the investigation and shall, wherever possible, apply the standards of and afford the parties the rights and procedures available under that policy. The Complaint Resolution Officer may seek legal advice from the General Counsel, who may retain outside counsel to advise the Complaint Resolution Officer after consultation with the Regent panel.

Except as provided for in Section IV, Any allegations, investigation, or proposed sanction of a Regent may be resolved informally at any time, following consultation with the Office of the General Counsel and with the approval of the Regent panel. The Complaint Resolution Officer shall coordinate any informal resolution.

For the purposes of this Section, ~~outside counsel may be used in the place of the Office of the General Counsel~~ the Regent panel may appoint a different Complaint Resolution Officer for a particular case when good cause exists, as determined by unanimous vote of the Regent panel.

The Complaint Resolution Officer and members of the Board shall undergo relevant training (e.g. on the relevance of trauma in the context of sexual misconduct) approved by the University regarding the investigation of misconduct and the administration of sanctions.

1. Preliminary Review of Allegations

When allegations of a Regent's misconduct or breach of duties come to the attention of the Board or a member thereof, the allegations shall be forwarded to the ~~Office of the General Counsel~~ Complaint Resolution Officer. The ~~Office of the General Counsel~~ Complaint Resolution Officer shall promptly notify the General Counsel and the Regent panel ~~accused Regent~~ of the allegations and shall conduct a confidential preliminary review ~~investigation~~ of the allegations. The preliminary review ~~investigation~~ should be conducted in a manner designed to minimize any

intrusion into the complainant's and accused Regent's personal or non-University affairs. The Complaint Resolution Officer shall notify the accused Regent of the allegations during the preliminary review.

The ~~Office of the General Counsel~~ Complaint Resolution Officer shall, ~~with the concurrence of at least two of the three Regent panel members,~~ initiate a formal investigation if, on the basis of its preliminary review investigation, it finds (a) the allegations are plausible and not frivolous, (b) the alleged conduct, if substantiated, would constitute a breach of the Regent's duties or responsibilities or otherwise be cause for sanctions, and (c) the allegations concern conduct by the Regent in his or her official capacity ~~or conduct that affects the University's reputation, integrity, or policy objectives.~~ If either the preliminary review investigation determines that these criteria are not satisfied or it is determined that it is not possible, based on the reasonable investigative methods available to the ~~Office of the General Counsel~~ Complaint Resolution Officer, to reach a conclusion, no further action shall be taken. The results of the preliminary review investigation shall be treated as private privileged and confidential ~~to the extent permitted by law.~~

Where appropriate, the ~~Office of the General Counsel~~ Complaint Resolution Officer shall provide a complainant with a written explanation of rights and available options for reporting to and/or notifying law enforcement or other campus authorities of the alleged misconduct.

2. Investigation

Upon determining that a formal investigation is warranted, the ~~Office of the General Counsel~~ Complaint Resolution Officer shall notify the, ~~with the concurrence of at least two of the three~~ Regent panel ~~members,~~ and appoint an investigator who may or may not be a University employee ("Investigator").

The appointed Investigator shall, with oversight by the Complaint Resolution Officer, ~~at the direction of the Office of the General Counsel~~ and consulting as appropriate with the Regent panel, gather information relevant to the allegations of misconduct or breach; afford the accused Regent an opportunity to respond to the allegations and comment on the information gathered; and make a written report of its review, findings, and recommendation ("Investigator's Report") within 90 days of initiation of the investigation ~~from the date of appointment,~~ unless the ~~Office of the General Counsel~~ Complaint Resolution Officer determines that circumstances warrant a longer period. The investigation should, to the extent reasonable in the circumstances, be conducted in a manner designed to minimize any intrusion into the complainant's and accused Regent's personal or non-University affairs.

The Investigator's Report shall be treated as private privileged and confidential to the extent permitted by law and University policy.

3. Opportunity to Respond to the Investigator's Findings

Prior to finding a violation or breach of the University Bylaws, policy, or applicable law, the complainant and the accused Regent shall have the right to review and respond to the evidence upon which the Investigator will rely prior to the report being finalized. ~~Investigator shall notify the accused Regent in writing of their intention to do so and the reasons therefor and shall invite the Regent to respond. Said notification will be delivered to the office and residence of the accused by registered mail. The Regent may respond, either in writing or in a personal conference, or both. Such response shall be within 14 days of the receipt of the notice. If there is a personal conference, the Regent and the Investigator shall each be entitled to bring a representative of their choice, including an attorney, to the conference.~~

Any response shall be provided within 14 days of the review of the evidence and any written response by an accused Regent to the allegations shall become part of the formal record and shall be appended to the Investigator's Report.

4. Determination of Appropriate Sanctions

The Investigator shall submit the Investigator's Report, upon completion, to the Complaint Resolution Officer, who shall provide it to the Regent panel, the Office of General Counsel, and any authorized University policy-owner the Regent panel.

The Complaint Resolution Officer shall notify the complainant and the accused Regent of the Investigator's findings and conclusions. They shall have 30 days to respond to the Complaint Resolution Officer, either in writing or in a personal conference, regarding an appropriate sanction or other corrective or remedial actions. They may bring a representative of their choice, including an attorney, to the personal conference. Any written response shall become part of the formal record.

If the Investigator has determined by a preponderance of the evidence that the Regent violated the ethical principles or breached his or her duties as set forth in the University Bylaws, policy or applicable law, the ~~Office of the General Counsel~~ Complaint Resolution Officer shall, in consultation with the Regent panel, recommend an appropriate sanction to the Regent panel. The Regent panel may accept the Complaint Resolution Officer's recommendation or make its own recommendation. The Complaint Resolution Officer and shall forward the Investigator's Report, any party's written response, and the recommended sanction of the Complaint Resolution Officer and the Regent panel, if any, to the individual members of the Board. If the Investigator has concluded that the preponderance of the evidence standard is not met or that he or she lacks the ability to determine whether the preponderance of the evidence standard is met, the Regent panel may close the matter and may determine corrective or remedial actions, short of sanction, without no further Board action will be taken.

5. Board Consideration and Vote

Upon receiving from the ~~Office of the General Counsel~~ Complaint Resolution Officer the Investigator's Report and the recommended sanction, and unless the matter is resolved informally, the Board shall, at either a regularly or specially set meeting, vote on any proposed sanction. The Complaint Resolution Officer shall be present at the meeting to answer questions or provide information about the investigatory process.

At least ten days prior to the meeting, the complainant and the Regent may submit a written statement to the Board addressing the appropriate sanction and may request to appear before the Board at the scheduled meeting. Any party is entitled to bring a representative of their choice, including an attorney, to the meeting or to have the representative appear on the party's behalf.

~~Any~~ Sanctions may be imposed only by majority vote of the Board, excluding the affected Regent, who may not participate in the discussion or vote.

6. Confidentiality

All individuals affected by the investigation shall be accorded privacy ~~confidential treatment~~ to the maximum extent possible, consistent with University policy and applicable law.

7. Required Communications

If an investigation leads the Complaint Resolution Officer or University officials to conclude that

a crime has probably been committed, the results of the investigation shall be reported to the District Attorney or other appropriate law enforcement agency. For matters under Section IV, the Systemwide Title IX Officer will inform the complainant of their right to make a report to law enforcement and the University will follow any mandatory reporting requirements under the law. The UC Police should be the conduit for communications with law enforcement agencies unless ~~the Office of the General Counsel~~, in consultation with the Regent panel, in a particular situation determines a different communications strategy.

Section III – Types of Sanctions

The types of sanctions that may be imposed on a Regent are as follows: written censure, removal or suspension from a committee assignment, revocation of University privileges, recusal from certain Board proceedings or decisions, or restitution.

More than one sanction may be imposed for a single act of misconduct, e.g., a letter of censure and removal from a committee assignment. The Board may remove or terminate a sanction, either automatically or by administrative discretion, in individual cases. The severity and type of sanction selected for a particular offense must be appropriately related to the nature and circumstances of the case.

Prior to the imposition of any sanction described below, the Board may waive or limit any or all sanctions on the condition that the accused Regent performs some specified action(s) designed to address the harm and/or to prevent future harm. Such actions may include, but are not limited to, monetary restitution, compliance with a commitment not to repeat the misconduct, or other act to make whole injury caused by the Regent's misconduct or to prevent future misconduct.

If the imposition of a sanction is waived, the subsequent failure to perform the required act or otherwise comply with the conditions of the waiver will immediately subject the Regent to the implementation of the underlying sanction without an additional hearing. The authority to determine whether the Regent has complied with the conditions of the waiver rests with the Board.

1. Written Censure

The Board may convey a formal written expression of institutional rebuke that contains a brief description of the censured conduct. Written censure is to be distinguished from an informal written or spoken warning, and must be delivered confidentially to the recipient and maintained in a designated personnel file or files indefinitely or for a lesser period of time specified in the writing. Informal written or spoken warning is not an official disciplinary action.

2. Removal or Suspension from Committee Activity

The Board may remove or suspend a Regent from his or her position as a member, chair, or vice-chair of a committee or subcommittee. In the case of a suspension, the duration of the suspension shall be specified.

3. Revocation of University Privileges

The Board may revoke a Regent's University privileges such as access to University property, use of University administrative staff, or parking and library privileges. The degree and duration of the revocation shall be specified.

4. Recusal from Certain Board Proceedings or Decisions

The Board may recuse a Regent from participating in specified Board proceedings, including from voting on specified matters, where the subject matter of the vote relates to the allegations of

misconduct or breach of duties or the Regent's participation would otherwise be in appropriate in light of the misconduct or breach of duties.

5. Restitution

In the appropriate case, the Board may require divestiture, restitution, or forfeiture as appropriate to remedy an official violation of University policy.

Section IV – Special Provisions for SVSH Matters

A Regent's acts or omissions in his or her non-official capacity may be the basis for sanctions to the extent such acts or omissions are covered by and could constitute a breach of the SVSH Policy.

When allegations involve an alleged breach of the SVSH Policy, the Systemwide Title IX Officer shall take all actions and hold all authority assigned to the Complaint Resolution Officer, including notifications to and consultation with the Regent panel. The sole exception shall be that the recommendation of a sanction shall be the responsibility of the Complaint Resolution Officer in all cases, including SVSH matters.

The Systemwide Title IX Officer shall follow the processes in, apply the standards of and afford the parties the rights and procedures available under the SVSH Policy including an equal opportunity to meet with the investigator, submit information, identify witnesses, respond to the evidence gathered, and have an advisor present during interviews and any related meetings. Allegations under the SVSH Policy may be resolved informally consistent with the requirements and procedures of that policy.

If there is a conflict between this Policy and the SVSH Policy, the Systemwide Title IX Officer shall apply the provisions of the SVSH Policy and shall follow all requirements of this Policy regarding consultation with and notification to the Regent panel. The Systemwide Title IX Officer may consult with the Regent panel as necessary when addressing such conflicts.