



Board Governance Committee

Agenda Item 6a

August 14, 2018

Item Name: Process for Handling Harassment Allegations Against Board Members

Program: Board Governance

Item Type: Action

Recommendation

Consider and discuss whether to approve the attached draft policy for handling harassment allegations against Board members.

Executive Summary

At its May 2018 meeting, the Committee directed staff to draft a policy for handling harassment allegations against Board members. The team has prepared a draft policy and included it with this item for the Committee's consideration and discussion.

Strategic Plan

This agenda item supports the 2017-2022 Strategic Plan's goal of cultivating a risk-intelligent organization.

Background and Analysis

In March 2018, the Board approved the addition of language to the Board Governance Policy stating that CalPERS has zero tolerance for harassment or discrimination, and emphasizing the responsibility of each Board member to vigorously and visibly promote a harassment-free and discrimination-free culture and work environment at CalPERS. At the May meeting the Committee reviewed the University of California's Policy on Review of Allegations of Board Member Misconduct ("UC's Policy") (Attachment 2) and directed staff to bring back a draft policy for CalPERS.

The "Policy for Reviewing Allegations of Board Member Harassment" ("Policy") is included as Attachment 1 for the Committee's consideration and discussion. The team modeled the Policy after UC's Policy and made several modifications, including focusing the Policy to address harassment rather than misconduct in general. The Policy establishes the process for handling allegations that a Board member (or designee) has engaged in conduct constituting harassment, sexual harassment, or retaliation in connection with service on the Board. Responsibility for administering the policy is assigned to the Office of the General Counsel and an advisory committee of two Board members, the Review Panel. The Review Panel consists of the Board

President and Vice President, and the Policy includes a process for appointing alternates in the event of any conflicts.

The Policy provides for three stages in the event of an allegation: a preliminary investigation, a formal investigation, and when warranted, Board action. At the outset, the Office of the General Counsel reviews the allegation, notifies the Review Panel and accused Board member, and conducts a preliminary investigation. Based on the results of the preliminary investigation, the Office of the General Counsel and Review Panel determine whether a formal investigation is warranted.

If warranted, an investigator is appointed to gather information and prepare a written report of the investigator's review, findings and recommendation. The Policy provides the accused Board member with an opportunity to respond to the investigator's findings. The investigator's report, along with any written response from the accused Board member, is then submitted to the Office of the General Counsel and the Review Panel. If the investigator determines that the accused Board member has engaged in conduct constituting harassment, sexual harassment, or retaliation, the Office of the General Counsel shall, in consultation with the Review Panel, recommend an appropriate sanction and forward it and the investigator's report to each member of the Board.

A meeting will then be scheduled for the Board to vote on the proposed sanction. The Policy establishes four potential sanctions: formal censure, removal or suspension from committee activity, revocation of Board member privileges, and recusal from certain Board proceedings or decisions.

Composition of Review Panel

A question was raised at the May meeting regarding the number of Board members who could sit on the Review Panel. The Legal Office continues to believe that any more than two members would risk requiring the Review Panel to conduct its work subject to the Bagley-Keene Open Meeting Act, including the obligation to hold meetings in open session. Since Bagley-Keene does not apply to UC, it does not have the same constraint, which explains why its review panel has three members.

Attachments

Attachment 1 – Draft Policy for Reviewing Allegations of Board Member Harassment

Attachment 2 – UC Regents Policy on Review of Allegations of Board Member Misconduct

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