

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
BOARD GOVERNANCE COMMITTEE

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 24, 2018
4:03 P.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

COMMITTEE MEMBERS:

Ms. Priya Mathur, Chairperson

Ms. Dana Hollinger, Vice Chairperson

Ms. Margaret Brown

Mr. John Chiang, represented by Mr. Matthew Saha

Mr. Rob Feckner

Mr. Ramon Rubalcava

Ms. Theresa Taylor

BOARD MEMBERS:

Ms. Adria Jenkins-Jones, represented by Mr. Ralph Cobb

Mr. Henry Jones

Mr. David Miller

Mr. Bill Slaton

Ms. Betty Yee, represented by Mr. Alan Lofaso

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Mr. Matt Jacobs, General Counsel

Ms. Cara Buchanan, Committee Secretary

ALSO PRESENT:

Ms. Christy Bouma, California Professional Firefighters

Mr. Terry Brennand, Service Employees International Union,
California

A P P E A R A N C E S C O N T I N U E D

ALSO PRESENT:

Mr. J.J. Jelincic

Ms. Cathy Jeppson, California Teachers Association

Ms. Jackie Lee, California Teachers Association

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1 P R O C E E D I N G S

2 CHAIRPERSON MATHUR: Well, good afternoon
3 everyone. We are going to get the Board Governance
4 Committee meeting started.

5 The first order of business is roll call.

6 COMMITTEE SECRETARY BUCHANAN: Good afternoon.
7 Priya Mathur.

8 CHAIRPERSON MATHUR: Hello. Good afternoon.

9 COMMITTEE SECRETARY BUCHANAN: Dana Hollinger?

10 VICE CHAIRPERSON HOLLINGER: Good afternoon.

11 COMMITTEE SECRETARY BUCHANAN: Margaret Brown?

12 COMMITTEE MEMBER BROWN: Here.

13 COMMITTEE SECRETARY BUCHANAN: Matthew Saha for
14 John Chiang?

15 ACTING COMMITTEE MEMBER SAHA: Here.

16 COMMITTEE SECRETARY BUCHANAN: Rob Feckner?

17 COMMITTEE MEMBER FECKNER: Good afternoon.

18 COMMITTEE SECRETARY BUCHANAN: Ramon Rubalcava?

19 COMMITTEE MEMBER RUBALCAVA: Here.

20 COMMITTEE SECRETARY BUCHANAN: Theresa Taylor?

21 COMMITTEE MEMBER TAYLOR: Here.

22 CHAIRPERSON MATHUR: We do have a quorum and
23 please note for the record all also that Mr. Jones, Mr.
24 Slaton, Mr. Lofaso and -- oh my gosh, Ralph --

25 ACTING BOARD MEMBER COBB: Mr. Cobb.

1 (Laughter.)

2 CHAIRPERSON MATHUR: Cobb. I'm so sorry. I just
3 -- Mr. Cobb are also -- are also in attendance. Forgive
4 me.

5 I know I just had a moment.

6 (Laughter.)

7 CHAIRPERSON MATHUR: And Mr. Miller, who I --
8 cause he's all the way on the outside. Sorry. Thank
9 you -- are also all in attendance.

10 So that's terrific.

11 Okay. Now, Agenda Item number 2 is approval of
12 the September 24th, 2018 Board Governance Committee timed
13 agenda.

14 VICE CHAIRPERSON HOLLINGER: Motion to approve.

15 CHAIRPERSON MATHUR: Made by -- Motion made by
16 Hollinger to approve.

17 COMMITTEE MEMBER TAYLOR: Second.

18 CHAIRPERSON MATHUR: Seconded by Taylor.

19 Any discussion on the motion?

20 Seeing none.

21 All those in favor say aye?

22 (Ayes.)

23 CHAIRPERSON MATHUR: Any opposed?

24 Motion passes.

25 Agenda Item number 3 is the Executive Report.

1 Mr. Jacobs.

2 GENERAL COUNSEL JACOBS: Good afternoon,
3 President Mathur and Board members. A very short
4 executive report here today. I just wanted to alert the
5 Committee to something I'm sure you already know, which is
6 that the only substantive item on the agenda today is the
7 second reading of the proposed policy on the handling of
8 harassment allegations against Board members.

9 CHAIRPERSON MATHUR: All right. Thank you.
10 Agenda -- any discussion on that?

11 Seeing none. All -- on Agenda Item number 4,
12 approval of the August 14th, 2018 Board Governance
13 Committee meeting minutes.

14 COMMITTEE MEMBER FECKNER: Move approval.

15 COMMITTEE MEMBER TAYLOR: Second.

16 CHAIRPERSON MATHUR: Moved by Mr. Feckner,
17 seconded by Ms. Taylor.

18 Any discussion on the motion?

19 Seeing none. All those in favor say aye?

20 (Ayes.)

21 CHAIRPERSON MATHUR: All opposed?

22 Motion passes.

23 That brings us to Agenda Item 5, information
24 consent items. And I've had no request to pull anything
25 off of consent.

1 And so that brings us to agenda item number 6,
2 the process for handling harassment allegations against
3 Board members, second reading.

4 Mr. Jacobs.

5 GENERAL COUNSEL JACOBS: Yes. Thank you.

6 So this is coming back for, as you said, a second
7 reading. The history of the development, the request from
8 the Committee for this policy is laid out in the agenda
9 item. The -- we brought this forward in August, based on
10 the -- with a draft policy that was based on the UC
11 Regents policy with respect to the same topic. And there
12 was a lively discussion about various issues in the draft
13 policy. And we were asked to return with a new revised
14 policy that addresses those points, comments, and
15 concerns. And that's what we've endeavored to do.

16 As the agenda item lays out, there are some
17 choices in here for the Committee and ultimately the Board
18 to make about various aspects of the policy. But I will
19 just highlight a few of the changes that we made based on
20 the discussion in the August session.

21 And those are that, first, instead of
22 automatically making the two member review panel -- that
23 is the two members of the Board who would be members of
24 the review panel to work with the investigator, instead of
25 making those automatically, the President and the Vice

1 President of the Board, the new draft allocates that
2 responsibility -- or the responsibility to the President
3 to appoint whoever the two members would be.

4 Second, instead of the General Counsel being
5 involved in, or having a role, in the investigation, the
6 review panel would work with an outside non-CalPERS
7 investigator.

8 Thirdly, the General Counsel would not have any
9 role in recommending what the sanction would be. That
10 would be up to the Committee and ultimately -- well,
11 actually, it would be to the Board in the first instance.

12 The list of potential sanctions has been changed
13 to mirror the language that already exists in the Board
14 Governance Policy with respect to a violation of that
15 policy. And there are some other changes as well, but
16 those, I would characterize, as the most significant ones.

17 I would make a overarching comment, which is this
18 is not an exhaustive or comprehensive code that covers all
19 the potential scenarios and procedures that might be
20 applicable to a particular situation involving an
21 allegation of harassment against a Board member. This is
22 the -- what I would call the basic building blocks of a
23 procedure. That may have to be further developed as we
24 confront particular issues or we would fall back on
25 existing law.

1 Just by contrast, if we were trying to cover
2 absolutely everything that might come up, the Code of
3 Civil Procedure, which covers just about everything that
4 could come up in a civil case, covers about 18 volumes of
5 the west annotated codes with both the -- the codes
6 sections and the annotations, so there's a lot of law
7 there.

8 And so that's not -- just to be clear, it's not
9 what we're endeavoring to do here. This represents some
10 fundamental basic and fair procedures that would apply to
11 a good number of potential scenarios and get us started,
12 but it doesn't cover, to be sure, everything that could
13 arise in the investigation and. As I say, for that, we
14 would have to develop -- the Board would have to develop
15 those or probably fall back on existing law, because there
16 is quite a bit of existing law and analogous situations.

17 So those are my thoughts. And I give it back to
18 you, President Mathur, for discussion amongst the
19 Committee about what they like and what they don't like
20 about this new draft.

21 CHAIRPERSON MATHUR: Thank you very much.

22 I'll call on Ms. Taylor.

23 COMMITTEE MEMBER TAYLOR: Oh, thank you. I was
24 first. So I'm looking at attachment 3, which is the
25 underline and cross-out.

1 GENERAL COUNSEL JACOBS: Yes.

2 COMMITTEE MEMBER TAYLOR: And I -- so a couple of
3 things. First, on page two -- I think that's page two.
4 Yeah, page two of five, I want to clarify "After it has
5 been..." -- "After it has been appointed, the Review Panel
6 shall appoint an investigator who may not be a CalPERS
7 percent employee, to conduct a preliminary confidential
8 investigation". So what's the point of having a review
9 panel, if you're just appointing an investigator? So
10 wouldn't -- why wouldn't we just have -- that's my first
11 question. Why wouldn't we just have the President pick
12 the investigator?

13 I don't see that it's necessary for us -- we
14 either have a review panel to conduct the preliminary
15 investigation, and then assign it out, or if we are not
16 going to have the preliminary investigation done by the
17 review panel on the Board, then I would assume that we
18 don't need this extra step is my thinking. You guys may
19 not agree. So that's fine.

20 Second, on the second to last paragraph on the
21 page, you have, "The investigator shall", and you have
22 "consulting". And you need to cross out -- I don't know
23 if you did or not. It doesn't look like you did -- "ing",
24 I-n-g, just grammar. That was a grammar issue.

25 GENERAL COUNSEL JACOBS: Ah, very good, yes.

1 COMMITTEE MEMBER TAYLOR: And then -- where did
2 it go? There it is -- on page four of five, and this I
3 leave up to the Committee, but I think -- let's see,
4 "Sanctions that may be imposed..." -- it's types of
5 sanctions, number 4 -- "...on a Board member, include but
6 not are..." -- "...are not limited to admonishment, formal
7 censure, temporary termination of a Board member's travel
8 privileges or the requirement of additional training.
9 More than one sanction may be provided..." -- so where we
10 cross -- so that's the underlined part. That's the new
11 stuff.

12 What we crossed out it looks like, "...are as
13 follows: Formal censure..." -- oh, okay. It's still in
14 there -- "...removal or suspension from a Committee
15 assignment, revocation of Board privileges, and/or recusal
16 from certain Board proceedings or decisions".

17 So I have concerns that we are lessening it to
18 just taking away their travel privileges, a Board
19 member's. This is a pretty serious -- if they're found
20 guilty of sexual harassment, that's a pretty serious
21 allegation, this has a occurred before. And I think that
22 I don't know that I would want someone who's been found
23 guilty of that to be serving on Board Governance, nor
24 should they be serving on our hiring committees.

25 So that is my feeling. So that would be our

1 Performance, Compensation, and Talent Management. I think
2 that if they're going to perform their fiduciary duty,
3 they can remain on Investments, and Finance and
4 Administration, Risk and Audit, any committees that have
5 to do with their fiduciary duty. But any committees that
6 have to do with governance of our Board and/or hiring of
7 other people, they should not be on is my feeling. I
8 don't know how the rest of the Committee feels.

9 So I will take -- if somebody wants me to make a
10 motion on that, I would be happy to make a motion.

11 And then lastly, let me make sure I found this
12 right. Hold on. I don't know the difference between
13 revocation of Board member privileges and, I guess --
14 yeah, so what -- why would we -- what are Board member
15 privileges, Mr. Jacobs? I'm not sure what that is and why
16 we crossed that out?

17 GENERAL COUNSEL JACOBS: The idea really was just
18 to be consistent with the language in the Board Governance
19 Policy. So revocation of Board member privileges -- in
20 fact, I think I wrote this in the agenda item -- is
21 broader. I'm not sure exactly what it applies to, but
22 it's certainly broader than the language about travel
23 privileges.

24 COMMITTEE MEMBER TAYLOR: And the travel
25 privileges are what's in other --

1 GENERAL COUNSEL JACOBS: That's in the Board
2 Governance Policy. This is the exact language that is in
3 the Board Governance Policy with respect to the sanctions
4 that can be imposed on a finding that a Board member
5 violated the Board Governance Policy. This is the
6 language.

7 COMMITTEE MEMBER TAYLOR: So where -- where --
8 this is -- outside of the Board Governance Policy, this is
9 a sexual harassment policy?

10 GENERAL COUNSEL JACOBS: Correct.

11 COMMITTEE MEMBER TAYLOR: Okay. And again, I
12 would be happy to make -- I don't know what the means
13 either, so maybe I'll just leave that alone. I don't know
14 what Board member privileges are. Does that mean not
15 going to the -- not using the -- you know, the Board rooms
16 back here, is that Board member privileges?

17 GENERAL COUNSEL JACOBS: You know that's a
18 question I think for the Committee to discuss, what are
19 the Board -- so-called Board member privileges. I think I
20 had a discussion with Ms. Brown about that last time. I
21 think that it could be -- I mean, it really couldn't be
22 access to your -- to your resources, to carry out your
23 jobs, but it might be access to the -- the meals or --

24 COMMITTEE MEMBER TAYLOR: Well, our resources in
25 the back -- all our resources are available right here, so

1 we don't necessarily -- I never come here.

2 GENERAL COUNSEL JACOBS: Yeah, I meant more like
3 your offices, or your --

4 COMMITTEE MEMBER TAYLOR: Yeah. I never come
5 here and I live in Sacramento.

6 GENERAL COUNSEL JACOBS: Right.

7 COMMITTEE MEMBER TAYLOR: So I don't know that
8 it's necessary to have access to the back rooms on off
9 Board weeks, so that could be Board privileges, but
10 anyway.

11 CHAIRPERSON MATHUR: I think the point is not
12 necessarily to have this be an exhaustive list that covers
13 all possible sanctions, but -- and so maybe the Board
14 member privileges was a little broad, and that's why it
15 was removed specifically. But, yeah I --

16 COMMITTEE MEMBER TAYLOR: That's fine. I think
17 just saying travel --

18 GENERAL COUNSEL JACOBS: Yeah, the through was
19 really, look --

20 COMMITTEE MEMBER TAYLOR: -- is a little bit --

21 CHAIRPERSON MATHUR: Yeah, but we could add back
22 in the Committee -- so, "Removal or suspension from a
23 Committee assignment", which I know we had some discussion
24 about last time. But as you know, no Board member sits on
25 every Committee. It's not necessarily necessary to

1 execute your fiduciary duty to sit on a committee.

2 And also Board -- you know, Committee leadership
3 assignments might also be another thing that could be --

4 COMMITTEE MEMBER TAYLOR: There you go.

5 GENERAL COUNSEL JACOBS: There you go.

6 CHAIRPERSON MATHUR: So we could add those two
7 back in, and that might be my suggestion.

8 COMMITTEE MEMBER TAYLOR: I would like to make a
9 motion to add back in -- let me read it, so that I get it
10 right.

11 CHAIRPERSON MATHUR: "The removal or suspension
12 from a Committee assignment".

13 COMMITTEE MEMBER TAYLOR: "Removal or suspension
14 from a Committee assignment", and that was it, right?

15 CHAIRPERSON MATHUR: And would you also add in
16 "Removal or suspension of committee leadership positions"?

17 COMMITTEE MEMBER TAYLOR: Yeah. We don't have
18 that there, so yeah.

19 CHAIRPERSON MATHUR: Okay.

20 VICE CHAIRPERSON HOLLINGER: I would second.

21 CHAIRPERSON MATHUR: You're seconding?

22 VICE CHAIRPERSON HOLLINGER: I would second that.

23 CHAIRPERSON MATHUR: Terrific. Motion made by --
24 so the motion, Ms. Taylor, was that to adopt the process
25 as laid out with that change that you've articulated?

1 COMMITTEE MEMBER TAYLOR: The --

2 CHAIRPERSON MATHUR: With the change of adding
3 back in --

4 COMMITTEE MEMBER TAYLOR: "The removal..." --

5 CHAIRPERSON MATHUR: "The removal or suspension
6 of a committee assignment", and --

7 COMMITTEE MEMBER TAYLOR: "...suspension of a
8 Committee assignment and removal or suspension of
9 leadership".

10 CHAIRPERSON MATHUR: -- "...and removal or
11 suspension of leadership"?

12 COMMITTEE MEMBER TAYLOR: And also the
13 corrections I said.

14 CHAIRPERSON MATHUR: And also the corrections you
15 said.

16 COMMITTEE MEMBER TAYLOR: Yeah.

17 CHAIRPERSON MATHUR: So that's the motion.

18 COMMITTEE MEMBER TAYLOR: Okay.

19 CHAIRPERSON MATHUR: And seconded by Hollinger.
20 Thank you for that clarification.

21 Mr. Slaton.

22 BOARD MEMBER SLATON: Thank you. I would agree
23 with adding those back in. Although we say, "...include
24 but not limited to...", it makes it difficult to impose
25 something that's outside the boundaries of this, if it's

1 fairly significant. So I think those two are good, the
2 Committee assignment, leadership roles. And I would
3 suggest -- I would ask if the maker of the motion and the
4 second would accept a friendly amendment of adding back in
5 the revocation of Board Member privileges. And the reason
6 is -- let me give you an example that I think would fall
7 in that category that might be appropriate is representing
8 CalPERS speaking at a public event representing CalPERS.
9 That might be something we would want to -- and it might
10 be -- not require any travel to do it.

11 VICE CHAIRPERSON HOLLINGER: Right.

12 BOARD MEMBER SLATON: So I would suggest that
13 leaving that broader language in gives a -- just a little
14 more teeth and flexibility to have -- come up with an
15 appropriate sanction, given what the offense might end up
16 being.

17 CHAIRPERSON MATHUR: Is that acceptable to the
18 maker and the seconder --

19 BOARD MEMBER SLATON: Well, I'm just a -- I'm not
20 a Committee member.

21 COMMITTEE MEMBER TAYLOR: We've got three things
22 then. So we want the suspension -- removal of suspension
23 from Committee assignment and removal or suspension from a
24 leadership role on committees, and revocation of Board
25 member privileges to be added back in, in addition to the

1 corrections I --

2 CHAIRPERSON MATHUR: In addition to the technical
3 questions, correct.

4 BOARD MEMBER SLATON: Could I make one more --

5 CHAIRPERSON MATHUR: Yes. And just confirming
6 that's acceptable to the seconder.

7 VICE CHAIRPERSON HOLLINGER: Yes, yes, yes.

8 CHAIRPERSON MATHUR: Okay.

9 BOARD MEMBER SLATON: Okay. Now, the next one
10 which is maybe a little more difficult, which is,
11 "...recusal from certain Board member proceedings or
12 decisions". And let me make a comment about this of why I
13 think some version of that should go back in.

14 Let me paint a little picture for you. So
15 someone is -- there's an accusation of harassment, and the
16 process finds that it's accurate. So now we face a
17 situation where the person is -- the person who is guilty
18 of that, or found -- not in a court of law, but found by
19 this process to be -- have done it. So the perpetrator is
20 sitting here as a -- doesn't even have to be a Committee
21 members, but sitting at a meeting, and the person who has
22 been harmed is an employee of CalPERS and required to be
23 presenting at the meeting, and has to deal with the
24 interaction from a person sitting at the dais.

25 And so I would say that which -- you know, what's

1 the value here of quote fiduciary duty of attendance or
2 the protection of someone who is the -- someone who has
3 suffered from this activity?

4 So I just raise that as a conflict that if you
5 don't have the ability to say you can't be in that
6 proceeding, you don't have an ability to necessarily
7 protect other person. So I just toss that bomb into the
8 middle of the auditorium, and see how people feel.

9 CHAIRPERSON MATHUR: Matt, do you have any
10 response to that comment?

11 GENERAL COUNSEL JACOBS: It's a tricky issue.
12 You've got your fiduciary duty to ask questions, and to
13 participate in the Board proceedings weighed against an
14 entirely legitimate concern that the -- to use the term in
15 the scenario, "victim", not be further hurt, traumatized,
16 whatever. I'd have to reflect on it further. And I think
17 it would depend upon the particular situation, which is a
18 typical lawyer answer.

19 But I would say that the fiduciary duty is
20 probably going to trump. But again, it would be kind of a
21 scenario-by-scenario inquiry.

22 BOARD MEMBER SLATON: So the alternative is it
23 could be -- that interaction could be controlled and
24 monitored by whoever is chairing the meeting --

25 GENERAL COUNSEL JACOBS: Correct.

1 BOARD MEMBER SLATON: -- and counsel --

2 GENERAL COUNSEL JACOBS: Correct.

3 BOARD MEMBER SLATON: -- to make sure that it
4 doesn't go -- doesn't get sideways.

5 GENERAL COUNSEL JACOBS: Correct. That would be
6 a less intrusive alternative in legalese, which is usually
7 preferred.

8 BOARD MEMBER SLATON: Okay.

9 CHAIRPERSON MATHUR: So perhaps we don't need to
10 anticipate that necessarily in the --

11 BOARD MEMBER SLATON: Okay.

12 CHAIRPERSON MATHUR: -- process, but handle it in
13 the moment.

14 GENERAL COUNSEL JACOBS: I think that's right.

15 CHAIRPERSON MATHUR: Yeah. Okay.

16 Mr. Feckner.

17 COMMITTEE MEMBER FECKNER: Thank you, Madam
18 Chair.

19 First off, on the same paragraph that Theresa
20 started on, on page two of five -- as I put my finger on
21 it and it moves -- that first paragraph, "After it has
22 been appointed, the review panel shall point an
23 investigator, who may not...", that "may" should be
24 changed to either "shall" or "must".

25 COMMITTEE MEMBER TAYLOR: First paragraph?

1 CHAIRPERSON MATHUR: "Who shall not be a
2 CalPERS..." --

3 COMMITTEE MEMBER FECKNER: It say, "May not be a
4 CalPERS employee", which it could imply they could be and
5 we said they couldn't. So we need to change that to
6 either "shall" or "must" not.

7 CHAIRPERSON MATHUR: Are you comfortable with
8 that, Mr. Jacobs?

9 GENERAL COUNSEL JACOBS: Oh, yeah, that's fine.
10 That's the intent.

11 CHAIRPERSON MATHUR: So is that accepted by the
12 maker and the seconder of the motion?

13 COMMITTEE MEMBER TAYLOR: Absolutely.

14 VICE CHAIRPERSON HOLLINGER: Yes.

15 COMMITTEE MEMBER TAYLOR: That's another
16 technical.

17 CHAIRPERSON MATHUR: Yeah. Anything else, Mr.
18 Feckner?

19 COMMITTEE MEMBER FECKNER: I have something else
20 to say, but it's on the motion, so...

21 CHAIRPERSON MATHUR: Okay. So can we come back
22 to you?

23 COMMITTEE MEMBER FECKNER: Sure.

24 CHAIRPERSON MATHUR: Okay. Thank you.

25 Ms. Brown.

1 COMMITTEE MEMBER BROWN: Thank you.

2 I have something at a little higher level. So
3 you know when I read the item under background and
4 analysis, we talk about how in March of 2018, we
5 explicitly applied the Harassment Policy to the Board.
6 But when you read that policy, it talks about the roles of
7 employees, and managers, and supervisors, but it doesn't
8 talk about the role of the Board.

9 And if you go through that document, it talks
10 about it throughout that document. But it nowhere
11 references what Board members are supposed to do. And so
12 I have concerns about that, because are we managers and
13 supervisors? I know we're not employees, but I just -- if
14 that applies to us, we're nowhere mentioned in that
15 document at all. And I think that should be addressed if
16 we're going to be governed by that document.

17 GENERAL COUNSEL JACOBS: Okay. Well --

18 COMMITTEE MEMBER BROWN: I mean, because it
19 starts out, the purpose, "CalPERS expects it managers and
20 supervisors the vigorously and visibly promote a
21 harassment free..." -- I mean, I think you could very
22 easily say the Board manager. I mean, I just think it
23 needs to be modified, in my opinion.

24 GENERAL COUNSEL JACOBS: Yeah. I think the idea,
25 and when the Board voted last year to adopt the Harassment

1 Policy for itself, I think it implicitly substituted Board
2 members for those words like "employees" and the like, and
3 said we will be governed by -- that is the Board that said
4 it, we will be governed by the Harassment Policy that
5 applies to team members.

6 There are parts of this that would not apply to
7 Board members to be sure. And I think that what -- where
8 there's a conflict or where -- that that's what we're
9 doing here in this process is providing a process that
10 would trump anything in here that would relate to a Board
11 member with respect to the process by which it would
12 occur.

13 Because in an employee context, you've got an
14 entire process. It's overseen by the SPB and other laws
15 and the like, and internal policies. And many of those
16 are not going to apply to Board members just under the
17 law. So what you've got here is the outline of a policy
18 to address those kind of harassment allegations as to
19 Board members.

20 COMMITTEE MEMBER BROWN: My concern is that if it
21 gets to an independent counsel, an implicit policy isn't
22 going to help us -- help, if it's not explicit, in my
23 opinion. And, you know, you'll find out the first time
24 it's tested. I don't know how long it would take to
25 modify that, so that it does include the Board.

1 CHAIRPERSON MATHUR: I think we adopted it in
2 March.

3 GENERAL COUNSEL JACOBS: March of 2018, right.

4 CHAIRPERSON MATHUR: Of 2018. So perhaps all it
5 requires is a sentence that says -- that says in all cases
6 where staff -- where the word staff is used, that applies
7 to Board members. And maybe we could even put that in
8 this --

9 GENERAL COUNSEL JACOBS: Sure.

10 CHAIRPERSON MATHUR: -- in this policy and just
11 say, you know, in reference to that policy.

12 GENERAL COUNSEL JACOBS: Yeah, that's a good
13 idea, because it says right here the opening that, "The
14 policy sets forth the procedures to be followed when
15 allegations made that a member of the Board has violated
16 the CalPERS Harassment, Discrimination, Retaliation
17 Prevention Policy".

18 And then further on it says, "The policy relies
19 upon and incorporates the Harassment Prevention Policy as
20 a foundational document". And so right there would be a
21 place to indicate that we substitute the word "Board
22 member" for "employee", or what have you, in the following
23 places.

24 CHAIRPERSON MATHUR: Yeah. So it -- would we --
25 so I think we should -- is that something that you think

1 we could just add today, a sentence that accomplishes
2 that?

3 GENERAL COUNSEL JACOBS: I do. But what I would
4 suggest is if this motion is adopted, that I bring back --
5 since there's been a few different suggestions, and it may
6 sound like everybody is on board today, but when it's
7 actually written out, it may look a little bit different
8 to some people, so that I would put it -- bring it back
9 with the changes that -- as best we can indicate -- as
10 best we can make them from the transcript, and put it on
11 the consent calendar. And then if somebody disagrees with
12 what we've done, somebody can pull it off the consent, and
13 we can talk about wordsmithing a particular concept.

14 CHAIRPERSON MATHUR: Okay. Or perhaps -- I don't
15 know if it's possible. I know it's Monday today, but is
16 it something that could be done Wednesday for the Board
17 meeting?

18 GENERAL COUNSEL JACOBS: Oh, that's an idea.
19 Yeah.

20 CHAIRPERSON MATHUR: Okay.

21 GENERAL COUNSEL JACOBS: Sure. Yeah.

22 CHAIRPERSON MATHUR: So the maker and second of
23 the motion, are you comfortable with adding that language
24 into your motion?

25 COMMITTEE MEMBER TAYLOR: Yes.

1 VICE CHAIRPERSON HOLLINGER: Yes.

2 CHAIRPERSON MATHUR: Okay. Thank you.

3 Okay. Mr. Saha.

4 ACTING COMMITTEE MEMBER SAHA: Thank you, Madam
5 Chair. I had the benefit of talking with Matt a little
6 bit about this item previously. And I was wondering,
7 Matt, if you could talk a little bit more, maybe for the
8 benefit of the other Committee members, on the possibility
9 of including some ND -- NDA language, and if you think
10 that there's a need for including that in scenarios that
11 might call for it?

12 CHAIRPERSON MATHUR: Non-disclosure agreement?

13 ACTING COMMITTEE MEMBER SAHA: Yes.

14 GENERAL COUNSEL JACOBS: Yes. Well, the policy
15 does state in several different places that the inve --
16 that the efforts -- the investigative efforts will be
17 conducted and the results thereof will be maintained
18 confidentially to the maximum extent permitted by law. So
19 that's kind of one of those examples, where we're falling
20 back on existing law.

21 I think what you're talking about is the
22 possibility of there being a resolution --

23 ACTING COMMITTEE MEMBER SAHA: Correct.

24 GENERAL COUNSEL JACOBS: -- of some kind of
25 allegation of harassment. And at page three under Section

1 E, Board Action, it does provide that -- the possibility
2 of an informal resolution. And that informal resolution
3 could take a lot of different forms from a stern oral
4 directive to something more substantive. I don't know
5 that it would ever end up in some kind of a formal written
6 agreement, because the extremes -- I mean, there's
7 basically three scenarios that could come out of an
8 investigation.

9 One would be nothing, because either the
10 preliminary investigation -- either the review panel and
11 the investigator determined there was nothing to -- there
12 nothing to see here, or it would shut down after the
13 preliminary investigation, or there wasn't enough to make
14 a finding, in which case it would also be shut down, or
15 there's be a finding and then it would go to the Board for
16 reso -- for a determination of a sanction.

17 But you're right, it could be some kind of
18 resolution in between. And I think that would be one of
19 those situations where we would just have to rely and fall
20 back on existing law, which would generally be -- with
21 respect to a Board member, it would be probably be that
22 it's not -- that an NDA would not be appropriate. In
23 fact, NDAs are generally not appropriate, except sometimes
24 with respect to personnel matters.

25 So I don't know if that answers your question. I

1 kind of rambled, but...

2 ACTING COMMITTEE MEMBER SAHA: No, that's good.
3 Thank you.

4 GENERAL COUNSEL JACOBS: Okay.

5 ACTING COMMITTEE MEMBER SAHA: And I just wanted
6 to piggyback on that really quickly, if I may, and just
7 ask about the settlement process with regards to any civil
8 litigation that might be included in the policy, if you
9 think that that would be something that would be
10 beneficial as well?

11 GENERAL COUNSEL JACOBS: Yeah. Again, my comment
12 on that would be this is kind of the bare bones.

13 ACTING COMMITTEE MEMBER SAHA: Right.

14 GENERAL COUNSEL JACOBS: And we can certainly add
15 something like that. I don't think it's necessary --

16 ACTING COMMITTEE MEMBER SAHA: Okay.

17 GENERAL COUNSEL JACOBS: -- because it already
18 talks about there being the potential for an informal
19 resolution. And if we start cataloging all the different
20 ways that could be resolved. I'm going to come back with
21 a 10-page document. I think that's something for further
22 development, if and when it comes up. That would be my
23 take on it.

24 ACTING COMMITTEE MEMBER SAHA: Okay. Thank you
25 very much.

1 CHAIRPERSON MATHUR: Thank you.

2 Mr. Jones.

3 COMMITTEE MEMBER JONES: Yeah. Thank you, Madam
4 Chair. Yeah. My comment goes to item number three --
5 just a minute -- "Procedures for Investigation of
6 Allegations and Imposition of Sanctions". And in that
7 section it makes reference to the Board President and the
8 Board Vice President about their role in establishing the
9 investigative process.

10 And it -- there needs to be something to cover
11 the fact that it says if the Board President and Vice
12 President are both subject to the allegations, "otherwise
13 who cannot serve, the matter shall be referred to the
14 Board Governance Committee".

15 And our current structure and the proposed
16 structure could include the President and the Board
17 President. So I think you need to add something that says
18 that it excused the President and the Vice President,
19 because it is a seven-member committee, so it could drop
20 to five and you still would have a quorum.

21 CHAIRPERSON MATHUR: I see. So what you are
22 suggesting is that the matter shall be referred to the
23 Board Governance Committee --

24 COMMITTEE MEMBER JONES: Excluding --

25 CHAIRPERSON MATHUR: -- excluding --

1 COMMITTEE MEMBER JONES: -- the President and the
2 Vice President.

3 CHAIRPERSON MATHUR: Yeah, in that case.

4 COMMITTEE MEMBER JONES: Yes.

5 CHAIRPERSON MATHUR: That's fair. That seems
6 like -- that seems appropriate. Thank you for that
7 comment. I see that it's accepted by maker and seconder
8 of the motion, as -- thank you, Mr. Jones.

9 Mr. Miller.

10 BOARD MEMBER MILLER: This is kind of a
11 clarifying question from my perspective. You had
12 indicated, Matt, that this was intended for sexual
13 harassment. And I'm wondering why we don't have the word
14 in there, and whether -- because, you know, it is -- what
15 is the definition? Is it the Webster dictionary
16 definition, is it the California definition for civil
17 harassment, which is very, very different, or is that made
18 moot if we include the line that refers back to the
19 CalPERS policy?

20 GENERAL COUNSEL JACOBS: It is made moot. And
21 the reason, Mr. Miller, is that the reference back -- it's
22 not just sexual harassment, it's harassment. And the
23 policy that is attachment 2 --

24 CHAIRPERSON MATHUR: Attachment 1.

25 GENERAL COUNSEL JACOBS: I said attachment 2,

1 attachment 1.

2 CHAIRPERSON MATHUR: Um-hmm.

3 GENERAL COUNSEL JACOBS: Yeah, it says
4 attachment. It should be attachment 1 -- does have
5 definitions of harassment and sexual harassment.

6 BOARD MEMBER MILLER: Okay. So it was inclusive
7 of sexual harassment --

8 GENERAL COUNSEL JACOBS: Yes.

9 BOARD MEMBER MILLER: -- not exclusive to it.

10 GENERAL COUNSEL JACOBS: Yes.

11 BOARD MEMBER MILLER: Thank you. That was my
12 confusion.

13 GENERAL COUNSEL JACOBS: Yeah.

14 CHAIRPERSON MATHUR: Thank you.

15 Ms. Brown.

16 COMMITTEE MEMBER BROWN: I'm done. Thank you.

17 CHAIRPERSON MATHUR: Thank you, Ms. Brown.

18 Okay. So we do have a motion on the floor, but
19 we have several members of the public who wish to comment.
20 I'll let them comment. J.J. Jelincic and Ms. Jeppson. If
21 you could please come forward and take these two seats to
22 my left, identify yourself and your affiliation for the
23 record. You'll each have two minutes to speak. Three
24 minutes. I'm sorry, three minutes to speak.

25 MR. JELINCIC: Chair is too high.

1 CHAIRPERSON MATHUR: You're on.

2 MR. JELINCIC: I'm J.J. Jelincic speaking for
3 myself.

4 I would not be here except for the footnote. I
5 was the public presenter who said I had not seen the
6 policy being cited. I said that I did not recall seeing
7 the policy. It is now asserted that copies were given to
8 all Board members in 2017. That type of casual
9 misrepresentation is unfortunately fairly typical of the
10 Chief Counsel.

11 Most people in this room and most people watching
12 on the internet know that I had a habit of reading all the
13 material given to the Board. I had not seen this policy
14 until I got it as a result of a Public Records Act
15 request. It was available only on the intranet or by a
16 PRA, if you happen to know to ask for it.

17 Since the policy is a management policy adopted
18 and modified at will by management, which did not apply to
19 the Board, there was no reason for the Board to see the
20 policy. Staff adopts policies and procedures all the time
21 that the Board never sees nor in most cases needs to see.

22 This policy is not broad enough to cover the
23 Chief Counsel publicly dressing down the Board's
24 independent consult -- independent counsel for
25 administrative hearings for failure to support the staff's

1 position.

2 This change to Board policy is about controlling
3 Board members. That is why it is coming before this
4 specially called Committee session -- meeting.

5 It should be noted that a staff member accused of
6 violating the policy would have the right to a public
7 hearing at the SPB. However, a falsely accused Board
8 member would have no right to a public hearing. That
9 Board member would be dependent on a secret kangaroo
10 court.

11 I urge you to either reject the proposal or amend
12 it so that the Board members have a right to a public
13 hearing and the opportunity to present a public defense.

14 Thank you.

15 And I have one other observations not directly
16 related to the policy. But Robert's Rules of order makes
17 a motion the property of the body, and it can only be
18 changed by a vote of that body. It cannot be changed by
19 the maker of the motion.

20 Thank you.

21 CHAIRPERSON MATHUR: Ms. Jeppson.

22 MS. JEPPSON: Good afternoon. I have sat at the
23 back of the room for many years. And when I look at this
24 policy, which I lost it as we were going back amending
25 this, amending to the amendment, and I'm wondering if we

1 just didn't treat this by having what we do -- you know, I
2 think that it should be totally removed from the Board. I
3 don't think it should be a review committee, if there is a
4 problem, because you may be sitting next to you, and one
5 may be the vic -- quote the victim, the other may be the
6 perpetrator.

7 And it seems to me that, you know, there are --
8 in the State, we have things that you can do. You know,
9 you can have like -- you can have independent agencies
10 that handle this. Like the State has this. And I think
11 rather than having the Board involved, it gives the
12 impression that you're out to get someone. And I don't
13 think that's the case here. I think the Board is a lot
14 better than that.

15 And so I would -- what I would do is where I
16 could remove the Board getting involved, because I just
17 can't wait to see what the newspapers would come up with
18 this one.

19 Thank you.

20 CHAIRPERSON MATHUR: Thank you very much.

21 We have two -- three more members of the public
22 who wish to speak, Mr. Brennand and Ms. Bouma you're next.
23 If you could take these two seats to my left, identify
24 yourself and your affiliation for the record, and you'll
25 have three minutes to speak.

1 MR. BRENNAND: Good afternoon, near good evening,
2 Madam Chair, members. Terry Brennand on behalf of SEIU
3 California here in support of the policy.

4 It has been amended a few times or suggested
5 amendments. I agree with all of them. I think you need
6 to take seriously Mr. Slaton's concern, because if we get
7 in a situation where one of your team members has been
8 victimized, we failed. As an organization, as a society,
9 as an employer, we failed.

10 If they're required to then present, testify, be
11 in front of their victimizer, we failed again. Don't fail
12 them twice.

13 Thank you.

14 CHAIRPERSON MATHUR: Thank you.

15 Ms. Bouma.

16 MS. BOUMA: Chair and members, Christy Bouma on
17 behalf of the California Professional Firefighters.

18 I come before you today with credentials on
19 behalf of my organization to speak to you, but also as one
20 of the signers of the, "We Said Enough" letter last year.

21 As the current president of the Institute of
22 Governmental Advocates who was invited into the
23 legislature's process and discussion about how they were
24 going to establish a harassment policy applicable to
25 elected members of the Senate and the Assembly, and I'm an

1 owner of my own small business with four whole employees,
2 and have challenged myself to take a view of how these
3 policies should invite -- or should be -- apply to a broad
4 organization like CalPERS with an elected Board, and the
5 little lobbying firm of three or four employees, I think
6 it's an issue that needs to be taken seriously across the
7 spectrum.

8 I know that this Board is independent. And even
9 in listening to the dialogue in the legislature, they
10 believe they were different, but finally came to the terms
11 with the fact that they need to do something that would
12 embrace the public's confidence that victims would have a
13 forum in which to be protected, and perpetrators would be
14 held to account for the way that they're treating their
15 fellow human beings.

16 So I'm here in support of the Sexual Harassment
17 Policy. And as it is evolving here, I appreciate the
18 dialogue and the comments about how to improve the policy.
19 But I think no need to waste another moment about making
20 sure you have a clear policy directive for yourselves, and
21 for your dedicated staff members that serve you every day
22 and every month.

23 I think the final thing that I would say is that
24 don't forget about the training. The very valuable
25 lessons that I've heard in being part of these discussions

1 is make it an approachable training, small group training,
2 bystander training. You know, it's very difficult for a
3 victim on their own to find their voice and speak out
4 against mistreatment of any kind, harassment of any kind.

5 So train all of the team members to be good
6 bystanders to what could potentially be a sexual
7 harassment or other type of harassment that's going on,
8 and let them help improve the culture.

9 So I appreciate the conversation. I appreciate
10 the you're bringing this up and trying to get a policy
11 adopted and urge you to get that squared away.

12 We're in support.

13 CHAIRPERSON MATHUR: Thank you.

14 We have one more member of the public who wishes
15 to speak. Ms. Lee If you could please come forward, take
16 one of these seats to my left, identify yourself and your
17 affiliation for the record, and you'll have three minutes
18 to speak.

19 MS. LEE: Hello. My name is Jackie Lee, and I'm
20 a CTA liaison for CalPERS.

21 I'm just looking at the policy. It says
22 Harassment, Discrimination, and Retaliation Prevention
23 Policy. A lot of people keep referring it to sexual
24 harassment, but I think it talks about all harassment.

25 CHAIRPERSON MATHUR: It does.

1 MS. LEE: So I'm just curious why is there such a
2 rush to get this finalized like right now, when there are
3 so many questions posed by you members, as well as our
4 questions that we have? I think that wordsmithing the
5 document is always very needed when we're doing this. And
6 I used to do tech writing for a computer firm. And so it
7 was the association for people who are computer people
8 and, you know, users. And sometimes the two do not match.
9 And I think sometimes this is what's happening in here.
10 And it's a requirement to take more to look at all the
11 angles.

12 I'm wondering is there a reason why there's so
13 much rush to do this?

14 My suggestion is to carefully review all
15 documents. And when all questions are answered properly
16 and satisfactorily, then put it to a vote, because it
17 seems to me -- to me, the appearances, the rush is that
18 there is a reason because you have someone in mind to go
19 ahead and sanction, and that doesn't make me feel good
20 about the whole process.

21 And I've been here for five years. I would like
22 more clarity, more careful decisions that take -- if it
23 takes time, then it takes time if. If we need to do it in
24 December, then let's do it in December. There's no rush
25 to do a good policy. Tech writing taught me that, and I

1 would really like for this to be applied here, and that's
2 my suggestion.

3 Thank you so much for your time.

4 CHAIRPERSON MATHUR: Thank you for your comments.

5 So I think it would be useful to restate the
6 motion and perhaps if it's easier, if it would satisfy Mr.
7 Jelincic to withdraw and then reenter the motion fully,
8 which would be, I think, perfectly fine.

9 COMMITTEE MEMBER TAYLOR: I withdraw the motion.

10 CHAIRPERSON MATHUR: Okay. So maybe I can take a
11 crack, and you can help, Mr. Jacobs, at restating the
12 motion. And then you can tell me if you -- well, and then
13 you can say, yes, I make that motion, if that --

14 COMMITTEE MEMBER TAYLOR: Okay.

15 CHAIRPERSON MATHUR: -- if that's amenable to
16 you?

17 So the motion, as I understand it, is to adopt
18 the policy with several modifications, including on page
19 one, section 3, Procedures for Investigation of
20 Allegations and imposition of sanctions. In the last
21 sentence after the word -- words "Board Governance
22 Committee", to put in paren -- parentheses, "Excluding the
23 Board President and Vice President".

24 And then on page two in the first paragraph,
25 after the word "investigator" in parentheses and

1 quotations, to say, "...who shall not be a CalPERS
2 employee".

3 Also, on page two, under B, Formal Investigation,
4 the second paragraph, should start the "The" should be
5 capitalized and "consulting" in the second line should
6 just be "consult".

7 GENERAL COUNSEL JACOBS: If I may, Ms. Mathur, on
8 that one.

9 CHAIRPERSON MATHUR: Yes. Yes.

10 GENERAL COUNSEL JACOBS: The -- the probably
11 shouldn't be capitalized, because it's a continuation of
12 the sentence from --

13 CHAIRPERSON MATHUR: Oh, is it? Okay. Then it
14 shouldn't be capitalized. Thank you for that.

15 GENERAL COUNSEL JACOBS: Yeah.

16 CHAIRPERSON MATHUR: Upon determining that a
17 formal investigation is warranted, the...", yes we'll
18 leave that lower case.

19 And then on page four of five, section IV, Types
20 of Sanctions, to include in the list of sanctions,
21 "Revocation of Board member privileges, removal or
22 suspension from a Committee assignment, removal or
23 suspension of Committee leadership roles".

24 Well, and there was -- there was the question
25 raised of whether recusal from proceedings where there's

1 the -- where the victim is present, and I think Mr. Jacobs
2 said that we needed to -- he needed to further think about
3 that, but that also perhaps that didn't -- that could
4 be -- that could be addressed in the moment, and we could
5 figure that.

6 So those are the changes that I heard. Did I
7 miss anything that you heard, Mr. Jacobs?

8 GENERAL COUNSEL JACOBS: No, I think you got it.

9 CHAIRPERSON MATHUR: Okay. Is that --

10 COMMITTEE MEMBER TAYLOR: So I'll make that
11 motion.

12 CHAIRPERSON MATHUR: Thank you. The motion was
13 made by Taylor.

14 VICE CHAIRPERSON HOLLINGER: Second.

15 CHAIRPERSON MATHUR: And seconded by Hollinger.

16 Any further discussion on the motion?

17 Seeing none.

18 All those in favor say aye?

19 (Ayes.)

20 CHAIRPERSON MATHUR: All opposed?

21 (No.)

22 CHAIRPERSON MATHUR: Please note Ms. Brown's no.

23 The motion passes.

24 And now coming back to you, Mr. Feckner, did --
25 you had something, if you could -- thank you.

1 COMMITTEE MEMBER FECKNER: Thank you, Madam
2 Chair. You know, part of the problem that we deal with
3 here, and some of that goes to what Ms. Jeppson said, is
4 that we're trying to create policy while we're in
5 handcuffs. Because the legislature doesn't give you the
6 opportunity to give us more options than what we
7 current -- what you currently have on the paper.

8 So we're trying to craft something through a very
9 narrow set of options to be able to deal with Board
10 behavior. No other group can discipline this Board, but
11 the Board itself. So at some point, we may need to look
12 at legislative relief to be able to put more language in
13 place to allow the Board to effectively manage itself
14 without having to fine-tune a set of guidelines that may
15 not be appropriate for what we're trying to do.

16 GENERAL COUNSEL JACOBS: Um-hmm, yeah

17 CHAIRPERSON MATHUR: That may not be sufficient.

18 Thank you.

19 Ms. Hollinger.

20 VICE CHAIRPERSON HOLLINGER: Yeah. And I just
21 wanted to add on to what Mr. Feckner said, and what the
22 ladies spoke to with trying to rush something through, we
23 really were responding to the fact that the Board doesn't
24 currently have any rules or conduct in place regarding our
25 conduct, in case -- regarding sexual harassment.

1 And so I think the effort to do this was to
2 demonstrate that to put in good governance procedures for
3 ourselves. While I heard you say we don't want to rush
4 it, but like Mr. Feckner said, we're limited in scope,
5 yet, we didn't want to not have something in place,
6 because I think that the time calls for it, but I
7 appreciated your responses.

8 CHAIRPERSON MATHUR: Thank you, Ms. Hollinger.
9 Mr. Miller.

10 BOARD MEMBER MILLER: Yeah, I just wanted to
11 acknowledge and express my appreciation for Mr. Feckner's
12 comments, because I think in the bigger picture, as a new
13 Board member, I really was surprised to find out that on
14 behalf of our members and the Board, that as an elected
15 Board member, there is virtually nothing that can be done
16 to address really egregious, even criminal behavior, in
17 terms of removing someone from that Board.

18 And even in the event that someone removes
19 themselves by being thrown in jail, if they don't resign,
20 my understanding is they sit out their term, and their
21 constituents won't necessarily have any voice on that
22 Board.

23 So I think something legislative, something
24 longer term, something more substantial to address those
25 remote possibilities still would be wise just for the

1 credibility and the confidence of our members, that there
2 would be a mechanism to deal with bad behavior by their
3 elected Board members in the future.

4 CHAIRPERSON MATHUR: Thank you, Mr. Miller.

5 That brings us to Agenda Item number 7, which is
6 summary of Committee direction.

7 GENERAL COUNSEL JACOBS: I think we have that.

8 (Laughter.)

9 GENERAL COUNSEL JACOBS: We just went through it.

10 CHAIRPERSON MATHUR: All right. Terrific.

11 And then 7b is public comment. I have no further
12 requests to speak, but is there anyone from the public who
13 wishes to speak at this time?

14 Seeing none, then we are adjourned.

15 Thanks, everyone.

16 (Thereupon California Public Employees'
17 Retirement System, Board Governance Committee
18 meeting adjourned at 4:55 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration, Board Governance Committee meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed, under my direction, by computer-assisted transcription;

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of September, 2018.

JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063