

**BOARD OF REGENTS and its
AUDIT, COMPLIANCE AND TITLE IX COMMITTEE
NEVADA SYSTEM OF HIGHER EDUCATION**

Rogers Student Center, Ballroom
Nevada State College
1300 Nevada State Drive #300, Henderson
Thursday, February 28, 2019

Video Conference Connection from the Meeting Site to:

System Administration, Reno
2601 Enterprise Road, Conference Room
and
Great Basin College, Elko
1500 College Parkway, Berg Hall Conference Room

Members Present:

Dr. Patrick R. Carter, Chair
Mr. Trevor Hayes, Vice Chair
Mrs. Carol Del Carlo
Mr. Sam Lieberman
Mr. Donald Sylvantee McMichael Sr.
Ms. Laura E. Perkins

Others Present:

Dr. Thom Reilly, Chancellor
Ms. Crystal Abba, Vice Chancellor, Academic and Student Affairs
Mr. Andrew Clinger, Chief Financial Officer
Mr. Nate Mackinnon, Vice Chancellor, Community Colleges
Dr. Anne Milkovich, Chief Information Officer
Mr. Dean J. Gould, Chief of Staff and Special Counsel to the Board
Mr. Michael Flores, Chief of Staff to the Chancellor
Mr. Joe Reynolds, Chief General Counsel
Mr. Joe Sunbury, Chief Internal Auditor
Mr. Zelalem Bogale, Deputy General Counsel, System Administration
Ms. Mistee A. Galicia, Deputy General Counsel, Compliance
Mr. Jimmy Martines, Deputy General Counsel, Real Estate
Mr. Bing Li, Acting Cyber Security Officer
Ms. Joi Holliday, Senior Policy Analyst
Mr. Theo Meeks, Research Scholar
Dr. Federico Zaragoza, President, CSN
Dr. Kristen Averyt, President, DRI
Mr. Bart J. Patterson, President, NSC
Dr. Karin M. Hilgersom, President, TMCC
Dr. Vincent R. Solis, President, WNC

Faculty senate chairs in attendance were: Dr. Darin Dockstader, CSN; Dr. Richard L. Jasoni, DRI; Mr. Jinho Jung, GBC; Dr. Abby Peters, NSC; Mr. Mike Holmes, TMCC; Mr. Douglas Unger, UNLV; and Mr. James Strange, WNC. Student body presidents in attendance were: Ms. Becky Linville, GBC; Ms. Stephanie Molina, UNLV-GPSA; and Mr. Dimitrie Suciu, WNC.

The following institution business officers were also in attendance: Ms. Mary Kaye Bailey, Vice President, Finance and Administration, CSN; Ms. Sonja Sibert, Vice President, Business Affairs, GBC; Mr. Kevin Butler, Vice President, Finance and Business Operations, NSC; Mr. Jim New, Vice President, Finance and Administrative Services, TMCC; Ms. Jean Vock, Vice President, Finance and Business, UNLV; Mr. Vic Redding, Vice President, Administration and Finance, UNR; and Ms. Darla Dodge, Interim Vice President, Budget Office Services, WNC.

For others present, please see the attendance roster on file in the Board Office.

Chair Carter called the meeting to order at 11:00 a.m. with all members present.

1. Information Only-Public Comment – None.
2. Approved-Consent Items – The Committee recommended approval of the consent items.
 - (2a.) Approved-Minutes – The Committee recommended approval of the following minutes.
 - November 29, 2018, meeting minutes (*Ref. A-2a(1) on file in the Board Office*).
 - December 19, 2018, meeting minutes (*Ref. A-2a(2) on file in the Board Office*).
 - (2b.) Approved-Follow-Up: Student Health Center, UNR – The Committee recommended approval of the follow-up response to the audit report of UNR Student Health Center for the period July 1, 2016, through February 28, 2018 (*Ref. A-2b on file in the Board Office*).

Regent Lieberman moved approval of the consent items. Vice Chair Hayes seconded. Motion carried.

(Audit Summary on file in the Board Office).

3. Approved-Change in Leadership, CSN – The Committee recommended approval of the report and institutional response to the CSN Change in Leadership audit for the period July 1, 2016, through January 31, 2018 (*Ref. A-3 on file in the Board Office*).

Chief Internal Auditor Joe Sunbury reviewed the *College of Southern Nevada Change in Leadership Internal Audit Report*. This is an audit done within the first year of service for a new president. Internal Audit does an expenditure review as well as reviews of financial accounts, contracts, equipment and any legal issues. College of Southern Nevada's audit resulted in findings in a few key areas including operating, host, and travel transactions and deficit account balances. Corrective actions were discussed.

3. Approved-Change in Leadership, CSN – (continued)

Regent Del Carlo moved approval of the report and institutional response to the CSN Change in Leadership audit for the period July 1, 2016, through January 31, 2018. Regent Lieberman seconded.

After a request from Regent Perkins for clarification on the deficit account, Mary Kay Bailey, Vice President of Finance and Administration, CSN, clarified that the CSN Dental Faculty Practice does have a deficit balance and has been under review for some time.

The current operating model is not sustainable and new models, including partnerships, are being discussed.

Motion carried.

4. Approved-Purchasing Card Program, WNC – The Committee recommended approval of the report and institutional response to the WNC Purchasing Card Program audit for the period July 1, 2017, through June 30, 2018 (Ref. A-4 on file in the Board Office).

Chief Internal Auditor Sunbury reviewed the *Western Nevada College Purchasing Card Program Internal Audit Report* and discussed the use of data analytics for process improvement. A test of merchant category codes resulted in findings of codes that were deemed unnecessary. A process walkthrough also led to process improvements in card holder applications and documentation.

Regent Del Carlo moved approval of the report and institutional response to the WNC Purchasing Card Program audit for the period July 1, 2017, through June 30, 2018. Regent Perkins seconded.

After a request from Regent Del Carlo for clarification on the term data analytics, Chief Internal Auditor Sunbury clarified the collection and analysis of data and its use.

Chair Carter noted the report showed a single purchase that was split into multiple transactions. The combined total exceeded the \$4,999 single transaction limit. Chair Carter noted that this is something that needs to be monitored and controlled, as the same scenario seems to appear frequently in audit reports.

Motion carried.

5. Approved-Hosting, NSHE – The Committee recommend approval of the report and institutional response to the NSHE Hosting audit for the period July 1, 2017, through June 30, 2018 (Ref. A-5 on file in the Board Office).

5. Approved-Hosting, NSHE – (continued)

Chief Internal Auditor Sunbury reviewed the *Nevada System of Higher Education Hosting Internal Audit Report* and noted this was the first report completed entirely in Workday. The review has led to improved documentation and processing, including a new training guide.

Regent Del Carlo moved approval of the report and institutional response to the NSHE Hosting audit for the period July 1, 2017, through June 30, 2018.
Regent Perkins seconded.

After a question from Vice Chair Hayes, Chief Internal Auditor Sunbury clarified that there were 55 individual hosting transactions reviewed, not 55 hosting accounts.

Motion carried.

6. Approved-Audit Exception Report – The Committee recommended approval of the Audit Exception Report for the six months ended December 31, 2018. The Audit Exception Report is a compilation and status of the audit findings and activities of the Audit, Compliance and Title IX Committee for the six-month period (*Ref. A-6 on file in the Board Office*).

Chief Internal Auditor Sunbury reviewed the *Nevada System of Higher Education Internal Audit Department Report on July 1, 2018, through December 31, 2018, Activities*. Although the format is consistent with historical reports continued improvements will be made in the future, based on feedback. The report is now shorter in length and includes graphics to illustrate trends.

There were 14 unresolved items on the report, mostly related to IT. A new Senior IT Auditor has just started with the department and will be assigned to review these items.

Regent Del Carlo moved approval of the Audit Exception Report for the six months ended December 31, 2018. Vice Chair Hayes seconded.

Chair Carter noted that older outstanding items need to be reviewed to see if they are still relevant or need to be removed for clear reporting. The goal is to clear off the old items or come up with an action plan to address them and move forward.

Motion carried.

7. Information Only-Internal Audit Departmental Updates and Emerging Risks, NSHE –

Chief Internal Auditor Sunbury provided general remarks regarding departmental updates, initiatives and alignment related to on-going risk assessments, including updates on formalizing in-take procedures as part of efforts regarding incident management.

7. Information Only-Internal Audit Departmental Updates and Emerging Risks, NSHE – (continued)

The new duties and reporting for the Chief Internal Auditor are now reflected in the Internal Audit Charter. The new role will drive policy recommendations and process improvement. Great progress has been made on these fronts so far.

8. Information Only-Compliance Department Updates, NSHE – Deputy General Counsel for Compliance Mistee A. Galicia provided an update on the NSHE Compliance Department, Annual Work Plan and general remarks regarding on-going compliance issues at various institutions (Ref. A-8 on file in the Board Office).

Mistee A. Galicia presented an overview of Title IX and higher education, acknowledging the change to the committee to include Title IX compliance. The presentation highlighted:

- The original purpose of Title IX was to close the gender gap in athletics.
- The second wind of Title IX was to give additional opportunities to address gender-based harassment and violence.
- An overview of campus responsibility under Title IX;
 - Designate a Title IX Coordinator,
 - Develop appropriate policies and procedures,
 - Resolve complaints promptly and equitably, and
 - Train students, faculty and administrators.
- Best practices for proactive Title IX Compliance include;
 - Assessment,
 - Wide dissemination of contact information for Title IX Coordinator,
 - Wide dissemination of policies and procedures,
 - Mandatory training for all faculty and staff,
 - A regular climate survey, and
 - Updated policies which provide clear guidance regarding gender equity, prohibition of sexual harassment and assault, reporting mechanisms, the process for resolving complaints and anti-retaliation.

Changes to Title IX were proposed by the U.S. Department of Education in November 2018. The public comment period for the proposed changes expired on February 15, 2019. Although the proposals have not yet gone into effect, NSHE and the institutions need to be aware of the potential changes and prepare for the future.

The proposed changes:

- Change the standard of proof to clear and convincing, raised from the previous preponderance of the evidence.
- State that the school must now have actual knowledge of an event, changed from the current standard that the institution reasonably should have known.

8. Information Only-Compliance Department Updates, NSHE – (continued)

- Change the definition of sexual harassment to “Sexual assault or unwelcome conduct on the basis of sex, that is so severe, so pervasive and objectively offensive that it denies a person access to the school’s education program.” This provides more clarity from the current broad definition.
- Changes to the administration of a school’s Title IX program to narrow the school’s responsibility to conduct that occurs within educational programs, which previously governed a wider range of school activities.
- Permit the accused’s representative to cross-examine the accuser during the hearing process to determine credibility.

During the period for public comment, the Chancellor provided comment to the Department of Education. The comments were based on the responses from Title IX Coordinators and representatives from the institutions as well as comments on the current state of Title IX within higher education.

Vice Chair Hayes clarified that the Committee was not aware that there had been a NSHE response to the proposed changes and noted that the Board was not allowed to review the changes and take a formal stance before an opinion was provided on its behalf. The statement was not reviewed before it was submitted, and the Committee and the Board have interest in current Title IX standards and processes as well as any proposed changes and the issuance of a statement without their input is cause for concern.

Vice Chair Hayes noted that no one person should be deciding on behalf of NSHE and that it would be beneficial to see the current state of Title IX within the system and to have the Title IX Coordinator come in to present on the current processes and the proposed changes to make sure NSHE is compliant with current and future standards. Further presentation on Title IX is needed and more information is needed before the Committee and the Board can make an informed decision.

Deputy General Counsel Galicia clarified that there is concern within higher education that Title IX compliance and due process are at issue and the proposed changes seek to rectify the confusion and concern, including addressing the single investigator mode that Vice Chair Hayes noted as a concern.

Regent Del Carlo agreed with Vice Chair Hayes and noted that the Chancellor’s policy statement was a surprise and questioned if proper protocol was followed with issuing such a statement on behalf of the System.

Deputy General Counsel Galicia clarified that the letter was issued on January 30, 2019, in response to the November 2018 Department of Education request for comment. The letter highlighted comment and concern on live hearings, allowing students through third party representatives to cross-examine their accusers, which could potentially re-traumatize the victim, the narrowed definition of sexual harassment and the requirement that the University provide an advisor to any party who does not bring their own as well

8. Information Only-Compliance Department Updates, NSHE – *(continued)*

as the associated fiscal impact of such a requirement. Some change to Title IX will likely be seen in the near future. All proposed revisions will come to the Committee and Board if changes are adopted by the Department of Education.

Vice Chair Hayes noted that during the public comment period the Board met four times giving ample time to seek Board input.

In response to a question from Chair Carter asking whether the Chancellor can issue policy statements on legislation without Board input, Chief of Staff and Special Counsel to the Board Dean Gould stated that he is not aware of any such policy but that the issue is more a matter of practice. It is logical to seek input of the Board, since the Board is a policy-making body, before official NSHE comment is made.

Chair Carter stated that the issue should have been addressed in a public Board hearing and requested that Chief Internal Auditor Joe Sunbury review the issue and see if other issues were addressed without proper Board input or approval. Clarification is needed to determine when Board of Regents input and/or approval is required. This item is considered new business.

Deputy General Counsel Galicia noted that progress is being made on the Annual Compliance Work Plan. It is a labor-intensive task but will help to improve processes in the future.

In response to a question from Regent Del Carlo asking for clarification on mandatory training to faculty and staff, Deputy General Counsel Galicia stated that coordinators evaluate different sectors on campus and target the training to those groups. The content of the Title IX training is tailored to the group and attendance is documented.

9. Information Only-New Business – Regent McMichael requested a review of the UNR Rifle Team dissolution. Chair Carter noted that this item is more appropriate for the full Board meeting. The item will be brought to new business at the Board of Regents meeting.

Regent Del Carlo requested Title IX training for the Board of Regents.

Regent Hayes requested a presentation from the institution Title IX Coordinators and other key stakeholders to address the current Title IX processes, existing laws, and proposed changes.

10. Information Only-Public Comment – None.

The meeting adjourned at 11:49 a.m.

Prepared by:

Amanda Dimit
Special Assistant and Coordinator
to the Board of Regents

Submitted for approval by:

Dean J. Gould
Chief of Staff and Special Counsel
to the Board of Regents

Approved by the Board of Regents at its June 6-7, 2019, meeting.