

**POMONA COLLEGE BOARD OF TRUSTEES**  
**REPORT OF BOARD REVIEW COMMITTEE**  
**ON WORK AUTHORIZATION INVESTIGATION**

May 3, 2012

**THE COMMITTEE'S CHARGE**

In February 2012, the Board appointed five trustees to review the facts and circumstances surrounding the February 2011 complaint and ensuing investigation that ultimately led to the termination of seventeen Pomona workers (the "Complaint"). The Board charged the Committee with determining whether the Board acted appropriately in referring the Complaint to the Audit Committee; whether the Audit Committee appropriately sent the Complaint to Sidley Austin ("Sidley") and whether the Board had sufficient information concerning the investigation and how it was to proceed. The Committee reviewed the record to determine what happened from the time the Complaint was first received until the September 27, 2011 report to the Board Chair concerning significant compliance issues. The Board did not charge the Committee to review issues beyond the Board's processes, such as the advice received from any law firms retained by the College in connection with this matter, nor the actions of the Administration once the information was conveyed to the Administration that the College was employing workers without proper work authorization documents.

**THE REVIEW PROCESS**

Jeanne Buckley, Paul Eckstein, Margaret Lodise (chair), John Payton and Stewart Smith, were initially appointed as members of the Committee. Due to his illness, John Payton did not participate in the investigation by the Committee. The Committee members interviewed members and former members of the Board of Trustees, members of the Administration and attorneys at Sidley who were involved in the handling of the Complaint once it was received by the Board. The Committee conducted these interviews by phone. In addition, the Committee received and reviewed the Complaint and documentation in the nature of emails sent and received during relevant time periods. The Committee conducted its interviews and document review in February and March, leading to the production of this report.

**THE BASIC FACTS**

In August 2010, a college employee (the "Complainant") wrote a letter to the Complainant's attorneys alleging that the Complainant had had a conversation that month with Vice President Karen Sisson who had asserted that under President Oxtoby's presidency and prior to that time, it was the policy of Pomona College that the verification of the documentation of workers hired by the College was not in fact

undertaken as required by law.<sup>1</sup> The Complainant forwarded that letter to the Board chair, Paul Efron, in February 2011. Upon receiving the letter, Efron discussed the appropriateness of investigating the Complainant's allegations with three Board members who concurred with Efron that the allegations were specific and serious and should be investigated.

In late February 2011 Efron referred the Complaint to the Chair of the Audit Committee<sup>2</sup> who mistakenly summarized the contents of the Complaint for Sisson, who had been referred to in Complainant's letter. Thereafter, in early March 2011, Efron asked the Vice Chair of the Audit Committee to oversee the investigation and to hire counsel to conduct the investigation. After determining that the College's long-time counsel, Sidley, had sufficient expertise to conduct an investigation of the allegations made by the Complainant, in mid-March 2011, the Vice Chair of the Audit Committee retained Sidley to conduct an investigation to review the College's policies and practices respecting compliance with U.S. Immigration law during the employee hiring process and course of employment.

Because the allegations in the Complaint were directed at the President of the College, he appropriately removed himself from any supervision of the investigation. In addition, because the Board Chair was having significant disagreements with the President of the College at the time, he decided that while he would normally oversee such an investigation, it was inappropriate for him to oversee this investigation.

Before any work authorization documents were sent to Sidley, in April 2011 the College's Human Resources office began conducting an internal process audit of the College's I-9 forms,<sup>3</sup> which was not completed until June 2011. In the meantime, the

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<sup>1</sup> Although Sisson recalled having a conversation with Complainant in which the issue of undocumented workers was briefly raised, she denied making the specific statements attributed to her in the Complaint.

<sup>2</sup> Under the By-Laws, the Audit Committee is specifically charge with investigating financial issues. While the By-Laws are silent as to which Board Committee is charged with the responsibility of investigating whistle-blower complaints about non-financial issues, in the absence of a more specific By-Law provision, the Chair appropriately referred the investigation to the Audit Committee.

<sup>3</sup> From early in the investigation, it appears that there was confusion over what was meant by an I-9 audit. The College and the representative of the Board initially believed this would be a process audit (not involving a review of documents underlying the I-9s). Sidley, on the other hand, believed, as stated in their letter of December 6, 2011, "[i]nvestigation of the Oxtoby administration's policy required, as one part, a review of the stated policies of the administration, including the current Human Resources department...The investigation, therefore, from the outset also had to examine what the administration had actually done. The I-9 forms themselves are the only objective proof of that. Thus, the only way the investigation could reliably determine the administration's actual policy was to look at whether the required I-9 documentation in fact existed in the files.

Investigation of the broader allegation that the College had never, in fact, undertaken to verify work authorization also required examination of the I-9 files. There was no way to reliably investigate such an allegation about actual performance without examining the I-9s themselves. And since this allegation was not limited in time, it required examination of the I-9s of all employees."

When Sidley was made aware of HR's internal review, they came to the conclusion that a decision to commence a full audit had been made, even though there is no documentation of such a decision actually being made.

Vice Chair of the Audit Committee had resigned her position on the Board of Trustees without asking the Board Chair to transfer responsibility for oversight of the investigation to the new Chair of the Audit Committee (who took office on July 1, 2011) and the Board Chair did not, on his own, transfer such oversight responsibility.

In June 2011, pursuant to Sidley's prior request, the I-9s reviewed by the Human Resources office were sent to Sidley, together with the supporting documents, with the expectation that Sidley would confirm the process audit conducted by HR. In early July 2011, representatives of Sidley spot checked the I-9s and supporting documents provided by the College and determined that several files contained false documents and found numerous other errors. Thereafter, in July and August 2011, Sidley reviewed all of the College's I-9 files and other documents provided by the College and then interviewed a number of employees of the College. In mid-August, Sidley reported its initial findings to the new Chair of the Audit Committee, who was not aware of the Complaint or even that an investigation was being conducted by Sidley.

Sidley completed its investigation in late September 2011 at which time it reported to the Board Chair and the new Chair of the Audit Committee that while the Oxtoby administration had engaged in no wrongdoing, a number of the I-9 files were deficient and that there appeared to be false documents included in some of those files.

## **THE IMPACT**

The Committee concludes that despite the communications problems which occurred, the ultimate result would not have been any different had the Board more closely supervised the investigation. Given the nature of the Complaint against the current Administration, the only way a proper investigation could be conducted was to bring in an outside consultant to review the policies and procedures of the College. Although there is no doubt that the initial thrust of the Complaint (that Oxtoby and prior administrations had had a policy of ignoring federal immigration requirements) was disproved, the interviews conducted by Sidley pointed to specific concerns by those interviewed that there were irregularities in the College's documentation process. Sidley was informed of affirmative statements by prior managers that undocumented workers had been hired and of specific concerns about the need to review and tighten the I-9 process. These facts, in addition to the allegations in the Complaint, according to Sidley, would have led to a recommendation for a full review of the documentation.

## **THE FINDINGS**

1. The Board Chair appropriately referred the Complaint to the College's Audit Committee.
2. The charges made by the Complainant were specific and serious, and required investigation.

3. Given that the allegations of impropriety were directed at the College's President and that the Board Chair had significant disagreements with the President at the time, both the President and the Board Chair appropriately removed themselves from the investigation.
4. The College properly hired Sidley to conduct the investigation.
5. Sidley believed from the outset that a full audit was required given the allegations in the Complaint.
6. The Board could have done a better job of supervising the investigation.
7. The Board did not have in place sufficient processes to ensure that the Complaint was appropriately handled from intake until completion of the investigation.
8. There were breakdowns in communication between the Audit Committee and Board leadership.
9. As confirmed by multiple sources, the Committee concludes the ultimate decision to conduct the full I-9 investigation as it was conducted was a proper one.
10. If the Board had been fully advised of the Complaint in February of 2011, the Committee is confident that the Board would have concluded that in the proper exercise of its fiduciary duties, failure to conduct the kind of investigation that was conducted would have exposed the College to significant liability and possible criminal charges.

## **RECOMMENDATIONS**

Procedural changes need to be made and safeguards need to be implemented. This particular situation seems to have created a “perfect storm” because the persons normally involved in assuring that there is appropriate communication and decision making were not involved for the reasons stated above. The Board is already undertaking to implement a comprehensive whistle-blower policy so that any such complaint received in the future will go through clearly defined channels and will not be handled by only one or two members of the Board without greater communication.

The Board should review its policies concerning the hand off of matters from past committee chairs to new committee chairs. The Board year is co-terminus with the academic year and thus ends on June 30. However, the last Board meeting of the year is the weekend of graduation in May and there is not another meeting until October. A mechanism should be established to ensure that matters being handled by Board committees do not fall through the cracks during the months between May and October.

The Board should put in place a mechanism to ensure that when a law firm is

engaged by the College and/or the Board, the engagement is clear as to its terms and the law firm is clear as to who on the Board has the ability to authorize any steps taken by the law firm in connection with that engagement. The College does not have in-house counsel that directs outside law firms, but the College and Board should consider how to ensure that adequate reporting is made in connection with engagement of outside counsel to perform tasks for the College.

Margaret Lodise (Chair)

Jeanne Buckley

Paul Eckstein

Stewart Smith