

UNIVERSITY OF CENTRAL FLORIDA

Statement and Recommendations by

Chairman Marcos Marchena

January 18, 2019

Let me begin by thanking Trustee Seay, Joey Burby and his team for their methodical and thorough investigation of this matter. I appreciate their collaboration with both the Inspector General of the Board of Governors, as well as the staff of the Florida House of Representatives. I realize we only received the report yesterday, but I'm sure, like me, you went through it in detail last night. I also wanted you to hear directly from Mr. Burby and be able to ask him questions as to the process of the investigation.

Based upon the investigation, I have a number of recommendations. With one exception, I am not asking that we take action on these recommendations today. I think it is fair and reasonable to give all of us an opportunity to consider these recommendations in light of the report. So, I will lay out my recommendations today and will place this item on the agenda for our meeting on the 24th and ask that we take action at that time.

There are two types of actions that I am recommending to the Board. The first and most important type is systemic. These include a number of the procedure changes mentioned in the investigation and some already implemented:

Of course, the certification on the use of funds from the President, the CFO, and the General Counsel previously adopted will remain in effect.

President Whittaker already separated the position of CFO and V.P. for Administration and Finance. I recommend the Board adopt that change as policy and require approval of the Board to change the structure and responsibilities of the two positions.

The office of the General Counsel, the compliance, ethics and risk office and internal audit will develop updated specific written policies and procedures for the Board's consideration to further ensure proper use of state appropriated E&G Funds.

We will review the existing whistleblower program and update it to encourage reporting of known or suspected violations of law, regulation or University policy.

President Whittaker has already directed that the University's internal audit department conduct real-time audits for all capital projects in excess of \$2 million. This includes pre-start verification of the funding source, spot verification of the funding source during a capital project and, of course, appropriate post-project audit. I recommend that these actions be formally adopted as Board policy.

Next, I recommend that a standard format be adopted for Committee and Board agenda memoranda. The information we receive on written agenda items in advance of meetings at times is extensive, and at other times is limited. I recommend that in the future, agenda items

include a specific format, even if there will be an oral or PowerPoint presentation in connection with the item. The format of the agenda item will be distributed to you today for your review prior to taking action next Thursday. The essential components of the recommendation are that all decision points relative to an agenda item be specifically identified, all pro and con facts relative to each decision point be identified, that the specific source of funding and fiscal impact be included in the agenda item and any restrictions on the proposed funding source be identified.

I know we will be receiving a report and additional recommendations from the Association of Governing Boards later this spring relative to additional steps for the staff's interaction with the Board to ensure the Board is properly informed in all material matters, so I expect this Board will be adopting additional recommendations at a later date when that report is presented. After the report, the Board will also undergo additional training regarding the budgeting process and appropriation.

The second type of recommendation is retributive.

First, I am comforted, though not surprised, that the investigation found no one personally profited from the decisions regarding the Trevor Colbourn Hall project, nor that any funds went missing.

The report found that the individual primarily responsible for the decision to use restricted funds for the Trevor Colbourn Hall project and for not informing the Board was the former CFO, Bill Merck.

Some have argued that because the funds were used for a needed building that Bill Merck's poor judgment should be overlooked. Others have argued that, with Bill Merck's departure, together with the acknowledgment by the University that this inappropriate expenditure of restricted funds occurred and with the reimbursement of the funds, no other disciplinary actions are necessary.

I disagree on both counts.

The investigation found a pattern of behavior by Mr. Merck to avoid informing the Finance Committee and the Board that the approval of the project involved restricted funds. Mr. Merck, who refused to participate in the investigation but then sought to discredit it, has accused several people, including me, of impolitic behavior. I want to be unequivocal here, the only imprudent behavior was Mr. Merck's decision that he knew best and that he would get Trevor Colbourn Hall built with restricted funds without giving this Board a legitimate opportunity to decide the correct course of action. I have discussed CFO obligations with multiple CFOs. To a person they have told me Mr. Merck, who routinely reported to the Finance committee and the Board, had a duty to not only inform the Committee and the Board of the restricted nature of the funds but to highlight the restricted nature of the funds and ensure that a decision was made knowingly. Why didn't he do so? The report makes it clear: he told multiple people, he knew the Board would say no.

Some might argue that Bill Merck, who led this ill-conceived effort, is being impacted the least. Some have suggested that the University should pursue Mr. Merck's retirement pension. Mr. Cole has reviewed with me the statute on what is required for a state employee to lose his or her retirement pension and, while I'm sorely disappointed in Mr. Merck's behavior, I do not consider

Mr. Merck's actions rise to that level. However, I believe it is appropriate for the Board to take added measures with respect to Mr. Merck, and I therefore recommend that Mr. Merck be stripped of all remaining unpaid performance bonus.

The report found that four other employees knew the use of the restricted funds was not allowed.

The report makes it clear that these four individuals, together with Bill Merck, knew that this was an inappropriate use of restricted funds and failed to bring it to our attention. I've had occasion to interact with some of these employees extensively on other matters. I have found them to be very dedicated and capable employees who have shown significant passion for their work. However, we must make it clear to all employees that we will undertake all our actions within the rules and concealing or obscuring information from the Board is completely unacceptable. I concur with the actions taken this morning by President Whittaker with respect to all four individuals.

Last week Dr. Hitt requested to end his one-year employment agreement effective immediately. I accepted his request on behalf of the Board as of January 10 which was the date of his letter and I request that you ratify my action today.

The report does not find anyone else was knowingly involved in the decision to use restricted funds without full disclosure to, and full approval of, this Board. According to the report, the internal managerial decision to use restricted funds was made as early as June 2013. The first time this item came before a Board committee was April 2014. Dr. Whittaker was not hired until August 2014. Dr. Whittaker has told us previously, and the investigation report bares-out, that he was not aware the use of funds was inappropriate. Dr. Whittaker did receive and sign, along with a number of other University officers, documents and a report to the Board of Governors for the project. I understand that signatures are requested routinely on reports, but these must be taken seriously. I also consider that Dr. Whittaker as Executive Vice President had a heightened duty of inquiry. I have every confidence in President Whittaker. I believe President Whittaker will lead this University to preeminence, will continue to achieve high results under the Board of Governors performance standards and will develop UCF into a model of a twenty-first century university. Recognizing the position that he held during a portion of this process, I recommend that Dr. Whittaker's participation in the performance bonus program be eliminated for two years. That will cover the balance of his time as provost.

I do not want anyone to think that making these recommendations has been easy for me. I will tell you that I have not slept much over the past month. I have no desire to injure any of the individuals impacted today, but my obligation is to the University, ensuring that we behave appropriately within the law and regulations that apply to us and more importantly, that we continue to earn the community's trust, the Board of Governors' trust and the trust of the Legislature and the Governor.