

## MEMORANDUM

**To:** Dr. Reagan M. Ramsower, Sr. Vice President and Chief Operating Officer  
Brandyn J. Hicks, Esq., Director of Special Projects and Initiatives

**From:** J. Cary Gray, Chair  
Baylor University Board of Regents Governance and Compensation Committee

**Date:** October 4, 2016

**Re:** Status Report to Sexual Assault Task Force

---

This is a memorandum concerning progress of the Baylor University Board of Regents (“Board”) towards implementation of the May, 2016 recommendations from Pepper Hamilton as such recommendations pertain to Board operations and to matters within the scope of the Board’s responsibilities. The Board considers these efforts to be on-going in nature, and would welcome further input from the Administration. As you also know, the Board is also relying on outside consultants as more fully described below.

Section III of Pepper Hamilton’s Report of External and Independent Review addresses “Governance, Leadership and Compliance” recommendations. The first section below is keyed off of the “Project Road Map” you have provided to the Board concerning that section of the Pepper Hamilton recommendations. The remaining sections below address other parts of the Pepper Hamilton document.

### I.

#### **Empower Board committees to take active role in education, oversight, and enforcement of governance issues and fiduciary responsibilities**

Section III.2 proposes four specific action items to be undertaken by the Board. These action items were a major focus of the Board’s July meetings.

- a. Provide Association of Governing Boards training for Board of Regents

The Board’s efforts to accomplish the tasks associated with this recommendation arguably began in April of 2016. Three members of the Board attended the Association of Governing Boards’ National Conference on Trusteeship in Washington, D.C.: David Harper, Chair of the Board’s Academic and Student Affairs Committee; Cary Gray, Chair of the Board’s Governance and Compensation Committee; and Kathy Wills Wright, Vice-Chair of the Board’s Governance and Compensation Committee.

The Board has also engaged two individuals with the type of expertise suggested by this recommendation to assist the Board with its deliberations on governance issues: Raymond D. Cotton, an attorney with the Washington, D.C. firm of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.; and Dr. Cathy A. Trower, President of Trower & Trower, a Weare, NH based consulting firm. Mr. Cotton regularly represents

universities, university governing boards and university presidents in dealing with governance issues. Dr. Trower is a nationally prominent higher education governance consultant. She was formerly a faculty member of the Harvard Graduate School. Both Mr. Cotton and Dr. Trower attended the Board's July meetings.

The Board's July meetings consisted of a full day, annual retreat followed by a day of committee meetings and then a meeting of the full Board was held on the third day of the meetings. The retreat included a presentation by Dr. Trower on issues that are a focus of the AGB, including education, oversight, and enforcement of governance issues and fiduciary responsibilities. Dr. Trower and Mr. Cotton then facilitated a lengthy discussion on education, oversight, and enforcement of governance issues and fiduciary responsibilities issues during the Thursday meeting of the Governance and Compensation Committee.

During the meetings the Board considered and eventually adopted a new "Statement of Commitment and Responsibilities." This Statement has now been executed by every voting and non-voting member of the Board. Dr. Trower has advised us she considers the Statement a "best in class". One of the goals of the new Statement is to emphasize the Board's commitment to performing its responsibilities to the institution.

b. Evaluate and make recommendations regarding Board size and composition

The Governance and Compensation Committee regularly reconsiders and recommends updates to the Board's Bylaws and a document entitled "Guidelines for Board Operations". The Guidelines, in particular, speak to the recommended size of the Board and call for a target of 33 to 38 voting Regents. This is in line with other major, private universities including Stanford, Northwestern, Vanderbilt, as well as regional peers such as Rice University, Southern Methodist University and Texas Christian University.

Section 5.1 of the Bylaws previously provided the Board with the option of establishing an Executive Committee consisting of the Chair, Vice-Chair, Committee Chairs and immediate Past Chair of the Board. In order to address concerns about the efficiency of Board operations with a Board of more than 30 voting Regents, the Board voted in July to establish an Executive Committee. This action was taken as a direct response to the results of the Pepper Hamilton investigation and the Pepper Hamilton recommendations.

Additionally, during the July Board meetings the Governance and Compensation Committee re-evaluated the composition of the Board. Recognizing the continued lack of diversity, and the belief greater diversity in the membership would enhance the Board's performance of its responsibilities to the institution, an announcement was made to the full Board that the Governance and Compensation Committee deems it unlikely new Regents will be nominated in the near future unless they would improve the Board's overall diversity.

c. Review considerations and standards for new Board membership, including actual or perceived conflicts of interest, and implement due diligence standards in the selection of Board members

The standards for new Board membership are covered in the Bylaws and Guidelines for Board Operations. These standards are under constant evaluation, as are the processes for identifying candidates and selecting them for nomination to serve on the Board.

In addition, during the July Board meeting three new "alumni-elected (voting) Regents" attended their first meeting of the Board. Individuals willing to serve as alumni-elected Regents will be screened by a four

person nominating committee and the three best candidates will appear on a ballot. The candidates selected to appear on the ballot will not campaign on issues, but will instead be introduced to all alumni through a series of communications and elected by popular vote. Another action taken by the Board during the July meetings that relates at least in part to this recommendation from Pepper Hamilton was the adoption of provisions in the Bylaws that provided alumni-elected Regents will not be counted in the calculation (percentages) of Baptist and Non-Baptist Regents.

The Governance and Compensation Committee is continually evaluating the standards for new board membership and the processes for selecting nominees. The Committee regularly seeks input and assistance of the full Board on these issues.

- d. Educate and train Board members to remain within appropriate reporting protocols and lines of communication when addressing members of the administration and the Athletics Department (consistent with employment contracts)

Another focus of the July Board meetings was remaining within appropriate reporting protocols and lines of communication. This is addressed in the new Statement of Commitment and Responsibilities. The members of the Board seem to fully appreciate the importance of the issue and agreed that as a matter of process the Board Chair and Chair of the Governance and Compensation Committee would be contact points for recognizing and reporting deviations from the protocols, and would be contacting Regents where deviations occur.

Further, during the July meetings the Board continued discussions on the best way to identify and engage a “Board Professional” who would serve as the primary point of contact between the Board and the rest of the Administration, including the Athletics Department. The Board asked the Administration to develop recommendations. Per this request, the Administration has since responded with a recommendation that the current Chief of Staff to the President be dually designated as the “Board Professional” and tasked with the roles of a Board Professional as contemplated by organizations such as the AGB. The designation of a Board Professional is on the agenda for the October meeting of the Governance and Compensation Committee.

An additional step taken at the July Board meetings was the elimination of the Board’s Athletics Committee and the delegation of its prior duties to other standing committees of the Board. This should more easily and better align athletics with the rest of the institution. This action was also consistent with the recommendations from Pepper Hamilton in Section X.5 and X.6

In addition to the foregoing efforts to accomplish the objective of insuring Board members remain within appropriate protocols, an emphasis on more consistent communications among Board members has been implemented. The new Executive Committee of the Board is holding regular conference calls every other week, with updates on the matters discussed during the calls being subsequently sent to the full Board. These updates are including reminders of the importance of fulfilling the mandates of the Statement of Commitment and Responsibilities and remaining within appropriate reporting protocols.

All of these efforts seem to be working. The Administration has been specifically asked to notify Board leadership when there are deviations from these protocols. During the (almost) three months since the July

meetings there have only been two instances noted. Calls were made by Board leadership to Regents and each of these instances seems to have been addressed effectively and amicably.

## **II.**

**Identify a special oversight committee of the board to work in conjunction with leadership to ensure that these recommendations are properly resourced, completed in a timely manner, and effectively implemented.**

Section III.9 of the recommendations is to identify an oversight committee of the Board to assist in ensuring these recommendations are properly resourced, completed in a timely manner and effectively implemented. Working with the Administration, the Board determined the most effective way to accomplish this recommendation was to designate the Audit and Compliance Committee to provide primary oversight, and to designate the new Executive Committee of the Board to confirm. The Audit and Compliance Committee meets with certain members of official university implementation teams and various individuals involved in the implementation of the Pepper Hamilton recommendations, as well as the University's Title IX Office.

As of the date of this memorandum, the Board's leadership is fully satisfied with the progress being made and believes the Administration is to be commended on the effectiveness of their response to the Board's decision to adopt all 105 recommendations. Of course, not all of the recommendations have been fully implemented, but commendable progress is being made.

During its July meetings, the full Board received a comprehensive report from Dr. Ramsower outlining the steps and projects that had been undertaken to that point, as well as the status of implementing the recommendations in general. During the October meetings it is anticipated that an update will be brought forward in the report to the full Board on the October Audit and Compliance meeting.

## **III.**

### **Status of broad recommendations not specifically assigned to the Board**

In addition to the recommendations from Pepper Hamilton in part III, several of the items identified as "Broad Recommendations" in part I have been addressed to some degree by the Board.

Section I.1 of the recommendations proposes "establishing Title IX obligations as an institutional priority." This action had already been undertaken by the University prior to delivery of the specific recommendation by Pepper Hamilton. However, from the Board's perspective it is understandable and appropriate that Pepper Hamilton would have included it anyway. To whatever extent someone would try to argue Title IX obligations were not already an institutional priority prior to May of 2016, the Board's adoption of all 105 recommendations and vote to have the Administration implement them should settle that question. Title IX obligations are an institutional priority for Baylor.

Similarly, Section I.2 proposes “swift and certain action consistent with these recommendations.” In addition to the adoption of all 105 recommendations, the Board took personnel actions in May to assure leadership at all levels of the university is capable and committed to fulfilling the commitment of the university to integrate academic excellence and a Christian commitment in a caring community. These actions by the Board also accomplished the recommendation in Section I.4 that “necessary personnel action for accountability and effective implementation of Title IX” be considered.

Through the actions identified in the prior sections of this memorandum, Section I.6 of the Pepper Hamilton recommendations also appears to have been accomplished. However, as will many of the foregoing action steps, this also requires on-going attention which the Board is fully committed to providing.

Section I.8 recommends committing sufficient infrastructure and resources for effective Title IX implementation. While the determinations about how such resources are being deployed is left to the discretion of the Administration, the Board is fully committed to finding (where necessary) and allocating these resources. These commitments by the Board include the resources referenced in all of Section VII of the recommendations by Pepper Hamilton.

The recommendations of Section I.9 and I.10, as well as the recommendations in all of Section X, were in part addressed by personnel decisions that were made by the Board in May. In addition, the Board supported changes in policies such as the drug testing protocols for athletes, as suggested in Section X.11, as well as the aforementioned decision to dissolve the Athletics Committee of the Board to insure the football program and all of the inter-collegiate athletics programs are fully aligned with the university and its mission.

Section 1.12 suggests considering the important of forthright communication to the effective implementation of Title IX. Through its release of the “Findings of Fact” on May 26, 2016, the Board has been reliably advised that no university has done more in the way of fully, forthrightly and accurately communicating the university’s failures at all levels to respond to the mandates of Title IX in a timely manner.

#### **IV. Conclusion**

This memorandum should reflect the Board’s broad commitment to compliance – not only with regard to Title IX of the United States Education Code – but in every respect necessary to fulfill Baylor mission.

As mentioned several times in this memorandum, the Board understands many of the recommendations cannot be accomplished without on-going vigilance. The Board is committed to undertaking whatever efforts are necessary and welcomes (indeed, encourages) feedback from the Administration to insure the Board is fulfilling its responsibilities to the institution in every respect.

Cc: Dr. David E. Garland  
Christopher W. Holmes  
Ronald D. Murff  
Joel T. Allison