A special meeting of the Board of Trustees of the University of Vermont and State Agricultural College held a meeting on Wednesday, August 10, 2011 at 12:00 p.m. in Memorial Lounge, room 338 Waterman Building.

MEMBERS PRESENT: Chair Robert Cioffi, Secretary Donna Sweeney*, Samuel Bain*, Bill Botzow, Ian Boyce*, John Bramley, Carolyn Branagan, Christopher Bray*, Frank Cioffi, Jeff Davis*, Kyle DeVivo*, John Hilton, Jr.*, Joan Lenes, Debbie McAneny*, David Potter*, Kesha Ram, Brian Sozansky*, and Jeanette White*

MEMBERS ABSENT: Vice Chair Harry Chen, David Daigle, Dale Rocheleau, Bill Ruprecht, Governor Peter Shumlin and Mark Young

ALSO PARTICIPATING: Senior Associate General Counsel Lucy Singer, Vice President for Student and Campus Life Thomas Gustafson and Vice President for Executive Operations Gary Derr

* via conference phone

Chair Robert Cioffi called the meeting to order at 12:04 p.m.

He recognized that this meeting was the first for Interim President John Bramley as a Trustee and extended him a warm welcome.

Approval of Previous Minutes

A motion was made, seconded and it was voted to approve the minutes from the July 25, 2011 meeting as presented.

Executive Session

At 12:06 p.m., the Chair Cioffi entertained a motion to enter into executive session for the purpose of considering personnel matters. He stated action was anticipated following the session. All in attendance were excused from the meeting with the exception of Vice Presidents Derr and Gustafson, and Senior Associate General Counsel Lucy Singer.

At 12:38 p.m. the meeting was re-opened to the public.

Trustees Debbie McAneny and Sam Bain departed the meeting.

Other Business

Chair Cioffi presented the following resolutions for approval:
Resolution regarding Report on Reviews

BE IT RESOLVED, that the Board hereby issues its Report on Reviews (“Report”) as appended; and

BE IT FURTHER RESOLVED, that the Board hereby directs the initiation of the follow-up actions set forth in the Report, and

BE IT FINALLY RESOLVED, that the Board hereby establishes an ad hoc Committee charged with responsibility for the oversight of progress toward, and completion of, the directives set forth in the Report, and approves the appointment to this Committee of the following members: Bill Botzow, Chair; Mark Young, Vice Chair (ex officio as Chair of the Audit Committee); Frank Cioffi (ex officio as Chair of the Governance Committee); David Daigle; and Joan Lenes.

Resolution regarding Executive Compensation

BE IT RESOLVED, that the Board hereby designates the Annual Review Subcommittee of the Executive Committee as the body that will review on behalf of the Board existing University executive compensation policies, procedures, and/or guidelines, and recommend to the Board any proposed revisions, and/or additions, to existing policies, procedures, and/or guidelines; and

BE IT FINALLY RESOLVED, that the Annual Review Subcommittee report periodically on its progress to the Executive Committee, and that the Executive Committee issue a final report and recommendations to the Board for action no later than the February 2012 meeting of the Board.

A motion was made, seconded and it was unanimously voted to approve the resolutions as presented.

Chair Cioffi offered a statement regarding Report on Reviews and Executive Compensation as appended to these minutes.

Adjournment

There being no further business the meeting was adjourned at 12:50 p.m.

Respectfully submitted,

Donna Sweaney, Secretary
Overview

In May 2011, the Board of Trustees directed the administration to initiate a review process to examine the implications of information that had surfaced during the University’s production of public records. The Board deemed this review necessary to protect and reinforce the integrity of the institution by requiring that this situation be assessed and understood and that, in view of the findings, recommendations for appropriate policy and management approaches be developed. The review, which had three components, covered whether (1) the acceptance of a specified dissertation occurred in a manner consistent with the customary standards and procedures of the Graduate College; (2) travel and business-related expenditures for President Daniel Fogel, his wife (Rachel Kahn-Fogel), and others were properly incurred and documented in view of University requirements; and (3) personnel actions were taken with respect to University events planning and Development Office staff in a manner consistent with legal and policy requirements. The review processes and their outcomes are described below.

I. The Dissertation

Over the period May 16 - May 27, 2011, the University’s Office of the Provost conducted a review of the facts relating to the doctoral dissertation of Michael Schultz1. The purpose of the review was to ensure that institutional policies and procedures had been followed with respect to the Graduate College’s acceptance of his dissertation. In addition, the review looked at whether, in view of a personal relationship that had come to light between Mr. Schultz and Mrs. Kahn-Fogel, she had made any attempts to influence the outcome. In this regard, the title of the dissertation was *Elucidating the Role of the University CEO’s Spouse in Development, Alumni Relations, and Fundraising*.

The review examined the Graduate College file relating to Mr. Schultz, and also involved interviewing each member of the dissertation committee as well as the responsible administrators in the Graduate College. The review found that the academic records were in order and that the documents in the file were customary. In addition, all members of the dissertation committee stated to their interviewer that the dissertation process was rigorous, the dissertation proposal addressed a good question, the methodology was sound, the research was original, and the dissertation was of high quality and stood on its own merits. All of the interviewees said that they had no knowledge of any attempts by any third party to seek to influence the outcome of the dissertation process, nor were they cognizant of a personal relationship between Mr. Schultz and

1 At the time he submitted his dissertation, Mr. Schultz served as an Associate Vice President in the University Office of Development.
Mrs. Kahn-Fogel. The review also found that Mrs. Kahn-Fogel was not in fact a subject of the research, nor was she interviewed in the course of the research.

In sum, the review concluded that the acceptance of the dissertation conformed to applicable policies and procedures and that no third party had attempted to influence the outcome of the process.

**II. Travel and Business-Related Expenditures**

The University, through its Office of Audit Services (OAS), reviewed selected travel and business meal and amenity expenses for President Fogel, Mrs. Kahn-Fogel, Mr. Schultz, and Ms. Leslie Logan. The review sought to determine whether the expenses were reasonable and had a University business-related purpose. In conducting the review, OAS obtained program and accounting information for the period July 1, 2009, to May 31, 2011. This information included PeopleSoft-generated expense report line-item detail data, general ledger expense data, purchasing card level III data, Development Office contact and events data, and supporting documentation.

To determine the review population, OAS filtered the travel expense and general ledger data by individual name and Journal ID for President Fogel, Mr. Schultz, and Ms. Logan, the latter of whom accompanied the President and Mrs. Kahn-Fogel on several Development and UVM athletics-related trips. OAS also searched the expense data for key words. From these criteria, OAS identified expenses totaling $84,800, allocated as follows: President Fogel - $67,026; Mrs. Kahn-Fogel - $2,609, and Mr. Schultz - $15,165. OAS determined that certain expenses for Mrs. Kahn-Fogel were commingled with the expenses of UVM employees; for example, several meals charged to the President’s purchasing card also included the meal costs for Mrs. Kahn-Fogel and Ms. Logan. OAS also found occasions where Mr. Schultz or Ms. Logan purchased refreshments for groups of individuals that included Mrs. Kahn-Fogel. Because the data available did not allow for disaggregation of these combined charges, OAS included the total amount of the expense both in the UVM employee’s total and the total for Mrs. Kahn-Fogel.

OAS also reviewed all electronic expense data such as vendor name and dollar amount for reasonableness. OAS then obtained from management expense documentation totaling $53,312 or 63% of the total population, a significant sample, for more detailed review. OAS also filtered electronic Development and alumni events data and identified those activities attended by both Mr. Schultz and Mrs. Kahn-Fogel and compared the dates of the event to the purchasing history of Mr. Schultz for possible non-business purchases on those same dates.

In summary, OAS identified certain travel days that the traveler exceeded the University-established travel threshold for reasonableness ($55 per day) and recommended that management seek reimbursement for the costs:

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2 Over the period in question, Ms. Logan served as a University and presidential events planner.
President Fogel has fully reimbursed UVM in the amount of $151.00.

Other than the meal costs, the review did not identify any transactions for President Fogel, Mrs. Kahn-Fogel, Mr. Schultz or Ms. Logan that appear to be unreasonable or unrelated to a University business purpose. OAS has nonetheless identified opportunities for the University to strengthen its practices related to documenting, reviewing, and approving the reimbursement of employee expenses. OAS will generate more specific recommendations as requested.

### III. Personnel Actions

The Board of Trustees retained the law firm of Dinse, Knapp & McAndrew, P.C. (Dinse)\(^3\) to conduct a review examining whether President Fogel and/or his wife improperly influenced personnel matters and, if so, whether such conduct violated the law or internal UVM policy. The review took place between May 19, 2011 and July 8, 2011. Dinse examined documents such as UVM internal policies (e.g., Code of Business Conduct, Conflict of Interest and Conflict of Commitment, Equal Employment Opportunity/Affirmative Action Policy Statement, Sexual Harassment: Employees); UVM’s values statement, “Our Common Ground”; UVM’s Parameters for Compensation; UVM position descriptions; past and current UVM employee personnel files; compensation information for UVM employees; and voluminous records produced in response to numerous Public Records Act requests. Dinse also interviewed seventeen witnesses, some witnesses on more than one occasion. Interviewees included current and former administrators and employees of the University who work(ed) in either the Development Office or the Office of the President, the current Chair of the Board, the two immediately preceding Chairs of the Board, and President Fogel.

After reviewing all of the information gathered, Dinse’s principal finding was that a lack of clarity as to the role of the President’s spouse in University events planning and Development activities, sustained throughout the Fogel presidency, caused confusion as to the scope of Mrs. Kahn-Fogel’s authority and discretion. Dinse’s assessment did not include an independent review of performance indicators or make any determination with regard to specific employees’ skills and abilities. However, Dinse found that as a result of the ambiguity surrounding Mrs. Kahn-Fogel’s role, a number of personnel actions related to the staffing of the President and his wife were made based upon the personal preferences of the Kahn-Fogels, such as comfort level with specific individuals, and not upon an objective assessment of the employees’ skills and demonstrated abilities. Employees favored by the Kahn-Fogels were perceived by others to be protected and advanced by them. This environment negatively affected morale in the Development Office and created ongoing distractions from the pursuit of the fundraising objectives of the University.

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\(^3\) The attorneys engaged in this work were Karen McAndrew, Amy McLaughlin, and David Gurtman.
In the course of its review, Dinse also considered the impact and import, if any, of Mrs. Kahn-Fogel’s numerous personal communications to Mr. Schultz, activity in which she engaged for several years. While Dinse found no evidence of a hostile work environment affecting Mr. Schultz as that term is defined under Vermont and federal anti-discrimination laws, it did find that Mrs. Kahn-Fogel’s conduct was clearly inappropriate and imprudent. Dinse uncovered no evidence that Mr. Schultz personally engaged in personnel decisions that violated University policy or law in the discharge of his responsibilities as Associate Vice President.

Based upon the foregoing, the Board concludes that the Dinse review did not yield findings that demonstrated that violations of the law or University policy occurred. The findings nonetheless show that the climate created by the actions and perceptions described above ran counter to the University’s stated guidelines and values. Specifically, Dinse cited the statement of “Parameters for Compensation at UVM”, which provides that compensation should be determined after consideration of four factors, two of which are performance and market competitiveness; secondly, Dinse cited Our Common Ground, a statement of community values. To be effective and meaningful, these values must be modeled throughout the institution, especially by University leadership, beginning and ending with the Board and the President.

In view of its findings, Dinse offered several practical recommendations for the Board’s consideration:

- When conducting a Presidential search, the University’s due diligence should be expanded to include the candidate’s spouse or partner if the spouse or partner may be directly or indirectly involved in University events planning or Development work, or other University activities.

- In addition, with a Presidential hire, the University should discuss with the spouse or partner the extent to which he or she wishes to be involved in University affairs, and develop clear parameters for defining the role of that individual. The University should also consider creating a formal job description for the Presidential spouse or partner reflecting the desired or expected level of involvement. Finally, the University should identify any functions that cannot be assigned to a Presidential spouse or partner.

- If the Presidential spouse or partner will in fact play a role in University events and activities, an appropriate mechanism should be put in place for oversight and periodic formal review of his or her involvement. In addition, if staff will be assigned to the spouse or partner, the University should clearly delineate a reporting structure for such staff.

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4 The other factors are equity and recognition of the role of collective bargaining for unionized employees. http://www.uvm.edu/hrs/?Page=unibac/parameters.html
5 http://www.uvm.edu/president/formerpresidentfogel/?Page=antiviolence_initiative.html
The University should seize the opportunity to articulate expectations about workplace environment best practices.

Finally, issues of concern should be openly confronted and addressed promptly at an appropriate level of the University, real solutions should be promptly explored, and the situation monitored to ensure that any recommended solution is effectively implemented.

Conclusions and Next Steps

The Board concludes that the reviews provide a sound basis for its core finding that neither the law nor University policy was violated during the course of the events examined. The Board further concludes, however, that the University should be engaged in best practices in all domains of its operations and activities. In this matter, effective management and oversight were lacking, for which the President, and in turn the Board of Trustees, must accept final responsibility. In this regard, although many of the issues and climate concerns related to events planning and Development were known by certain administrators and trustees at the time that they occurred, as a result of this review the magnitude of the situation is for the first time apparent. The Board therefore must enhance its capabilities in terms of continuity of knowledge as its leadership and membership changes over time.

Consequently, the Board directs as follows:

- The Board shall develop and adopt a policy regarding volunteer or other services to be provided by a presidential spouse or partner who may be involved with University programs, activities or operations. These parameters should be reviewed by the Board Chair with the spouse or partner as part of an orientation. The Dinse suggestions furnish a good foundation from which to begin the policy development process.

- The Office of Audit Services shall generate, for review and action by the Audit Committee, recommendations regarding steps that the University might take to strengthen its practices related to documenting, reviewing, and approving the reimbursement of employee and volunteer expenses.

- The administration, led by Interim President Bramley and Provost Jane Knodell, shall draft for the Board’s consideration a UVM-community-vetted policy statement regarding workplace climate that incorporates and reinforces new and/or existing requirements and standards. The campus Anti-Violence Initiative\(^6\), approved by President Fogel some years ago, and the Code of Business Conduct\(^7\), approved in its most recent version by the President and the Board on October 30, 2010, offer useful models for this work. The policy should require that its content be acknowledged and understood by all employees and volunteers, and that administrators be required to report violations. In addition, appropri-

\(^6\) [http://www.uvm.edu/president/formerpresidentfogel/?Page=antiviolence_initiative.html](http://www.uvm.edu/president/formerpresidentfogel/?Page=antiviolence_initiative.html)

\(^7\) [http://www.uvm.edu/policies/general_html/businessconduct.pdf](http://www.uvm.edu/policies/general_html/businessconduct.pdf)
ate mechanisms should be in place to allow individuals to make such reports without fear of retaliation, even if the situation involves a senior University official.

It is essential that this work be completed promptly. Accordingly, the Board Chair will appoint a Board ad hoc committee to work with those charged with responsibility for undertaking the tasks outlined above and to monitor progress. The Board will expect a progress report at its October, 2011 meeting, and all of this work should be completed before December 1, 2011.

The Board is dedicated to encouraging and expecting an environment defined by strong ethical values, responsible behavior, and genuine accountability that applies to all levels of the institution, most certainly including the President and the Board itself. Human error and fallibility will always be with us. However, in an educational community, it is important that we learn from our mistakes and take appropriate corrective action to avoid them in the future, for the benefit of the entire University.

In closing, the Board extends its gratitude to the many individuals who contributed to the completion of these reviews, as well as to those who will work to strengthen our policies and practices. We have learned a great deal that will help to improve this exceptional institution.

Issued by the Board of Trustees, August 10, 2011
Robert F. Cioffi Statement RE: Report on Reviews and Executive Compensation
August 10, 2011

In May 2011, the Board of Trustees directed that a review process be conducted to examine the implications of information that had surfaced during the University’s production of public records with respect to the behavior of certain individuals. The Board deemed this review necessary to protect and reinforce the integrity of the institution by requiring that this situation be assessed and understood, and that recommendations for appropriate policy and management approaches be developed. Today, we are releasing the results of that Review.

The Review covered three primary components:

1) Whether the acceptance of a doctoral dissertation authored by Associate Vice President for Development Michael Schultz occurred in a manner consistent with the customary standards and procedures of the Graduate College;

2) Whether travel and business-related expenditures for President Daniel Fogel, his wife Rachel Kahn-Fogel, and others were properly incurred and documented in view of University requirements; and

3) Whether personnel actions were taken with respect to University events planning and Development Office staff in a manner consistent with legal and policy requirements.

The review processes and their outcomes are described in more detail in the six-page document we are distributing, but let me take a moment to describe the findings, recommendations, and next steps.

1) The Dissertation. As was reported some weeks ago, the review of the Schultz dissertation was conducted by the Office of the Provost at UVM. The review found that all paperwork and processes for evaluation of the dissertation were in proper order, the research and dissertation were properly conducted and prepared, and that there was no attempt by anyone to influence the process.

2) Travel and Business-Related Expenditures. The University Office of Audit Services reviewed travel and business meal and amenity expenses for President Fogel, Rachel Kahn-Fogel, Michael Schultz, and Leslie Logan, who served as an events planner and Chief of Protocol. This review did not identify any transactions that were unrelated to a University business purpose. However, it did identify ten instances in which meal charges exceeded the University’s per day meal threshold of $55. The amount of money involved totaled $151, and has been reimbursed to the University.

3) Personnel actions. The law firm of Dinse, Knapp, & McAndrew, P.C., conducted this review. A wide range of documents and policies were reviewed, and extensive interviews were conducted with seventeen witnesses who had served in key roles in the Development Office, the Office of the President, and the Board of Trustees. The principal findings of this review are:

   - That violations of the law or University policy did not occur. However:
   - There was a lack of clarity as to the role of the President’s spouse in events planning
and Development activities, causing confusion as to the scope and authority of Mrs. Kahn-Fogel.

- Presidential staffing and personnel decisions were at times based on personal preferences rather than objective performance assessment.
- An environment negatively affecting morale was created and allowed to continue.

All of this ran counter to the University’s stated guidelines and values, specifically our statement of “Parameters for Compensation at UVM,” and “Our Common Ground,” a statement of community values. To be effective and meaningful, these guidelines and values must be followed and exemplified across the University, especially by the institution’s leadership. And we fell short of that goal. In this matter, effective management and oversight were lacking, for which the President, and in turn the Board of Trustees, must and do accept responsibility. The buck stops with us.

There are several recommendations that are included in the Review document. To be responsive to those recommendations and ensure that they are addressed, the Board directs the following:

- The Board shall develop and adopt a policy regarding volunteer or other services to be provided by a presidential spouse or partner who may be involved with University programs, activities or operations. These parameters should be reviewed by the Board Chair with the spouse or partner as part of an orientation.

- The Office of Audit Services shall generate, for review and action by the Audit Committee, recommendations regarding steps that the University might take to strengthen its practices related to documenting, reviewing, and approving the reimbursement of employee and volunteer expenses.

- The administration shall draft for the Board’s consideration a UVM-community-vetted policy statement regarding workplace climate that incorporates and reinforces new and/or existing requirements and standards. The policy should require that its content be acknowledged and understood by all employees and volunteers, and that administrators be required to report violations. In addition, appropriate mechanisms should be in place to allow individuals to make such reports without fear of retaliation, even if the situation involves a senior University official.

With respect to this matter, I want to express both my regret that this situation was allowed to continue for as long as it did, and my confidence that we will effectively address these types of issues going forward. Human error and fallibility will always be with us. In an educational community, it is important that we learn from our mistakes and take appropriate corrective action to avoid them in the future, for the benefit of the entire University community.

The Board also passed a resolution unrelated to this Review, regarding the issue of executive compensation. This resolution designates the existing Annual Review Subcommittee of the Board’s Executive Committee with the task of reviewing executive compensation policies, procedures, and/or guidelines, and recommend to the Board any revisions that may be warranted. And this applies to both
Presidential compensation and to other high level administrative positions as well. As part of this process, the Annual Review Subcommittee will be seeking perspectives from the leaders of our governance bodies as this work moves forward.

This is important work, as the Board needs to have an ongoing handle on national trends, market forces, and internal policies that are carefully and deliberately developed and implemented. But make no mistake: The inescapable fact is that we must be competitive at all levels of the institution to be able to recruit talented faculty, staff, and administrators to UVM.

Now, I recognize that Presidential compensation has been on people’s minds lately in light of Dan Fogel’s resignation and severance arrangements. Certainly I have heard a significant amount of anger, frustration, and second-guessing around this situation, and I completely understand the reasons for those views. I recognize that it’s a lot of money, but in the national marketplace for university presidents it is not at all out of line. The Board made a very careful, deliberative business decision in the best interests of the University, which is our fiduciary responsibility. We had contractual obligations to honor, including taking into account that our agreement in March called for Dan to be paid through June, 2013. Even so, our revised agreement reduced that obligation by six months, and is still modest in terms of Presidential severance agreements nationally.

In the end, weighing all of the factors we had before us, we made a decision that accommodated changing circumstances, considered an exceptional set of achievements, and addressed the unusual personal circumstances we all know about. I recognize and accept that this outcome has been controversial, but the Board made a rational business decision with strong and widespread support of its members.

I apologize for such a long statement. I will first take questions from the Board, and after we adjourn I will be happy to take questions from the media or others who are here.