

THE UNIVERSITY OF TENNESSEE
BOARD OF TRUSTEES

MINUTES OF THE AUDIT AND COMPLIANCE COMMITTEE

June 5, 2018
Knoxville, Tennessee

The Audit and Compliance Committee of the University of Tennessee Board of Trustees met at 12:00 p.m. EDT on June 5, 2018, in 832 Andy Holt Tower on the University of Tennessee campus in Knoxville, Tennessee.

I. CALL TO ORDER

Mr. D. Crawford Gallimore, Chair, called the meeting to order.

II. ROLL CALL

The Secretary, Catherine S. Mizell, called the roll, and the following members of the Committee were present at the meeting location in Knoxville or by telephone:

Mr. D. Crawford Gallimore
Mr. Raja Jubran
Mr. Brad Lampley
Ms. Sharon Pryse
Mr. Tommy Whittaker

Chief Financial Officer David Miller and Trustee Terry Cooper were present by telephone. Members of the administrative staff, two members of the UT Knoxville Faculty Senate, a UT Knoxville student, and representatives of the media were present in Knoxville.

Secretary Mizell announced the presence of a quorum and reminded the committee of requirements of the Open Meetings Act applicable to meetings conducted with members participating electronically, including the requirement of a roll-call vote on all action items. All members indicated that no one else was present at their locations.

III. APPROVAL OF MINUTES FROM LAST MEETING

Chair Gallimore asked for any corrections to the March 22, 2018, minutes. Hearing none, Trustee Lampley moved approval of the minutes as presented and Trustee Pryse seconded. There was a roll-call vote and the motion carried.

IV. RECOMMENDATION ON SETTLEMENT OF CLAIM/POTENTIAL LITIGATION - BEVERLY DAVENPORT

Mr. Matthew Scoggins, General Counsel, presented the Recommendation on Settlement (Exhibit 1).

The President, who is not able to join us today because he is out of the country, requests your approval of a Separation Agreement with Dr. Beverly Davenport.

On December 15, 2016, upon the recommendation of the President, the Board of Trustees appointed Dr. Davenport to be Chancellor of UTK, effective February 15, 2017, in accordance with the terms of an offer letter dated December 6, 2016. Pursuant to the terms of the Appointment Letter, her appointment as Chancellor was without tenure and without a definite term. Also in accordance with the Appointment Letter, the President recommended that Dr. Davenport receive tenure as a full professor. The Board of Trustees awarded her tenure as a full-time faculty member in the School of Communication Studies within the College of Communication and Information.

By letter dated May 2, 2018, the President terminated Dr. Davenport's appointment as Chancellor for performance reasons, effective June 30, 2018, and placed her on administrative leave until that date. Effective July 1, and in accordance with the Appointment Letter, Dr. Davenport will become a tenured faculty member in the School of Communication Studies. Pursuant to the Appointment letter, she will receive an annual salary of \$438,750, which is 75% of her initial base salary as Chancellor of \$585,000, for four years. When benefits are included in the calculation, Dr. Davenport will receive \$486,838 per year for the next four years. After that time, her salary will be adjusted to the average base salary of full professors in her department, which is currently \$164,632 including benefits.

The President has decided that an amicable resolution of a claim by/potential litigation with Dr. Davenport is in the University's best

financial and other interests. Included in your materials is a Separation Agreement that contains terms and conditions for terminating the employment relationship and the Appointment Letter. Dr. Davenport, the President, and the Chief Financial Officer have executed the Separation Agreement. The Separation Agreement is being presented to this committee for approval in accordance with Board of Trustees Policy BT0012, Policy on Settlement of Claims and Litigation. The Separation Agreement states that it is not final and binding unless it is approved in accordance with the policy.

The terms of the Separation Agreement include the following:

Dr. Davenport's employment will end today, and today she irrevocably resigns her tenured appointment with the University, and the Appointment Letter terminates for all purposes. Dr. Davenport will receive a total of \$1.33 million, which is a compromised amount that was arrived at by considering a number of factors, including the University's obligation to pay Dr. Davenport salary and benefits at her rate of pay as Chancellor through June 30, 2018, while she is on administrative leave; the University's obligation to pay Dr. Davenport salary and benefits over the next four years in the amount of \$1,947,352.00 for work in her tenured faculty appointment; the University's obligation to pay Dr. Davenport annual salary and benefits beginning with the fifth year and for an indefinite period thereafter in the amount of the average base salary of full professors in the School of Communication Studies within the College of Communication and Information, which currently would amount to \$164,632 in salary plus benefits, for work in her tenured faculty appointment; the University's obligation under University policy to pay Dr. Davenport for accrued and unused annual leave at the time of the termination of her employment; and the parties' mutual interest in avoiding the expenses and costs of litigation.

The Separation Payment will be paid as follows:

\$548,500.00 less all required state and federal tax withholdings to Dr. Davenport no later than five business days following today; \$181,500.00 to Dr. Davenport's attorneys no later than five business days following today; and \$600,000.00 less tax withholdings to Dr. Davenport no later than January 15, 2019. No taxpayer dollars, no student tuition or fees, and no donor funds will be used to fund the Separation Payment. The funds for the Separation Payment will come from interest income and licensing revenue.

Dr. Davenport and the University will release claims against each other, as described in Paragraphs 7-12 of the Separation Agreement. Nothing in the Separation Agreement constitutes an admission of liability or wrongdoing by Dr. Davenport or the University. Dr. Davenport will not seek reemployment with the University or the State of Tennessee.

The Separation Agreement contains a non-disparagement provision that will apply Dr. Davenport and another non-disparagement provision that will apply to the President, the President's Administrative Council, all Chancellors, UTK Vice Chancellors, UTK Deans, University trustees, and UT System and UTK media relations employees.

Finally, I think it is important to point out that this action item falls within two areas in which this Board of Trustees has increased its oversight and control over the past two years. First, as previously stated, the policy is being presented to the Audit Committee pursuant to the Board's Policy on Settlement of Claims and Litigation, which was adopted at the Fall 2016 Meeting. Second, the next Chancellor appointed by the Board who returns to a faculty position will have their faculty salary established at the end of their appointment as opposed to the beginning of their appointment - in accordance with the Board's Policy on Setting Faculty Salaries upon Conclusion of Administrative Appointments, which was adopted in December 2017 and amended at the Winter 2018 meeting.

Under the new policy, when a Chancellor's administrative appointment concludes, the administrative salary will be relinquished, and the Board will establish the person's faculty salary within a range that is not more than 125% of the highest salary of all full-time faculty in the department who share the same discipline and academic rank and not less than the average salary of all full-time faculty in the department who share the same discipline and academic rank.

The new policy establishes criteria that will be used in setting the salary within the prescribed range. For example, criteria include: first, length and quality of administrative service at the University; second, the person's particular experience, expertise, achievements, and standing in the discipline; and third, expected or assigned contributions to the department.

If Dr. Davenport had been appointed as Chancellor under the new policy, then her faculty salary effective July 1 would be scheduled to be somewhere

between \$133,416 and \$198,422, as determined by the Board, rather than \$438,750.

Chair Gallimore called attention to the Resolution in the materials, read the Resolution, and then called for a motion to approve the following Resolution:

RESOLVED: The Audit and Compliance Committee of the Board of Trustees, acting pursuant to authority granted by Board of Trustees Policy BT0012 (Policy on Settlement of Claims and Litigation), approves the recommended resolution of the claim by/potential litigation with Beverly Davenport in the amount of one million three hundred thirty thousand dollars (\$1,330,000) and the Separation Agreement between the University and Dr. Davenport.

The motion was made by Vice Chair Jubran and seconded by Trustee Pryse. Chair Gallimore then called for discussion. Trustee Pryse commented that she had been hopeful that the hiring of our first female Chancellor would be successful and was very sorry it was not a successful outcome. She commended the administrative staff for all their hard work in negotiating the separation agreement.

There being no further discussion, Chair Gallimore called for the required roll-call vote, and the motion carried unanimously.


V. OTHER BUSINESS

There was no other business brought to the Committee Chair's attention before the meeting.

VI. ADJOURNMENT

There being no further business to come before the Audit and Compliance Committee, Chair Gallimore adjourned the meeting.

Respectfully Submitted,


Sandy S. Jansen
Chief Audit and Compliance Officer
Office of Audit and Compliance