

WEDNESDAY, AUGUST 16, 2023
LEGAL, AUDIT, RISK AND COMPLIANCE COMMITTEE MEETING

Elizabeth P. Kessler, chair
Michael Kiggin, vice chair
Alan A. Stockmeister
Jeff M.S. Kaplan
Elizabeth A. Harsh
Juan Jose Perez
Joshua H.B. Kerner
Amy Chronis
Hiroyuki Fujita (*ex officio*)

Location: Vitria on the Square - University Square North (USN)
14 East 15th Avenue Columbus, OH 43201

Time: 12:00-2:00pm

Public Session

ITEMS FOR DISCUSSION

1. *Annual Compliance Report – Mr. Gates Garrity-Rokous* 12:00-12:10pm
2. *Annual Government Affairs Update – Ms. Stacy Rastauskas, Ms. Trudy Bartley,
Mr. Michael Rodgers, Mr. Stan Skocki* 12:10-12:30pm
3. *External Auditor Update –Mr. David Gagnon* 12:30-12:40pm

ITEMS FOR ACTION

4. *Approval of May 2023 Committee Meeting Minutes – Ms. Elizabeth Kessler* 12:40-12:45pm

Executive Session

12:45-2:00pm



Annual Compliance Report

Gates Garrity-Rokous





Overview

- ✓ Risk Trends
- ✓ Focus Area: Concern Reporting

Risk Trends: Higher Education

Key Risk Drivers – FY2023-24

- Regulatory Expectations and Enforcement
- Academic Excellence and Research Innovation
- OSU Wexner Medical Center
- Athletics Transformation
- Economic and Political Environment

Regulatory Expectations & Enforcement

Risk Drivers



KNOWN RISKS

- Continued new legislation and regulations
- Malign influence and grant repayment



EMERGING RISKS

- Affirmative Action and free speech
- Employment concerns



FY2024 COMPLIANCE FOCUS

- Continue improvements in issue response processes
- Reinforce leadership expectations
- Continue to align controls and processes

Academic Excellence & Research Innovation

Risk Drivers



KNOWN RISKS

- Competitive pressures and key opportunities requiring increase in speed of decision-making
- New secure research regulations



EMERGING RISKS

- AI technologies across all operations
- Cybersecurity 3rd party risks



FY2024 COMPLIANCE FOCUS

- Reinforce focus on cybersecurity
- Focus on regulatory tollgates (key decision points)
- Continue to align controls and processes to obtain efficiencies and facilitate compliance

OSU Wexner Medical Center

Risk Drivers



KNOWN RISKS

- Post-pandemic increase in enforcement
- HIPAA privacy and challenges to data sharing for research purposes



EMERGING RISKS

- Impact of China de-risking on sourcing
- Cybersecurity 3rd party risks



FY2024 COMPLIANCE FOCUS

- Maintain focus on tailored risk programs and compliance auditing
- Combine privacy and compliance investigations and auditing resources
- Continue alignment of WMC and campus information security efforts

Athletics Transformation

Risk Drivers



KNOWN RISKS

- Fundamental change in business model
- 2022 NCAA Major Case requiring continued monitoring and reporting



EMERGING RISKS

- Diverse NIL recruiting strategies
- Efforts to obtain employee status or “revenue sharing” for student-athletes
- Title IX implications of any organizational changes



FY2024 COMPLIANCE FOCUS

- Continue rapid response to evaluate new NIL opportunities
- Maintain focus on Major Case requirements

Economic and Political Environment

Risk Drivers



KNOWN RISKS

- Efficiency priorities and competitive employment pressures
- Need for continued simplification of operations
- Increase in student concerns of physical security



EMERGING RISKS

- Impact of 2024 election season

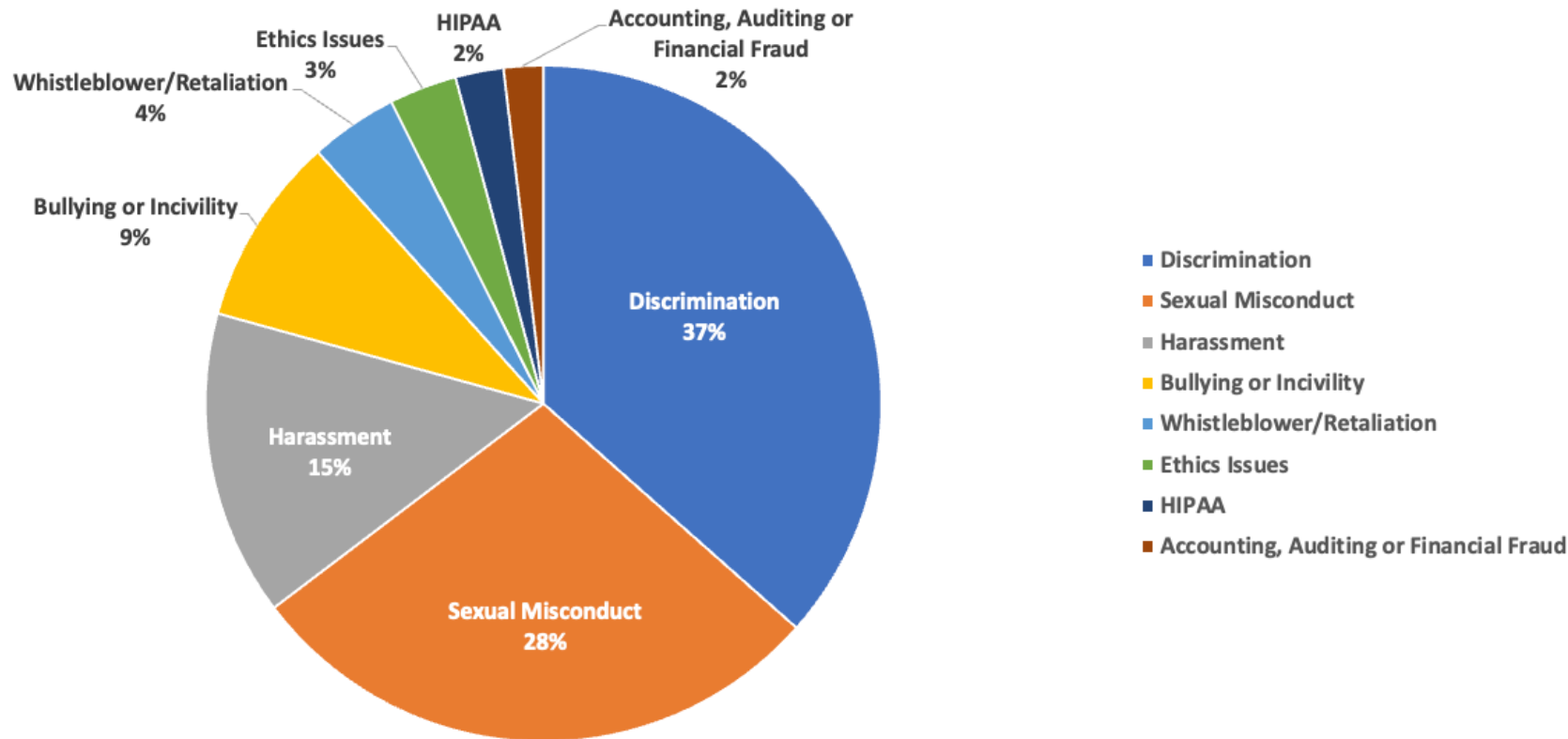


FY2024 COMPLIANCE FOCUS

- Assist OHR in improving compliance auditing
- Continue focus on Clery Act compliance
- Continue focus on concern reporting processes

Focus Area: Concern Reporting

Top Hotline Reported Issues - FY2023



Volume (FY22 to FY23)

- 32% increase in employee matters (2,151 from 1,628)

Type (FY22 to FY23)

- Discrimination, harassment, and sexual misconduct complaints increasing
- HIPAA and bullying/incivility concerns declining
- Proportion of anonymous complaints still declining



Office of Government Affairs Annual Update

Stacy Rastauskas, Vice President for Government Affairs



Legal, Audit, Risk, and Compliance Committee
Public Session
August 2023

About Government Affairs

- Federal, state, local and community, advocacy
- 20 team members focused on advancing university and medical center priorities
- Annual government investment into the university is \$1.53 billion
- Worked on 57 of individual policy issues since January 2023
- Build and steward relationships between public and university officials





2022-2023 Highlights

- Engagement with key officials
- Advocating for investment
- Responding to policy changes affecting university

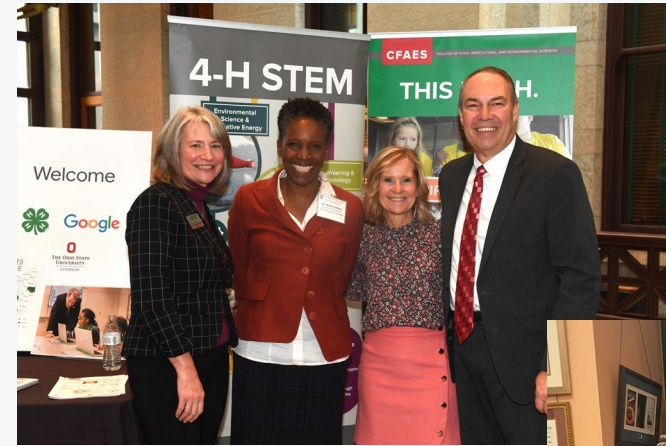
Federal

- Federal Appropriations
 - FY23 – Signed into law on 12/29/2022
 - FY24 – In process
- Policy
 - Chips and Science Act
 - Name, Image, and Likeness (NIL)
 - Farm Bill
- Engagement
 - Legislative meetings and campus visits
 - Scarlet and Gray Congressional Breakfast and Scholarship Fundraiser, Buckeyes on the Hill



State

- State Operating Budget
 - Funding increases
 - Policy issues
- Legislation
 - Senate Bill 83
 - Senate Bill 117
- Engagement
 - Alumni in Government Luncheon
 - Legislative meetings and campus tours
 - Ohio State Fair



Local

- Carmenton
 - Streamlining infrastructure and construction process
- Partnership Achieving Community Transformation (PACT)
 - New Executive Director Sheldon Johnson
- Engagement with Local Stakeholders
 - November Columbus City Council elections
 - Wexner Medical Center East Side community engagement



Columbus STEAMM Rising



W. Randy Smith

Vice Provost for Academic Programs
The Ohio State University



Dr. Angela Chapman

Superintendent and CEO
Columbus City Schools



Megan Noble

Executive Director, Strategic Priorities
Columbus City Schools

Columbus STEAMM Rising - Background

- Columbus STEAMM (Science, Technology, Engineering, Art, Mathematics, and Medicine) Rising was created in response to Columbus Mayor Ginther's question: *"How can Columbus City students see themselves in STEM positions in Carmenton?"*
- STEAMM Rising was developed as a partnership between the City of Columbus, Columbus City Schools, Columbus State Community College, and Ohio State to offer a design-thinking institute for K-12 teachers to:
 - Show them the wide array of options in STEAMM education
 - Connect them with post-secondary colleagues
 - Help them begin to think about how the work fits into their own classrooms
 - Tell their students about the wide array of career options available in STEAMM

Columbus STEAMM Rising – Implementation

- Planning began in Autumn 2021, led by the Office of Academic Affairs, and leadership in Columbus City Schools and Columbus State Community College. A commitment was made to hold 5 consecutive annual institutes through 2026.
- The first Institute was held in June 2022 at Ohio State, during which dozens of teachers from Columbus City Schools visited classrooms and labs across the Columbus campus.
- The second Institute, held in June 2023, in partnership with JPMorgan Chase hosted more than 100 Columbus City Schools educators.

Questions?

Thank you for your time!



The Ohio State University



**Meeting with the
Legal, Audit, Risk and Compliance Committee
of the Board of Trustees**

August 16, 2023

Agenda

Status of fiscal 2023 audits (verbal update)

Industry Update

Higher education sector fundraising in fiscal 2022

2022 NACUBO-TIAA Study of Endowments

Cryptocurrency in higher education

ESG considerations – rating agencies



**Higher education
sector
fundraising
in fiscal 2022**

Higher education sector fundraising in fiscal 2022

In February 2023, the Council for Advancement and Support of Education (CASE) published its annual *Voluntary Support of Education (United States)* survey. The survey gathered responses from 826 U.S. institutions, representing about 25% of the colleges and universities in the U.S. and 70% of funds raised. The survey covered various types of private and public colleges and universities and gleaned data about their philanthropic support in the 2021-2022 academic year. Following are highlighted data and our key takeaways from the survey.

Estimated voluntary support of higher education by source¹

(Dollars in millions)

| Donor type | 2022 amount | % of 2022 total | % increase 2021 to 2022 |
|----------------------------|-----------------|-----------------|-------------------------|
| Organizations ² | \$36,500 | 61.3% | 14.6% |
| Alumni | 13,500 | 22.7 | 10.2 |
| Non-alumni individuals | 9,500 | 16.0 | 8.0 |
| Total | \$59,500 | 100.0% | 12.5% |
| Current operations | \$34,250 | 57.6% | 6.0% |
| Capital purposes | 25,250 | 42.4% | 22.6 |

¹ Source: CASE *Voluntary Support of Education (United States)*, 2022 survey.

² Category includes foundations, donor-advised funds (DAFs), corporations, and other organizations.

Higher education sector fundraising in fiscal 2022 (continued)



Key takeaways from the survey

- ▶ Following \$52.9 billion of sector giving in fiscal 2021, the booming stock market through the end of calendar 2021 supported a 12.5% increase in giving in fiscal 2022, resulting in a record-high \$59.5 billion of sector fundraising. By the end of the fiscal year, stock market declines may have limited total fundraising (especially major gifts, as discussed below). Still, gifts from all sources – alumni, non-alumni, and organizations – increased. Organizations, which include DAFs, foundations, corporations, and other organizations, was the single largest category of giving, comprising 61.3% of the total.
- ▶ There were seven gifts in 2022 (versus nine in 2021) of \$100 million or more, totaling \$1.08 billion and 1.8% of total gifts. This group of major donors included four foundations, two DAFs, and one living individual.
- ▶ Giving increases were concentrated in restricted endowment gifts, followed by restricted gifts for current operations. Once again, financial aid was the most common restricted endowment purpose (40.1% of all such gifts), and research was the most common restricted purpose for current operations (29.9% of all such gifts).
- ▶ For the 781 institutions who responded to the survey in both 2022 and 2021, support increased 11%. Of this group, approximately two-thirds saw giving totals increase, on average by 25.7%. The remaining one-third reported that giving declined, on average by 20.6%.

Higher education sector fundraising in fiscal 2022 (continued)



Key takeaways from the survey

- ▶ Once again, respondent private and public research/doctoral institutions generated a disproportionate share of total giving, comprising 73% of sector funds raised (versus 71% in 2020) and growing 12.1% over 2021. Mirroring this result was the group of 20 institutions – most of whom are research/doctoral institutions – who raised the most in 2022 and comprised 26.4% of all giving. Additionally, although as categories they comprise much smaller shares of total giving, respondent private and public baccalaureate institutions realized the largest overall percentage increase in giving (12.3%), whereas associate’s institutions was the only category to realize a decline (15.4%).
- ▶ Several institutions responded to a new question in the 2022 survey aimed at better understanding gift distribution by size and number of gifts. The average respondent among a total of 217 reported receiving 13,165 gifts totaling \$81.76 million. In terms of the sheer number of gift transactions reported, 42.1% were below \$100, and the vast majority were below \$1 million. As to dollars raised, the single largest distribution category—comprising 23.6% of the total dollars—was gifts from \$1 million to just below \$5 million. Gifts of \$25 million or more constituted 13.8% of total dollars raised but less than 1% of total transactions reported.
- ▶ In 2022, the survey asked about giving from alumni by graduation cohort, with two hundred institutions responding. The data show that participation and dollars raised grow as alumni age. Participation and dollars raised for alumni out 10 years or less was 11.7% and 1.5%, respectively. The vast majority of participation and dollars raised are from alumni out 31 years or more, with the out 50+ years cohort having the highest participation (14.6%) and the most dollars raised (37.8%).

2022 NACUBO- TIAA Study of Endowments

2022 NACUBO-TIAA Study of Endowments



Respondent data

A total of 678 institutions—aggregating \$807 billion of total endowment value—took part in the Study, which covered the fiscal year ended June 30, 2022. Endowment wealth remained sharply concentrated, with endowments over \$1 billion comprising 84% of total endowment value (unchanged from 2021). Average endowment size was \$1.2 billion, with the median endowment size \$203.4 million.



Fundraising

New endowment gifts in 2022 rose 22% over 2021, likely reflecting surging equity markets through the end of calendar 2021 (the first half of fiscal 2022). Responding to a question added last year, nearly two-thirds of survey respondents reported at least some giving directed toward diversity, equity, and inclusion (DEI) initiatives.



Returns

In a staggering reversal, annualized average returns were -8.0% in 2022 versus 30.6% in 2021. Once again, larger endowment size and private market allocations correlated with better performance. The best-performing cohort—with an average return of -4.5%—was endowments over \$1 billion. The average market value decline for the three smallest cohorts was 9.6%, reflecting higher public market allocations. Post-pandemic increases in fuel and commodities prices exacerbated by the Ukraine/Russia conflict helped make private energy and infrastructure the strongest performing assets for endowments in 2022. Private equity, venture capital, and private real assets also posted strong returns, allowing the largest endowments to mitigate overall negative returns.



Spending

Overall endowment spending in 2022 increased to \$25.85 billion, even though effective spending rates were down (4.17% in 2022 versus 4.79% in 2021) due to higher market value averaging in endowment spending formulas. The median percentage of operating budget funding from endowments was 5.3%.



ESG considerations

More endowments said they have added environmental, social, and governance (ESG) factors to their portfolios. Over 86% of endowments responding to the Study's question on investment policies include a commitment to ESG in their policies. In addition, 18% of endowments include responsible investing (RI) criteria in a wide range of asset classes, and 24% plan to add or expand RI approaches to portfolios or policies given the increased focus on DEI.

Cryptocurrency in higher education

What is cryptocurrency?



Cryptocurrency (crypto) is a digital asset (i.e., property) designed to work as a medium of exchange

- Mined (i.e., formed), encrypted, and stored in secured blockchains
 - Tracking and transacting uses blockchain technologies
- Not really a security or a fiat currency
- No central authority that manages or maintains value
- Can be used as a means of payment or investment



Blockchain is a digital ledger that keeps record of transactions in code

- Each transaction is a “block,” and the ledger is a “chain” which links the blocks together
- Does not sit on one server (decentralized tracking and validation) – no single party controls the data
- Once data is written, it cannot be deleted
- Uses technology which prevents unauthorized changes to the blockchain record through the use of a digital key

Common cryptocurrencies



Bitcoin



Ethereum



Ripple



Litecoin



Stellar



IOTA



Dash



Bitcoin



Bitcoin

...and thousands more. Anyone can create their own form of cryptocurrency with a modified blockchain code.

Risks and challenges



Risk of loss

- When holding crypto, it can be highly speculative and volatile. Recent market turmoil has resulted in value declines and bankruptcies of crypto firms.
- Losses may be direct, or indirect (e.g., crypto allocations in funds)
- Loss of keys or other access points



Reputational risks

- Blockchain does not disclose donor identity
- Crypto issues in endowment or operating assets
- Environmental concerns around crypto mining
- Exposure to fraud or bankruptcy from crypto firms or other third-parties



Other challenges

- Policies and procedures over transacting, custody, valuation, and accounting. FASB plans to extend fair value accounting currently used by NFPs to all entities.
- Use of third-party advisors and brokers and related due diligence
- Tax and other regulatory compliance

Questions to ask

Because crypto is still speculative and volatile, engaging in transactions or holdings requires a thorough understanding of the risks, as well as the entity's crypto posture. Colleges and universities, with appropriate oversight of the board, should establish clear policies and procedures before accepting crypto or investing in these digital assets.

- Have we engaged an **outside advisor** to better understand crypto risks and opportunities?
- What **approvals** should occur prior to accepting a donation in crypto?
- How are we staying **current** on evolving tax compliance and reporting rules?
- What information will be required from donors for proper **identification**, and how can we ensure its accuracy?
- Given the potential **risk of loss** and impacts on financial reporting, will we hold or immediately liquidate such donations?
- Will we make crypto investments **directly or indirectly** (e.g., through commingled funds)?
- How will crypto payments or investments be **administered**, and by whom?
- Are **internal controls** appropriate? Consider whether a reputable custodian or broker is needed.

ESG considerations – rating agencies

ESG considerations – rating agencies

In its *Higher Education 2023 Outlook* (December 8, 2022), Moody's noted that ESG and nontraditional risks will have growing effects on budgets as institutions adjust to a changing environment. Moody's cited environmental challenges, including as to climate management and extreme weather, which require increased planning and higher costs (e.g., utilities and insurance); heightened social risks, including around access, affordability, student support services (e.g., mental health), and changing consumer preferences; and governance risks, including high leadership turnover, increased politicization of higher education, cybersecurity, and international campus and student risks from geopolitical realignments. Moody's and S&P have recently refined their methodologies to incorporate ESG factors—which they say increasingly influence credit drivers—and have also begun to articulate ESG risks and impacts in issuer ratings reports. Some of these risks are sector-specific, while others cut across various industries.

Example methodology considerations

Moody's ESG considerations result in "Issuer Profile Scores" (IPSs) and, ultimately, "Credit Impact Scores" (CISs). General IPS categories include the following:



Environmental IPS: Carbon transition, physical climate risks, water management, waste and pollution, and natural capital.



Social IPS: Customer relations, human capital, demographic and societal trends, health and safety, and responsible production.



Governance IPS: Financial strategy and risk management, management credibility and track record, organizational structure, compliance and reporting, and board structure and policies.

- Moody's has established general principles for assessing E, S, and G risk categories for issuers that result in the IPS, which is expressed on a five-point scale. Sector-specific risk subcategories may also be relevant to the analysis. For example, for public sector entities—including public colleges and universities—governance factors such as institutional structure and budget management may also be relevant.
- In addition, Moody's may establish a CIS to explain the impact of ESG considerations on the rating of the issuer or transaction. The CIS is based on a qualitative assessment of the impact of ESG considerations in the context of the issuer's other credit drivers that are material to a given rating. The scale ranges from CIS-1 ("Positive") to CIS-5 ("Very Highly Negative").



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SUMMARY OF ACTIONS TAKEN

May 17, 2023 – Legal, Audit, Risk & Compliance Committee Meeting

Voting Members Present:

Elizabeth P. Kessler
Alan A. Stockmeister
Jeff M.S. Kaplan

Elizabeth A. Harsh
Juan Jose Perez
Taylor A. Schwein

Amy Chronis
Hiroyuki Fujita (ex officio)

Members Present via Zoom: N/A

Members Absent:

Michael Kiggin

The Legal, Audit, Risk & Compliance Committee of The Ohio State University Board of Trustees convened on Wednesday, May 17, 2023, in person at Longaberger Alumni House on the Columbus campus and virtually over Zoom. Committee Chair Elizabeth Kessler called the meeting to order at 11:58 a.m.

PUBLIC SESSION

Items for Action:

1. Approval of Minutes: No changes were requested to the February 15, 2023, meeting minutes; therefore, a formal vote was not required, and the minutes were considered approved.

Items for Discussion:

2. External Audit Update: Mr. Dave Gagnon and Ms. Cathy Baumann from KPMG, the university's external auditor, presented an update on the results of the 2022 single audit and the plan for the 2023 audit.

(See Attachment X for background information, page XX)

3. Office of University Compliance & Integrity Update: Public Records, Conflicts of Interest, & Process Improvements: Mr. Gates Garrity-Rokous and members of his team provided updates on the university's public records program, conflict of interest process, and ongoing process improvement work.

(See Attachment X for background information, page XX)

4. Title IX Regulations Update: Ms. Keesha Mitchell and Ms. Amy Golian provided an overview of recent regulatory activity from the U.S. Department of Education related to Title IX in public session.

(See Attachment X for background information, page XX)

EXECUTIVE SESSION

It was moved by Ms. Kessler, and seconded by Mr. Stockmeister, that the committee recess into executive session to consult with legal counsel regarding pending or imminent litigation, to consider business-sensitive trade secrets that are required to be kept confidential by federal and state statutes, and to discuss personnel matters regarding the appointment, employment and compensation of public employees.



A roll call vote was taken, and the committee voted to go into executive session with the following members present and voting: Ms. Kessler, Mr. Stockmeister, Mr. Kaplan, Mrs. Harsh, Mr. Perez, Ms. Schwein, Ms. Chronis, and Dr. Fujita.

The committee entered executive session at 12:35 p.m. and the meeting adjourned at 2:08 p.m.

DRAFT