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Memorandum

To: OSU Board of Trustees
From: Debbie Colbert, Board Secretary
Date: Thursday, October 14, 2021
Subject: Independent review of due diligence

In May 2021, the OSU Board initiated a retrospective review of the 2019 presidential search process. The retrospective review provided trustees with an important opportunity to hear from faculty, staff, students and stakeholders, and consider what went well in the last search process and what might be done differently in the future. The feedback from the review was discussed at the May 21, 2021, Board meeting.

In addition to the retrospective review, the Board also sought an independent review of the background check process used during the 2019 presidential search. This review was completed and is provided in Attachment 1.

To provide some context for this review, I worked with Gigi Bruce, chief assistant to the provost, to gather information from a number of search consultant firms that regularly conduct searches in the higher education sector, including searches for senior academic leaders, presidents and chancellors. A summary of the due diligence typically conducted is provided in Attachment 2.

The independent consultant reviewer noted several recommendations for the Board to consider. A number of these recommendations were discussed with the Board at its October 8, 2021, meeting and would be included in the due diligence process for the next presidential search as discussed with the Board (see section titled "Due Diligence" in the [docket on the preliminary timeline and process accepted at the Board meeting](#)).

Beyond these recommendations, the independent consultant included some additional background material for the university to consider, which I understand to be outside of what is typical in higher education searches (see page 7 of the enclosed report). Regarding the recommendation to search for police contacts (versus convictions), OSU's General Counsel has advised that this information would need to be obtained at a later stage of the process, not serve as the basis for excluding a candidate and, if obtained, to be used for awareness and support. The Board may want to discuss whether and how to obtain this information, especially given the potential disparate impact on candidates of color. Regarding the recommendation to search for candidate political contributions and activities, the General Counsel has advised that both OSU policy and constitutional law create some legal barriers to fully implementing this recommendation. Rather, information collection should be geared to understanding demonstrated commitments to OSU values and policies.

Special thanks to Vice Chair Kirk Schueler and Trustee Julia Brim-Edwards for their engagement in this review, and to Chief Executive of Audit, Risk and Compliance Patti Snopkowski for assisting with the engagement of the consultant.



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cc:

President Becky Johnson
Gigi Bruce, Chief Assistant to the Provost
Cathy Hasenpflug, Chief Human Resources Officer
Patti Snopkowski, Chief Audit, Risk, and Compliance Executive
Becca Gose, General Counsel

DRAFT DUE DILIGENCE REPORT

Completed by Mike Snyder

September 29, 2021

Scope of Work

To review background check and due diligence process completed in the consideration of Dr. Fieldon King Alexander during the 2019 presidential selection.

To prepare a summary and findings report that identifies where more comprehensive analysis of the candidate should have occurred, if applicable, and to make recommendations related to the best methodologies for validation and assessment of a candidate's background and highlight the limitations inherent to background checks.

OSU Documentation

- Witt Kieffer Inc. Contract with OSU (prepared by OSU)
- Presidential Search: Due Diligence/Background/Reference Check Process (Prepared by OSU Provost's Office)
- 2019 Summary of Due Diligence Conducted on Alexander (prepared by WittKieffer)
- Harassment and Discrimination Questionnaire (form prepared by WittKieffer; completed by K. Alexander)
- Reference Summary for K. Alexander (prepared by WittKieffer)
- Off-List Reference Summary for K. Alexander (prepared by WittKieffer)
- Resume (prepared by K. Alexander)
- Career Builder Verification of International Degree (prepared by WittKieffer)
Career Builder Employment Verification Document (prepared by WittKieffer)
- Media Check Report (prepared by WittKieffer). Report includes a summary cover, noting areas flagged by subject including a selection of social media links from Twitter, LinkedIn, YouTube, Blogs.
- July 22, 2021 email from Dr. Zach Smith, managing partner of WittKieffer, to Debbie Colbert, OSU's Secretary of the Board of Trustees, regarding the databases that were used to generate WittKieffer's Media Check document.
- Nov 13, 2019 Stakeholder Group Feedback Report for K. Alexander (prepared by OSU)
- Sept 16, 2021 email from Dr. Smith to Colbert, regarding court records sites used

Findings & Recommendations

Application Process

It is common for employers in many occupations to ask candidates if they have any history of adverse employment actions as a part of the application process (i.e., Have you ever been the subject of an investigation or inquiry related to your work performance or conduct? Have you ever been involuntarily dismissed from a position? Have you ever been subjected to discipline by an employer? etc.).

For executive level searches, OSU uses disclosure forms provided by the search firm hired to conduct the search. This was the approach used in the 2019 Presidential Search. Dr. Alexander and other finalists completed WittKieffer's "*Discrimination Questionnaire*," which asked five questions:

- 1) Within the last seven (7) years, have discrimination or harassment accusations or complaints based on race, gender, sexual orientation, national origin, age, disability, religion or any other protected basis been asserted against you and submitted to any of your employers? [Note: We are not asking about complaints you have personally raised or submitted, and we are not asking about criminal convictions.]
- 2) While employed by your current employer, or any former employer, have complaints of discrimination or harassment based on race, gender, sexual orientation, national origin, age, disability, religion, or any other protected basis been asserted against an employee in your chain of command?
- 3) While employed by your current employer, or any former employer, have complaints of inappropriate sexual or other conduct been asserted against you and submitted to any of your employers or any other institution?
- 4) During the preceding five years, have you been a member of or associate of any club or organization (other than a religious organization) that discriminates against or excludes persons based on race, gender, sexual orientation, national origin, age, disability, religion, or any other protected basis?
- 5) Is there any other information concerning your background that you have not yet shared that should be taken into consideration by the organization in evaluating your application?

Regarding questions one and four, it is unclear why WittKeiffer limits responses to seven and five years respectively.

Recommendation

It is recommended that job candidates for the position of president complete an employment history questionnaire developed by the institution, rather than a search firm. Many employers require candidates of all levels to complete a questionnaire regarding any past adverse employment actions.

Unlike the questionnaire provided by WittKieffer, which had time restrictions, it is recommended that time restrictions not be included in any an employment history questionnaire.

References

WittKieffer completed five on-list references and three “*off list*” interviews with individuals not included in Dr. Alexander’s list.

Of the eight reference checks completed, four references were affiliated with Louisiana State University, one affiliated with former employer, California State University-Long Beach, and one affiliated with former employer, Murray State University.

Oregon State University’s candidate search was “*confidential*,” prohibiting WittKieffer from expanding their reference checks to verify Dr. Alexander’s responses with his current and past employer’s Employee Relations Department, Human Resource Department, student government leaders and employee groups, and others.

Recommendation

To verify a candidate’s response to an employment history questionnaire and to evaluate information found in media and other public records searches, it is recommended that the institution conduct extensive reference checks.

Confidential searches significantly limit an employer's ability to obtain information regarding a candidate for a position. Ideally, references checks would extend beyond those provided by a candidate (e.g., employee groups, student government leaders, etc.). The candidate's employment and other offices of the current and past employers should also be contacted regarding any history of complaints, investigations, or disciplinary actions (e.g., Human Resources, Employee and Labor Relations, etc.).

A confidential search prohibits these common hiring practices from occurring, increasing the probability of a failed hire.

Court Records

WittKieffer documented a PACER search, which is a database of federal court filings (bankruptcies, civil and criminal). However, there is no record of a search completed for county

or state court civil filings regarding Dr. Alexander or any corporate or non-profit organizations associated with him.

Regarding corporation affiliations, many civil employment-related lawsuits do not name an individual, only the business. Absent from the documentation provided was a list of Dr. Alexander's current and past business affiliations as an owner or board member and business civil litigation search history.

There is no documentation to support a search of Dr. Alexander as an officer or board member was completed or a litigation history search for such organizations.

Recommendation

It is recommended that a search of online databases be completed on any corporate or non-profit organizations where the candidate was an executive or board member. There are many online search engines to locate non-profit organizations associated with an individual (i.e.: <https://projects.propublica.org/nonprofits/>). Many of these search engines will produce not only an individual's role within the organization (such as officer or board member), but also the salaries paid to the individual and the overall financial health of the organization during the time of the candidate's association with the organization.

A comprehensive search of federal, state, and county court filings associated with the candidate as an individual and their associated corporations and non-profit organizations is also recommended. This includes PACER, a federal database that contains all federal court filings and used by WittKieffer in this search. Beyond this federal database, the institution should search county courthouse records where the candidate's resided, been employed, or is/was an executive or corporate or nonprofit board member for any civil and criminal filings.

Some states require users to search the individual county courthouse website (e.g., California), while other states allow users to search an entire state at once (e.g., Oregon and New York).

Most civil courthouse records are available to the public online. To learn which county courthouse to search, the use of a skip trace database is important. These online software programs (e.g., CLEAR, Transunion TLO, IRB, Accurint, etc.) are primarily used by private investigators and law enforcement and allow users to quickly filter through billions of public and proprietary records to provide a comprehensive report of an individual.

Additionally, third-party website databases, like Unicourt.com, collects civil complaint information on individuals from participating counties and states.

Media/Social Media

The media report provided by WittKieffer included a search of available newspaper sources and a general web search. WittKieffer provided a summary cover to the media report flagging

categories of information. It also included a limited number of social media links from Twitter, YouTube, and Blogs.

Most skip trace databases provide users with a list of email addresses associated with an individual that expand the last 25 years. Many of these databases also provide a function to cross reference each email address located with the hundreds of social media sites available to locate an individual's social network history (e.g., Myspace, Facebook, Instagram, Blogspot, etc.).

Recommendation

While a general media search was completed, it is recommended that the institution use one or more skip-tracing programs (ie: CLEAR, TLO, IRB, etc.) to obtain a more comprehensive report that includes, but not limited to: media report, social network history report, employer history, residential history, corporation history, criminal history, driving record, voting records, foreclosures, civil liens, and tax liens.

Social media databases should also be searched for the candidate's online profiles. Any social media content that is public should be reviewed.

Given there are likely to be hundreds of articles associated with a candidate, ideally the media report should contain a hyperlink and a one to two sentence synopsis of the article, highlighting anything critical or adversarial.

Comprehensive Report

In the 2019 search, WittKieffer provided a number of files containing various elements of the background check and due diligence completed on the candidate. Absent from the information provided was a comprehensive report that contained all the information regarding Dr. Alexander in one document.

Recommendation

Once the due diligence is completed, a background investigation report should be generated that includes all the information gathered, categorized by investigation task, and succinctly written.

Overall Process Recommendations

Independent Background Checks

Many institutions, organizations and businesses utilize search firms to locate and recruit candidates for their vacant executive level positions and often rely on the search firm to vet their proposed candidate. Given the potential inherent conflict between identifying issues in a candidate's background and successfully placing the candidate in a position, it is highly recommended that the institution conducts a pre-employment background investigation of candidates that are additional to the search firm.

Additional Background Material to Consider

For high profile positions where public scrutiny and media inquiries are expected, the following additional background investigation tasks should be considered to maximize the confidence of the selection committee and to help mitigate any concerns:

- **Police Contacts:** Complete public records requests to the law enforcement agencies where the candidate's resided and been employed for any police contacts.
- **Political Contributions:** Political contributions are public records and the types of political causes and political campaigns and candidates a candidate supports may be of importance to an employer. There's many online search sites that provide this information (i.e.: https://www.fec.gov/data/receipts/individual-contributions/?two_year_transaction_period=2022&min_date=01%2F01%2F2021&max_date=12%2F31%2F2022 and <https://www.opensecrets.org/donor-lookup>).
- **Political Activity:** Search online databases for a candidate's history of political causes and political party's donations. How a candidate voted is confidential, however, if they voted is not confidential and may be of interest to an employer.

Inherent Limitations to Background Checks

It should be noted that there are some limitations to the information that can be acquired through background checks. There is no single 'catch all' skip tracing database or search engine that provides information about candidates. Although many of the skip tracing programs are very good at finding information, there are some counties in the US that do not release their court information online, making it difficult to locate court filings.

Additionally, there are businesses that will help individuals' "scrub" their online presence by having their names removed from data broker's lists, like Intelius, Spokeo, and Whitepages (there's over 40 data brokers) and from internet searches, increasing the difficulty of locating media articles.

Lastly, depending on the severity of the crime and the amount of time that has passed, individuals can have their criminal histories expunged. An expungement permanently removes a person's record of arrest and associated court file, making it unlikely to locate.

Executive Searches: Due Diligence Process

Prepared by Gigi Bruce, Chief Assistant to the Provost, OSU Office of the Provost

All reputable search firms take due diligence element of the search process very seriously. Like the University, the reputation of the firm is at stake. If a problem arises after a candidate is appointed, or even if a problem arises when a candidate has advanced to the finalist stage, that reflects poorly on the firm's advice and due diligence.

The university follows best practice in assessing the qualifications and practices of firms that propose to assist with senior level searches at OSU. Best practice includes requiring firms to outline their due diligence approaches in detail in their written proposals; clarifying practices and procedures during the proposal review phase; and checking references for search firms under consideration. The reference check process focuses on recent searches relevant to the proposed search and probing on the skills and qualifications of the specific personnel who will represent the firm in the OSU search.

The typical due diligence process is summarized below, based on OSU's experience and information provided by the following firms: Isaacson Miller, Parker Executive Search, Greenwood Asher, Diversified Search (Koya Partners), and Academic Search.

Throughout the search, firms encourage candidates to disclose any information that the firm or the university should know about, including anything that might emerge from media or public record checks. Firms include questions related to reputation and existing and potential negative public visibility in interviews of references as well.

When issues arise, the firm works swiftly and directly with the search advisory committee chair and the appointing authority to discuss the concerns and decide on an approach to investigate and address them. Depending on the issue that is identified, the chair or appointing authority may speak directly with the candidate and/or seek permission to speak with others who have insight into the situation (supervisor, colleagues, etc.).

1st round candidates

- Verification of employment (including dates of employment, job titles over two positions prior or 10 years of employment, whatever is greater), academic degrees, professional licenses/certifications;
- Check of criminal history by search firm;
- Media checks and public search (not exhaustive, local jurisdictions, etc.; Nexus, local newspapers, google and google news, other sources to the practice areas such as university websites, journals, Office of Inspector General fraud databases).

2nd round candidates

- On-list reference checks by phone (include supervisors, peers, others);
- Some firms ask second round finalists to complete a disclosure form for themselves, and sometimes for those under their purview (have you ever been accused of harassment or discrimination?; etc.).

Prior to appointment

- Off-list reference checks by phone by the search firm;
- Off-list reference checks by the appointing authority;
- Criminal background check by OSU;
- Some universities require a candidate disclosure form.