

# HIGHER EDUCATION GOVERNING BOARDS

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AN INTRODUCTORY GUIDE FOR MEMBERS OF  
COLLEGE, UNIVERSITY, AND SYSTEM BOARDS



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# HIGHER EDUCATION GOVERNING BOARDS

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## FOREWORD

*EFFECTIVE GOVERNING BOARDS*, released nearly a decade ago, has informed and guided thousands of board members who serve public and private institutions and systems. Yet as the challenges confronting higher education and its unique model of board governance have continued to grow more complex, we have recognized a need to refresh the basic guidance AGB provides for governing boards and their volunteer members.

These are, indeed, disruptive times for higher education and its nearly twenty million students. Public scrutiny of the value and affordability of higher education places an ever-brighter spotlight on the sector and its governance. In this challenging context, board members—as fiduciaries—are called upon with increasing urgency to add value to the institutions they serve and higher education as a whole. Risks associated with the few but often high-profile governance breakdowns do collective harm to our institutions and the sector. It is essential for boards to get governance right.

Intended to enhance board effectiveness, this new publication is divided into two sections. The first identifies and informs the most sacred and specific responsibilities of the governing board of any college, university, or public system—from protecting the institution or system’s mission and selecting its chief executive officer to ensuring educational quality and the ethical conduct of board members. The second section focuses on the fiduciary principles and expectations that lie at the heart of effective governance. It is striking that many boards fail to spend sufficient time providing a comprehensive review of the legal standards that define the fiduciary role of board members individually, and those of the board as a whole. AGB urges that these standards be emphasized with new board members in advance of their service and that they be addressed as a central theme of new board member orientation.

Voluntary service on the governing board of a college, university, or system can be highly rewarding. Nonetheless, it requires work and commitment. As boards respond to today’s heightened call for appropriate engagement and collaborative leadership, their members must recognize

that effective board governance requires constancy, awareness, and curiosity.

I sincerely recommend that all board members—whether new to their board service or more experienced in the role—attend to this refresh of one of AGB’s foundational volumes. I also encourage you, both as board members individually and as boards collectively, to be guided in your work by *An Anatomy of Good Board Governance in Higher Education*, a companion volume recently released by AGB that clarifies the elevated expectations of effective governance in today’s environment and recognizes the vital role of board composition, collaboration, and culture as drivers of board effectiveness.

Getting governance right is a standard of board accountability that can serve as a powerful reminder of the impact boards have on institutional effectiveness. *Higher Education Governing Boards: An Introductory Guide for Members of College, University, and System Boards* and its companion, *An Anatomy of Good Board Governance in Higher Education*, can be used to educate and remind new and more experienced board members alike of their essential responsibilities. Together, they can help ensure that the sector meets its public purpose.

I wish you and your board colleagues success (and enjoyment) in meeting your responsibilities and achieving your mission.

—RICHARD D. LEGON

*President, Association of Governing Boards of Universities and Colleges*

## INTRODUCTION

**THE AMERICAN SYSTEM** of higher education governance emerged from colonial roots, reflecting both early experience and the clear imprint of a burgeoning democracy. Colonies, and later states, chartered boards to engage in a remarkable degree of self-regulation in guiding early institutions of higher learning. Such empowerment made for inevitable conflicts that would eventually reach the courts. So it was that in the Dartmouth College case of 1819, the US Supreme Court affirmed not only the general sanctity of a contract but quite specifically the autonomy of an independent board to govern an institution as a chartered corporate entity. That judgment ensured the independence of both public and private institutions and shaped the course of American higher education governance. Although Dartmouth was a private institution, like most of its colonial peers, it had strong governmental ties. Moreover, the autonomy to which the Supreme Court gave legal sanctity in the Dartmouth case would avail public as well as independent institutions of higher learning.

Today, America's system of higher education is distinguished by a great variety of institutional types—public and independent; large and small; two-year and four-year; residential and online; research universities, comprehensive universities, liberal arts colleges, and community colleges; religiously affiliated institutions, women's colleges, tribal colleges, and historically black colleges and universities; graduate and specialized colleges; freestanding institutions and multicampus systems. Each of the more than fifty thousand volunteers who serve on the governing boards of the nation's colleges, universities, and systems is individually a fiduciary, and how individual board members comport themselves with respect to their fiduciary duties materially affects board performance and the quality and standing of board governance in higher education. Yet because a governing board acts always and only as a corporate body, rather than through its members or officers individually, the board itself bears fiduciary responsibility for the institution it governs. While differences in institutional type may account for differences in how a board carries out its governance

responsibilities, the responsibilities themselves are essentially the same at all institutions.

The dramatic contrast in how an institution of higher learning and almost any other corporate entity are guided and shaped affects every dimension of a board's responsibility and activity. In addition to serving the unique mission of educating the next generation's leaders, colleges and universities are charged with nurturing research on the frontiers of knowledge. Their laboratories differ significantly from corporate or government laboratories, where research tasks are assigned—even to the most eminent investigators—and are closely regulated to meet defined expectations and yield specific outcomes. The concepts of academic freedom and free inquiry and the tradition of shared governance that are integral to the academic community are virtually unknown elsewhere. Given such stark differences, the orientation of new board members to their unique role in governing academic institutions is crucial, as are continual reminders to guide even the most seasoned board members.

Intended both to orient and to guide, *Higher Education Governing Boards: An Introductory Guide for Members of College, University, and System Boards* is divided into two parts. The first part focuses on the board as a corporate body, providing an overview of the board's essential fiduciary responsibilities as they relate to the mission of the institution, presidential selection and support, presidential performance assessment and compensation review, strategic planning, fiscal integrity, educational quality, institutional autonomy and academic freedom, institutional policies and processes, constituency engagement, and board conduct. The second part provides a discussion of governing board members and officers as fiduciaries of their institutions and explains the three duties that apply to them as such—the duty of care, the duty of loyalty, and the duty of obedience. Included throughout are questions intended to promote reflection by individual boards and board members on their roles and responsibilities in governing America's colleges, universities, and systems.

# THE ESSENTIAL RESPONSIBILITIES OF GOVERNING BOARDS

**THE GOVERNING BOARD** of a college, university, or system is accountable for fulfilling fiduciary responsibilities in several essential areas. The board is responsible for

- > establishing, disseminating, and keeping current the mission of the institution;
- > selecting and supporting the president of the institution;
- > periodically assessing the president's performance and reviewing his or her compensation;
- > charging the president with the task of leading a strategic planning process, participating in that process, approving the strategic plan, and monitoring its progress;
- > ensuring the institution's fiscal integrity, preserving and protecting its assets for posterity, and engaging directly in fundraising and philanthropy;
- > ensuring the quality of the education provided by the institution;
- > safeguarding both the autonomy of the institution and the related tradition of academic freedom;
- > ensuring that the policies and processes of the institution remain current and are properly implemented;
- > engaging regularly with the institution's major constituencies;
- > ensuring that its business is conducted in an exemplary fashion, that its governance policies and practices are kept current, and that the performance of the board, its committees, and its members are periodically assessed.

This section provides an overview of the board's fiduciary responsibilities in each of these essential areas.

*A mission statement provides unique and indispensable guidance to the campus*

*community and to countless others who engage with the institution.*

## **THE MISSION OF THE INSTITUTION**

***The governing board is responsible for establishing, disseminating, and keeping current the mission of the institution.\****

The approval and dissemination of a mission statement are central responsibilities of a governing board—even at public institutions in states where constitutional or legislative mandates may materially affect the process. Such a statement not only describes the institution’s current character but even more importantly expresses its aspirations, reflecting both the larger context of higher education and the distinctive nature of the institution for which it speaks. Basic values are thus a vital component of any mission statement.

A mission statement provides unique and indispensable guidance to the campus community and to countless others who engage with the institution. Not surprisingly, a first task for an accreditation visiting team is usually to review the current mission statement. As the visit develops, the team appraises the statement’s congruence with institutional objectives, programs, services, and resources. The board should therefore be familiar with the content of the mission statement and should periodically review it to ensure concordance between the mission and reality, both present and future.

When the statement is obsolete, overseeing its updating is a major board responsibility. Revising it is a sensitive and demanding process that should engage all the institution’s stakeholders—faculty, students, staff, alumni, and community—because all have a vital interest in the resulting declaration. The mission statement should be concise enough to be widely disseminated, and it should be specific enough to be unique to the institution it represents.

Board members should be advocates for the mission statement, as well as the institution for which that statement speaks. They should be sufficiently familiar with the institution’s mission to respond readily and accurately to relevant questions from the campus community and beyond.

The board of a public institution has the additional responsibility of ensuring that the mission is aligned with public purposes or, in the case of a multicampus system, that the mission of each campus is aligned with the system's vision and public purposes. At public colleges and universities, the mission statement should clearly reflect the commitment of the institution—and the board—to serve the goals and objectives of the state through human and economic development and other means. The stated mission of each public college, university, or system should also comport with statewide higher education imperatives and the individual missions of its public peers. In a multicampus system, a comprehensive mission statement should recognize the system's overall goals and tasks. It should also acknowledge differences both among the missions of the constituent institutions (whose origins and strengths may differ sharply in ways that define their distinct missions) and between the campuses' missions and the system's mission. The mission of the system should ideally represent a whole that transcends the sum of its parts.

## **QUESTIONS TO CONSIDER**

- **What are the origins of the current mission statement?**
- **When was the mission statement last revised? What is the process for changing it—including approval at the state level, if necessary?**
- **Are there important aspects of institutional character or values that are not adequately reflected in the mission statement?**
- **How does the mission statement differentiate the institution from other colleges and universities?**
- **How does the board know whether the institution is successfully fulfilling its mission?**
- **Has the board considered the long-term consequences and related resources required for any possible expansion of the institution's mission?**
- **In what ways does a publicly supported college or university's mission statement commit the institution to meet and serve statewide higher education plans or needs?**

## **PRESIDENTIAL SELECTION AND SUPPORT**

***The governing board is responsible for selecting and supporting the president of the institution.\****

Selecting a president is among the paramount responsibilities of a governing board, not least because the board must delegate to the president many tasks over which it may hold legal authority. The president must be able to lead and manage the institution and remain confident that the governing board will not seek to intervene or preempt that role. A board that insists on micromanagement or recurrent interference dooms a presidency from the outset.

The selection process requires careful board attention. A special search committee should be appointed and given ample time and support to sustain an invariably demanding task. The committee, chaired by a member of the governing board, should reflect the diversity of the institution's constituencies by involving representatives of those groups through direct membership or in advisory roles. It should first assess the current status of the institution and then identify key criteria to guide the selection process. Choosing a professional search firm at this stage may be helpful, if not essential. The board must be cautious, however, and should avoid possible preemption by an external consultant of the board's authority and responsibility.

*The transition of presidents offers a special opportunity for board leadership.*

Although creating a diverse candidate pool is a legal requirement for most presidential searches, it should also be an institutional imperative. The pool not only should reflect racial and gender diversity, but should in other ways recognize the variety of constituencies the institution serves and hopes to attract. Barring exceptional circumstances, internal candidates should be given equal consideration, although familiar prospects should not be afforded special consideration. A critical factor in shaping the pool may be the willingness of candidates to risk public disclosure of their potential interest. While private universities and a few in the public sector are able to conduct confidential searches, the freedom of information laws of most states demand some disclosure about the search process at public institutions. Some such laws require the public identification of virtually all

candidates beyond the initial stage and may thus discourage promising prospects from risking unwelcome publicity as a cost of candidacy. In these instances, the board or search committee should obtain legal counsel regarding the state's open-meeting and public-records laws, ensure the search process complies, and inform candidates of applicable provisions.

While not every candidate needs to bring extensive faculty service—indeed, some of the most able presidents have not been scholars—a keen appreciation of academic values and interests should be a prime prerequisite. A board composed mainly of nonacademics, as most are, thus bears particular responsibility in this regard to elicit input from faculty and student members on the search committee. Such input could, for example, properly raise concerns about an otherwise promising candidate who has shown unfamiliarity with academic values and leadership.

After carefully reviewing candidates and developing a short list, the committee typically invites candidates for campus visits. The selection of the new president should be made by the entire board from the finalists recommended by the search committee. If the appointee has held a faculty post elsewhere, a suitable academic appointment should accompany the administrative role. State laws may directly constrain a public board's discretion in determining salary and other benefits. The virtual certainty that such arrangements will become public in most states imposes a further, if indirect, constraint upon the hiring process. Public boards should seek counsel on the implications of the state's open-meeting and public-records laws regarding the appointment process and disclosure of presidential compensation and benefits.

The new president's compensation—salary, benefits, and such—should be approved by the full board, and undisclosed collateral agreements between an appointee and a board chair or committee chair are to be avoided. There should be a clear initial agreement about eligibility for positions on corporate boards (which may enhance a public institution's service to the state), reimbursed club memberships, foreign travel, and other elements of compensation and benefits. The new president should be expected to develop and share his or her goals with the board, either at the time of appointment or soon thereafter, since the appraisal of the president's performance requires mutually acceptable goals.

When public-meeting laws do not require the board to act in public, a public announcement should be made, preferably by the board chair, immediately following official board action. Introducing the new president to the campus and to the larger community is a vital task for the board. Even if that person has long service at the institution or close ties to it, assumption of the presidency creates new relationships, obligations, and opportunities.

The transition of presidents offers a special opportunity for board leadership. The board should honor the service of the outgoing president and determine that person's role, if any, going forward. To provide a sound foundation for the new president, the board should ensure that he or she is clear about board expectations and the culture of the board and is confident of the board's support.

A board supports the institution's president in numerous ways—for example, establishing valuable contacts with constituent groups, publicly defending the president against inevitable criticism, aiding in making friends and raising funds for the institution, and attending important campus events at which board member presence and participation enhance both the appearance and reality of collaboration. The degree of board involvement in such tasks varies substantially among multicampus systems because of size and scale. Boards that govern two or three campuses are better able to provide such support than those that govern a dozen or more separate sites. In some systems, local institutional boards fulfill much of this role.

## **SELECTING LEADERS IN MULTICAMPUS SYSTEMS**

The selection of leaders in multicampus systems is distinctive in two respects. One is simply a matter of terminology. In the United States, the titles "chancellor" and "president" are used inconsistently. In some systems, the person who leads the entire system is the chancellor, and the campus heads are presidents. In others, the system head is the president, and campus heads are chancellors. The process of choosing leaders also varies from system to system. Although campus heads are invariably chosen by the system chief executive and appointed or confirmed by the system board, local councils or boards may screen candidates and make initial recommendations that are customarily followed at the system level. Thus, while the ultimate authority is consistent across systems, the degree of

delegation and local initiative may vary substantially among different structures.

Of special importance is the crucial and sensitive relationship between the president and the board chair, since the chair often serves as guide and confidant even to a seasoned president. The president must be assured of the board's full support when controversial positions must be taken publicly. While differences are inevitable, they properly remain within the boardroom. A healthy board-president relationship transcends merely personal ties between the institution's leaders and markedly enhances institutional interests.

*Of special importance is the crucial and sensitive relationship between the president and the board chair.*

Occasional criticism of the president by campus groups may be especially difficult for a board, since board members often live some distance from the campus and only meet periodically. Yet whenever such concerns reach the board, the president should receive the benefit of any doubt. The board, or the board chair, should promptly inform the president of the concerns and help in seeking a resolution. The board chair can be an essential source of ongoing support for the president and should regularly communicate with him or her. While sometimes a private remonstrance or even rebuke to a president may be warranted, individual board members must take great care not to escalate a conflict with public statements. Such publicity not only undermines the president but also diminishes confidence in the board's governance. Even at public institutions, the commitment to openness and transparency does not in any way require public airing of differences between the board and administration or among board members.

## QUESTIONS TO CONSIDER

- Have the board and its search committee developed a process for selecting the new president that will be widely respected and will

lend legitimacy to the selection?

- Has the board established a meaningful way to make the candidate pool diverse, especially taking into consideration how diversity addresses institutional goals and needs?
- What steps may be taken—consistent with freedom of information laws, where they apply—to reduce the risks of premature publicity about the search or the identification of individual candidates who have requested confidentiality?
- Does the statement of expectations used for the search provide to prospective candidates a clear picture of institutional needs and a solid basis for assessing the performance of the new president at the end of the first year and beyond?
- Do the relevant constituencies have a meaningful stake in the search process, either through membership on the search committee or in other ways?
- Has the board given adequate consideration to succession planning and future searches?
- Has the board made clear its expectations for the president's partner and specified the perquisites, if any, that might be provided?
- If there is a residence for the president, has the board prepared it in advance and made essential repairs, sparing the new president potential criticism for incurring such expenses?
- How does the board demonstrate its support of the chief executive?

## **PRESIDENTIAL PERFORMANCE ASSESSMENT AND COMPENSATION REVIEW**

***The governing board is responsible for periodically assessing the president's performance and reviewing his or her compensation.***

A board responsibility only slightly less critical than appointing a new president is regularly reviewing the president's performance and adjusting compensation on the basis of such reviews. The process for assessment should be discussed with the president and agreed to in advance. The primary purpose of the review should be to enhance the performance of the president—that is, it should be a formative process. A key element of this process is a carefully developed and clearly understood set of strategic

goals, expectations, and associated metrics for the president. At a predetermined time in each academic year—ideally a time not complicated by other urgent or critical tasks—the board or a designated committee should meet with the president to review carefully his or her performance.

Following the review, the full board (usually on recommendation of its compensation or executive committee) should consider and approve an adjustment both in salary and in related benefits. An effective compensation review should be guided by a written policy that provides for an impartial committee, comparative data, a decision by the full board, and appropriate public disclosure. Any adjustment should reflect the board's awareness of appropriate benchmarks both within the institution and in the larger marketplace of college and university presidents. Even if the new compensation package is approved by an executive, compensation, or personnel committee, any other board member who seeks information should be fully informed of all details contained in the recommended or approved agreement. With increased scrutiny of compensation packages for chief executive officers throughout the nonprofit sector, and especially within publicly supported institutions of higher learning, a high level of transparency within the board is imperative.

In the occasional case where an annual review yields a negative judgment, the board should make every effort to guide the president toward improved performance during the coming year, clearly explaining its expectations and the criteria by which improvement (or failure to improve) will be assessed. Only if the institution's needs (or the gravity of the shortcomings) demand an immediate change in leadership should a single negative review cause the termination of a presidential appointment—even though every person who assumes such a post recognizes that he or she serves at the pleasure of the board.

Periodically—perhaps every three to five years—the board should engage in a deeper and more comprehensive assessment of the president, which would take account of the views of other constituencies. This more formal assessment may involve a special board committee and an outside consultant who can confidentially confer with members of the campus, the surrounding community, alumni, and others—including, at public institutions, relevant state and local government officials.

*Periodically—perhaps every three to five years—the board should engage in a deeper and more comprehensive assessment of the president.*

## QUESTIONS TO CONSIDER

- How should the board work with the president to develop the criteria that will guide the annual performance review?
- How, if at all, should the results of an annual presidential review be shared with the campus community and, at public institutions, with relevant state and local officials?
- Is the process by which the board carries out a periodic comprehensive assessment of the president communicated appropriately to constituents—including, at public institutions, relevant state agencies and officials?
- What benchmarks and other sources should be consulted in the process of adjusting a president's salary and benefits?
- What special considerations and expectations should shape the evaluation or assessment of a public college or university president's performance (for example, evidence of institutional and presidential commitment to help meet the state's needs and enhance the quality of life for its citizens)?

## STRATEGIC PLANNING

***The governing board is responsible for charging the president with the task of leading a strategic planning process, participating in that process, approving the strategic plan, and monitoring its progress.***

The president should periodically be charged by the board to lead a strategic planning process. That process requires a clear understanding between the board and the president, as well as within the board itself, to determine what may realistically be expected regarding both process and outcome. How boards engage in a planning process and oversee it varies. Some establish an ad hoc planning committee, some assign board engagement to the executive committee, and some assign aspects of the process to all relevant standing committees.

The actual planning process must engage all the relevant campus constituencies—faculty, students, staff, alumni, and members of the broader community of which the institution is a vital part. At public institutions, the strategic plan should reflect and contribute to achievement of the state’s goals and priorities by focusing on areas through which public higher education can make significant contributions, such as teacher education or advanced research programs, and the planning process should engage relevant state and local government officials.

Sometimes, the strategic planning process builds on an existing plan that already has board approval and needs only to be updated. At other times, there is either no such plan or one so obsolete that a new planning activity is required. While the planning process need not be initiated immediately after a new president assumes office, early action may help the president provide appropriate strategic leadership sooner than would otherwise be the case.

The board’s role in this process has several dimensions. The president should be assured of board support when addressing critical issues about the institution’s future. Board involvement in approving the planning process and helping shape potential outcomes is crucial to the success of the process and should precede analysis of specific components. Especially because strategic planning involves assessing priorities, board backing is critical even to posing such daunting questions as whether a program or discipline should be enhanced in the coming decade, deemphasized, or eliminated or whether a campus should be built, expanded, or closed. While the board should not consider, much less resolve, the merits of such issues when it launches the process, it must signal to the campus community its willingness to have the president and the planners address them and its ultimate receptiveness to what could include unpopular recommendations.

The president should keep the board fully informed as the process unfolds, even to the extent of flagging potential flashpoints before they become public. And the board should regularly reaffirm its readiness to confer with the president at any time during the planning process.

The board’s most critical role is at the final stage. The board must receive and digest the strategic plan well before the meeting at which final approval will be considered. Although it is the president’s task to apprise the board of any implications of specific recommendations, board members should be sufficiently informed to optimize the discussion time when the board does

convene to address the plan. Given the importance of potential actions, board members should not hesitate to seek additional guidance or defer final action until further insight has been provided. In the end, the board must be ready to assume shared responsibility for a plan that could include controversial proposals it deems vital to the institution's future. Such a role may indeed constitute a governing board's greatest challenge and its finest hour. For a plan to have meaning, it needs to be evident in the president's priorities, the institution's budget, fundraising activities, the board's agenda, and the life of the institution. Monitoring progress on strategic planning goals should be woven into the board's work and revisited regularly.

*The board must be ready to assume shared responsibility for a plan that could include controversial proposals it deems vital to the institution's future.*

Planning within multicampus systems may differ substantially from framing the charter of a single campus. Maintaining an appropriate balance between central authority, on the one hand, and institutional autonomy or creativity, on the other, poses a special challenge for planners at the system level. System boards must understand and appreciate the mission of each campus and where that mission fits within the system. Multicampus planning should focus the system's efforts on assessing and meeting broad statewide needs (for public institutions), marshaling and committing the distinctive potential of each campus, and maximizing the potential of coordination and collaboration, such as joint degree programs. Systemwide planning should fashion a total academic response that surpasses the sum of the constituent parts.

## **QUESTIONS TO CONSIDER**

- **When was a planning process last conducted? What records and reports, including evidence of implementation, are available?**
- **Is the board using the current plan to guide budget allocations and other policy decisions, thus signifying its level of commitment to the planning process?**

- How should the full board address strategic planning? Should the board appoint a strategic planning committee or use its executive or other standing committee?
- What provision should be made early in the process for seeking campus consideration of planning proposals? How can the president and the board appropriately engage faculty bodies and their leaders?
- Is the time frame established for the planning process realistic? Have goals and deadlines been established to keep the process on track?
- Public boards should also consider which public needs should receive special attention in the strategic planning process: How can the institution most effectively contribute to meeting them? Does the institution's plan (or the plan of each institution in a system) align with the public agenda or state master plan?

## **FISCAL INTEGRITY**

***The governing board is responsible for ensuring the institution's fiscal integrity, preserving and protecting its assets for posterity, and engaging directly in fundraising and philanthropy.***

Few responsibilities of a governing board merit closer attention than that of ensuring the institution's fiscal integrity. The board is the ultimate fiduciary of the institution, although day-to-day operations are properly delegated to the administration. The board not only bears legal responsibility for approving the annual budget and monitoring the institution's fiscal welfare but is increasingly held accountable on campus and well beyond for an exceptional measure of fiscal integrity. To fulfill this responsibility, the board should ensure that it receives pertinent information and allows sufficient time to consider strategic financial issues.

At state institutions, the board also serves a special role in balancing state appropriations with tuition income, carefully weighing the practical effect of tuition and fees on the affordability of the college experience for students and their families. Public boards should monitor such fiscal data as program costs, regularly reviewing and assessing the productivity of various academic sectors. The marshaling of this data and the exercise of oversight of the institution's expenditures should make boards especially effective and well-informed advocates for adequate state appropriations.

The public's perception of any institution's fiscal integrity is profoundly shaped by the standards prescribed by the governing board. At the very least, fiscal integrity entails rigorous compliance with all applicable federal, state, and local laws. Legal compliance demands greater and more detailed knowledge than what a typical board member brings from business, professional, or civic experience. Thus, gaining an understanding of the legal environment of higher education is a vital element of board education and places major responsibility on the institution's general counsel or legal staff and board professional.

Multicampus system boards properly delegate to the campus level a host of operational financial and budgetary matters. These boards must, however, retain full authority and responsibility over certain priorities that cannot be delegated, such as setting fiscal policies for all campuses, presenting a system budget to state government, ensuring fiscal integrity by scheduling and reviewing the results of audits, and implementing regulations on conflicts of interest. Rigorous conflict-of-interest standards require regular reports as well as resolution of potential conflict-creating relationships.

Beyond what the law minimally requires of all colleges and universities, boards should impose upon themselves the highest standards of fiscal integrity and accountability. Regular reviews of required audits—external and internal—are part of board accountability. Boards should devote special attention to such sensitive issues as auditor independence, audit committee procedures (including independence and financial literacy), conflict of interest, whistleblower protection, document-retention policies, transparency and accountability in governance, and financial disclosure beyond what is legally required.

As the ultimate monitor of expenditures, the board bears final responsibility for ensuring that financial resources and their use comport with the priorities and outcomes identified in the institution's strategic plan. The board should consider whether budget decisions reflect strategic priorities and commit institutional resources to what is deemed most important. The board is in a key position to take a longer, prospective view, investing in strategic priorities beyond annual budget decisions. Oversight also entails a board commitment to monitor both educational quality and institutional productivity by requesting and reviewing periodic reports of

such measures by the administration. This strategic work may benefit from periodic joint meetings of the finance and academic affairs committees or from board retreats.

Assessing and managing risk is another vital (though too often undervalued) dimension of fiscal responsibility. The board should ensure that the administration has a comprehensive risk assessment and management plan and that the plan is consistent with the institution's mission, the board's risk tolerance, and the current conditions and activities of the institution. Board members with business and professional backgrounds are likely to appreciate the importance of this area. Every board should assure itself of risk-assessment capability within or readily available to the institution. Where resources seem inadequate, the board should charge the administration to fill that gap and report regularly not only on the risk-assessment process but also on specific risks that the process has identified—whether they involve the institution's finances, investments, campus safety, student mental health, IT security, liability for overseas study programs, or, of equal significance, reputation.

The garnering and stewardship of private resources represent an important challenge for all boards. High among a board's duties is to preserve and protect the institution's basic assets, as well as to enhance those assets. The board should establish and regularly monitor policies that govern the institution's endowment and the use of endowment income, ensuring faithful adherence to donors' conditions and to relevant tax and other legal constraints. Even where a completely separate board governs an institutionally related foundation, regular communication and a memorandum of understanding between the institution and foundation are crucial to define the respective responsibilities of the two entities and to ensure that the foundation's actions serve the needs of the institution with which it is affiliated. Foundation supplements for the salaries of university officials, whether the president or a coach of a major sport, must comport with the university's policies and procedures as determined by its governing board and should not undermine board authority. Patterns of fundraising and stewardship vary widely among multicampus systems, ranging from those with a single systemwide foundation to those where each campus has its own foundation, solicits its own alumni and community, and operates independently of its sister institutions. In the latter structure, the board can

support and facilitate an approach to fundraising that seeks joint campus opportunities and projects and coordinated donor requests where feasible.

*The board serves in a unique position to plan for the long-term interests of the institution, protect intergenerational equity, and weigh the always competing priorities for financial resources.*

Since board members represent a major resource for institutional advancement, they bear a special responsibility for personal philanthropy to the institution they serve. Although this is rarely an explicit condition for board service in a public institution, it is appropriate to set an expectation that all board members contribute to the institution annually and during comprehensive campaigns, commensurate with their ability to give. Board members must be public advocates for the institution and its needs and thus should work closely with the president—and the institutionally related foundation, where one exists—in seeking additional philanthropic support from sources to which they have or could establish access.

Lastly, besides faculty and institutional reputation, the most valuable asset of most colleges and universities is the physical campus. It deserves protection and stewardship by the board. Ensuring appropriate reinvestment in this vital asset is properly an inescapable and abiding priority.

The board serves in a unique position to plan for the long-term interests of the institution, protect intergenerational equity, and weigh the always competing priorities for financial resources. Integrating financial, academic, and campus planning—joining mission, vision, and planning in a master plan for the future of the institution—requires the leadership of the president and the stewardship of the board.

## **QUESTIONS TO CONSIDER**

- **How much “financial literacy” should be expected of board members, especially those asked to serve on the audit, finance, and investment committees?**

- What information should board members—especially those who are not members of the finance committee—receive about the institution’s fiscal affairs to ensure long-term viability?
- In addition to reviewing and monitoring the annual budget, does the board examine trends and comparative data—on revenue, expenditures and debt, and key indicators such as instructional expenditures per FTE student—in the context of institutional strategies and goals?
- Are members of the board informed of expectations for personal philanthropy, if any? Do they support the institution commensurate with their ability to give?
- Are considerations of risk—both positive and negative—an integral part of the board’s decision-making process?
- How does the board regularly assess the status of the institution’s physical, human, reputational, and other assets?
- Do the leaders of the institution (and its related foundation, if one exists) ensure that fundraising priorities and expenditures from investments are aligned with the institution’s interests, policies, and priorities? Does the spending rule of the endowment meet institutional needs and protect intergenerational equity?

## EDUCATIONAL QUALITY

***The governing board is responsible for ensuring the quality of the education provided by the institution.***

The board bears ultimate responsibility for the educational mission of the institution; the types of degrees and academic programs the institution offers; and the policies for the recruitment, assessment, and promotion of faculty. It is also accountable for the overall quality of the learning experience. The faculty and academic administrators—not the board—determine the manner in which subjects are selected and taught, faculty members are recruited and assigned to teach particular courses, curricula are reviewed and revised, student progress and performance are assessed, and degrees are awarded. Yet it is appropriate for the board to convey its expectations that faculty will establish and monitor standards for teaching and learning, as well as for curricular review and revision.

Delineating the proper roles of the board, administration, and faculty is an inescapably delicate and sensitive process. While the faculty and administration are responsible for upholding and improving educational quality, the board has a fiduciary responsibility to ensure this is done. Typically through a committee on academic affairs, the board poses trenchant questions and requests data about the institution's academic quality. A board should expect timely responses in order to make policy decisions. However, board members who are accustomed to prompt and precise answers to their inquiries must be tolerant of the time often required for faculty bodies and academic units to work through their processes and respond.

All board members, not just those on academic committees, need to understand academic programs, the heart of the work of a college or university. To exercise its critical role in the educational process, the board should inform itself about the array of educational, research, and service programs the institution offers. The board should ensure that such offerings align with the institution's mission and strategic plan—and, at public institutions, the board should also appraise the institution's potential to contribute to the state's economic and other needs. As the board undertakes the annual budget process or engages in strategic planning, it will make decisions that have great consequence for educational programs.

*As the board undertakes the annual budget process or engages in strategic planning, it will make decisions that have great consequence for educational programs.*

An especially valuable source of information about academic programs is board participation in the external review of academic units and the institution as a whole by regional and specialized accrediting associations. The board should commit substantial time to read and discuss the reports of accreditation visiting teams, under the guidance of the president and the academic administrators who bear direct responsibility for the units under review. The board should be fully informed of the institution's response to any concerns or deficiencies identified through the accrediting process and

should monitor compliance with commitments the institution makes to the accrediting body in response to such concerns. In making budget decisions and long-range plans, the board should take into account any commitments that result from the institution's regional accreditation reviews.

## **ENSURING EDUCATIONAL QUALITY IN MULTICAMPUS SYSTEMS**

Multicampus system boards can review and shape academic programs in different ways. By allocating resources to encourage and reward interinstitutional collaboration (for example, joint degree programs and shared or complementary research centers and institutes), systems can maximize the potential contribution of public higher education to the state and its future. Systems are also uniquely positioned to identify gaps or underserved sectors and, accordingly, to marshal educational resources from different campuses to serve the needs of the state most effectively.

*Governing boards bear ultimate responsibility for the value of the educational experience their institutions provide.*

The board has a special responsibility to ensure that all undergraduate students are offered a comprehensive general education that prepares them for productive lives and for effective and informed citizenship. While all the professional accrediting associations (for example, business, engineering, education, nursing, architecture, and journalism) require that undergraduate degree programs contain a substantial general or nonprofessional component, they wisely leave the composition of that academic core to the institution and its faculty. The board should ensure that this mandate guides the general education that the institution's undergraduate students receive, whether they major in an arts and sciences field or pursue a professional degree. Monitoring metrics for assessing student learning outcomes and progress toward goals will help the board fulfill this responsibility.

The board should understand how students progress through the curriculum toward completing degree requirements within a reasonable time. Besides reviewing accrediting agency reports, the board should seek information about the manner in which the institution conducts assessments of student learning and should regularly receive the results of those assessments. Such a focus is especially critical for public boards in the increasing number of states that require student learning assessments, although these assessments should yield valuable insights even where they are not mandatory.

Governing boards—no less at public institutions than at private ones—also bear ultimate responsibility for the value of the educational experience their institutions provide. As the board and its standing committees review proposed tuition and fee increases, they should carefully assess the potential impact of such costs on the affordability of higher education. The board should also examine institutional expenditures and the trends in support for the academic core to ensure that the budget is properly aligned with the institutional mission. Board members might also compare the expense of attending their institution with charges imposed by comparable peers, fully recognizing the major financial sacrifice that paying for college represents to most families.

The board should regularly and publicly commend outstanding achievement and commitment by the institution's faculty. Both junior and senior professors should be recognized for such efforts. Endowing annual teaching awards, attending events where such awards are conferred, inviting recipients to board meetings for public recognition and commendation, and privately conveying appreciation to outstanding professors represent a board's visible commitment to enhance the quality of the learning experience—without intruding on the prerogatives of the academic administration.

## **QUESTIONS TO CONSIDER**

- **By what means can the board most effectively monitor educational quality?**
- **Is the board appropriately engaged in ensuring the educational quality of the institution's programs without preempting the vital prerogatives of the faculty and administration?**

- What data should the board receive regarding student attainment?
- How fully should the board review reports and recommendations from regional and specialized accrediting associations? What issues should the board focus on?
- How can the board best integrate its responsibilities for fiscal integrity and academic quality, especially in regard to budgeting and planning issues?
- Are faculty appropriately engaged in the vital work of institutional governance, such as institutional planning, budgeting, presidential search, and accreditation?
- Are articulation agreements and other policies in place to facilitate student enrollment, transferability of credit, and degree completion?

## **INSTITUTIONAL AUTONOMY AND ACADEMIC FREEDOM**

***The governing board is responsible for safeguarding both the autonomy of the institution and the related tradition of academic freedom.***

The tradition of citizen trusteeship that distinguishes the governance of American colleges and universities is itself a protection designed to ensure institutional independence. This principle of independence from governmental control was established in law by the US Supreme Court in the Dartmouth College case of 1819. Although the degree to which courts defer to the actions and decisions of a public university board varies considerably—and is greater for constitutional boards than it is for statutory boards—the Supreme Court has on several occasions insisted on substantial deference to academic judgments made in good faith. Colleges and universities, both public and independent, enjoy institutional autonomy free from direct governmental control. Governing boards serve as both a buffer and a bridge, protecting the institution from direct governmental control while representing the public trust in which colleges and universities are held.

Self-governance and self-regulation are crucial to institutional quality and integrity in American higher education, but they cannot be maintained if higher education is perceived as insular or dismissive of society's legitimate interests, concerns, and priorities. A public board in particular must seek a sometimes elusive balance between protecting the autonomy of

the institution and representing and fulfilling the public trust. The rationale behind self-governance in higher education grows out of centuries-old tradition as well as the modern-day missions of colleges and universities.

*Governing boards serve as both a buffer and a bridge, protecting the institution from direct governmental control while representing the public trust in which colleges and universities are held.*

The primary reason governing boards are composed of lay citizens, rather than government officials or members of professional societies, harkens back to the evolution of English common law and the development of social institutions not directly controlled by the church, guilds, or the government. Boards made up of representatives of the citizenry were intended to ensure arm's-length independence of leadership for these institutions but not to provide the day-to-day responsibility for running them. Today, boards continue to exercise policy and oversight functions rather than managerial or administrative ones.

Public and independent nonprofit colleges and universities are unique among social institutions in that their missions require them to work to benefit the whole of society through teaching, research, and service. Other institutions—for example, churches, volunteer groups, and some for-profit institutions—perform similar functions, but only colleges and universities combine all of them. In so doing, they constitute a precious reservoir of expertise and cultural memory that simultaneously serves the past, the present, and the future. Citizen self-governance is designed to maintain this complex mission and public trust.

Colleges and universities serve a much wider range of internal and external stakeholder groups than do most of society's other institutions. This is another reason their governing boards are—or should be—structured to represent the broad society rather than particular stakeholder groups. The involvement of lay citizens acting as collective bodies distinguishes higher education boards from representative or legislative models, under which individual members generally are considered proxies for constituent groups. The best boards reflect diverse perspectives and experiences, but higher

education boards were never intended to be representative of narrow interests. In the end, individuals who accept the responsibilities of trusteeship implicitly pledge a commitment to the whole institution, not to the appointing authority or to particular interests on or off campus, and to all citizens, not to a select few.

Another critical aspect of self-regulation, institutional autonomy, and accountability is voluntary accreditation, through which the public is assured of the quality of education. Regional and national accrediting agencies set standards, and teams of peers conduct periodic institutional reviews. This system of self-regulation has many critics but is a well-established tradition and a requirement for student eligibility for federal financial aid. Boards should be familiar with the regional and specialized accreditations their institutions hold and use the accreditation process to promote educational quality and their own understanding of it.

Institutional autonomy includes the tradition of academic freedom, regarded as an essential tenet of American higher education. Academic freedom is the right to pursue truth without reprisal, regardless of how unpopular that pursuit is with political, religious, institutional, or other leaders. The strength and stature of a college or university may be most clearly exemplified by its protection of this right. Threats to academic freedom may originate both outside and within the academic community. The critical challenge for the governing board, with the guidance of its legal counsel, is to differentiate those external forces that demand compliance from those that should be resisted. Even where a threat may immediately target only an individual professor, the institution's autonomy may potentially be implicated to a degree that the board should not only support the imperiled faculty member but also assert collective interests.

A board's responsibility encompasses approval of faculty personnel policies that ensure academic freedom in and beyond the classroom, as well as due process in the event of an adverse personnel action against a professor. The board is the ultimate guarantor of academic freedom and institutional autonomy in all educational matters and should jealously guard a prerogative as vital to board members as it is to professors and students. Many public college and university boards are directly involved in collective bargaining as the result of the faculty's choice of a national organization to represent their interests. Occasionally, a faculty organization

may seek to barter noneconomic interests (including academic freedom or due process) for short-term monetary benefits. Even where a local consensus may appear to exist, the governing board should resist such a trade-off and should insist that certain paramount values simply cannot be sacrificed through the bargaining process. This approach finds support from at least one national faculty organization actively engaged in collective bargaining. The American Association of University Professors has several times censured a college or university administration for yielding at the bargaining table on this type of issue at the insistence of one of the association's own chapters. In this situation, the board may represent the last—and strongest—guardian of such ultimate and nonnegotiable values as academic freedom.

*The governing board serves at the nexus of external and internal demands, and it must remain vigilant in protecting institutional autonomy and academic freedom.*

Multicampus system boards share with boards of individual public institutions a prime obligation to protect autonomy and academic freedom. System boards may prove especially effective in this role. Given the typically statewide political source of their authority, whether by election or by appointment, they are potentially most capable of deterring legislative and other incursions that threaten autonomy or academic freedom. System boards thus bear a special responsibility to protect the autonomy of the institutions they govern, and they should pay particular attention to the values of free inquiry and expression within the academic setting.

In an increasingly litigious society, almost every action taken by a public college or university is potentially subject to challenge in court because it involves the exercise of the authority of state government. In extreme cases, a university official or board member may incur personal liability, although the US Supreme Court has reinforced the concept of “qualified immunity” in situations where the invalidity even of an arguably unlawful action was not clear beyond doubt. Courts usually defer to the good-faith judgments and actions of public institutions and their governing boards. Moreover,

courts are far less likely to intervene at the behest of an aggrieved student, faculty member, or staff member if the institution has an adequate internal process for addressing disputes and if the grievant either failed to pursue that option or pursued it with negative results. Thus, a board may find itself in the role of a court of last resort for internal appeals. This internal process has the laudable goal of resolving disputes on campus wherever possible and, as a result, substantially reducing the risk of external intervention.

The changing legal climate is not confined to the courts or to public institutions. Not long ago, a trustee of an independent college or university could comfortably confine his or her attention to the governance of a single self-contained campus community. Today, however, political pressures and external scrutiny compound potential threats and extend the range of possible exposure. Independent institutions, too, are now vulnerable in ways that could not have been foreseen but can hardly be avoided. Examples of such new threats abound—dramatically heightened congressional scrutiny, detailed and deep Internal Revenue Service inquiries (as well as increases in mandated disclosure), closer scrutiny of intercollegiate athletics, challenges to board-determined presidential compensation levels, and a host of accountability and compliance mandates. The governing board serves at the nexus of these external and internal demands, and it must remain vigilant in protecting institutional autonomy and academic freedom.

## **QUESTIONS TO CONSIDER**

- **Does the board understand its obligations to safeguard institutional autonomy?**
- **Do board members participate in institutional accreditation? Does the board receive the report from the visiting team?**
- **How can the board best explain to those outside the academy the analogy between faculty tenure and safeguards provided by other sectors (for example, partnership for lawyers and accountants)?**
- **Do board members understand the principles of academic freedom and their obligation to defend it?**
- **In the rare case where the interests of a faculty member and those of the institution conflict or compete, which interests deserve primacy**

within the scope of academic freedom if both cannot be equally protected?

- What steps can public boards take—including but not limited to improving internal grievance and appeal procedures—that may reduce the risk of external intervention in personnel matters by agencies and courts?

## **INSTITUTIONAL POLICIES AND PROCESSES**

***The governing board is responsible for ensuring that the policies and processes of the institution remain current and are properly implemented.***

The board should be aware of major areas that deserve policy coverage and ensure that responsive policies not only exist but are current, implemented, and readily accessible to those who are either affected by them or charged with their implementation. Not every policy demands board adoption or revision. Indeed, the board of even a relatively small college would be swamped if its attention were required for every new policy. High priority should be accorded any actions that legally require the board's attention (such as emergency preparedness, codes of conduct, faculty personnel, academic affairs, and student affairs) or that directly affect its own governance and oversight of operations (such as board bylaws and conflict of interest). Action at the highest level should be reserved for policies with the broadest scope or those that guide implementation at lower levels consistent with board action. For boards engaged in collective bargaining, some policymaking and revision may occur during negotiations. Accordingly, the institution's board members should review with great care any significant policy changes that emerge from the bargaining process and are brought to the board for final approval in a new union contract.

*A regular long-term plan should schedule one or more major policy areas for board review each year on a continuous cycle.*

Whenever a gap appears in the policy grid, it is the administration's task to develop suitable language to fill that gap and seek board approval. At least where the proposed policy carries substantive import, the board should

review draft language carefully, ask probing questions, and seek an explanation of the implementation process. The board might well ask for periodic reports on the application of major new policies, including suggestions for modification. A regular long-term plan should schedule one or more major policy areas for board review each year on a continuous cycle—for example, reviewing student affairs policies every three to five years.

Emergency preparedness is one area of campus life that offers a compelling example of this shared responsibility. Plans must be in place to deal with such unlikely but disabling contingencies as devastating storms, campus shootings, and terrorist attacks. Every board should ensure that detailed emergency plans and policies exist or, where they are lacking, charge the administration to develop them. Each board member should have a copy of the plans, including clear directions for communicating with one another, with the president, and with the board professional in the event of a disaster. There should be clarity about who speaks for the institution and the board during an emergency. The board should also be assured that there are adequate plans for data backup and retrieval in the event of a campus calamity or cyberattack. The leadership succession should be specified in case the president or board chair is unable to serve at such a time.

Another area where the board and administration share responsibility is faculty personnel policies, except where those policies are superseded by a collective-bargaining agreement. A wise board recognizes that while the academic administration enforces and applies personnel policies, it is usually the board that adopts and modifies those policies and also approves senior faculty appointments and grants promotions and tenure—no less where the institution is engaged in collective bargaining than elsewhere. Although protection of faculty interests does not demand tenure (which a few reputable institutions do not offer), most colleges and universities have found tenure to be a workable, reliable, and (by prospective faculty) anticipated safeguard for academic freedom.

These two major policy areas—and many other examples, such as intercollegiate athletics and alcohol and drugs—illustrate the need for proper balance and productive collaboration between the board and administration.

## QUESTIONS TO CONSIDER

- Which policies and processes require board approval, and which should be adopted and promulgated by the administration?
- What is the role of the institution's legal counsel in reviewing and approving proposed new or revised policies and ensuring their compatibility with the charter, bylaws, and institutional mission?
- Is there a schedule for periodic board review of major policy areas? What is the protocol for assigning responsibility for initiating each such review, identifying policy gaps, and recommending policy additions or changes?

## CONSTITUENCY ENGAGEMENT

***In concert with senior administration, the governing board is responsible for engaging regularly with the institution's major constituencies.***

Public and independent colleges and universities historically have been afforded significant deference, the benefits of which have accrued to all of society. But they never have been fully autonomous, nor should they be. Complete autonomy is incompatible with the mission of any social institution. Tension between institutional goals and the public interest—and debate about what constitutes the public interest—are natural in academic life. Campuses have been testing grounds for social ideas, and the history of higher education can be mapped in large part by tracing the relationships between institutions and the societies they serve. Especially important for boards of publicly supported institutions of higher learning is recognition of the vital nexus between the needs of the state and its communities and the resources that each educational institution can and should bring to bear in meeting those needs.

Governing boards buffer their institutions from governmental control while serving as bridges to their communities and representing the public interest. There are times when boards and their leaders must defend policies and explain institutional actions to their communities because their objectivity and experience command a unique measure of credibility. At other times, the faculty and administration can benefit from the public perspective that board members bring to their campuses. Board members

are institutional ambassadors, and they are public representatives. On both scores, they exercise important civic responsibilities.

*Both as fiduciaries and as citizens, board members play a uniquely effective and influential role as advocates for the value of higher education.*

The board needs to communicate regularly with internal constituents in order to learn their views and concerns and to inform them of the board's actions and activities. Faculty, students, and staff may be invited to attend board meetings, serve on committees, and meet with board members at open forums. The board chair or president may periodically inform the campus community about the board's work and meet, in particular, with faculty leaders. Board member participation on the administration's campuswide governance committees and ad hoc task forces offers the opportunity for meaningful contributions and builds relationships that enhance understanding.

Today, many topics and issues are likely to invite exchanges between the board and the institution's various "publics," including relevant state and local government agencies and officials, business leaders, and the news media. Issues of access and affordability have been increasingly troubling for higher education, public as much as private. Concerns about the quality of higher education range from the global position of the United States and the practical monetary value of a college degree to governmental inquiries into issues such as executive compensation and endowment spending policies. Rankings, ratings, graduation rates, and assessment of student learning all serve to quantify the value of higher education and challenge colleges and universities to defend their worth.

The implications of such an evolving and expanding role are inescapable for all but the most sheltered boards of independent institutions as well as for the board of any publicly supported postsecondary institution. Whoever may be designated as the institution's official spokesperson—typically the president or a university relations officer—the board can hardly avoid eventual involvement. And when issues occasionally escalate beyond the administration, the board's role as communicator, primarily through the

board chair, may become indispensable. At such times, the board becomes both buffer and bridge in the exchange with a broad range of external and internal constituencies.

Finally, while the members of college and university governing boards tend, understandably, to focus on the success of their own institutions, an increasing number also view themselves as stewards for higher education writ large. Both as fiduciaries and as citizens, these board members play a uniquely effective and influential role as advocates for the value of higher education, helping restore and bolster public trust in the sector.

## QUESTIONS TO CONSIDER

- Who are the constituents of the institution? How can the board engage them in matters of significance where their views are important?
- How does the board communicate with the faculty on matters of importance? Does the board provide opportunities for their views to be heard?
- How can the board most effectively function as a bridge between the campus and the broader community? In the case of a multicampus system, how can the board most effectively relate and respond to the distinctive concerns of each community in which a campus is located?
- What special role should the board chair play in facilitating the engagement of the institution's administration and faculty with the external community?
- Do board members understand who may speak on behalf of the board or the institution and when it is best for the board chair, the president, or both to do so?
- How can the board best understand and respond to the public's concerns about what the institution is doing—or not doing but should be?
- Do individual board members serve as public advocates for the institution and for higher education in general?

## BOARD CONDUCT

***The governing board is responsible for ensuring that its business is conducted in an exemplary fashion, that its governance policies and practices are kept current, and that the performance of the board, its committees, and its members are periodically assessed.***

No aspect of a governing board's activity is more visible than the conduct of its own affairs. If serious lapses occur at the highest level of the institution's governance, confidence on and off campus in institutional oversight and integrity will inevitably suffer. The quality of a board's conduct of its own affairs should provide a model that guides the rest of the institution, setting standards that invite emulation throughout campus governance and management. Because of the high visibility of their actions and interactions, board members must be accountable to one another for civility, preparedness, ethical behavior, restraint, cohesion, and credibility.

Although most board members are busy people with myriad other responsibilities, joining a college, university, or system board presupposes a high level of commitment. A well-functioning committee structure and board members who come to meetings ready to work are vital. Careful and conscientious preparation for board and committee meetings is essential. The board chair and president should plan board meetings with focused, strategic agendas that include substantive discussions and meaningful work. Meeting schedules reflect various factors, including public pressure and even mandates. Most state college and university boards meet far more frequently (some as often as monthly) than do their private counterparts, for whom three or four meetings a year is the norm.

In addition to setting aside sufficient time to understand its own institution and the challenges it faces, the board should remain broadly informed about the current—and constantly changing—environment of higher education. Understanding fiscal, academic, and legal challenges facing colleges and universities is vital. Every board should expect new members to attend a comprehensive orientation program focused on the duties of trusteeship, the values of the institution, the challenges confronting the institution, and, at public institutions, the state's agenda for higher education. Records should be maintained that document the content of such orientation sessions and participation in them. The board should also schedule periodic—perhaps annual—retreats at which major policy issues may be discussed apart from the urgent pressures and often

preemptive agendas of regular business sessions and, if law allows, without the strictures that apply to public meetings. Much of the oversight of this work of the board should be done by the governance committee or a similar standing committee.

Unlike their private-sector counterparts, public boards seldom choose their colleagues and successors. Nevertheless, trustees should be assertive in advising the governor or other appointing authority about their particular board's needs (for example, greater financial expertise). Their advice could even extend to identifying candidates for an impending vacancy and supporting an appointment process based on merit. The question of faculty and student membership on the governing board should be addressed by each independent institution in ways consistent with its own values and traditions. The question of faculty and student membership on the governing boards of public institutions is typically determined as a matter of state policy by the legislature and implemented by the governor. Regardless of whether board membership includes faculty, students, or staff, the board should make an effort to assess the effectiveness of its communications with those constituencies and ascertain the best means of informing them and becoming informed of their views. As part of the orientation process, board members who are elected representatives should be reminded that in the role of board member, they serve the whole institution.

Transparency of board proceedings is of course imperative for publicly supported colleges and universities. Public higher education is seldom exempt from extensive freedom-of-information requirements contained in public-records and open-meeting laws. While these laws usually contain specific exemptions for matters such as personnel decisions, land purchases, and consultations with legal counsel, the exemptions must be strictly construed and carefully invoked. The board should rigorously observe such legal requirements as a public vote to convene a closed session for a stated purpose and a prompt report of the results of a closed session. Accordingly, the board should regularly make available to the campus and larger community as much information about its proceedings and its policies as possible.

The overall performance of a board can be measured by how well it fulfills the specific areas of responsibility discussed in this guide. It is

essential for every governing body to have policies that clarify the components and implementation of its legal and fiduciary responsibilities. A board policy manual or handbook, maintained by the board professional and shared with all new board members, enables the board to monitor the currency of the policies that guide its work.

As accrediting agencies give greater attention to board governance during their institutional reviews, it is incumbent upon the board to ensure there is a comprehensive set of board policies that demonstrates its commitment to principles of responsible governance and to transparency in the conduct of its work. In addition, as the board cultivates and welcomes new members to its ranks, clear standards for exemplary conduct convey the board's commitment to the highest standards of academic trusteeship. Current governance policies help demonstrate that commitment to members of the campus community and the public.

*It is essential for every governing body to have policies that clarify the components and implementation of its legal and fiduciary responsibilities.*

While there are a number of essential and recommended board policies, clearly the most essential are the board's bylaws. Bylaws are a core legal document that defines the structure and operation of the governing board. The board's bylaws, updated periodically and overseen by the board's governance committee (or committee on trustees), should be reserved for the board only. Other structures that are part of institutional governance should have their own statements of purpose and organization and be subject to formal board approval. Bylaws must state clearly that they ordinarily take precedence over all other institutional documents—including, for example, the faculty handbook. Exceptions would include contracts, such as collective-bargaining agreements. The general counsel of the board or institution should be certain that the bylaws are consistent with applicable laws, the board's needs, and the highest principles of fiscal integrity and that they are amended as necessary. A public board must also be clear about and sensitive to the delineation between institutional policy as such policy shapes its bylaws and the relevant mandates of state law.

Any revisions to the bylaws must comport both in process and in substance with pertinent provisions of state law.

*The credibility of a board's appraisal of the president's performance depends on a commitment to rigorous and regular self-scrutiny of board and board member performance.*

The bylaws need not include detailed statements of responsibilities for the board's standing committees. Committee charges should be approved by the board and maintained as part of the board's policy manual. Exceptions include the executive committee, the audit committee, and the governance committee, whose responsibilities are central to the board's own operations and likely to be amended less frequently than others. These committees might be considered for inclusion in the bylaws.

There are a number of other essential governance policies, including a statement on board member responsibilities. This statement details expectations for individual board members, including guidance on such matters as philanthropy, conflict of interest, and communication with the institution's constituencies. Additional policies that boards should consider include a code of conduct and ethics, criteria for the selection of new board members, and an investment and spending policy.

The board should also devote regular attention to the currency and application of its own conflict-of-interest policies; public boards also must attend regularly to the implications of all state conflict-of-interest constraints and disclosure obligations. Monitoring board conflict of interest requires diligence and oversight. The board should demonstrate a commitment to prevent not only actual or material conflict but also the appearance of conflict. The board should promulgate a rigorous code of conduct for board members, seeking a commitment from every member at least once a year. An independent board should charge its general counsel to be certain that its conflict-of-interest policy adheres to the public charity laws in its state and maintains currency. A public board should charge its general counsel to be certain that its conflict-of-interest policy adheres to all regulations and policies that affect government agencies and, with the

exception of constitutional boards, typically extend to state-supported higher education.

The credibility of a board's appraisal of the president's performance depends on a commitment to rigorous and regular self-scrutiny of board and board member performance. The criteria for such reviews should be clearly understood and fully accepted by all board members. Indeed, the very process of fashioning such expectations may provide an invaluable opportunity for introspection.

Well-tested instruments exist for board self-assessment, and they can be adapted to the needs of a particular institution and its board. The self-assessment should consider the knowledge and accomplishments of the board as a whole and its cooperation and collaboration in the conduct of its work, as well as individual performance. Each board member should be invited to assess his or her own performance and the effectiveness of the board and its committees. The process should assess overall board effectiveness and provide a composite profile of the contributions of each member.

Appraising the interaction between the board and the president is of particular importance and should include a careful examination of board leadership, the board as a whole, and individual members. The board's support for the president and its capacity to unify and speak publicly with a single voice despite inevitable differences among individual board members should rank high among criteria for assessment.

An external consultant or facilitator—especially one who has extensive experience with college and university boards—may prove most useful to this task. A consultant may be able to recommend specific steps that would enhance future board performance, as well as identify qualities to be sought in recruiting new board members. Like presidential assessment, board assessment should be a formative process. Its greatest value is the education and improvement of the board.

Assessing individual board members at the end of their terms should be a routine practice, regardless of the appointment process. The results can provide individuals with useful feedback and inform decisions on reappointment. For some board members, guidance from a board assessment may enhance both the value of board service and individual commitment to trusteeship. Occasionally, a board member may infer from a

negative appraisal an imperfect match between his or her interests or available time and the board's needs. The interests of the institution and the public are, after all, paramount.

## QUESTIONS TO CONSIDER

- How can the board best maintain appropriate independence while being sufficiently knowledgeable about campus issues to be able to govern effectively?
- How well are new board members oriented to the responsibilities of trusteeship? How well are continuing members educated about current issues and future concerns?
- Are board bylaws and other governance policies current and adequate? Are they properly related to the authority of other institutional policies?
- How can a board best achieve and maintain consensus? How can a board most effectively manage potentially disabling conflicts or disagreements without impairing its credibility or esteem? Conversely, how does a board avoid groupthink and “polite” agreement or artificial consensus in favor of healthy and respectful discourse?
- What degree of monitoring and reporting is necessary to ensure that board members are aware of the rigorous standards applicable to potential conflicts of interest and comply with them?
- Is assessment used to enhance the performance of the board and individual members?
- Are new board members provided with a statement of expectations? How does such a statement relate to board assessment?

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*\* As it is used throughout this publication, the term “institution” refers to the college, university, or system the board governs.*

*\* Although actual designations vary across institutions, the term “president” is used throughout this publication to refer to the chief executive officer of a college, university, or system.*

# THE GOVERNING BOARD MEMBER AS FIDUCIARY

**MEMBERS OF THE GOVERNING BOARDS of colleges and universities hold a unique position with regard to stewardship of the institutions they serve, a position not shared with students, faculty, alumni, donors, regulators, or others in the community. Governing board members are fiduciaries.**

The concept and practice of being a fiduciary cannot and should not be reduced to a legal principle with no real-world impact on a board member's behavior. Fiduciary principles and duties are at the heart of good governance. The fiduciary duties described here may seem, at first glance, to be a matter of common sense. What could be more essential for a board member than to act with good faith and care, with loyalty to the institution, and in compliance with its mission and the law? And yet, behind nearly every failure of governance and leadership at higher education institutions is a breach of the principles of fiduciary duty.

While governing boards act as a body, the fiduciary duties applied by law and best practice fall on individual board members. Each has a personal responsibility to ensure that he or she is up to the task and fulfilling his or her obligations. Board members must be more than names on a masthead. They must be fully engaged. They must attend meetings, read and evaluate the materials, ask questions and get answers, honor confidentiality, avoid conflicts of interest, demonstrate loyalty, understand and uphold mission, and ensure legal and ethical compliance. Those who cannot do so must step down and allow others to take their place. The success and sustainability of the institution and the protection of board members from personal liability require nothing less.

*A college or university board member or officer has duties to the institution under the law that a faculty member, a student, or an administrator does not.*

This section provides a discussion of governing board members and officers as fiduciaries of their institutions and explains the three fiduciary duties that apply to them.

## **WHAT IS A FIDUCIARY?**

Under state statutory and common law, officers and board members of corporations—including nonprofit corporations and public bodies that operate colleges and universities—are fiduciaries and must act in accordance with the fiduciary duties of care, loyalty, and obedience. Legally, a fiduciary relationship is one of trust or confidence between parties. A fiduciary is someone who has special responsibilities in connection with the administration, investment, monitoring, and distribution of property—in this case, the charitable or public assets of the institution. These assets include not just the buildings and grounds and endowment, but also intangibles, such as the reputation of the institution and its role in the community. A college or university board member or officer has duties to the institution under the law that a faculty member, a student, or an administrator does not.

The particular duties owed by a fiduciary to the institution he or she serves are commonly known, as described above, as the fiduciary duties of care, loyalty, and obedience. Taken together, they require board members to make careful, good-faith decisions in the best interest of the institution consistent with its public or charitable mission, independent of undue influence from any party or from financial interests. These duties may be described in and imposed by a college or university's bylaws, governing board policies, standards of conduct, or code of ethics. In the case of a public institution, state law may describe or apply these standards of conduct differently (for example, under particular rules applicable to regents or public bodies); however, adherence to these principles remains a key governance best practice at both independent and public colleges and universities.

Board members and officers must understand that while they hold fiduciary duties individually, they act collectively as a board. Absent a particular designation of authority by the board to an individual board member or officer (such as the authorization of a board chair to enter into

an employment agreement with the president on behalf of the institution), no single board member or officer has authority to bind the institution or determine its course of action, even those who may be appointed by a state governor or through a political process.

## **THE DUTY OF CARE**

The duty of care generally requires officers and governing board members to carry out their responsibilities in good faith and to use the degree of diligence, care, and skill that ordinarily prudent persons would reasonably exercise under similar circumstances in like positions. Accordingly, a board member must act in a manner that he or she reasonably believes to be in the best interests of the institution.

Determining what is in the best interests of the institution is left to the governing board's sound judgment under the duty of care. It will necessarily involve a balancing of interests and priorities appropriate to the institution's mission and consistent with its strategic priorities. This should include explicit attention to the tradeoffs inherent in achieving balance among employees' interests (maintaining quality of education and protecting the institution's assets), student interests (maintaining affordability), physical assets (buildings and grounds), fiscal assets (endowments and fund balances), consumer value of the degree (cost of degree attainment versus future job earnings), and community interests in the institution (jobs, economic development).

Under the duty of care, governing bodies of colleges and universities are responsible for both the short- and long-term financial health of the institution and the achievement of the goal of preserving the institution and its resources for future generations. At the same time, governing boards have the obligation to develop and protect the quality of the institution's academic programs and to become appropriately engaged in the oversight thereof.

There can be no single, succinct statement of specific actions required by the duty of care, since different circumstances will inevitably require different acts. However, the proper exercise of the duty of care requires a board member to attend meetings regularly; to read and evaluate the meeting materials prepared for the board in advance of the meeting; to ask

questions and participate actively in board discussions; and to be knowledgeable of the institution's purposes, operations, and environment.

Also interwoven in the duty of care is the responsibility of board members to maintain the confidentiality of matters brought before the board, both during and after their board service. This is particularly the case with respect to personnel concerns and sensitive business matters. In some cases, board members may be asked to sign an oath of confidentiality or a binding agreement that sets forth their duties and responsibilities to the institution. Such instruments may be useful, but they may also seem heavy-handed to some, and the duties will apply to board members who have been duly elected and have consented to service whether or not an oath or agreement exists. At the same time, board members must balance their obligation to maintain confidentiality with the core governance principle and public policy objective of promoting transparency in board operations.

The duty of care does not require professional expertise, extensive consideration, or full knowledge of the matter at hand by every board member. Instead, the duty generally requires board members to be reasonably well informed of the relevant issues. Officers and board members may rely upon expert advice in making their determinations. For example, a board member may rely upon information, opinions, reports, or statements—including financial statements and other financial data—that are prepared or presented by (a) one or more officers or employees of the institution whom the board reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants, or other persons as to matters the board reasonably believes are within the person's professional or expert competence; or (c) a committee of the governing board of which he or she is not a member if the board member reasonably believes the committee's report merits confidence. Any reliance on information provided by others must be reasonable under the circumstances, considering such factors as the source from which the information was obtained, whether the information relied upon is a brief summary or an extensive analysis, whether the matter is routine or exceptional, and the time frame in which a decision must be made.

## **THE DUTY OF LOYALTY**

The duty of loyalty requires officers and board members to act in good faith and in a manner that is reasonably believed to be in the interests of the college or university and its nonprofit or public purposes, rather than their own interests or the interests of another person or organization. The fiduciary must not act out of expedience, avarice, or self-interest. The requirement that officers and board members discharge their duties in good faith is a subjective one that will vary depending on facts and circumstances.

Under this duty, a college or university board member must be loyal to the institution and not use the position of authority to obtain, directly or indirectly, a benefit for him or herself or for another organization in which the board member has an interest. Accordingly, when evaluating a board member's conduct, the duty of loyalty considers both a board member's financial interests and the governance or leadership positions he or she holds with other organizations.

Board member independence is increasingly sought after by regulators and key stakeholders to ensure adherence to the duty of loyalty. In this context, independence means that the board member is not employed by and does not do material business with the college or university. This information is reported on IRS Form 990 and in other public record filings. In addition, the board member acts independently of any personal relationship he or she may have with the president or senior leaders of the college or university or with other board members. It is not required that every member of the board be independent (for example, some ex officio board members may not be), but, ideally, a majority of the board members should be independent.

*It is incumbent on board members to retain their independence from external and internal stakeholders in the conduct of their oversight and policy responsibilities.*

In addition, it is incumbent on board members to retain their independence from external and internal stakeholders in the conduct of their oversight and policy responsibilities. This applies to boards of independent

institutions and, especially, to public boards whose members are most often selected for their service through some form of political appointment. It also applies in cases in which board members are appointed or elected by internal constituent groups such as faculty or staff. Public and internally appointed board members may be respectful of the views of appointing authorities, but they must not allow such influence to be determinative of board action. Governing board members of public institutions, while serving the public interest, must still adhere to the fiduciary duty of loyalty to the institution and, in so doing, must prioritize the interests of the institution over any other. It is essential that board members avoid a conflict of loyalty in meeting their fiduciary responsibilities to act on behalf of the institution(s) they hold in trust.

*Fidelity by board members and officers to their legal fiduciary duties is the essence of good governance.*

The most critical implementation of the duty of loyalty comes in a college or university's conflict-of-interest policy. Such a policy, when adhering to state law and best governance practices, requires that board members fully disclose financial interests and dual organizational relationships ("dualities of interest") that may affect their decision making on behalf of the institution. The policy will prohibit board members from participating in or unduly influencing decisions in which they have a material financial conflict of interest or an adverse duality of interest ("recusal") and may require the board member to eliminate the duality of interest.

## **THE DUTY OF OBEDIENCE**

A third fiduciary duty, which is arguably an element of the duties of care and loyalty, is the duty of obedience. This is the duty of board members to ensure that the college or university is operating in furtherance of its stated purposes, as set forth in its governing documents, and is operating in compliance with the law. The board should also periodically reevaluate its purposes and mission and must be prepared to amend or change them when

it is necessary and appropriate to do so under the law and the institution's governing documents. A governing body of a college or university must make reasonable efforts to ensure that the institution is both legally and ethically compliant with the law and applicable internal and external rules (for example, accreditation, environmental, research, labor, or athletics requirements) and that it has instituted effective internal controls to achieve compliance and to identify and address problems.

## **TO WHOM ARE FIDUCIARY DUTIES OWED?**

By law, the duties of care, loyalty, and obedience are owed to the institution by governing body members and officers. However, in the court of political and public opinion, fiduciary duties are commonly extended (erroneously) to other beneficiaries: students (and those who may pay the tuition for them), faculty, alumni, donors, and the community at large, particularly where the institution has a direct and material impact on the livelihood of its community and the beneficiaries of its research and scholarship. In a given case, governing board members may comply faithfully and with integrity with their legal fiduciary duties in overseeing their institutions and yet still run afoul of regulators, politicians, and stakeholders who believe a different result should ensue. It may even cost a board member his or her seat. Still, fidelity by board members and officers to their legal fiduciary duties is the essence of good governance.

## **FIDUCIARIES WITHIN A SHARED GOVERNANCE SYSTEM**

In the American higher education system of shared governance, governing boards share governance duties with the president and the faculty while respecting academic freedom and soliciting input from a broad campus constituency. However, under the law, only governing board members and officers hold fiduciary responsibility. Nevertheless, the governance principles ingrained in the fiduciary duties discussed here have clear application to the efforts of the administration and faculty, as well. All participants in the system of shared governance would do well to adhere to these principles and practices.

## QUESTIONS TO CONSIDER

- Does the board understand the elements of the duty of care, the duty of loyalty, and the duty of obedience? How is the board educated about these duties?
- How does the board assess its own performance in fulfilling its fiduciary duties?
- Do board members understand the ways in which they could be exposed to personal liability for breaching their fiduciary duties? What areas of liability exposure are of greatest concern?
- How does the board involve experts to facilitate and enhance its understanding of matters before it?
- Does the board have a robust conflict-of-interest policy that also addresses dualities of interest? How and to whom do board members disclose conflicts and dualities? Whose responsibility is it to review board conflict-of-interest disclosures and to report on potential conflicts to the board? What does the board do when a conflict is identified?
- How does the board determine what matters before it are confidential, and how does it enforce confidentiality by board members?
- Has the board been impeded in fulfilling its fiduciary responsibilities by external influences such as government, corporate, political, social, athletic, or religious interests? How should the board respond under these circumstances?
- Do appointed public board members understand and abide by their fiduciary obligation to evaluate the matters before them objectively and to maintain their independent judgment, notwithstanding any potential effort by the appointing authority to influence their decisions?
- By what process does the board determine whether proposed board action is consistent with the institution's mission and purposes?
- How does the board oversee legal compliance in the institution? What internal controls are applied to prevent legal violations such as fraud, theft of intellectual property, embezzlement, athletics infractions, use of gifts in violation of donor intent, and employment discrimination? Are they effective?



Since 1921, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country's unique form of institutional governance through its research, services, and advocacy. Serving more than 1,300 member boards, nearly 2,000 institutions, and 40,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions and institutionally related foundations with resources that enhance their effectiveness.

In accordance with its mission, AGB has developed programs and services that strengthen the partnership between the president and governing board; provide guidance to regents and trustees; identify issues that affect tomorrow's decision making; and foster cooperation among all constituencies in higher education. For more information, visit [www.agb.org](http://www.agb.org).