

AGB STATEMENT ON BOARD ACCOUNTABILITY

Adopted by the AGB Board of Directors, January 17, 2007



Association of Governing Boards
of Universities and Colleges

The “AGB Statement on Board Accountability” encourages all governing boards and chief executives to examine the clarity, coherence, and appropriateness of their institutions’ governance structures, policies, and practices. The AGB Board of Directors adopted the statement on January 17, 2007, having previously adopted three other statements that discuss important board responsibilities:

- AGB Statement on Institutional Governance (1998)
- AGB Statement on Governing in the Public Trust: External Influences on Colleges and Universities (2001)
- AGB Statement on Board Responsibilities for Intercollegiate Athletics (2004)

This statement was inspired by the work of the AGB Task Force on the State of the Academic Presidency in American Higher Education, the report of which AGB published in September 2006. The task force suggested that higher education governance was subject to increasingly intense public scrutiny and that boards would benefit from a statement of principles. In developing the statement, AGB solicited the views of the association’s board of directors, the councils of presidents and board chairs, and scores of presidents and chancellors, trustees and regents, senior administrators, and higher education experts nationwide. In addition, AGB received many comments in response to an “AGB Alert” sent to members.

Special thanks are due to Robert M. O’Neil, former president of the University of Virginia and the University of Wisconsin and general counsel of the American Association of University Professors, who wrote several drafts of the statement. Others who provided substantive commentary and suggestions included Robert H. Atwell, former president, American Council on Education; Rita Bornstein, president emerita, Rollins College; Roger Bowen, general secretary, American Association of University Professors; Richard P. Chait, professor, Harvard Graduate School of Education; James J. Duderstadt, former president, University of Michigan; Paul L. Locatelli SJ, president, Santa Clara University; Martin Michaelson, attorney, Hogan & Hartson; William G. Tierney, director of the Center for Higher Education Policy Analysis, University of Southern California; Jane V. Wellman, Institute for Higher Education Policy; and E.B. Wilson, former chair, St. Lawrence University. AGB President Richard D. Legon and Vice President Daniel J. Levin coordinated development of the statement.

The “AGB Statement on Board Accountability” is not intended to be prescriptive or to offer legal advice. Rather, it is intended to serve as a template and resource for discussions of good governance, policies, standards, and principles.

Copies of this document may be downloaded at www.agb.org/accountability; printed copies are available free of charge by writing to matts@agb.org.

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Introduction

Although the precise point at which a college or university governing board may justifiably be called “accountable” is elusive, the issue of board accountability warrants attention. Certain elements of board accountability—observing the highest standards of fiduciary duty, avoiding the taint of conflict of interest in decision making, and scrupulously observing applicable federal, state, and local laws—seem so obvious as to need little elaboration. Beyond such familiar requirements, however, the terrain is less plainly marked, and greater clarity will help the higher education community and the public better appreciate the full measure of board accountability.

The AGB Board of Directors believes that though the overall performance of the governing boards of America’s colleges and universities remains commendable, documenting certain policies and practices will foster confidence among presidents and chancellors, trustees and regents, and the general public that these boards are performing responsibly, effectively, and accountably. The AGB board believes such guidance to be in the public interest as well as that of higher education.

This view recently was underscored by the “Report of the AGB Task Force on the State of the Presidency in American Higher Education,” which recommended that the association develop a formal statement addressing board accountability and fiduciary responsibility. Development of such a statement also comports with the heightened emphasis being placed on accountability and self-regulation by the Panel on the Nonprofit Sector convened by Independent Sector.

Adoption by the AGB Board of Directors of this “Statement on Board Accountability” reflects a prevailing set of conditions:

- ◆ Growing pressure on many sectors of the nonprofit community for greater accountability presents a compelling opportunity to address this issue.
- ◆ Changes in the legal and regulatory environment (exemplified by Sarbanes-Oxley legislation), though largely designed to address problems in the corporate sector, are not irrelevant to higher education.
- ◆ Lapses and failures in the integrity and governance of certain participants in the nonprofit and higher education communities—particularly in such areas as conflict of interest, executive compensation, and financial oversight—have raised troubling questions.
- ◆ Increased scrutiny from congressional committees and state officials, and a litigious environment that affects all colleges and universities, call for clear articulation of the principles of autonomy and authority of governing boards.

The goals and aims of the AGB board’s “Statement on Board Accountability” include the following:

- ◆ Reaffirm within the higher education community, and explain to a broader audience, core principles of board accountability and responsibility. (A summary of basic responsibilities of governing boards appears as an appendix.)

- ◇ Impart a deeper appreciation of the gravity of concerns regarding governance, threats to board authority, and institutional autonomy.
- ◇ Recognize a sense of urgency about responding to such concerns before rigid external regulation preempts responsive internal action.
- ◇ Secure a wider and deeper commitment of boards to broadly shared principles and policies.
- ◇ Place college and university governing boards at the forefront of the nonprofit sector's response to concerns about governance and accountability.
- ◇ Provide appropriate overarching policies so credible that their acceptance across higher education is an inevitable response.

Defining “Board Accountability”

Members of governing boards, regardless of the size, mission, or source of support of their institutions, characteristically are bound by the duties of integrity, care, loyalty, and obedience. These values transcend differences among American colleges and universities and bear special importance to our nation's institutions of higher learning. At least four categories of board accountability may be identified. Boards are accountable to (1) the institution's mission and cultural heritage, (2) the transcendent values and principles that guide and shape higher education, (3) the public interest and public trust, and (4) the legitimate and relevant interests of the institution's various constituencies.

The exercise of independent judgment is an essential function of college and university governing boards. Although board members must be conscious of formal and legal lines of authority, they also must be free to make their own judgments, reflecting the highest level of accountability. Boards and their members bear a fiduciary responsibility that extends beyond—and may at times conflict with—the wishes or needs of the legal source of their authority. Boards that seek to meet the test of accountability should consider the following:

- ◆ **Boards are accountable to and for the mission and heritage of their institutions.** The mission and heritage of the institution guide the board's work and affect how the board addresses its responsibilities. Boards have a fiduciary responsibility to advance the institution's mission and to promote the institution's integrity and quality. Boards also have a responsibility to reexamine and reshape that mission (or to make recommendations to the authorizing body) as needs and conditions indicate.
- ◆ **Boards are accountable to and for the transcendent values that guide and shape American higher education.** Among those abiding values are self-regulation and autonomy, academic freedom and due process, shared governance, educational quality, transparency, and fiscal integrity. Boards are accountable for such values not only in behalf of their own institutions but also for American higher education generally. In the case of

church-affiliated institutions, guiding values also may include certain tenets of the relevant faith community.

◆ **Boards are accountable to the public interest and the public trust.** The American people entrust control of higher education institutions to citizen boards and to the independent judgment of their members, rather than to senior public officials or bureaucracies. All governing boards are accountable to the broad public interest and for the achievement of public purposes. Thus, boards incur a special duty to preserve and enhance the institution for future generations. Governing boards of independent colleges are accountable not only to the sources of their founding authority but also to a government-issued statement of authority, such as a charter that describes some of the basic public expectations for the institution. For those boards whose members are elected by the public or appointed by a governor or legislature, authority derives from and accountability pertains to the people of the state.

◆ **Boards are accountable to the legitimate and relevant interests that various constituencies represent.** These include faculty, staff, students, alumni, donors, parents, neighbors, and the local government, among others. A board must exercise its best judgment to accommodate such interests, but it is the board that makes the ultimate decision in light of the institution's mission, values, and the law. The board bears ultimate responsibility for weighing conflicting claims of interested parties and the good of the institution.

Several dimensions of accountability that merit close examination by boards—fiscal integrity; board performance; educational quality; and presidential search, assessment, and compensation—are addressed below:

Fiscal Integrity

Among the responsibilities of governing boards, maintaining fiscal integrity is fundamental. Boards bear ultimate legal responsibility for approving the institution's annual budget and monitoring the institution's fiscal welfare. The board is the ultimate fiduciary of the institution, even though day-to-day operations are properly delegated to the administration.

Boards also bear special responsibility to help the institution anticipate natural or man-made disasters or other crises that may profoundly disrupt the educational process and the financial stability of the institution. Boards should ensure that the institution has developed, and periodically updates, a comprehensive emergency-preparedness and disaster-response plan that provides mechanisms for backup and preservation of vital institutional records. Such plans should include provision for board-administration interaction during a time of crisis, as well as for emergency board meetings.

The public's perception of the institution's fiscal integrity is profoundly influenced by the standards prescribed and observed by the governing board. Among the imperatives that follow from these premises are the following:

- ◇ Because the board bears ultimate fiduciary responsibility, among its primary concerns should be the cost, price, and quality of education offered by the institution.

QUESTIONS FOR BOARDS TO CONSIDER:

1. How can the board best achieve collective “financial literacy” while recognizing that not all board members need to be “financially literate”?
2. In its efforts to preserve intergenerational equity, how often does the board review the spending policies related to the assets it oversees?
3. How can the board effectively assess the potential of laws such as Sarbanes-Oxley to guide a commitment to standards of fiscal integrity?
4. If the board commits to standards of fiscal integrity beyond those the law requires, how should it explain its reasons for doing so, and how can it make clear the benefits of such commendable institutional self-regulation?

- ◆ To fulfill their oversight responsibilities concerning management of institutional resources, the board must ensure academic quality, taking into account not only current but future generations.
- ◆ Fiscal integrity entails rigorous compliance with applicable federal, state, and local laws, though that is only the starting point. Legal compliance requires a greater and more detailed understanding of such legal constraints than a trustee ordinarily brings from business, professional, or civic experience. Orientation to the legal environment of higher education is a vital element of board education.
- ◆ Beyond what the law requires of colleges and universities, boards should impose upon themselves the highest standards of fiscal

integrity and accountability. In this regard, boards should examine certain portions of the Sarbanes-Oxley Act of 2002 (and related enactments) and respond to the spirit that impelled this legislation, even though few such rules were designed for or nominally apply to higher education institutions. Boards should focus special attention, for example, on auditor independence; audit committee independence, composition, and activity; whistleblower protection; transparency and accountability in governance; and enhanced financial disclosure.

Board Performance

No aspect of a governing board’s activity is more visible than the conduct of its business as a board. If serious lapses occur at the highest level of the institution’s governance, confidence in overall institutional management inevitably will suffer. The quality of a board’s conduct of its business should be a model that guides the rest of the institution, setting standards that invite emulation in campuswide governance and management. Because of the high visibility of the example they set, board members must be individually accountable to one another for civility, preparedness, ethical behavior, restraint, cohesion, and sound judgment.

While no person deliberately joins a governing board unprepared for the tasks of trusteeship, trustees are volunteers for whom much of the role initially may be unfamiliar, and the full dimensions of that role may exceed their expectations. The process of becoming and remaining

adequately informed about the responsibilities of trusteeship is an important component of accountability. The complexity of the institution may magnify that task, such as at universities that include academic health centers and teaching hospitals.

Several elements are especially pertinent in the areas of the conduct of the board's business, the board's structure and selection process, trustee preparation, and oversight of institutional performance:

In regard to conduct of the board's business:

◆ To foster a paramount commitment to integrity in all functions, boards should promulgate a code of trustee conduct and ensure that members meet the requirements of all applicable laws and policies. The board should regularly review principles of fiduciary oversight as well as institutional bylaws and operating policies.

◆ The board should regularly monitor trustee and board compliance with the board's conflict-of-interest policy to avoid the appearance or reality that members ever benefit in inappropriate ways from their service.

◆ Board proceedings and communications should be as accessible as applicable practices and policies permit. For state-supported institutions, this means that board and committee sessions take place in public, save for those discussions that are expressly exempt from open-meeting laws because they relate to such sensitive matters as personnel, real estate transactions, pending negotiations, and legal consultations. Although such laws typically do not apply to boards of independent institutions, such boards should conduct their business and record their deliberations as though the board was subject to comparable public scrutiny.

QUESTIONS FOR BOARDS TO CONSIDER:

1. How can the board best maintain an essential measure of independence in meeting its fiduciary and other responsibilities?
 2. When and how should board actions and deliberations be reported to the broader campus community and other stakeholders?
 3. How can the board maintain the independence and objectivity of its judgment on critical issues that face the institution, even as it provides essential support to the administration and appropriately delegates academic and operational authority?
 4. How can the board avoid both apparent and actual conflicts of interest, while ensuring that highly qualified individuals are willing to serve as trustees?
 5. How can the board best achieve and maintain vital consensus? How should the board manage potentially disabling disagreements and dissension?
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In regard to the board's structure and trustee-selection process:

◆ Boards of institutions that have determined that direct board membership is not suitable for faculty, students, and staff should make special efforts to assess relations and communications with those constituencies on a regular basis.

◆ Boards that are authorized to fill their own vacancies should regularly review their

QUESTIONS FOR BOARDS TO CONSIDER:

1. How can the board most effectively attract members who have needed skills and talent?
2. How can the board most effectively achieve racial, ethnic, gender, geographic, vocational, and other forms of diversity?
3. Who within the administration or board of a public institution or system is best positioned to communicate to the appointing authority the specific needs of the board and the value of the board's independence?

membership composition, with the goal of sustaining or expanding financial expertise or "literacy"; experience within the higher education community; racial, ethnic, gender, geographic, vocational, and other forms of diversity; and other important characteristics.

◆ Boards that lack trustee-selection authority should seek opportunities to advise the appointing office (typically the governor) with respect to gaps or weaknesses in the experience, expertise, or diversity of the current membership.

In regard to trusteeship preparation and performance oversight:

◇ Every board should adopt a statement that addresses the values, principles, and expectations of members. Each member of the board should affirm his or her understanding of and commitment to board and trustee responsibilities.

◇ Each institution should require all new trustees to attend a comprehensive orientation program focused on the duties of trusteeship and the values of and challenges confronting the institution. Records of participation in and the content of such sessions should be maintained.

◇ Boards should schedule periodic retreats at which major policy issues are discussed apart from the urgent pressures and preemptive agendas of regular business sessions.

◇ Board education and development should be a continual process. Educational sessions should be a regular part of board meetings. Trustees should be expected to attend regional and

national workshops that address current and emerging issues facing boards. Members of public boards should participate actively in available statewide trustee-education programs.

QUESTIONS FOR BOARDS TO CONSIDER:

1. Are the board's bylaws and policies regularly reviewed and up to date?
2. Is a comprehensive board orientation program for new board members in place? How is the work of individual trustees and the board as a whole assessed?
3. How can board members maintain a proper balance between being fully informed and diligent in their service on the one hand and keeping the inherent ambiguities of trusteeship in perspective on the other?

◆ Boards should ensure that a process exists for the regular and rigorous assessment of the board's own performance and that of individual trustees.

◆ Boards should ask the institution's legal counsel to provide periodic briefings on regulatory actions and court decisions that may significantly affect the institution and its gove

Educational Quality

The board broadly defines the educational mission of the institution, determines generally the types of academic programs the institution shall offer to students, and is ultimately accountable for the quality of the learning experience. The faculty and academic administrators—not the board—shape the manner in which subjects are taught and learning experiences framed, identify who shall teach these programs, and develop approaches to assess the outcomes of student learning.

The board is the prime guarantor of academic freedom and of institutional autonomy in educational matters (see the “Statement on Institutional Governance” adopted by the AGB board in 1998). The proper exercise of this role entails several specific board responsibilities:

- ◆ Boards should inform themselves about the array of educational, research, and service programs the institution may offer, ensuring that these programs comport with the institution’s identity and mission.
- ◆ Boards should be aware of and appropriately engaged in the processes by which the institution and its various educational programs are accredited. For example, trustee involvement in the regional accrediting process is essential.
- ◆ Boards should ensure that all undergraduate students are offered a comprehensive general education to prepare them for specific careers and effective citizenship.
- ◆ Boards should determine that systematic and rigorous assessments of the quality of all educational programs are conducted periodically, and board members should receive the results of such assessments.

QUESTIONS FOR BOARDS TO CONSIDER:

1. How can the board systematically consider information about student learning and academic quality?
 2. How can the board ensure that it retains appropriate distance and avoids the temptation to micromanage or involve itself unduly in judgments about specific educational programs?
 3. How can the board most effectively affirm its commitment to basic principles of academic freedom? How can it best ensure that such principles guide the institution’s relationships with faculty and students?
 4. How can the board best assess the academic workforce with regard to the balance of full-time tenured, tenure-track, non-tenure-track, part-time, and adjunct faculty?
 5. What should be the board’s role when educational program reduction or elimination is indicated for fiscal or other reasons? What evidence should the board acquire before approving a proposal to add or terminate a program?
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Presidential Search, Assessment, and Compensation

Few tasks that face a governing board are more critical than the selection of a chief executive. The process of choosing a new president entails far more than a personnel decision. Such a search also entails an opportunity to take stock of the institution and its prospects, to bring together diverse campus constituencies and achieve consensus, to prepare the institution for new and possibly quite different leadership, to create a transition structure conducive to a new president's success, and to establish expectations by which the new president's leadership will be assessed.

Just as the board is ultimately responsible for selecting the president, it also is responsible for determining the president's compensation and assessing his or her performance. In conducting regular evaluations and providing feedback, the board provides the president with a meaningful gauge of leadership performance; at the same time, the board gains valuable perspectives on the institution's progress in achieving its goals.

Regular evaluations of the chief executive also help ensure that a board fulfills its fiduciary responsibility in setting presidential compensation. Board members, especially the chair, should establish and maintain regular and candid communication with the president, apart from the standard performance assessment process. The board should offer support and guidance to the president throughout his or her tenure and at moments of transition.

In regard to presidential search:

- ◇ Boards that seek a new president should form a search committee with sufficient time and commitment to sustain this arduous task. The search committee should reflect the diversity of the institution's various constituencies, through direct membership or advisory roles.
- ◇ The search committee should begin by assessing and then articulating the current status and prospects of the institution. Based on these assessments, it then should define the characteristics, expectations, hopes, and needs for new leadership and fashion a fair, credible, and highly conscientious selection process.

QUESTIONS FOR BOARDS TO CONSIDER:

1. Have the board and search committee developed a fair and legitimate process that will culminate in the hiring of the right leader at this time in the institution's history?
2. How can the search committee and board be confident that the candidate pool is appropriately broad in terms of executive talent and representation of diverse candidates?
3. How can the board maintain suitable oversight of professional search consultants so that they do not supplant the board's ultimate responsibility for identifying the qualities needed in the next president?

- ◆ The search committee should determine how transparent its process ought to be. In the case of public institutions, the process should meet the requirements of state open-meeting and public-records laws, while seeking to protect the identity of candidates who might be deterred from pursuing the job by premature public disclosure of their candidacy.

In regard to presidential assessment and compensation:

- ◆ The board should evaluate the president’s performance on the basis of clearly defined, mutually agreed-upon performance goals. The board should lead an annual presidential assessment process and provide feedback to the president that is both candid and constructive; it should schedule more intensive and systematic reviews of presidential performance every three to five years.

- ◆ The board should have clearly defined policies on setting presidential compensation and monitoring spending. The boards of public institutions and systems should disclose the president’s total compensation package, including all sources of compensation, upon hiring the president and each time compensation is adjusted. In private colleges and universities, determining executive compensation and benefits should be the primary task of a board compensation or executive committee, fully adhering to the board’s bylaws. This committee should report the general outlines of the president’s compensation package—including any compensated memberships on corporate or other boards—in executive session to the full board. Any trustee who wishes detailed information about any aspect of the president’s compensation should be fully apprised of all details. Legal authority for setting presidential compensation ultimately resides in the full board, not in a subset of its members.

- ◆ The board should base a president’s compensation on explicit and justifiable benchmarks from within and outside the institution as well as on the marketplace for chief executives. The board must remain sensitive to the perceptions of stakeholders and the public.

QUESTIONS FOR BOARDS TO CONSIDER:

1. How should the board work with the president to develop the criteria by which the president’s performance will be annually reviewed?
 2. How widely publicized should be the criteria by which the president’s performance will be reviewed?
 3. Who should be involved in the review and assessment process?
 4. In setting the president’s compensation, has the board conducted itself in accordance with the institution’s bylaws, policies, and good judgment? Has it complied with applicable state and federal laws and regulations?
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Conclusion

There can be no assurance that governing boards, by adopting the foregoing recommendations, will be spared questions and concerns about accountability. Yet there is little doubt that a heightened commitment to accountability in each of the areas discussed here will enhance the board’s performance, the esteem the board earns within the campus community, and the degree of deference it receives from stakeholders and would-be regulators. The soundest path to sustaining institutional independence is to achieve a level of confidence and trust in the way the governing board oversees the affairs of the institution and meets its fiduciary responsibilities. The goal of this statement is to motivate boards to commit themselves to model policies and practices that warrant the public trust.

Appendix I

A Governing Board's Basic Responsibilities

Accountability naturally flows from the board's basic responsibilities:

- ◆ Approve the mission and purpose of the institution.
- ◆ Recruit, appoint, support and evaluate the chief executive officer.
- ◆ Guard the fiscal integrity of the institution:
 - Consider and approve the institution's budget.
 - Monitor the resources and productivity of the institution.
 - Manage the institution's endowment (in many public institutions and systems, this responsibility is delegated to an affiliated foundation).
 - Participate in fund-raising, both through personal philanthropy and advocacy.
 - Ensure that annual independent audits are conducted.
 - Meet the expectations of board accountability and transparency in the conduct of board affairs.
- ◆ Oversee and participate in periodic strategic planning and monitor progress on its outcomes.
- ◆ Be aware of educational, research, and service programs and demand evidence that the institution's academic priorities are being met.
- ◆ In concert with the senior administration, engage with the institution's major constituencies on a regular basis.
- ◆ Preserve institutional independence to protect the pursuit of truth, the generation of new knowledge, and intellectual inquiry so that they remain unencumbered by direct government control or special interest.
- ◆ Remain informed about institutional issues and the challenges confronting higher education.
- ◆ Serve, as necessary, as a final court of appeals on matters relating to governance and on institutional policies and practices in accordance with campus grievance procedures.

Appendix II

AGB Resources

The following publications and others concerning trustee and board responsibilities are available at www.agb.org:

Effective Trusteeship, A Guide for Board Members of Independent [or Public] Colleges and Universities, by Richard T. Ingram. (2006, 42 pp. independent; 2005, 66 pp. public)

Financial Responsibilities of Governing Boards, by William S. Reed. (2001, 112 pp.)

“A Guide to Updating the Board’s Conflict of Interest Policy,” an AGB Board Basic by Alexander E. Dreier and Martin Michaelson. (2006, 16 pp.)

“The Leadership Imperative,” The Report of the AGB Task Force on the State of the Presidency in American Higher Education. (2006, 50 pp.)

Making the Grade: How Boards Can Ensure Academic Quality, by Peter T. Ewell. (2006, 73 pp.)

Presidential Compensation in Higher Education: Policies and Best Practices, by Robert H. Atwell and Jane V. Wellman. (2000, rev. 2007, 61 pp.)

Strategic Leadership in Academic Affairs: Clarifying the Board’s Responsibilities, by Richard L. Morrill. (2002, 124 pp.)

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