



LEGAL PRIMER

for Board Operations

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INTRODUCTION

Board professionals work closely with boards and their chairs and perform a vital function for their institutions. In today's legal environment, it is imperative that board professionals and board members have the resources to do their work effectively and in accordance with the law.

This legal primer is designed to provide concise legal information on a variety of topics pertinent to the work of board professionals and the board members whom they serve. For the sake of brevity, it focuses only on the legal issues most relevant to board operations. In addition to providing general information on applicable laws, it offers guidance and assists board professionals in managing the work of the board and maintaining the corporate record of their institutions.

This publication can be especially helpful to board chairs and board professionals, along with the college or university's legal counsel. The chair and the board professional are the ones who most regularly deal with the specific issues surrounding board operations. Those three individuals should be capable of working on these issues together.

The summaries of the law presented in this primer are posited on general common legal principles and federal statutory and regulatory standards that inform the work of all college and university boards. There is no specific discussion of local, municipal laws or state laws that may also pertain to the subjects presented in the primer. For these specifics, board professionals, board chairs, and board members should consult legal counsel.

This publication is designed to serve the following purposes:

- **It serves as an orientation tool on key legal issues.** This primer does not cover every task that has legal dimensions or poses legal risk. Rather, it highlights the major legal issues that board professionals and board members (in particular board chairs, as well as committee chairs and new board members) should be aware of when performing their responsibilities.
- **It will help board professionals and boards to use their legal counsel effectively.** The primer touches upon the natural tension between legal counsel—whose job it is to limit an in-

stitution's liability and thus restrict the release of privileged information—and other college and university officials whose jobs are to reach out to the community, share information, and build relationships of trust. It is especially important for legal counsel to work well with board chairs, presidents, and all the professional members of the board staff. This publication aims to help facilitate understanding of the legal issues undergirding those relationships.

- **It will help administrators and board members work harmoniously, efficiently, and productively.** While board members, presidents, and senior administrators may disagree in private, they should speak publicly with one voice for the good of the institution. What this means in practice can have legal as well as public-relations implications. Board professionals, other senior administrators, and board leaders who may already be familiar with many of these issues might benefit from a legal primer to refer to (and possibly refer others to) during discussions on good basic legal policies and practices.
- **It will reduce potential liabilities that might inadvertently arise** as boards conduct their valuable work by increasing awareness and understanding of basic legal concerns surrounding board operations.

This primer provides an overview; for greater detail, please see the “References and Recommended Resources” section, which includes recommendations for further reading.



THE HIGHER EDUCATION FRAMEWORK

Before we turn our attention to the legal and ethical obligations board members assume by virtue of the position they hold, we should consider the environment in which boards operate: the legally distinctive world of the modern institution of higher education. A widely cited aphorism attributed to many college presidents holds that if you have seen one college, you have seen one college—a common-sense formulation of the truism that each higher education institution possesses distinct attributes that distinguish it from all others and make generalizations problematic.

Institutions have different governance characteristics, structures, and processes. Our own two universities, for example, reflect such diversity. One is an independent urban university affiliated with the United Methodist church (although the curriculum is secular). The other, while generally viewed as a state university, is a self-governing university that receives public funding. Cornell University, to cite just one other example, is an independent Ivy League and federal land-grant research university.

Boards of independent colleges and universities differ from those of public institutions. At the risk of over-generalization, independent governing boards are, in the main, self-perpetuating, while the members of public boards are in whole or in part appointed by some combination of the governor and the legislature. The governing boards of private institutions tend to be larger than those of public institutions. It used to be true that substantial numbers of board members at private institutions were selected with an eye toward fundraising, although now similar interests influence some public board appointments as well.

COMMON QUALITIES OF HIGHER EDUCATION INSTITUTIONS

Those distinctions notwithstanding, the legal obligations of board members emanate from certain features common to virtually all institutions of postsecondary education, whether public or independent, sectarian or nondenominational, two-year or four-year. All higher education institutions in the United States share certain structural, governance-related, and mission-related similarities that, in turn, inform the