



UPDATING BOARD BYLAWS

A GUIDE FOR COLLEGES
AND UNIVERSITIES

by Robert M. O'Neil

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FOREWORD

As higher education takes center stage in the great debate about the future of our country and the world, governing boards of colleges, universities, and systems find themselves standing in the spotlight. Occasionally, they receive standing ovations for their visionary guidance and collective commitment to academic excellence and institutional leadership. Sometimes, unfortunately, the glare reveals weaknesses that could have been remedied with better governance practices.

Great governance begins with good governing documents, and bylaws are the starting point. They define the parameters for how the board—in collaboration with the president and the administration—leads the institution. In today's world, they must take into account the increasing complexity of the higher education enterprise and offer guidelines for navigating the many challenges and opportunities facing colleges and universities. Revising the bylaws is not a trivial issue to be delegated to a staff member. It is, ultimately, the responsibility of the full board.

Updating Board Bylaws offers a process and a point of reference for leaders of academic institutions—board members, presidents, and their advisors—who are tasked with reviewing their bylaws. The Goldilocks goal of “just right” serves boards well. The bylaws should provide adequate controls to protect the institution and ensure enough flexibility to adjust to changing circumstances. Furthermore, they need to be regularly reviewed and periodically refreshed to ensure compliance with current regulations, relevance with changing circumstances, and consistency with best practices.

The delicate balance needed in bylaws cannot be defined in absolute terms for all colleges, universities, and systems. State laws vary, as do institutional traditions and trajectories. Rather than dictate a definitive bylaws standard, this book offers sample language—drawn from a variety of current bylaws and refined by professionals and practitioners—as a starting point for a thoughtful review of your bylaws. The illustrative language provides some of the most common differences between public and independent colleges and universities, but these distinctions are not intended to be universal. In short, the sample text (on the left-hand pages) is intended to be adapted and adjusted to suit your institution. The commentary (on the right-hand pages) includes background, context, and caveats to guide your decisions.

FOREWORD

We appreciate the support provided by BoardEffect for this publication.

Its commitment to using technology to make good governance more efficient and effective is essential in today's constantly evolving world. Governance practices should not be static. This book offers a way for boards to ensure that their structure and practices are reviewed and updated in keeping with the changing needs of their institutions, government regulations, and public accountability.

Because they establish the rules by which the board organizes itself to do its work, bylaws ultimately guide the governance of each college, university, or system. Board chairs, presidents, general counsel, secretaries and other board professionals have a special obligation to ensure that bylaws are kept up to date and reflect and inform actual practice. We hope that *Updating Board Bylaws* will be a trusted companion in that critical function.

Richard D. Legon

President

Association of Governing Boards of Universities and Colleges

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INTRODUCTION

Updating Board Bylaws: A Guide for Colleges and Universities

Bylaws are one of the primary policy documents that guide the governance of a college, university, or system. They establish the rules by which the governing board organizes itself. They are the vehicle by which the board implements the founding documents, such as the articles of incorporation of an independent institution or state statutes or constitutional provisions of a public institution or system. Reflecting institutional history and mission, they describe the board's responsibilities and structure. Because of their centrality to board operation, bylaws must be kept current—consistent with state law and legal standards—and followed.

Who Uses Bylaws?

Board members should consult the bylaws as the authority for defining the scope of duties and responsibilities of the board, officers, and key administrators and—to a lesser extent—faculty, staff, and student leaders. New and prospective board members should familiarize themselves with the major elements of the bylaws, which should be distributed as part of orientation. Most public institutions and systems are required to disclose their bylaws, and many post them on their Web sites, as do an increasing number of independent institutions.

What Are the Characteristics of Effective Bylaws?

Effective bylaws provide a roadmap for good governance, enabling board members to focus on fulfilling their fiduciary responsibilities, setting policy, and offering strategic thinking. Conversely, ineffective bylaws can impede the board. If the bylaws dictate overly complex structures and practices, the board may get mired in procedural details or fail to follow prescribed processes. If the bylaws are too vague, the board may lack a framework for its leadership structure, practices, and decision making.

State-of-the-art bylaws clarify the board's role and structure, provide reasonable flexibility and boundaries for board action, contribute to sound fiduciary functions, and identify key relationships.

Effective bylaws have the following characteristics:

1. **Board-focused.** The bylaws should be reserved for articulating the board's broad authority, structure, and practices. Other groups, such as the faculty senate, alumni association, and advisory councils, have separate guiding documents that define their responsibilities and relationships to the board; some of these documents may be subject to governing board approval.
2. **Clearly and succinctly expressed.** Reflecting their legal import, bylaws must be framed with care. Arcane and technical wording can cause confusion. Rather than repeating legislative statutes verbatim, bylaws should offer clear and concise language.
3. **Balanced in detail.** Too much detail may prompt the need for frequent revision, while too little detail may invite inconsistent interpretation and action. Brevity and simplicity are desirable unless the result omits critical guidance.
4. **Appropriately flexible.** While the bylaws should provide for continuity and consistency over time, they should also allow the board enough flexibility to respond to changing circumstances. For example, rather than establish a set number of board members, independent institutions often specify a range.
5. **Customized.** Bylaws must take into account federal and state laws (such as a state's nonprofit corporation act or requirements for entities that receive government funding), and the latter vary in many ways. Equally important, the bylaws should be adapted to the institution's culture and traditions. While much can be learned from reviewing bylaws of peer institutions, specific provisions need to be applied thoughtfully.
6. **Streamlined.** Over time, bylaws can become unduly complex. With the best of intentions, boards are prone to adding provisions to the bylaws each time a challenge arises. In the absence of careful pruning and revision, the result can be a morass of excess and sometimes inconsistency.
7. **Well-organized.** The bylaws provide a roadmap for board operations. They should be well-organized, with a table of contents, articles, and numbered sections. Each paragraph should be numbered so that cross-references are easy to follow.

8. **Consistent with practice.** Just as important as *having* appropriate bylaws is ensuring that the board operates *in compliance* with them. The board's actual practices and procedures need to be consistent with the bylaws. Where discrepancies exist, the board needs to adjust its practices or, if the practices are no longer current, amend the bylaws.

When Should Bylaws Be Reviewed? By Whom?

Since bylaws formalize the rules of governance and guide board structure and decision making, they can complicate the board's work if they are outdated or incomplete. Some common reasons for amending the bylaws include updating the language in keeping with best practices; adjusting the board size, terms, and/or term limits; changing board composition; streamlining the committee structure; using technology (teleconferences and e-mail); and undergoing an institutional transformation (such as evolving from a college to a university or merging with another institution).

The bylaws should be reviewed regularly but revised sparingly. Designed to provide consistency and continuity, they should not have to be altered in response to unusual events or recent crises. Instead, the institution can adopt policies or establish special procedures. A regular review of bylaws should take into account (1) major changes in the external environment or internal institutional structure, (2) compliance with federal or state regulations and consistency with judicial decisions, (3) discrepancies between current board operations and the bylaws, and (4) outmoded and overly cumbersome requirements.

The general counsel and/or board professional should review the bylaws annually. The board's governance committee (or committee on trustees), executive committee, or an ad hoc committee should establish a regular review cycle (for example, every two to three years).

How Are Bylaws Amended?

The findings from a bylaws review should be shared with the governance (or executive) committee and the full board. If revisions are warranted, the professional staff and designated board leaders (for example, the chair and/or secretary)—in consultation with the president—should work together to bring revisions before the full board for amendment. The process of managing the revision is best handled by the governance committee or a small, ad hoc

task force supported by a legal professional. Even if board members include experienced lawyers, working with bylaws is a highly specialized task that should be entrusted to an expert. Because the right expertise may not be found on campus, many institutions retain outside legal counsel to assist in revising the bylaws.

When updated bylaws are approved, the current version should indicate the date of board approval and the effective date of any particular changes. It is also helpful to retain a cumulative list of the dates of previous bylaws amendments. Furthermore, independent institutions must report significant changes to their bylaws to the IRS (on the Form 990) and sometimes the state.

How Do Other Policies Relate to the Bylaws?

The bylaws cannot, and should not attempt to, anticipate every decision, situation, or action. Nor should they address every aspect of organizational operations. The complexity of higher education requires a host of other policies and procedures that rank lower in the hierarchy of organizational documents. These other documents provide a greater level of detail, which the board needs for good governance but that is not practical or advisable to include in the bylaws. The bylaws should make clear their primacy among other documents. At the next level below the bylaws are the many policies, rules, and regulations that prescribe day-to-day operations. (*See Exhibit 1.*)

The board should be thoughtful and deliberate about what belongs in the bylaws. Other board-level policies and procedures (for example, procedures for reviewing conflicts of interest, policies about reimbursement of travel expenses related to board meetings) are often enshrined in a board policy manual that complements the bylaws and may be more easily updated. The board should also be thoughtful and deliberate about what issues it leaves to other constituents. While the board bears responsibility for the highest level of corporate policy and procedure, the administration and other groups (such as a faculty senate) have responsibility for other institution-wide documents, such as student handbooks and campus senate directives.

Exhibit 1. Hierarchy of Corporate Documents

1. The **articles of incorporation**, state charter, or constitution is a legal document that outlines the general purpose and structure. They usually follow a standard form and contain a minimum of detail because they are perpetual and more cumbersome to change.
2. **Bylaws** establish the governance structure. Following a fairly standard format, they define the duties, authority limits, and principal operating procedures for the board and board members. They should include only the highest-level board policies, not overly-detailed procedures or restrictions.
3. A **resolution** is a specific board declaration that describes an action to be taken or a principle to be adopted. Resolutions are specific to a particular board for a given situation. They range from declarations of the board's position on an important issue or in response to a recent event to statements of recognition related to major milestones or significant contributions of exemplary board members or retiring staff.
4. **Policies** serve as operating guidelines at various levels. Some policies define standards for board and staff behavior, such as conflict of interest and gift acceptance policies. Others supplement the bylaws and guide board practices, such as investment policies and executive compensation procedures. Still others direct staff operations, such as personnel and communications policies.
5. **Operating Procedures** define a process for implementing a general policy or campus procedures for special situations, such as man-made or natural disasters. There is often a blurry line between policies and procedures because it can be difficult to separate what gets done from how it gets done. In practice, policies should set the broadest parameters, and procedures should be handled by those responsible for implementation.

Source: Adapted from Barbara Lawrence and Outi Flynn, *The Nonprofit Policy Sampler*, BoardSource © 2006.

How to Use This Guide

Though no single model exists to shape—much less dictate—the content of bylaws, certain core operating rules apply to any well-run college, university, or system. This publication addresses the principal topics usually covered in the bylaws of higher education institutions or systems. It canvases the issues the board should consider in connection with each topic and offers checklists for board implementation. Because revising the bylaws is about much more than simply editing a historical document, this publication references additional resources that provide deeper analysis of the issues related to each article of the bylaws. An electronic list of these resources, including hyperlinks, is available on AGB's Web site (type "bylaws" in the search box) at www.agb.org.