

AGB BOARD OF DIRECTORS' STATEMENT ON

Influences Impacting Governing Board Independence and Leadership



About AGB

The Association of Governing Boards of Universities and Colleges (AGB) is the premier membership organization that strengthens higher education governing boards and the strategic roles they serve within their organizations. Through our vast library of resources, educational events, and consulting services, and with more than 100 years of experience, we empower 40,000 AGB members from more than 2,000 institutions and foundations to navigate complex issues, implement leading practices, streamline operations, and govern with confidence. AGB is the trusted resource for board members, chief executives, and key administrators on higher education governance and leadership. Learn more at www.agb.org.



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This statement was approved on November 10, 2023, by the Board of Directors of the Association of Governing Boards of Universities and Colleges. The following principles are intended to guide boards in the governance of colleges, universities, systems, and related foundations; inform them of their roles and responsibilities; and clarify their relationships with presidents, administration, faculty, and others involved in the governance process.



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Executive Summary

This *AGB Board of Directors' Statement on Influences Impacting Governing Board Independence and Leadership* builds on the *AGB Statement on External Influences on Universities and Colleges* (2012) within the context of the changing and often challenging dynamics now surrounding modern higher education in the United States. The 2012 statement contained four principles that remain actionable and relevant today and are intended to guide boards in the governance of colleges, universities, and systems; inform them of their roles and responsibilities; and clarify their relationships with presidents, administration, faculty, and others involved in the governance process. The four principles from the 2012 statement call upon governing boards to:

1. Preserve institutional independence and autonomy.
2. Demonstrate board independence to govern as established in charter, state law, or constitution.
3. Keep academic freedom central and be the standard bearer for the due-process protection of faculty, staff, and students.
4. Assure institutional accountability to the public interest.

Yet while those principles are still bedrock, governing boards need fresh guidance on how to apply them currently. More than a decade has passed since the 2012 statement was published, and the national and global environments have changed significantly. Those changes include the sharpening of political and cultural agendas from both sides of the political spectrum, increasing concern about the United States' global competitiveness, and a decline in the public's belief in the value of higher education to improve economic and social mobility. At the same time, the demands upon governing boards have expanded due to a heightened realization of the important responsibilities they have in encouraging student and institutional success, implementing best governance practices, and addressing the growing financial and enrollment challenges confronting many institutions.

Governing boards of colleges, universities, and institutionally related foundations are fiduciary entities, and their members, in collaboration with chief executive officers, are collectively responsible for their institutions' or related foundations' missions, sustainability, and strategic outcomes. Meeting those responsibilities has never been more crucial: strong American higher education institutions are essential to the health and vitality of a civil democracy and functioning national economy. To fulfill their duties as consequential, exemplary fiduciaries, governing board members must be open to listening and understanding

a wide range of viewpoints and approaches from myriad important constituencies, for new ideas and diverse perspectives are essential to effective decision-making. Governing boards need input from many stakeholders, experts, and others to help them understand, for instance, the various dynamics of a complex issue or the financial implications, risks, benefits, and anticipated or unanticipated outcomes associated with a particular investment.

At the same time, however, governing boards must also sharpen their ability to recognize and address influences that attempt to alter their decisions and may potentially jeopardize the future vitality of their institution, system, or related foundation. Such influences may come from within the board or campus community or from external sources. For example, influences may originate not only from alumni, campus leaders, faculty members, and single-issue-focused members of the board, but also campus leaders, donors, elected or appointed officials, religious entities, advocates for causes indirectly related to the mission of the institution, and others seeking to control or sway strategic, operational, and academic matters. Further, and more recently, influences to alter the course of institutional priorities may originate from foreign governments intent on misappropriating federally funded university research.

If left unchecked, such influences may corrode educational and research quality, free speech, academic freedom, campus morale, and public confidence in higher education institutions and foundations. Would-be influencers may attempt to supersede fundamental shared governance principles and practices that entrust strategic and academic decisions to governing boards, chief executive officers, and faculty leaders.

Thus, governing boards and their members must engage in a challenging and delicate balancing act. As fiduciaries, they should not only seek input from all relevant constituencies and listen closely with open minds but, importantly, governing boards must also act independently to further the best interests of the institution, system, or related foundation over the short and long term. That means protecting the college, university, or related foundation against any influencers' objectives that may conflict with the priorities that boards have established in collaboration with the chief executive officers and leadership teams.

Based on long-standing principles and leading practices of exemplary board governance, this statement explains how governing boards and their members can recognize and address influences that may threaten the fulfillment of their fiduciary duties and ultimately jeopardize their institution's educational quality and reputation. To accomplish that, it describes the historical context of higher education governance and provides recommendations to guide governing board members and chief executive officers. In addition, to deepen board members' and campus leaders' knowledge and capability to navigate the challenging environment and address influence, it includes appendices offering related resources, a checklist for boards to assess their fiduciary readiness, and examples of sources of tension.



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AGB BOARD OF DIRECTORS' STATEMENT ON Influences Impacting Governing Board Independence and Leadership

Introduction

In the current environment, universities, colleges, and their related foundations must satisfy a wide range of important stakeholders—stakeholders who can often be at odds with each other. Each governing board must carefully consider the needs and objectives of its specific constituencies and determine how it and the institution can best meet those needs and objectives.

However, a governing board must also serve as its institution's or foundation's North Star—overseeing and guiding it to ensure it fulfills its mission and holding fast to key principles and values over the long haul to benefit current and future stakeholders. The responsibility and ultimate accountability for each institution's mission, quality, vitality, and viability rests singularly with the governing board, which serves as the ultimate fiduciary authority.

Today, that authority is being challenged in unprecedented ways. Growing numbers of higher education institutions and foundations are being increasingly pressured by agenda- or interest-driven groups and individuals, including foreign governments, seeking to influence core strategic and academic activities in ways that challenge not only student learning, knowledge creation, and campus morale, but also national security and the protection of intellectual property. Importantly, the governing boards of universities, colleges, and related foundations are responsible for leading the response to those pressures, in collaboration with their chief executive officers. And to do so effectively, board members must strengthen their exercise of fiduciary duties by recognizing and appropriately addressing proposals that may conflict with the institution's mission, vision, and strategic priorities.

Governing boards must sharpen their ability to recognize and address influences that attempt to alter their decisions and may potentially jeopardize the future vitality of their institution, system, or related foundation. Such influences may come from within the board or campus community or from external sources.

The Foundation of Academic Freedom

America's founders placed board governance in the collective hands of citizen trustees who were expected to serve as independent fiduciaries with commensurate responsibility, authority, and accountability.

Board members must strengthen their exercise of fiduciary duties by recognizing and appropriately addressing proposals that may conflict with the institution's mission, vision, and strategic priorities.

Without academic freedom and autonomy, higher education institutions cannot fulfill the vital role they play in our democracy and economy. The global competitive positions of our nation and society are in jeopardy if board oversight of academic freedom is diluted.

The strategic importance of establishing ultimate authority with independent governing boards is especially salient when it comes to issues of academic freedom. Academic freedom is the foundation for learning at American colleges and universities, providing faculty members and students the ability to learn, debate, and express ideas without censorship, based on open access to facts, expertise, and alternative perspectives. Academic freedom is essential for innovation that depends on juxtaposing different ideas, challenging established norms, accessing relevant information from the best sources, and following an important question to its deepest understanding. Without academic freedom and autonomy, higher education institutions cannot fulfill the vital role they play in our democracy and economy. The global competitive positions of our nation and society are in jeopardy if board oversight of academic freedom is diluted.

Academic freedom gives college and university faculty members the vital opportunity to research, teach, write, and discuss issues in an academic field without interference, as long as their outcomes are aligned with board-approved missions and priorities. Colleges and universities require academic freedom to fulfill their core purposes, including educating students to develop their independence of thought and to advance knowledge through research and creativity.

Academic freedom does not mean that institutional leaders do not embrace change, innovation, and transformation. Rather it facilitates their ability to offer quality academic opportunities and experiences.

The governing board's responsibility related to academic matters is to safeguard academic freedom from influences that may jeopardize educational quality and institutional vitality. When such influences threaten academic freedom, governing boards need to address, proactively and with courage, efforts to mandate, prohibit, or limit academic decisions that, in fact, belong in governing board and institutional policies and procedures.

The Board's Fiduciary Responsibilities

As defined in law, the duties a fiduciary owes to the enterprise—in this case a college, university, or related foundation—are commonly known as the duties of care (a focus on the best interests of the enterprise), loyalty (placing the interests of the enterprise ahead of the interests of self or any other), and obedience (ensuring that the enterprise is operating in furtherance of its stated purposes as set forth in its governing documents and in compliance with the law). Taken together, these duties require governing board members to exercise their authority by making thoughtful, good-faith decisions that are consistent with the public or charitable mission of the enterprise, independent of influences that may not appropriately support that mission.

That independence is endangered today at all types of institutions, both public and private. Governing boards for public institutions and systems are more engaged than private colleges and universities with the political environment—given their public funding, appointment or election processes for board members, and open-meeting or open-record laws that require them to convene, discuss, and vote in full public view. Acknowledging their responsibility to state policies and procedures, board members of public institutions may be tempted to give deference to government officials, including those who appoint them, instead of acting on their individual perspectives and understanding of the educational needs of the general public and best interests of the institutions they hold in trust. Without deep fiduciary understanding, they may vote for a political agenda for fear of retaliation even when it is not aligned with their personal beliefs about what is best for the institution or it rolls back a vital initiative or otherwise works against the institution.

But the fact is that all academic institutions, private and public, have become vulnerable to domestic and even sometimes foreign entities. Such entities, which may have considerable impact on the institution's access to resources, can have their own goals for change not related to furthering the institution's mission and try to undercut the governing board's authority.

Governing boards are expected to welcome input, while ultimately making decisions that fulfill their fiduciary duties* and uphold their institution's or foundation's mission and strategic priorities. Every higher education governing board, whether public,

Strong American higher education institutions are essential to the health and vitality of a civil democracy and functioning national economy.

* "Just Say Yes? The Fiduciary Duty Implications of Directorial Acquiescence," <https://ilr.law.uiowa.edu/print/volume-106-issue-3/just-say-yes-the-fiduciary-duty-implications-of-directorial-acquiescence>.

private, system, or related foundation, needs to assess its culture and record from that perspective.

Recommendations

Governing boards must balance their responsiveness to valuable ideas and input while safeguarding their independence. To ensure this practice, it is AGB's recommendation that all governing boards continue to uphold the following principles outlined in the 2012 statement:

While these four principles are still bedrock, governing boards need fresh guidance on how to apply them currently.

1. Preserve institutional independence and autonomy.
2. Demonstrate board independence to govern as established in charter, state law, or constitution.
3. Keep academic freedom central and be the standard bearer for the due-process protection of faculty, staff, and students.
4. Assure institutional accountability to the public interest.

To implement those principles, AGB offers the following recommendations—practices that can help governing boards be prepared to make appropriate fiduciary decisions even when doing so may be difficult.

1. **Engage in thoughtful discussion, decision-making, and policymaking to build shared understanding of the core concepts and values that underlie exemplary governance and the board's work, while continuing to have meaningful learning experiences together about foundational principles, not just current campus matters.**

One way to begin such discussions could be reinforcing that governing boards are accountable for:^{*}

- **Protecting the mission.** Assessing and evolving the mission of the institution guides a governing board's work and how it addresses its responsibilities. Governing boards have a fiduciary responsibility to advance the institution's mission and to promote its integrity and quality. They also have a responsibility to reexamine and reshape that mission as needs and conditions may

* AGB Board of Directors' Statement on Board Accountability (2015), <https://agb.org/agb-statements/agb-statement-on-board-accountability/>.

require. Foundation boards should be guided by their fiduciary obligations to honor donor intent, serve as prudent stewards of charitable assets, and advance the mission priorities of the institution.

- **Safeguarding the transcendent values that guide and shape American higher education.** Among those abiding values are self-regulation and autonomy, academic freedom, shared governance, educational quality, transparency, and fiscal integrity. Governing boards are responsible for protecting such values not only on behalf of their own institutions and foundations but also for American higher education in general. In the case of church-affiliated institutions, guiding values may also include certain tenets of the relevant faith community.
- **Reinforcing the public's interest and trust.** The American people entrust control of higher education institutions to citizen-led boards and to the independent judgment of their members, rather than to senior public officials or bureaucracies. All governing boards are accountable for the achievement of public purposes. Thus, governing 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 (in whole or in part) authority derives from, and accountability pertains to, relevant state laws, charters, or other governing documents.
- **Enforcing the legitimate and relevant interests that various constituencies represent.** These include alumni, community leaders, donors, faculty, parents, staff, students, local government officials, unions, labor groups, among others. A governing 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, strategic priorities, and the law. The board bears ultimate responsibility for weighing conflicting claims of interested parties and the long-term benefits and priorities of the institution. Foundation boards should collaborate closely with institution leaders when considering gifts that may not advance the mission, values, or priorities of the institution.

Further, AGB's principles for exemplary governance state that governing boards should:

- Focus on what matters most, including success for all students and the fulfillment of the institution's or foundation's mission over the long term.
- Carry out the fiduciary duties of care, loyalty, and obedience.
- Protect academic freedom, board independence, and institutional autonomy.
- Understand and support shared governance.
- Engage in thoughtful discussion and decision-making based on sound information and collective wisdom.
- Establish an effective partnership with the chief executive officer.
- Document consensus and build on board learning experiences by maintaining a written, regularly updated inventory of policies and procedures for board governance.

In general, each board should apply a shared understanding of such core concepts as: the best interests of the institution; institutional autonomy; academic freedom; shared governance; board independence; the fiduciary duties of care, loyalty, and obedience; and board accountability. It should continually educate its members on all aspects of their fiduciary responsibilities, with a focus on key principles and how best to apply those principles.

2. Make structural and procedural changes that reinforce the governing board's fiduciary duties and authority.

- Dedicate time at every meeting to purposeful, ongoing education and discussion about board governance. Discuss how AGB's *Principles of Trusteeship* (AGB, 2021) applies to carrying out one's fiduciary duties.
- Ensure that new board members and their nominating or appointing authorities understand their fiduciary duties.
- Include a session on identifying and addressing external and internal influences in new-board-member orientation programs. In addition, provide continuing education on the topic for all board members, even seasoned ones.
- Determine the board's options for identifying and navigating efforts by influencers that may conflict with board-approved strategic priorities.

3. Listen, learn, and lead. Recognize that all governing boards and their organizations need to adapt and improve. Listen with open minds to constituents' concerns and suggestions.

- Support and encourage discussion of diverse viewpoints to expand mindsets, sharpen thinking, and make well-informed decisions.

- Listen with open minds to citizens and officials from domestic and foreign entities. Consider whether their concerns are well-informed, legitimate, and merit board discussion and potential changes to institutional policies and practices.
- Build important relationships by regularly and appropriately communicating with key constituencies through coordinated efforts throughout the year, not only when a problem occurs or during a particular cycle of events.
- Consider and discuss stakeholders' ideas, including whether the input merits potential changes to policies and practices.
- Establish policies and practices that discourage individuals or groups from going over the heads of senior administrators and going uninvited to the board directly with their grievances and concerns. Boards must be careful to avoid being used in this way, as it can create legal and other challenges.

4. Recognize that fiduciary duty belongs to each member of the board and to board actions.

- As stated in AGB's *Principles of Trusteeship*, each board member should think independently and act collectively on what matters most to support the long-term vitality of a college, university, or related foundation. Governing boards, reflecting the aggregate actions of board members, are responsible for advancing the institution's or foundation's best interests, as is each member of the governing board.
- Understand that governing board members have no authority as individuals; authority rests in the formal, collective actions of the board as a whole—the board's collective judgment. Individual board members' courage to make hard decisions will come from understanding their profound governance responsibilities and accountability for supporting the institution's or foundation's mission.

5. Address inappropriate influences that interfere with the governing board's independence, authority, or fiduciary commitment to the long-term success of the institution or foundation.

- Prepare to address, in open meetings with the public, if necessary, influences that are not aligned with the governing board's aggregate belief about the institution's or foundation's long-term interests, so as to reinforce its mission and strategic priorities. Collective wisdom requires candid discussion.

- Consider a phased approach or scenario planning when the potential for confrontation exists. Specifically, ensure the chief executive officer and board chair understand the potential challenges, and clarify messaging with influencers. The board chair speaks on behalf of the board, and the chief executive officer speaks on behalf of the institution, system, or related foundation.

Governing board members need to have a shared understanding of how their roles and responsibilities apply to today's new and challenging circumstances. When a hard decision requires extra resolve, governing board members should think through together the likely consequences of allowing influence, whether domestic or foreign, to go unchecked. A board that must deal—or is simply worried that it may have to deal—with a protracted influence could find itself distracted from its mission. Moreover, such a situation could raise confusing questions for:

- Governing board members (What matters most here?)
- Executive leaders (Should I make a public statement?)
- Faculty members (Is it safe to continue teaching?)
- Prospective faculty members (Do I want to be part of this environment? Will I be able to teach, research, and publish without interference?)
- Staff members (Does this activity impact how we engage and serve students? Does this activity conflict with newly enacted legislation or pending policy proposals?)
- Students (So much is changing so fast—what's next? How will it affect me? Is it safe to share my perspectives and questions? Should I transfer?)

- Prospective students (Should I apply? Can I receive a quality and comprehensive education? Will I be and feel welcomed on campus?)
- Accreditors: (Is the board meeting standards for board governance that are part of accreditation reviews?)

Unchecked influences may also interfere with the protection of intellectual property and negatively impact educational quality, student experiences, enrollment, staff retention, reputation, investment decisions, and financial sustainability, among other concerns. In addition, they may derail effective board governance and leadership by preventing or limiting a culture of transparency, collaboration, understanding, trust, and accountability.

When a hard decision requires extra resolve, governing board members should think through together the likely consequences of allowing influence, whether domestic or foreign, to go unchecked.

Conclusion

Various influences on universities and colleges, systems, and related foundations can create favorable and unfavorable consequences. Governing boards must ensure that any such influence is aligned with missions and strategic priorities. The stakes are high, and governing boards have critically important responsibilities that require them to welcome valuable input from various individuals and entities while also keeping damaging influences at bay. Governing boards that do this effectively may see their institutions or foundations flourish.

Governing boards must also define their current and desired place in the landscape of learning, truth, and reason, with a keen eye on what kind of future they are creating for students, democracy, the economy, and our nation's global competitiveness. Each governing board should pursue systematic strategies that refine its ability to make choices that represent the best interests of its institution, system, or foundation—enabling it to fulfill its mission now and well into the future.

The stakes are high, and governing boards have critically important responsibilities that require them to welcome valuable input from various individuals and entities while also keeping damaging influences at bay.



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Appendix A

Related Resources

AGB Resources

- AGB Board of Directors' Statement on Board Accountability* (2015), <https://agb.org/agb-statements/agb-statement-on-board-accountability/>.
- AGB Board of Directors' Statement on the Fiduciary Duties of Governing Board Members* (2015), <https://agb.org/agb-statements/agb-board-of-directors-statement-on-the-fiduciary-duties-of-governing-board-members/>.
- AGB Board of Directors' Statement on Innovation in Higher Education* (2017), <https://agb.org/agb-statements/agb-board-of-directors-statement-on-innovation-in-higher-education/>.
- AGB Board of Directors' Statement on Institution-Foundation Partnerships in Higher Education* (2016), <https://agb.org/agb-statements/agb-board-of-directors-statement-on-institution-foundation-partnerships/>.
- AGB Board of Directors' Statement on Justice, Equity, and Inclusion and Guidance for Implementation* (2021), <https://agb.org/agb-statements/agb-board-of-directors-statement-on-justice-equity-and-inclusion-and-guidance-for-implementation/>.
- AGB Board of Directors' Statement on Shared Governance* (2017), <https://agb.org/agb-statements/agb-board-of-directors-statement-on-shared-governance/>.
- AGB Statement on External Influences on Universities and Colleges* (2012).
- "American Democracy Is in Jeopardy: A Call to Higher Education Governing Boards," *Trusteeship* (Vol. 30, n. 5, 2022), <https://agb.org/trusteeship-article/american-democracy-is-in-jeopardy/>.
- An Anatomy of Good Board Governance in Higher Education* (2018), <https://agb.org/product/an-anatomy-of-good-board-governance-in-higher-education/>.
- FAQ: External Influences (2021), <https://agb.org/faqs/external-influences/>.
- FAQ: Shared Governance (2022), <https://agb.org/faqs/shared-governance/>.
- Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives* (2022), <https://agb.org/product/freedom-of-speech-and-diversity-equity-and-inclusion-on-campus/>.
- Higher Education Governing Boards: An Introductory Guide for Members of College, University, and System Boards* (2019), <https://agb.org/product/higher-education-governing-boards-an-introductory-guide-for-members-of-college-university-and-system-boards/>.
- Merit Selection of Public College and University Board Members* (2020), <https://agb.org/briefs/merit-selection-of-public-college-and-university-board-members/>.
- Public Board Members: Appointments and Responsibilities; Qualifications Sought in Individual Board Members* (2017), https://agb.org/wp-content/uploads/2022/06/Board-Selection-Criteria-Flyer_RTP.pdf.

Principles of Trusteeship: How to Become a Highly Effective Board Member for Colleges, Universities, and Foundations (2021), <https://agb.org/product/principles-of-trusteeship/>.

“Send in the Guardians,” *Trusteeship* (Vol. 30, n. 4, 2022), <https://agb.org/trusteeship-article/forum-send-in-the-guardians/>.

Shared Governance for Agile Institutions: A Practical Guide for Colleges and Universities (2023), <https://agb.org/product/shared-governance-for-agile-institutions/>.

Top Public Policy Issues Facing Governing Boards (2023), <https://agb.org/reports-2/top-public-policy-issues-facing-governing-boards-in-2023-2024/>.

Other Resources

Making the Case for Academic Freedom and Institutional Autonomy in a Challenging Political Environment: A Resource Guide for Campus Leaders (American Council on Education and Pen America, 2023), <https://pen.org/wp-content/uploads/2023/02/Academic-Freedom-Resource-Guide-final.pdf>.

Appendix B

Checklist: Board Readiness for Fiduciary Responsibilities

A governing board with qualities like the following can recognize influences that may conflict with its mission and priorities and is prepared to deal with them appropriately. How well do these qualities describe your board?

- 1. Fiduciary decisions**—Governing board decisions reflect the duties of care, loyalty, obedience, and the best long-term interests of the institution or foundation.
 - All board members thoughtfully assess, share, revise, and act on their independent judgment as to what course of action is in the best interest of the institution or foundation.
 - The governing board has a strong and consistent culture of focusing on fiduciary responsibilities.
 - Board members are sufficiently aligned with each other and the administration to recognize and converge on decisions that fulfill the mission and are in the best interest of the institution or foundation.
 - Board members understand and support shared governance and the faculty's role in academic decision-making.
 - The governing board ensures that the academic institution or foundation cultivates fiduciary understanding and positive relationships with key constituencies, especially those that have or feel a sense of ownership in the institution or foundation.
 - The governing board seeks and thoughtfully considers input from its constituencies that could benefit the best interests of the institution or foundation.

2. Legal authority—The governing board exercises its legal authority to confirm its fiduciary responsibilities and protect the responsibilities of the administration and faculty.

- Board members are clear about the nature, extent, and boundaries of their legal authority.
- The governing board understands any authority held by other individuals and entities that could impact board governance decisions. Those individuals and entities may include state or federal officials, legislatures, the U.S. Congress, and sponsoring organizations, for example.
- Governing board members are aware of how other individuals and entities may be tempted to influence the institution, system, or related foundation. They seek to establish mutual understanding with those individuals and entities to align their expectations with the organization's strategic priorities.

3. Independence—The governing board works and acts independently within a framework of legal documents and formal agreements that comport with the best long-term interests of the institution—such as the institution's founding charter, bylaws, federal laws and regulations, state constitutions and statutes, and accreditation requirements. Foundation boards should reference the terms of their memorandum of understanding with the affiliated institution and other applicable institution or system policies.

- All board members direct their loyalty to the institution they hold in trust, not to their appointing authority or electorate. They uphold the governing authority of the board and the authority of the administration and faculty. They recognize and address influences that are not aligned with strategic priorities.
- The governing board is aware of and addresses any impending action that goes against policies or that could compromise reputation—such as an agreement with a donor that violates institution or foundation values and gift acceptance policies.
- The governing board addresses influences that encroach on its independence, fiduciary responsibilities, or legal authority.
- The governing board recognizes and addresses influences that impact institutional autonomy and academic freedom.
- The board alone, acting collectively, makes the decisions that fall within its legal authority.

Appendix C

Examples: Some Sources of Tension

Colleges, universities, and institutionally related foundations may face situations that further complicate their efforts to advance and strengthen mission-focused outcomes. Governing boards that have or may encounter conflicts should update their governance policies, practices, risk management frameworks, and communications plans to proactively address these potential situations:

- When members of a governing board sense their fiduciary duties conflict with an appointing authority's expectations.
 - **Recommendation:** Seek to establish mutual understanding of expectations with the appointing authority. Maintain board independence and uphold fiduciary duties and principles of trusteeship. Think independently, act collectively.

- When a member of a governing board believes that their purpose for serving is to advance an agenda that is not aligned with what the full board believes represents the institution's or foundation's best interest.
 - **Recommendation:** Help the board member understand the potential implications associated with their perspective, continue board education and development efforts focused on fiduciary duties and principles of trusteeship, and potentially engage the board chair and legal counsel to explore additional options. Explore the applicability of conflict-of-interest procedures or other legal options if the board member violates fiduciary duties.

- When the board does not control the selection of new board members who need to reflect the perspectives, skills, expertise, and competencies that support the mission and strategic priorities of the institution, system, or foundation.
 - **Recommendations:** Establish a coordinated process for communicating with the appointing authority and/or appointment advisory group to advise them about the vital connection between board composition, effective leadership,

and mission fulfillment. As stated in AGB's *An Anatomy of Good Board Governance in Higher Education*, effective board governance requires the right people focused on the right issues at the right time.

- Request opportunities to share AGB's recommended criteria for board member appointments as part of the recruitment and selection process.
 - Update the board's composition matrix to demonstrate where there are gaps and opportunities.
- When foreign and domestic governmental entities or individuals provide funds that greatly impact the institution or foundation and create concern if the governing board or institution does not comply with the influencers' objectives.
 - **Recommendations:** Call for a pause in the agreement; solicit analyses of fiduciary duty, authority, and other issues. Engage the governing board in thoughtful, strategic discussion to determine if the objectives of the influencer are aligned with priorities, and subsequently respond to the influencer.
 - Determine alternative sources of funding that can support strategic and operational priorities.
- When a foreign government or company expresses a desire to invest in campus research or programming and requires intellectual property and knowledge from the research and programming to be shared with the investing authority.
 - **Recommendation:** Ensure compliance standards are understood and followed so as to avoid jeopardizing national security interests and federal research funding.
- When athletic booster clubs offer to provide financial support for current and prospective students, coaches, and programs that may not align with institutional goals or when athletic conferences seek organizational transitions.
 - **Recommendation:** Ensure governing board policies and standards are current, known to senior administrators, and implemented appropriately. Funding for special interests should never outweigh core mission responsibilities, immediate needs, and identified goals.

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