

# Governing Board Policy Implementation Guide

This document provides guidance on implementing the Governing Board Policy and addresses institutional governing board structures, characteristics, and practices that promote effective decision and policy making in the best interests of the educational institution. Topics addressed include conflicts of interest, board composition and size, selection and removal of members, board organization and committees, and board authority and functioning. The material in this document is informed by decisions and observations that the Commission and its representatives and volunteers have made and collected over time through evaluations of the role, structure, and effectiveness of governing boards and by principles of good practice in board governance.

Issues relating to the structure, authority, effectiveness and independence of an institution's governing board can arise at any time during an institution's association with WSCUC, including during the eligibility review.

## Conflicts of Interest

### Definition of conflict of interest

A conflict of interest exists, with regard to a proposed action of the governing board, or any committee with delegated authority of the governing board, where a reasonable person, having knowledge of all the relevant circumstances, would conclude that a board member or a member of the board member's family, or the board member's friends or associates, have an interest that may compel the board member to take action that (1) is incompatible with the board member's duty to the institution, or (2) would result in financial gain.

Conflicts can arise in a variety of situations but commonly arise where board members and/or their family members are:

1. Employees of the educational institution.
2. Shareholders or owners of the educational institution.
3. Persons with an ownership or investment interest in any entity that has a transactional, contractual or other financial arrangement with the educational institution.
4. Persons with contractual or other compensated relationships with the educational institution (such as the employee of a bank, the college's lawyer or a consultant to the college).
5. Persons who are appointed to the board by another entity with which they have ties that might jeopardize their independence.

Board members have an ethical responsibility and duty to disclose their interests and, where the board member has an actual or apparent conflict with an action of the board, to refrain from participating in discussions about or voting on any matters that relate to the conflict. Regardless of any legal duty, board members are expected to act as though such a legal duty is present. In all cases in which a potential

conflict may exist, the interested board member ensures that the conflict has been clearly and promptly disclosed to the board.

Generally, interested members recuse themselves when such matters are being discussed. For example, employee-board members are not involved in approval of budgets that set their salaries and bonuses. Shareholder-board members do not participate in the deliberations of or vote on any matter related to the declaration or payment of dividends or financial distributions of any kind that may inure to the benefit of that member.

Concerns can also arise when the board chair is responsible to a related entity, such as a religious institution. The board chair has a special leadership role, which may include setting agendas, making appointments, and leading discussions, and therefore can wield more influence than other board members. Whatever loyalties the board chair may have to other entities, the board chair is expected to act in the best interests of the educational institution when acting as board chair. The board chair does not have extensive authority to act alone but ordinarily acts with the advance approval and consent of the board or the board's executive committee and respects limits on the chair's authority as set forth in the bylaws or comparable organizational documents. Finally, a serious potential conflict exists if one person serves simultaneously as board chair of two institutions of higher education, which may be competing for students, faculty, and/or resources; therefore, this practice is discouraged.

## **Distribution of conflict of interest policies**

Governing boards publish their conflict of interest policies, and as a best practice will circulate the policies annually to the entire board, and obtain annual signed statements from each board member. By signing the policy, members agree to disclose potential and actual conflicts and to act in accordance with the policy when discussing or voting on the subject of the conflict. All board members, especially the chair and other officers, are mindful of known board member conflicts and invoke the policy as situations arise, noting in minutes any recusals, absences and abstentions resulting from conflicts. If a conflict arises between the times when statements are normally reported to the board, a member advises the chair of the conflict.

## **Compensation of board members**

For independent board members (who by the Governing Board Policy must make up the majority of the institutional governing board), compensation for service is typically not provided, but if provided, is expected to be reasonable. Some institutions, especially boards of for-profit institutions, compensate board members for their attendance at meetings or their service on the board. As set forth in the Governing Board Policy, the Commission believes that compensation for board participation can reach amounts that create a conflict of interest and deprive the receiving board member of the status of being disinterested for purposes of governing board independence. Although the Commission has not set a specific monetary value limit on stipends, any stipend will be reasonable, if calibrated to the need to attract high quality board members to the institution and to the commitment asked of board members, but not if so substantial as to provide an incentive to serve or remain on the board. Reimbursement of travel expenses by the institution to board members is not considered compensation.

## Qualifications of Governing Board Members

### Expertise of board members

Effective governing boards contain members with specific expertise that can benefit the institution. Every institution has its own mission, values, culture, educational programs, and operational structure, all of which factor into the qualifications of the governing board. The governing board, taken as a whole, reflects constituent and public interest through its membership. Institutions seek to constitute a board that includes representatives of the communities they serve who have expertise in governance, finance, and higher education, and who are diverse in terms of profession, age, gender, racial-ethnic background, and other factors.

### Commitment to the institution

Institutions have board members who demonstrate support of and an affinity with the mission of the institution and the constituencies served by it, who have expertise in some aspect of the institution's functioning, and who are willing and able to devote time and expertise to board work.

### Knowledge of higher education

Governing boards should have some members with expertise in higher education to help the board understand the institutions' educational offerings, academic infrastructure, faculty, learning outcomes, quality assurance systems, accreditation, and the changing environment within which the institution operates. These may be employees of the institution, such as designated board positions for a representative of the faculty and the staff, or faculty members or administrators from other non-competitor institutions.

### Financial skills and knowledge

Every governing board needs members with financial expertise, in order to oversee planning, budgets, and audits. These areas may include:

1. An understanding of generally accepted accounting principles (GAAP), generally accepted auditing standards (GAAS), and the ability to understand and interpret financial statements.
2. The ability to assess the general application of such principles and standards in connection with the accounting for estimates, accruals, and reserves.
3. An understanding of internal controls and procedures for financial reporting.
4. An understanding of the functions of finance, investment, and audit committees and their distinct roles.
5. A general understanding of the unique aspects of either not-for-profit, state-supported, or for-profit financial institutions, depending on the organizational type of the institution.

## **Board experience and development**

It is helpful for institutional governing boards to have members with experience in serving on other governing boards or who concurrently serve on the board of another non-competitor institution. Effective institutional governing boards provide orientation, training, assessment, and development for both new and continuing members.

## **Publication of qualifications**

Objective and relevant qualifications for board members can be written into the bylaws, governing documents, or board policies to promote effective board composition and guard against unqualified persons who are appointed for reasons unrelated to their objective qualifications. An example of a bylaw provision might be a requirement that board members have extensive experience with postsecondary educational institutions as an academic, an administrator, or as a trustee or serve or have served in a leadership position in a financial or other designated type of institution.

## **Functions of the Board**

As noted in CFR 3.7, a governing board “is responsible for mission, integrity, and oversight of planning, policies, performance, and sustainability. The governing board selects and evaluates the chief executive officer.” To carry out its legal and fiduciary responsibilities, boards are commonly involved in: developing and approving strategic plans and annual budgets; regularly monitoring the accomplishment of these plans and budgets; regularly monitoring student achievement indicators such as retention and graduation rates, student learning, and job placement; and reviewing annual financial audits and reports to ensure the adequacy of financial management and controls and to promote financial sustainability. Boards also review and adopt or reaffirm the institution’s mission and vision statements and key institutional policies. Board responsibilities are to be spelled out in bylaws or other organizing documents.

## **Frequency of Board Meetings**

It is critical that the governing board meets frequently enough to carry out its legal and fiduciary responsibilities for oversight and policy making. Infrequent meetings may result in inadequate oversight of plans and regular operations, loss of momentum on board-developed projects, and gaps in communication about important issues or challenges. Governing boards also often have an executive committee, composed of a smaller group of members that meets between meetings and can act on behalf of the board within limits as defined by a reserve power clause. For the board to operate independently, it does not allow too much authority to any one individual or committee, including the executive committee, and takes important actions at full board meetings. The number of meetings a year and the notice provisions for meetings are commonly set forth in the institution’s bylaws, in state statutes or other organizing documents. The bylaws will contain provisions on the conduct of meetings including those mediated by conference call, involving remote participation, or where there is voting outside of regularly scheduled meetings.

## Board Committees and Committee Structure

### Description of standing committees

There is no universal or all-purpose approach to standing committees. Some boards may conduct business as a body of the whole. As governing boards become more sophisticated in their oversight of an institution, they may also become more deliberate in how they design and organize themselves. Governing boards typically have a committee structure that ensures that the board as a whole is meeting its legal and fiduciary obligations of oversight. Governing boards usually establish standing committees (and ad hoc committees) in their bylaws or other organizing documents and have the power to create additional committees for specific purposes. Committees ordinarily meet separately from regular meetings of the board, review relevant materials and key performance indicators, and provide reports and recommendations for action to the full board.

Typical standing committees relate to finances, planning and budgeting; financial audit, which should be separate from the finance/budget committee; academic affairs; and a nominating committee that solicits and recommends board members. Many governing boards have other committees, such as facilities, investment, student affairs, fund raising and development, and an executive committee composed of a small group of members that can act if necessary between regular meetings.

### Composition of committees

As described in the Governing Board Policy, committees must meet the same member independence requirements of the governing board. Committees ordinarily have a minimum of three members, two of whom are independent, so that there is capacity for adequate breadth of experience and knowledge in the committee's area of responsibility and so that too much power is not concentrated in a few individuals. Board committees can include individuals who are not members of the board, but who have expertise in a particular area. They can be institutional staff, faculty or students, or persons from outside the institution. They may or may not have voting authority.

No one member should serve as chair of multiple committees. This ensures that control is not concentrated in just one person, such as the board chair or chief executive officer.

### Size of the Governing Board

Governing boards vary in size. They are expected to be large enough so that multiple committees can be composed of a sufficient number of qualified and independent members. A very small board, such as one with only five members, will, by definition, not have enough qualified persons with expertise in finances, planning, audit, and academic matters, to populate all the committees, especially if the board has members with multiple interests who therefore cannot be in the majority on a committee. Further, it is sometimes challenging to achieve a quorum with an adequate number of independent members if a board is small.

The size of the governing board is commonly set forth in the institution's bylaws, state statute or other organizational documents. Most organizational documents set a minimum and maximum size.

## Quorum Requirements

Bylaws or other organizational documents commonly establish the requirements for the number of board members present for the board to take action. Often this is a simple majority of board members; for changes to the bylaws or other key documents, a super-majority may be required.

## Selection and Removal of Board Members

Methods by which members of the governing board are selected, replaced, and removed are commonly set forth in state statute or organizational documents. These provisions ensure that the board maintains its required independence. In general, no one person, such as the institution's founder, or another entity, such as a parent corporation, a system, or a church, will have the power to select, appoint and remove members of the governing board at will. (Note: Institutions operating within a Functionally Integrated Type III supporting organization may be obligated to have a majority of the institution's board appointed by the supporting organization, as set forth in federal law and IRS guidance. Similarly, a Type II supporting organization may have a majority of its board members come from its supported organization(s), and a Type I supporting organization will often give its supported organization(s) the power to regularly appoint a majority of its board.)

For these purpose, the term at will means 1) without any cause being proven; or 2) without any process, such as prior consultation with other governing board members; or 3) with the removal taking effect before the natural expiration of the member's term; or 4) in a manner that is in conflict with statute or organizational documents.

## Nominating procedures

Governing boards have a committee with a majority of independent members that nominates and recommends members for election to the full board. A nominating committee is not controlled by a single person (such as the institution's founder); another entity (such as a parent corporation, a system or a church); or a majority of employees (who have potential conflicts over compensation and may be deferential to a founder or the chief executive officer). Another protection is to create limits on the proportion (less than a majority) of board members that can be selected or appointed by an individual, such as a founder, or a related entity such as a sponsoring church or parent company. (Note: At institutions that are part of a state system, by statute, there is often a single governing board for all institutions in the system and the governor appoints board members. Furthermore, institutions operating within a Functionally Integrated Type III supporting organization may be obligated to have a majority of the institution's board appointed by the supporting organization, as set forth in federal law and IRS guidance. Similarly, a Type II supporting organization may have a majority of its board members come from its supported organization(s), and a Type I supporting organization will often give its supported organization(s) the power to regularly appoint a majority of its board.)

## **Procedures for removing board members**

Governing boards have clear procedures that conform to the principles of independence to remove and replace board members. One way is with bylaws that 1) allow for removal of members only for cause and specified reasons, such as misconduct or failure to attend meetings, and 2) create a process to guard against inappropriate removal by a founder or related entity. The power to remove is placed in the hands of the full board. If any power to remove is placed in a single person or another entity, restrictions are placed on that power, such as not allowing board members to be removed until a replacement, acceptable to an independent nominating committee, has been found.

## **Terms of Board Service**

### **Length of service**

Governing boards have terms of service that promote continuity and independence. These provisions are set forth in state statute, institution's bylaws or other organizing documents.

Generally speaking, very short terms and very long terms are inadvisable. Having stated terms provides an important expectation that, during the term, board members are able to function free from interference or control by a single person or another entity. Similarly, shorter terms of service may provide a defined occasion to evaluate a member's contribution prior to the renewal of a term of service.

### **Staggered appointments**

Staggering terms promotes stability and independence by ensuring that there are always experienced board members present on the board to assist new members in understanding board requirements, practice and procedures.

## **The Chief Executive Officer and the Board**

One of the critical responsibilities of the board is the hiring and evaluation of the chief executive officer (CEO), usually called the president or chancellor. The board's authority to retain, evaluate and discharge the CEO is critically important and is specifically stated in the institution's bylaws or other organizing documents. The selection of a CEO may also need to comply with separate legal, political, and/or procedural requirements (e.g., in state-supported systems or accredited entities that are a part of a parent organization).

### **Selection of the CEO**

Governing boards are expected to have clear procedures for the selection of the CEO. Although not required, an independent search committee with an agreed-upon job description and process helps to guard against inappropriate influence or control of the decision. Some entities with multiple boards have the institutional governing board nominate the president but retain in another parent or sponsoring board the right to veto the board's selected candidate, which needs to be clearly stated in the bylaws or

organizing documents. In this case, the independence of the search is critically important to ensure that the decision is made in the best interests of the educational institution.

## **Evaluation of the CEO**

Governing boards also have clear procedures for the evaluation of the CEO. Some governing boards include the CEO as a voting or a non-voting member, which can complicate the evaluation process. Although this practice is not prohibited, governing boards that include the president need to be especially mindful of the president's dual role. They establish a practice of having regular executive sessions, with the CEO alone and then without the CEO present, and create a fair and independent process for reviewing the CEO's performance.

Good practice in the evaluation of the CEO involves regular, annual written evaluation with feedback to the CEO. Many resources are available to assist boards in performing productive evaluations (e.g., the Association of Governing Boards). Examples of good practices include 360-degree evaluations every three years combined with self-evaluations and the use of outside firms to ensure objectivity, along with annual reports on achievement of established goals. The objectivity and fairness of chief executive evaluation can be compromised if a majority of the board or the evaluating committee are employees, who by definition report to the CEO either directly or indirectly. A similar concern arises if a majority of the governing board consists of persons employed or controlled by another entity, such as a system, parent entity, or religious entity. In this case, the concern would be that the board would be controlled by persons whose primary loyalty might be to the related entity and who therefore might not be fair and objective in evaluating the CEO as the leader of the educational entity.

## **Removal or termination of the CEO**

Governing boards establish clear procedures related to the continued employment or termination of the CEO. These decisions are handled by the board with recusals of interested parties and objective and stated criteria for removal. Decisions on removal are not left entirely to a related entity although such entities may reserve power to endorse a recommendation for removal made by the governing board.

## **Clarification of roles and responsibilities of the CEO and board**

In both formal organization and practice, the respective roles of the governing board and of the president are clear and the boundaries respected. As more expressly set forth in the Governing Board Policy, the governing board exercises oversight in its designated areas of responsibility, especially financial and major policy-making matters, but is not involved in the day-to-day operations, management or decision-making, which are delegated to the president and through the president to the administration and faculty. Likewise, the chief executive officer provides open, accurate, complete, and candid reports to the governing board, carries out the directions and works to achieve the strategic goals of the board, and does not attempt to control the board or interfere with the exercise of its oversight responsibilities.

## Powers of Related Entities

The authority of a related entity over the accredited institution should be circumscribed in such a way that the independence of the institution and its governing board is not compromised. In the Related Entities Policy, organizational documents may require that certain corporate actions be approved by the board of the system, parent or sponsoring entity. In other words, the institution's governing board does not have the ability to make the final decision in these areas. The authority of the related entity over these actions is usually referred to as reserve powers in the institution's bylaws or other organizational documents.

Care is taken to ensure that the reserve powers left to the related entity are not so extensive that the institution's governing board is precluded or prevented from exercising its essential governance prerogatives. For example, setting forth in the bylaws a list of reserve powers that are ordinarily and appropriately the prerogative of the institution's governing board and/or its CEO (approval of the budget, appointment and discharge of administration and staff, appointment of more than a majority of the board members) may impair the independence of the board. It is understood that, in many cases, the oversight responsibilities of the parent organization and of the institutional governing board will be in alignment, such as in preserving the core mission of the institution or in ensuring its financial sustainability. In such cases, however, the parent organization will typically hold obligations to one or more other institutions. Under these circumstances, a WSCUC review may entail studying a record of board actions over time to ensure that the board has been able to act consistently on behalf of the accredited institution.

As a general rule, it is acceptable to have certain extraordinary decisions, such as the sale of the assets of an institution, be reserved to the related entity, but the final decision on matters that involve the ordinary oversight and management of the institution should reside with the board. Finally, where a power is reserved, it is always important for the organizational documents to ensure that the governing board will make the initial decision, reserving to the related entity (parent organization) only the power of final approval.

## Summary of Governing Board Characteristics

1. The chair and a majority of the board members are independent; they are not employed by the institution, are not compensated by the institution, except for modest or representative stipends, and do not have an ownership interest in the institution.
2. Compensation for services for the independent members of the board is modest or representative – not substantial enough to provide an incentive to serve or remain on the board for the stipend.
3. Governing boards have clear and published conflict of interest policies signed by each board member annually and followed.
4. Governing board members have relevant expertise that qualifies them to serve on the board.
5. Length of term for board service is clearly defined and promotes continuity and independence.
6. The quorum for the board to conduct business is comprised of a majority of independent members.
7. Governing boards typically have at least four committees: finance, financial audit, academic affairs, and nominations. The finance and audit committees are separate and distinct.
8. Board committees have a minimum of three members each, at least two of whom are independent (i.e., a majority are independent).
9. No one member serves as chair of multiple committees.

10. The governing board is of sufficient size so that all committees can be adequately populated by qualified members without concentrating too much control in a small number of people.
11. The board has clear procedures to select, nominate, remove and replace board members, conforming to the principles of independence.
12. The board has clear procedures for hiring, evaluating, retaining, or discharging the CEO that conform to the principles of board independence and responsibilities.
13. The powers of related entities do not significantly compromise the governing board's responsibilities and independence.

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*Approved by the Commission, November 2017<sup>1</sup>  
Revised by Staff, August 2023*

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<sup>1</sup> Prior to November 2017, the contents of this guide were part of the Governing Board Policy.