



Statement on the Governance Role of a Trustee or Board Member



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The University of the State of New York
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THE UNIVERSITY OF THE STATE OF NEW YORK

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November 2001

Dear Colleague:

The University of the State of New York (USNY) is a vast multi-billion dollar enterprise that encompasses schools, colleges, universities, libraries, museums, public broadcasting and other educational and cultural institutions that have been incorporated by the Board of Regents or the New York State Legislature. This enterprise has one common characteristic among almost all of its components. Each institution is governed by a board of individuals who willingly volunteer their services. On behalf of the Board of Regents and the State Education Department, we thank you for your contributions as a trustee/board member. You are performing a much-needed and valuable service to your institution and the community it serves.

This *Statement on the Governance Role of a Trustee or Board Member* is provided by the Board of Regents to assist trustees/board members in exercising their responsibilities. The Statement provides certain fundamental information regarding the stewardship role that members fulfill. The Regents recognize that USNY institutions vary greatly in the mission, size, form and structure of their boards. This document was prepared to provide guidance and information to assist all trustees/board members in the performance of their responsibilities. From the small historical society to the multi-million dollar college, university or school district, each member has a fiduciary responsibility for the institution he/she governs.

We urge you to share this document with your board colleagues, become familiar with its contents, and integrate its provisions into your institution's governance process, e.g., include in orientation materials for new board members or in the institution's handbook, where one exists. It can also be accessed at the following web site – www.nysed.gov.

If you have questions or comments regarding the Statement, please refer to Appendix E for offices to contact in the State Education Department or write to the address listed above in the letterhead.

Sincerely,

Handwritten signature of Carl T. Hayden in black ink.

Carl T. Hayden
Chancellor, Board of Regents

Handwritten signature of Richard P. Mills in black ink.

Richard P. Mills
Commissioner of Education and
President of the University of the
State of New York

BOARD OF REGENTS THE UNIVERSITY OF THE STATE OF NEW YORK

The University of the State of New York (USNY), created by the Legislature in 1784, includes: • all elementary, secondary and postsecondary educational institutions, both public and private • libraries • museums • historical societies and • other educational institutions that have been incorporated by the Regents or the Legislature or have been admitted to membership by the Regents.

As a trustee or board member, you have assumed an oversight role with your institution's service to the community, which includes protecting the public interest. This is a very important role because, as a trustee or board member, you and your colleagues are responsible for the overall direction, operation, assets and fiscal well-being of your institution. The assets of the institution are held in trust for the people of the State with trustees/board members acting as fiduciaries. As a volunteer, you must be willing to donate the time and attention to ensure that senior managers are fulfilling the institution's charter and/or legislative mandate. Presented below are fundamental questions that trustees/board members need to ask and revisit continuously to ensure they are fulfilling their role in a responsible manner.

What is the purpose of the institution?

As a trustee/board member, you should understand the purpose and mission of your institution which is defined by its charter, certificate of incorporation or by legislation. USNY institutions encompass a wide array of education purposes as

described above. In the case of organizations that are incorporated or chartered by the Board of Regents, you should obtain a copy of the Regents-issued charter or certificate of incorporation. Institutions chartered or incorporated by the Board of Regents are treated as not-for-profit entities. You should familiarize yourself with the institution's corporate status, powers, privileges, and duties, which are defined by its charter or certificate. Independent colleges and universities derive their corporate powers from the Board of Regents as do certain non-degree granting institutions. Libraries, museums, historical societies, public television and/or radio stations also derive their corporate powers from the Board of Regents. All of these institutions are governed by a board of trustees which is legally responsible for assuring that the institution fulfills the distinctive purposes for which it was established.

On the other hand, the State University of New York, its four university centers and various colleges of arts and sciences, technical colleges, medical centers and community colleges derive their authority from Education Law, as does the City University of New York, all of which are part of the USNY enterprise. A board of trustees governs and provides oversight for each.

USNY encompasses school districts and boards of cooperative educational services (BOCES) which also obtain their authority from the Education Law and other relevant statutes. As a board member, you need to know whether the school district is a common school, union free, central, central high school, or city school district. There are also "special act" school districts which have been established by the New York State Legislature on the grounds of charitable institutions caring for children and youth. BOCES are voluntary associa-

tions of school districts that agree to provide education and business services in a cooperative manner for purposes of economy and efficiency. The New York State School Boards Association publishes a handbook for school board members that provides more detailed information on the role of a school board member.

What is the financial status of the institution?

One of the most important issues you need to monitor is the financial status of your institution and whether its assets are being used for the benefit of the institution's mission. Ask for copies of fiscal reports, financial statements, and tax returns where applicable. Talk to executive staff and other board members about the financial condition of the institution.

Just exactly what am I responsible for?

You should meet with other trustees/board members to discuss their expectations of you. Inquire about by-laws, committees, organizational structure, financial responsibility, and conflict of interest policies. Keep in mind that being a trustee/board member requires a commitment of personal time and effort with generally no fiscal remuneration.

What duties do trustees and board members have to fulfill?

Although varied in purpose and mission, USNY institutions are, for the most part, not-for-profit corporations subject to the Education Law and other

laws governing not-for-profit corporations wherein trustees/board members must fulfill certain duties to the institution and the community it serves. Such duties involve care, loyalty and obedience.

Duty of Care

A trustee or board member must act in good faith and exercise the degree of diligence, care and skill that an ordinary prudent individual would use under similar circumstances in a like position. To conform with this standard, trustees and board members should:

- Regularly attend and participate in board meetings and committee meetings where applicable;
- Read, review and inquire about materials that involve the institution, especially board minutes, reports, and any literature that involves the institution;
- Have a fiduciary responsibility for the assets, finances and investments of the institution and exercise due diligence, care and caution as if handling one's own personal finances; and
- Use one's own judgment in analyzing matters that have an impact on the institution.

Duty of Loyalty

Trustees/board members owe allegiance to the institution and must act in good faith with the best interest of the organization in mind. They should not seek to benefit personally from any business derived from the institution without full disclosure to the board. They must avoid conflicts of interest or even the appearance of such. Acts of self-dealing constitute a breach of fiduciary responsibility that could result in personal liability.

Duty of Obedience

A trustee/board member has a responsibility to insure that the institution's resources are dedicated to the fulfillment of its mission. The member also has a duty to ensure that the institution complies with all applicable laws and does not engage in any unauthorized activities.

The NYS Attorney General publishes *A Handbook for Not-For-Profit Board Members*, which may be obtained from the following web site address: <http://www.oag.state.ny.us/charities/duties.html>. The Handbook contains more detailed information on the duties of a trustee/board member of a not-for-profit corporation.

What is the difference between provisional and absolute charters?

Corporations formed for the principal purpose of operating a college, university, school conducting some or all of the grades nursery through twelve, library, museum, historical society, or public television and/or radio station are created by the Board of Regents by issuance of an instrument called a charter, which sets forth the powers of the corporation. The document by which all other education corporations are created is known as a certificate of incorporation.

The initial incorporation of the educational institution is executed by the issuance of a provisional charter that is valid for a fixed term of one to five years. If the Board of Regents is not satisfied that the corporation can qualify for an absolute charter, it may extend the provisional charter for an additional term of years.

The process for the issuance of a certificate of incorporation is the same as that pertaining to a provisional charter. The legal effect of a certificate of incorporation is the same as that of an absolute charter.

If you are a trustee of a chartered institution, you need to be aware of the following:

- Whether your institution has a provisional or absolute charter;
- The specific standards that apply to your institution (see Appendix A);
- The specific powers of the corporation contained in the charter; and
- Whether the board has the number of members stipulated in its charter.

How do I distinguish between my governance role and that of a supporter or team player for my institution?

There is a fine line between governance and being a supporter of an institution. Members need to avoid meddling in managing daily affairs. Trustees/board members must balance their role as supporters for the institution's success against their governance role as overseers of the institution's management to ensure that assets are used properly, laws and regulations are followed, and the public interest is best served. The board needs to support the institution's management but must also govern by holding the chief executive officer (CEO) accountable for the institution's operations and service to the public.

In the governance role, trustees/board members should be concerned with protecting the public interest which they serve. Members exercise this

role by hiring a CEO to manage the operation of the institution and evaluating his/her overall performance in providing services to the public.

In a supportive role, board members assist by fund-raising, liaison and networking with other community leaders, and providing expertise in specialty areas such as law, planning, accounting and overall corporate management.

What if I lack knowledge or experience in fiscal governance?

One of the most important responsibilities of a trustee or board member is to ensure that financial resources are being used efficiently and effectively toward meeting the institution's goals, and that its assets are properly safeguarded. The area of fiscal governance is one in which board members may feel the least qualified and rely entirely on the CEO for guidance.

Trustees/board members should be cautious about relying completely on the guidance and judgment of the institution's CEO and management. Members have ultimate responsibility for governance of the institution's resources and their primary role of protecting the public interest. In monitoring the institution's budget, board members should ask questions about the assumptions made in preparing the budget. What types of data were used to prepare the budget? How are estimates developed for such expenditures as payroll, supplies and materials, travel and conferences, capital outlays, etc.? Are accounting and/or management processes adequate to ensure accurate and reliable data? What will be accomplished by passing this budget? How will outcomes be measured, evaluated and reported? How will the board

hold the CEO accountable for budget outcomes?
How are variances from expectations handled?

Similar questions may be raised about other areas, such as the institution's system of financial controls, processes employed to comply with applicable laws and regulations, accountability with performance results, etc.

What if the institution needs more expertise with fiscal matters?

When matters of fiscal governance become very technical and require greater expertise in assessing the fiscal condition of the institution or its long-term well-being, a board should seek the advice of experts. One mechanism for giving emphasis to the responsibility of fiscal governance is to create an audit committee composed of board members who have expertise in dealing with fiscal affairs.

An audit committee is organized pursuant to a charge or mission approved by the board. It should be established in the institution's charter, certificate of incorporation or by-laws. It holds meetings routinely throughout the fiscal year that involve such activities as:

- Helping set the fiscal environment or "tone at the top," which promotes a theme of fiscal responsibility and ethical conduct among all institution staff and board members;
- Reviewing the certified financial audit report of the institution and providing input on the results to the full board;
- Assessing the effectiveness of the institution's system of internal controls and reporting on any weaknesses;

- Assessing any risk associated with the validity and reliability of financial data; and
- Monitoring compliance with laws and regulations applicable to the institution's operations.

These are just some of the many activities that an audit committee can pursue to assist a board in its role of fiscal governance. Appendix D provides links to web sites that contain more information on audit committees and other issues relevant to the duties and responsibilities of trustees and board members.

Where can I get additional help?

There are many sources available to trustees and board members needing further information and guidance on their role. Members are encouraged to seek additional guidance, evaluate the need for additional training, and contact the NYS Education Department (SED) for guidance. The offices and contact information for SED are illustrated on Appendix E.

The procedures for the creation of education corporations by the Regents, and other related matters, are outlined in the pamphlet entitled "Education Corporations - Law Pamphlet 9." This pamphlet is available from the NYS Education Department Office of Counsel, and is soon to be available on the SED web site (www.counsel.nysed.gov).

Members are strongly encouraged to seek the advice of an attorney in matters involving the interpretation of laws and regulations pertaining to the institution's operations. The information contained in this document is not a substitute for the guidance provided by legal counsel.

The appendices contain additional information that may be helpful in fulfilling your role as a trustee or board member. Their content is listed below.

Topic	Appendix
Select Regulations of the Commissioner of Education Applicable to Chartered Institutions	A
Best Practices for Boards to Follow	B
Top Ten Warning Signs for Boards	C
Links to Web Sites	D
Contact Offices in SED by Type of Institution	E

APPENDIX A
The University of the State of New York
The State Education Department
**Select Regulations of the Commissioner of Education
Applicable to Chartered Institutions**

Elementary and Secondary Schools	Part 100
Nursery Schools and Kindergartens	Part 125
Libraries and Library Systems	Part 90
Historical Societies	Section 52.22 and Section 3.30 of the Rules of the Board of Regents
Museums	Section 52.22 and Section 3.27 of the Rules of the Board of Regents
Public Television and/or Radio Stations	Part 179 and Part 26 of the Rules of the Board of Regents
Colleges and Universities	Part 52

NOTE: This list is not exhaustive. Moreover, it does not include relevant provisions of the Education Law or other laws affecting these institutions.

APPENDIX B

The University of the State of New York The State Education Department **Best Practices for Boards to Follow**

1. Be informed of the institution's activities by:
 - Discussing operations with board members and officers.
 - Reviewing materials provided by the institution.
 - Actively participating in meetings of the board and the committees.
 - Asking questions and obtaining an understanding of the issues facing the institution.
2. Establish an audit and finance committee with responsibility to periodically meet with management and the auditors to consider:
 - The adequacy of internal controls and financial reporting processes, and the reliability of fiscal reports.
 - The independence and performance of the internal and external auditors.
 - Steps taken by management to address audit report findings.
 - Compliance with legal and regulatory requirements.
 - Steps taken by management to minimize significant risks to the institution.
3. Ensure the institution is carrying out its purpose without extravagance or waste and is not engaging in any questionable or illegal activities by:
 - Requiring management to provide periodic reports on how well the institution is fulfilling its mission and the activities accomplished for the period.
 - Approving strategic plans, budgets, policies, plans of operation, development plans and goals, contracts, key financial and program reports, and other items.
 - Holding the chief executive officer accountable for results.
 - Being involved in the selection and compensation of the chief executive officer.
 - Using good judgment in analyzing matters that may impact the institution.
4. Monitor the financial condition and management practices of

the institution by:

- Reviewing periodic fiscal reports, financial statements and tax returns.
 - Ensuring reserve funds are used for their intended purposes.
 - Verifying fund raising expenses are reasonable in relation to the amount of fund raising revenue generated.
 - Ensuring net assets are positive, but not excessive.
 - Verifying any deficits are being addressed with remedial action.
 - Ensuring records are complete and accurate, and required reports are filed with federal and state agencies.
5. To help ensure effectiveness, trustees/board members need to address the following, consistent with statute:
- Consist of a minimum of five voting members who are independent.
 - Meet at least twice a year, and more often as needed or required by statute.
 - Keep complete and accurate minutes of all meetings.
 - Not compensate their members for services in their role as trustee or board member (see note below).
 - Develop a training program for both new and experienced board members.
 - Seek expert advice when needed.
 - Avoid any conflict of interests or even the appearance of a conflict and maintain a conflict of interest policy for board members and employees.
 - Require each member to file an annual written disclosure of any business involvement with the institution or related parties.
 - Assess the need for liability insurance to protect board members and officers from legal liability.
 - Ensure their processes for selecting new members result in diversity of viewpoints and seek out individuals with commitment, skills, life experience, background, and other characteristics that will serve the institution and its needs.

NOTE: Reimbursement for expenses in the ordinary course of business does not constitute compensation. Trustees/board members who also serve as officers may receive compensation in their role as an officer (e.g., treasurer, secretary).

APPENDIX C

The University of the State of New York
The State Education Department
Top Ten Warning Signs for Boards

1. Lack of available documentation on the organization - by-laws, charter, mission statement, organization chart, prior year financial statements.
2. Lack of independent attitude or excessive conflict among trustees/board members.
3. Infrequent board meetings. Absence of board minutes.
4. Poor board attendance at meetings.
5. Lack of access to key information, fiscal, budget, program, and operations.
6. Lack of access to the chief financial officer.
7. Existence of conflict of interest relationships or less than arm's length transactions between the institution's board members and organizations that conduct business with the institution.
8. Lack of internal financial controls and written policies and procedures to safeguard, promote, and protect the organization's funds and other assets. Lack of fidelity bonds.
9. Lack of involvement in the hiring of key employees.
10. Failure to file documents with key control agencies such as the NYS Education Department, Internal Revenue Service, and NYS Department of Taxation and Finance.

APPENDIX D

The University of the State of New York The State Education Department **Links to Web Sites**

Government Agencies

Internal Revenue Service	www.irs.ustreas.gov
NYS Attorney General	www.oag.state.ny.us
NYS Education Department	www.nysed.gov
NYS Office of the State Comptroller	www.osc.state.ny.us

Education Associations

American Association of School Administrators	www.aasa.org
Education Commission of the States	www.ecs.org
Educational Research Service	www.ers.org
National Association of State Boards of Education	www.nasbe.org
National School Boards Association	www.nsba.org
New England School Development Council	www.nesdec.org
New York State School Boards Association	www.nyssba.org

Not-for-Profit Associations

Center for Non-Profit Corporations	www.njnnonprofits.org
Guidestar (IRS Form 990 database)	www.guidestar.org
Internet Nonprofit Center	www.nonprofit-info.org
Law about Nonprofit Organizations	www.law.cornell.edu/topics/ nonprofits.html

(continued)

National Center for Nonprofit Boards	www.ncnb.org
Nonprofit Evaluation Tools	www.innonet.org
Nonprofit Resource Center	www.not-for-profit.org
Nonprofit Risk Management Center	www.nonprofitrisk.org
Urban Institute – Center on Nonprofits	www.urban.org

Museums/Art Associations

American Association for State and Local History (AASLH)	www.aaslh.org
American Association of Museums (AAM)	www.aam-us.org
New York State Museum-Chartering Program	www.nysm.nysed.gov/charter
The International Council of Museums (ICOM)	www.icom.org

Library Associations

American Library Association's Association for Library Trustees and Advocates	www.ala.org/alta
New York Library Association	www.nyla.org
New York State Association of Library Boards	www.nysalb.org
New York State Library	www.nysl.nysed.gov

DISCLAIMER: These sites are provided for the user's convenience. The State Education Department (SED) does not control or guarantee the accuracy, relevance, timeliness or completeness of web sites not maintained by SED. Further, the inclusion of such sites on this list is not intended to reflect their importance, nor is it intended to endorse views expressed, or products or services offered, on these outside sites, or the organizations sponsoring the sites.

APPENDIX E

The University of the State of New York
The State Education Department
Contact Offices in SED by Type of Institution

To obtain further guidance about the governance role of a trustee or board member, you may contact the following addresses, telephone numbers, and web sites for your respective institution.

Institution	Contact Office
Public schools, Boards of Cooperative Educational Services	Facilities, Management and Information Services Office of Elementary, Middle, Secondary and Continuing Education Room 885 EBA Albany, New York 12234 www.emsc.nysed.gov 518-474-2238
Nonpublic schools	Office for Nonpublic School Services Room 481 EBA Albany, New York 12234 www.emsc.nysed.gov/rscs/ nonpub/nonpublic homepage.htm 518-474-3879
Museums, historical societies, public broadcast stations, and other cultural agencies	Chartering Program NYS Museum Room 3090 CEC Albany, New York 12230 www.oce.nysed.gov 518-473-3131

Institution	Contact Office
Libraries and library systems	Division of Library Development NYS Library NYS Education Department Room 10C50 CEC Albany, New York 12230 www.nysl.nysed.gov 518-474-7196
Public and private colleges and universities, licensed private and registered business schools	Office of Higher Education NYS Education Department 89 Washington Avenue Room 979 EBA Albany, New York 12234 www.highered.nysed.gov 518-474-5851
Independent living centers	Office of Vocational and Educational Services for Individuals with Disabilities One Commerce Plaza Albany, New York 12234 www.nysed.gov/vesid 518-474-3946
Psychotherapy institutes	Executive Secretary to the State Boards for Psychology and Massage Office of the Professions 89 Washington Avenue Albany, New York 12234 psychbd@mail.nysed.gov 518-474-3817 ext. 150