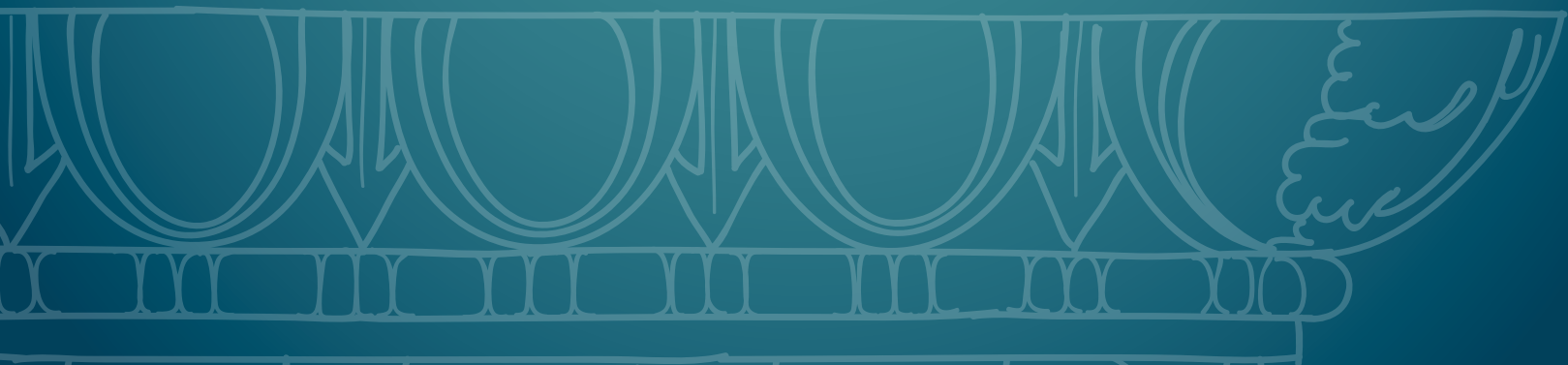


AGB Statement on
External Influences
on Universities and Colleges





This statement was approved on August 17, 2012, 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, and systems, 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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As the country increasingly focuses on the relationship between higher education and our nation's future, the responsibilities associated with effective board governance take on renewed emphasis. Serving as a board member has never been easy. Yet with calls at both the federal and state level for more transparency, improved educational quality, accountability, increased student access and attainment, and cost containment, the responsibilities of boards are more complex and challenging than ever.

During the past decade, intrusions into the work of governing bodies have grown significantly. Governors and legislators have attempted to direct governance actions, regulators have tried to redefine board independence, state laws have increasingly encroached upon independent decision making, donors and sponsors have sought to determine institution policy, and a broadening array of organizations has continually worked to influence board decision making.

As the overseers of a public trust, boards have an obligation to remain open to external input and ensure the institutions they govern are responsive to societal needs. They have the responsibility to link the colleges, universities, and systems they serve to the interests of the public. Through this special responsibility, boards help their institutions and systems meet public expectations and ensure a high degree of trust.

However, boards must also recognize that, in the end, their decision making must rise above the external pressures being applied to their work. America's unique higher education governance model is dependent on boards consisting of independent men and women acting together to be fully informed and impartial in their policy determinations, and committed to the long-term well-being of the institutions they serve.

This statement, first issued by AGB's board of directors in 2001, has been updated to address increasing efforts to affect board independence from outside the boardrooms of our institutions. It also serves as a reminder to the nation's 50,000 board members that theirs is a sacred trust that requires awareness, engagement, and independence.

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The stakes are too high for boards to cede their policy authority, for which they bear ultimate fiduciary responsibility, to governmental control or self-serving political, economic, or personal interests external to the institution. Acting as the oversight body of a public trust, boards should always bear in mind the following:

- ✦ Although boards should respect, encourage, and welcome the input of all stakeholders in considering a policy, they must ensure that their decision making processes are free of any undue pressures from external stakeholders—from policy makers (including appointing authorities and regulators), donors, alumni and boosters, corporate sponsors, or political-interest groups/organizations.
- ✦ Boards have ultimate responsibility to sustain higher education’s inherent values—academic freedom, institutional autonomy, and self-regulation—and protect them from those who attempt to leverage influence to affect institutional policy.
- ✦ Board independence is a basic requisite in meeting the fiduciary standards of obedience and loyalty that define a board’s legal obligations.
- ✦ Boards must use the mission of their institution or system as the focal point for their policy decisions, and public institution boards should also be especially mindful of statewide policy agendas as a framework for their actions.
- ✦ Individual board members whose views are not consistent with board decisions must respect the actions of the corporate body and avoid putting their own interests before that of the institution.
- ✦ Boards must police themselves in assuring the highest level of ethical behavior among their members, including avoiding any board member assuming the role as an advocate for a special interest in the outcome of a board’s decision.



- 1. PRESERVE INSTITUTIONAL INDEPENDENCE AND AUTONOMY.**
- 2. DEMONSTRATE BOARD INDEPENDENCE TO GOVERN ESTABLISHED BY 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.**

This statement is comprised of four principles. It concludes with several illustrative questions for governing boards to consider. The four principles are:

1. Preserve institutional independence and autonomy by:
 - ✧ keeping the mission as a beacon,
 - ✧ ensuring that philanthropy does not inappropriately influence institutional independence and autonomy or skew academic programs or mission, and
 - ✧ ensuring that institutional policies governing corporate-sponsored research and partnerships with the private sector are clear, up-to-date, and periodically reviewed.
2. Demonstrate board independence to govern as established in charter, state law, or constitution by:
 - ✧ ensuring the full board governs as a collective, corporate body taking into consideration the need for individual members to apply their individual consciences and judgments,
 - ✧ individual board members committing to the duties of care, loyalty, and obedience as essential fiduciary responsibilities, and
 - ✧ basing the selection or appointment of board members on merit and their ability to fulfill the responsibilities of the position.
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 by:
 - ✧ serving as a bridge to the external community,
 - ✧ informing, advocating, and communicating on behalf of the institution, and
 - ✧ exhibiting exemplary public behavior.

Primarily intended for boards and their individual members, the statement's secondary audience is the several stakeholders external to the university. Their input into board decision making is often essential and should always be respected, but it should never be unwarranted or intrusive.

Principles on External Influences

The following four principles are organized around key themes for governing boards and other academic leaders—and, in appropriate places, the external stakeholders of universities and colleges—to thoughtfully consider.

1. PRESERVE INSTITUTIONAL INDEPENDENCE AND AUTONOMY.

Both private and public institutions need a high degree of independence and autonomy from direct government control or any self-serving or political agenda. Because of higher education's unique mission to transmit and advance knowledge, colleges and universities function at their best when teaching and scholarship are unencumbered by unnecessary restrictions, preordained outcomes, or undue expectations or influences—whether from government officials, donors, or any other individuals or groups. The integrity of research findings and advancement of knowledge require free and independent inquiry. When necessary, boards must be willing to take a strong stand in defense of institutional autonomy and independence, providing a buffer between the college or university and inappropriate outside intrusion or criticism. Boards should:

🌀 **Keep the mission as a beacon.**

A governing board should base its decisions on how the institution can best serve the public trust by respecting the boundaries of the institution's mission. Colleges and universities are under frequent pressure from well-meaning interests and supportive constituents to alter missions or offer new academic programs that may run counter to their missions.

🌀 **Ensure that philanthropy does not inappropriately influence institutional independence and autonomy or skew academic programs or mission.**

All colleges and universities are becoming increasingly dependent on gifts from private donors, many of whom are demanding a greater say in not only the purposes but also the uses of those gifts. Such an outcome-driven and collaborative approach is the reality of contemporary philanthropy. Boards can help facilitate meaningful and appropriate relationships with donors by calling for up-to-date gift-acceptance policies and processes, as well as naming policies for buildings, research institutes and centers, and the like. These policies and processes will preclude donors from exercising inappropriate influence on the institution's independence and autonomy or its academic programs and mission. These policies and processes should apply to donors who are members of the governing board as well as to donors external to the institution, no matter how generous they may be.

🌀 **Ensure that institutional policies governing corporate-sponsored research and partnerships with the private sector are clear, up-to-date, and periodically reviewed.**

Colleges and universities engaged in research garner significant revenues from corporate-sector research and development programs, which are encouraged by federal tax laws and the needs of a competitive marketplace. Governing boards should make certain that all institutional policies guiding research and partnerships with the corporate sector—including technology transfer, licensing agreements, and ownership and dissemination of research results—are clear, current, protect faculty, and serve the interests of the institution. At the same time, those policies should be sufficiently flexible to enable new research discoveries to enter the marketplace in a timely manner.

2. DEMONSTRATE BOARD INDEPENDENCE TO GOVERN AS ESTABLISHED IN CHARTER, STATE LAW, OR CONSTITUTION.

Within some practical and legal limits, the board's authority is extensive—it is the legal entity composed of citizens who are surrogates of the full citizenry, created and charged to oversee the institution. Compared to their private college and university counterparts, boards of public institutions face some constraints in founding statutes or subsequent laws, but in nearly all areas, the authority of public and private college and university boards is remarkably similar.

It is the board's responsibility to exercise due diligence and trust in its own authority and capacity to make decisions, some of which will be difficult or unpopular—especially when internal and external stakeholders have competing demands. Despite the importance—indeed the necessity—that a board garner and appreciate a rich array of voices from its various communities, the distinction between advising and governing must remain clear. The board that surrenders or compromises its independence to internal or external claimants will see the erosion of its ability to govern fully and effectively.

🌀 **The full board must govern as a collective, corporate body taking into consideration the need for individual members to apply their individual consciences and judgments.**

A board with consistently agreeable members would be neither plausible nor in an institution's best interest; disagreements and tensions are inevitable in the boardroom. Board members bring their own perspectives and opinions to decisions, but in the end, the board governs as a body. Even when board members sharply disagree during the deliberative process, once a decision has been made the board must always speak publicly with one voice—particularly on issues with keen external stakeholder interest.

External pressures should not lead board members to respond to narrow interests or single issues, nor to use their board position inappropriately to advance their own personal goals, stature, or visibility. Doing so weakens the board and the citizen trusteeship of the institution.

🌀 Individual board members must commit to the duties of care, loyalty, and obedience as essential fiduciary responsibilities.

Board members' fiduciary responsibilities go well beyond ensuring the fiscal health of the college or university. The duty of care requires full attention to one's duties as trustee, setting aside competing personal or professional interests. The duty of loyalty demands that board members put the interests of the institution before their own self-interest and the interest of others. The duty of obedience refers to board members' obligation to promote the mission of the organization, within legal limits. Knowledge of and commitment to these duties, which are the cornerstone of governance and well established in law and practice, can guide a board and its members in relationships to external stakeholders.

🌀 The selection or appointment of board members should be based on merit and their ability to fulfill the responsibilities of the position.

Governing boards should be composed of carefully selected, independent-minded individuals who are fully committed to the college, university, or system they govern. All trustees must hold the institution "in trust" for all citizens, regardless of how they are selected and whether particular seats on the board are reserved for specific constituencies (such as faculty members or alumni).

Board appointments and reappointments in both private and public colleges and universities should be made based on a demonstrated commitment to serving the institution, its mission, and its public purpose. Doing so ensures that the board and its individual members can engage successfully with an array of external stakeholders, constituents, and influences.

Governing boards of most private colleges and universities are self-perpetuating; the board appoints members for most vacancies that occur. Selection should be guided by a statement of expectations and clear criteria, including the ability and willingness of the individual to use his or her best independent judgment on matters affecting the institution, to make a broad commitment to higher education, and to commit the time and energy necessary to fulfill the required responsibilities. Such expectations and criteria should also apply to the many church-related institutions where many trustees are appointed by denomination units or authorities.

The appointing authority in the vast majority of public colleges and universities—governors (with legislatures confirming)—should base selection on merit and commitment, not on political or partisan considerations. Criteria and expectations should include, in addition to those for private board members, a demonstrated understanding of the role of the institution or university system within the broader higher education system of the state and an appreciation for the public nature of the position and the institution.

3. KEEP ACADEMIC FREEDOM CENTRAL AND BE THE STANDARD BEARER FOR THE DUE-PROCESS PROTECTION OF FACULTY, STAFF, AND STUDENTS.


Intellectual integrity and academic freedom are at the heart of the historic justification for the self-governance of colleges and universities. Board members should be able to explain academic freedom and be prepared to support and defend it on behalf of their institutions and faculty members when external pressures, complaints, or misunderstandings arise. At times, it may be necessary for the board to publicly declare its support of faculty members and their right to unpopular or controversial ideas. The protection of academic freedom should also extend to staff members and students where appropriate.

At the same time, the board should ensure that academic freedom is not used as a shield for inappropriate or unethical behavior. The disregard or abuse of academic freedom corrodes respect for the governance of higher education and basic trust of the academy. In the legitimate academic work of research, scholarship, and teaching and learning, the board should see that protections of academic freedom through due-process policies and procedures are in place.


4. ENSURE INSTITUTIONAL ACCOUNTABILITY TO THE PUBLIC INTEREST.

When boards ensure that their institutions are accountable to the public interest, external constituents and stakeholders will respect the board's authority, see its value, and understand its responsibility for the oversight of the institution and its future. The American people entrust control of higher education institutions to citizen boards and to the independent judgment of their members, rather than to public officials, ministries, or bureaucracies. Governing boards, however, must earn and maintain the respect of external stakeholders, including those in political power.





When it is perceived that societal and institutional interests diverge, it is the board's responsibility to help reconcile differences and ensure institutional accountability to public purposes. Board oversight of educational quality must be a priority, not only to address legitimate public concerns, but to ensure that the private interests of students—to pursue meaningful degrees and credentials—are honored. Boards should:

 **Serve as a bridge to the external community.**

Governing boards should be a conduit between the institution and the public. This role means being attentive to the political, economic, social, and educational priorities of the nation, state, region, or community and actively encouraging the institution to search for solutions to society's problems. It means working with the chief executive to maintain a clear process for soliciting views from, and speaking to, such external stakeholders as elected leaders, business groups, or the news media.

The governing board and the chief executive face a variety of demands and expectations. But ultimately it is the board, by being a bridge to the community and attuned to its needs, that must decide what can be changed or improved and what should not, including any change in mission after careful deliberation.

 **Inform, advocate, and communicate on behalf of the institution.**

A governing board has a responsibility to communicate the value of the institution to the economic, social, and civic well-being of the community, state, or nation. While it is usually the chief executive who speaks for the institution and the board chair who speaks for the board, individual board members should take every opportunity to inform the public about the good things that the institution is doing and why it deserves support.

A governing board must be careful never to endorse political candidates and be wise and measured about making public statements or taking positions on community, state, or national social and political issues that do not directly affect the institution. At the same time, the board should encourage and sustain a campus environment that encourages debate and diversity of opinion on such issues.

🌀 **Exhibit exemplary public behavior.**

Through their personal demeanor, public respect for civilized dialogue, and commitment to board self-regulation, trustees should serve as models of public conduct for the campus community and the community at-large.

Trustees often come to the board from different political, religious, and social backgrounds, positions, or experiences, sometimes including election to their positions. They must protect their colleges and universities from partisan influences so they in no way become a distraction to the work of the institution or the board. All trustees have a responsibility to guard against encroachment into their boardrooms of ideology that works counter to ideas of mission, academic freedom, and fiduciary responsibility.

College and university boards must impose on themselves and those whom they govern the strictest ethical behavior—at the very least observing all applicable laws and regulations and being ready to exceed what the law demands. Board members must be especially vigilant in regard to potential conflicts, actual and apparent, created by their business and professional roles and personal relationships.



Illustrative Questions for Governing Boards to Consider

What evidence suggests that the board functions efficiently and effectively as an independent body?

Has the board defended institutional autonomy when such challenges have occurred?

Has the board defended academic freedom when such challenges have occurred? Have board members been educated about the principles of academic freedom and do they understand their obligation to defend it?

Do individual board members speak openly and freely during board meetings but support majority decisions in the end?

Has the board identified the key issues coming from outside the university that could potentially divide the board? Does the board have a positive board structure and culture to sustain effectiveness, if and when such situations arise?

Does the board have a statement of expectations for its members, which includes language about how individual members and the board relate to external constituents?

What policies and procedures does the board have in place to ensure that donors, including private-sector partners and sponsors, are engaged appropriately?

Has the board's capacity to fulfill its fiduciary responsibilities been impeded by external influences such as government, corporate, political, social, or religious interests? Has the legislature or governor recently intervened when it was determined that the board had not acted decisively on an issue clearly within the board's purview?

To what extent and in what ways have instances of partisan politics occurred in the boardroom by a minority of its members? How has this adversely affected the work, cohesion, and culture of the board?

Are members of the board able to articulate persuasively the public purposes of the institution? What does the board do to publicly ensure accountability by the institution?

Does the board have policies or protocols for its individual members about speaking to the press, elected leaders, donors, etc.? If so, have they been effective in reducing confusion, conflicts, and misunderstandings with external stakeholders?

How comfortable is the board with the processes through which new members are identified and vetted? To what extent are members identified on merit and their ability to serve as board members?

How does the board serve as an effective bridge to the external community? Through what mechanisms does the board identify potentially meaningful changes and trends in the external environment?

How does the board monitor its own conflict-of-interest policies and procedures?



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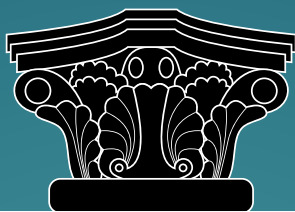
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