Consequential Boards

Adding Value Where It Matters Most

Report of the National Commission on College and University Board Governance

ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES

Members of the National Commission on College and University Board Governance

The National Commission on College and University Board Governance was supported by the AGB Board of Directors and by grants from Lumina Foundation, the Bill and Melinda Gates Foundation, and the Kendall Foundation of the Montgomery County Community Foundation. The conclusions and observations in this report represent the views of the commission, and not those of sponsors.

AGB ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES

Consequential Boards

Adding Value Where It Matters Most

Report of the National Commission on College and University Board Governance

AGB

Table of Contents

Executive Summary

The value of American higher education faces multiple risks, and changes in governance are needed to address them. At risk are accessibility and degree attainment for current and future students, institutional fiscal sustainability, educational quality, economic development and social equity, service to communities, and knowledge creation.

Consequential Boards

Adding Value Where It Matters Most

Leadership for change is more important than ever, and the choices ahead are more urgent and complex than those in the past. In this demanding environment, the structure of governance itself should not be an additional risk factor for the sector. Yet, too often it is. Board-president relationships are strained, the traditions of shared governance are fragile at best, and boards themselves too often fail to add value to institutional decision making. Governance processes are cumbersome and inwardly focused, roles and responsibilities among multiple actors are contested, and information for decision making is poor. Signs of pressure on governance are everywhere: polarized boards, rapid presidential turnover, faculty votes of no-confidence, and heightened scrutiny from accreditors, to name just a few. Dysfunctional governance contributes to the erosion of public trust in the ability of institutions to make choices that contribute to the public well-being.

Higher education cannot expect to return to the traditions that worked happily 50 years ago, when mostly honorific boards concentrated on selecting prominent leaders and on fundraising, and in which state and federal governments did not ask many questions about performance. In the future, higher education must be reconfigured to recognize new student populations, altered educational delivery methods, basic changes in financing, and rising expectations from the public. Boards must be at the forefront of those changes, because their fiduciary role requires them to focus on strategic long-term issues and the intersection of internal and public interests. Presidents and faculty will not be able to lead such changes on their own.

Boards are not the source of all of the governance challenges in higher education, but they can play a critical role in improving decision making within the sector. We offer seven recommendations aimed at boards in support of the distinct role only they can play in improving institutional value through more effective governance.

1. *Boards must improve value in their institutions and lead a restoration of public trust in higher education itself.*
2. *Boards must add value to institutional leadership and decision making by focusing on their essential role as institutional fiduciaries.*
3. *Boards must act to ensure the long-term sustainability of their institutions by addressing changed finances and the imperative to deliver a high-quality education at a lower cost.*
4. *Boards must improve shared governance within their institutions through attention to board-president relationships and a reinvigoration of faculty shared governance. Boards additionally must attend to leadership development in their institutions, both for presidents and faculty.*
5. *Boards must improve their own capacity and functionality through increased attention to the qualifications and recruitment of members, board orientation, committee composition, and removal of members for cause.*
6. *Boards must focus their time on issues of greatest consequence to the institution by reducing time spent reviewing routine reports and redirecting attention to cross-cutting and strategic issues not addressed elsewhere.*
7. *Boards must hold themselves accountable for their own performance by modeling the same behaviors and performance they expect from others in their institutions.*

Leadership for change is more important than ever, and the choices ahead are more urgent and complex than those in the past. In this demanding environment, the structure of governance itself should not be an additional risk factor for the sector.

Introduction

In September of 2013, the Board of Directors of the Association of Governing Boards of Universities and Colleges (AGB) constituted a special commission on the future of higher education governance. The commission comprises 26 individuals with extensive experience in governance from within higher education as well as from the corporate, nonprofit, and public-policy spheres. The commission's charge was to review the capacity of higher education governance to meet the challenges confronting the sector in in the 21st century and to develop recommendations aimed at improving the effectiveness of college and university governing boards.

The commission, chaired by former Tennessee Governor Philip Bredesen (D), conducted its work over the past year through four plenary sessions, augmented by public forums in San Diego, at the American Council on Education's national conference; in Nashville, at Belmont University; and in Orlando, as part of AGB's annual National Conference on Trusteeship. We sought advice from experts, both inside and outside of higher education, about how governance should evolve to support institutional change and effectiveness. We also reviewed the literature about higher education governance and institutional performance, including that on trends in finance, outcomes, and public attitudes.

The observations and recommendations in this report synthesize the thinking of all members of the commission. They reflect the judgment of a diverse group of experts about what works in higher education governance, as well as where the challenges lie and what might be done about them. Through the recommendations, we offer specific and actionable steps that are relevant across all types of public and independent settings—from two-year community colleges to private research universities.

We understand that generalizations about governance can be facile. Institutions with different missions and histories can approach governance quite differently. Partly due to differences in member selection and appointment, board cultures vary fundamentally between public and independent institutions, as well as between four-year institutions and community colleges. While we recognize those differences, we believe that many of the dynamics that influence governance are common to the full breadth of U.S. colleges and universities, which serve an increasingly diverse student body.

A foundational premise of our work is that changes occurring in American society, in the global economy, and in the demands placed on higher education call for a substantial recasting of governance to maintain the value of higher education for future generations. While some colleges and universities are ahead of others in tackling such changes, they can all benefit from taking a hard look at their governance practices and policies.

BOARDS AND INSTITUTIONAL VALUE

The unique system of board governance in public and independent colleges and universities in the United States is believed to be a major reason for America's strong showing in international rankings of educational quality (16 of the top 20 institutions in the Academic Ranking of World Universities, also known as the Shanghai Rankings, are from the United States). Even now, when America's international position in postsecondary attainment has slipped, many countries that aspire to improve their colleges and universities are importing our nation's system of governance by building boards and moving away from state regulation of institutional policy.

Although we recognize the importance of those distinctive aspects of American higher education governance, we are not complacent about the durability of this system. Much of the stature of the American system is based on the reputations of a relative handful of highly ranked U.S. universities, not on the overall performance of the sector. Empirical research about the relationship between boards and institutional performance is thin, particularly if the measure of performance is student success or the value added of the education that students receive.

More importantly, the social, economic, and political conditions that allowed our system of higher education governance to evolve as it has continue to shift, without commensurate changes in governance. Generous public subsidies, life-long careers for faculty and staff members, and a reasonable balance among academic programs, students, and labor-market needs are rapidly becoming things of the past. Yet, despite the pace of change affecting so much of higher education, most institutions approach governance in much the same way they did 50 or even 100 years ago. In order to meet the challenges of a new era and public expectations for higher education, boards must lead governance improvements to address institutional sustainability and effectiveness.

MAINTAINING INSTITUTIONAL VALUE: AN IMPERATIVE FOR CHANGE

Today's environment for American higher education is one of challenge and change for all institutions, public and independent. The time of comfortable annual growth in enrollments and revenues is over for most institutions. Competition has increased, and federal and state governments require more by way of performance and accountability. Even the most financially secure colleges and universities face daily challenges to reconcile views among different constituencies about resource allocation, priorities, and rewards. Institutions that thrive in this environment will do so by being clear about their values and by aligning resources (revenues, people, programs), processes (planning, budgeting, program review, educational delivery), results (degrees and credentials, learning, research, economic development, social mobility, jobs), and investors (students, the public, philanthropists, employers). Meeting this standard will require constant attention to ensure that institutions are providing a quality product or service at a price that investors are willing to pay.

The social, economic, and political conditions that allowed our system of higher education governance to evolve as it has continue to shift, without commensurate changes in governance.

Threats to the continued value of higher education vary depending on the sector and type of institution. Overall, three areas are most problematic for the majority of colleges and universities:

- Risks to fiscal sustainability;
- Eroding public trust in institutional leadership to address quality and affordability issues; and
- Concern about higher education's social and economic role.

Risks to Fiscal Sustainability

The majority of both public and independent institutions face long-term risks to sustainability that cannot be addressed in one or two budget cycles but require a strategic realignment carried out over many years. More and more colleges and universities face a widening gap between revenues and expenditures. Fixed costs are high and increasing, and meeting those alone consumes funding for investments in new programs and in the educational innovation so essential to change. Many institutions face growing imbalances between their academic program offerings and areas of current student demand. High-cost, low-demand programs are becoming financially unviable, and some humanities and graduate education programs are particularly vulnerable.

In the public sector, general-fund revenues from state and local government have stabilized somewhat since the recession of 2008 and are expected to increase overall by around 2 percent to 3 percent per year in the future. That is still half the rate of average increases before the recession. Even without accounting for enrollment growth, those increases will be consumed by rising costs for employee benefits, which are growing an average of 6 percent to 7 percent annually. Pressures on funding are even more acute in much of the independent sector, where revenues from endowments cover only 20 percent of average spending per student and where net tuition revenues have increased less than 1 percent each year.

Institutions in both sectors have taken on more debt to pay for investments in new programs and facilities, which further drives up long-term costs. In 2013, financial analysts at Moody's Investors Service issued their first-ever negative outlook for the entire nonprofit (public and independent) higher education sector. University business officers share the concern. A 2014 survey conducted by *Inside Higher Ed* found fully 60 percent of them believe their institution's long-range (10 years) financial model is not sustainable. Virtually all institutions will be forced to overhaul their business models, with a new focus on value and long-term sustainability rather than the traditional focus on consensus-based decision making. This will inevitably advantage some constituencies more than others.

Rising Prices and Eroding Public Trust

Public alarm about rising tuition has brought higher education and how it operates under increased scrutiny by the news media and the public at large. Opinion surveys show that the public recognizes the importance of postsecondary education and believes that it has become an economic necessity, both for the individual and society. But a majority also believes that tuition increases have hurt affordability without increasing educational quality. The public is concerned that institutions value their own status quo more than they care about keeping prices down. They believe that institutions increase tuition in order to spend more money on institutional amenities that do not translate into increased educational quality, and they are critical of spending on non-academic amenities. Public trust in the values and priorities of institutional decision makers, so essential for university self-governance, has eroded.

The consequences of eroding public trust are evident in growing federal and state regulation of colleges and universities and in the expanded news-media interest in higher education's overall performance and accountability. Debate about the economic payoff of higher education has become a staple in news-media coverage. As tuition rises, so does student debt, to the point that accumulated student loan debt in the United States is now greater than credit card debt. This is unmanageable not only at the undergraduate level, but also at the graduate level, especially in professional fields such as law and medicine. Economists have voiced worries that student loan obligations will create a new long-term drag on economic growth.

In the last year alone, as the commission has conducted its work, news-media interest in higher education costs and performance has skyrocketed, with the *Wall Street Journal*, the *New York Times*, and *The Economist*, to name just a few, printing series on higher education finance. A first-ever documentary film about higher education value, *Ivory Tower*, made the rounds at film festivals in early 2014. Its theme is the increasing costs and decreasing benefits of higher education.

To be sure, perceptions about costs and cost drivers are often based on incomplete information. Price increases do not translate into spending increases. Since 2000, overall educational and related institutional spending per student at public four-year institutions has increased about one-half percent per year at most institutions and has declined more than one percent annually at public community colleges. At public institutions, tuition revenues are used to make up for lowered state appropriations, not for increased spending and investments. Moreover, net prices have not risen nearly as substantially as "sticker" prices, as institutions have put more money into tuition discounting and other forms of financial aid. Institutions enrolling the majority of students (public community colleges and regional colleges and universities) have largely missed out on the amenities arms race. They have very few options for rapid changes in costs or programs, despite heroic efforts to maintain their mission of access and service to society.

Virtually all institutions will be forced to overhaul their business models, with a new focus on value and long-term sustainability rather than the traditional focus on consensus-based decision making. This will inevitably advantage some constituencies more than others.

Yet while the wage premium for a college education is as high as it has ever been, that premium (the increase in earnings attributable to having an advanced degree) has remained basically flat for the last 20 years, even as college prices have climbed. Better information about costs, prices, and outcomes would improve the conversation, but the issue is not one just of language or data. The core problem is a real and growing accountability gap affecting higher education. The views of institutional value held by people within the academy do not align with the views held by many consumers of higher education.

Eroding Capacity to Meet Social and Economic Needs for Higher Education

In the past 30 years, demand for higher education has escalated as changes in the economy have made some type of postsecondary credential requisite for economic mobility and individual advancement. Enrollments in public and nonprofit higher education have increased by over one-third just since the year 2000—more than six times the rate of growth in K-12 education, but less than one-third of the growth in the population on Medicare/Medicaid. Despite these increases, the rate of postsecondary attainment—referring to that proportion of the population with some type of a postsecondary credential or degree—has remained largely stagnant because too many students fail to complete a credential or degree. Higher education itself has become more economically and racially stratified, a trend that begins in K-12 and worsens in postsecondary education. More than 80 percent of low-income students (the majority of whom are Hispanic or African American) attend open-access public institutions, where resources to invest in student success are less than half those found in more-selective institutions. The United States, long an international leader in higher education, has slipped to 12th among developed countries in levels of postsecondary attainment among young adults.

Rising income inequality in the United States has become a major topic of public-policy concern, and the role of higher education in either solving or contributing to the problem of income inequality is a focal point. Leaders at both the state and federal levels have joined with influential foundations to call for growth in the number of people with high-value postsecondary credentials, both to ensure future economic competitiveness and to grow the middle class. Accomplishing those ends will require a new focus on student transitions from K-12 through college acceptance, graduation, and into the labor market, with particular attention paid to educational success for low-income students and underrepresented ethnic minorities. In most states, such students now make up a majority of young people, and higher education represents a transformational opportunity for them to lead better lives. With many students now attending more than one institution en route to a certificate or degree, colleges and universities must look at student success holistically, from pre-K through college graduation. This reality alone is forcing a change in approaches to course sequencing, articulation agreements, credit policies, and degree progression. Traditionally the purview of faculty, these areas are increasingly influenced by public-policy makers and others outside of the academy.

CHALLENGES FOR GOVERNANCE

Institutional governance is not the primary source of the difficulties facing higher education, but at most colleges and universities, governance structures are ill-aligned to deal with current and future challenges. Instead, the system of governance is focused excessively inward on power relationships and processes.

President-Board Relationships

Change in higher education requires leadership that is willing to take risks, build teams, and create the consensus needed to improve performance over many years. While many people contribute to this process, presidents play the single most important role. And that is why a key threat to improving institutional value comes from the instability in leadership caused by presidential turnover. This turnover is due partly to the aging of the population and partly to growing tensions between boards and presidents over their respective roles and responsibilities. Excessive presidential turnover is corrosive to strategic and sustained change. Transitions are particularly prevalent among the chief executives of large public systems, whose institutions collectively enroll the majority of our nation's students. The most recent American Council on Education survey of college presidents indicates that almost one-third expect to leave their jobs within the next five years. Fully half of community college presidents expect to do so. Further research shows shrinking

Institutional governance is not the primary source of the difficulties facing higher education, but at most colleges and universities, governance structures are ill-aligned to deal with current and future challenges. Instead, the system of governance is focused excessively inward on power relationships and processes.

numbers of senior academic leaders and other faculty members interested in pursuing a college presidency, as many do not have the appetite for the level of personal risk and exposure that comes with the job.

These realities suggest both an opportunity and a risk to the sector, as it searches for the next generation of leaders able to steer their institutions through the complex challenges ahead. To do so, many boards and presidents will need to redefine their working relationships to clarify mutual expectations, improve candor, and empower each other to play the leadership roles necessary to improve effectiveness.

The Changed Business Model

The financing of higher education has changed irretrievably, from a primary focus on increasing revenue to cover costs to instead finding ways to manage costs to maintain quality. This adjustment will force institutions and their boards to pay much more attention to where the money comes from, where it goes, and what it pays for in terms of performance and quality. Doing so will require a shift away from a historic focus on year-to-year fund balances and revenues to measures of costs and benchmarks of performance.

Improving board focus on finances is not by itself a controversial topic. Recent surveys by AGB show that boards and presidents alike agree that board involvement regarding new business models is both welcome and necessary. Nonetheless, many boards and presidents will remain hamstrung in shaping this conversation because of weaknesses in information and data systems and the absence of well-developed metrics for evaluating both funding and performance. Boards need information about revenues and expenditures that allow them to address issues of productivity and the value added by their educational programs. Institutions need better information about the flow of students from K-12 schools to college and on through to the labor market. Better fiscal decision making also requires more information about how personnel are used. Board discussions should include comparisons with peer institutions, patterns of spending over time, and major spending goals or standards broken down by area.

The problem is not that administrators refuse to share this information with their boards; they simply do not have it. Despite years of debate and several national efforts about college cost measures, higher education has yet to reach agreement about ways to measure costs. The current accounting system for higher education is opaque, and the sector does not have agreed-upon protocols for defining cost centers—including distinguishing between costs and revenues, parsing unit costs by level of instruction and discipline, and assigning general overhead costs.

Policies and Processes for Shared Governance

Shared governance, historically a perceived strength of higher education, has in the view of many people become an institutional liability—a "shared frustration" or "shared pain" as we have heard it described—to be worked around rather than engaged. Shared governance extends beyond simply the narrowest conception of faculty involvement in academic policy to the broader tradition in our country of decision making based on a dialogue among boards, public policy makers, presidents, faculty members, and others.

Sharing responsibility for making decisions has many valuable aspects. We would want to invent such an approach even if we had not inherited it. It is good practice to delegate authority for decision making to people who know the most about the work to be done and are responsible for carrying it out. Many facets of faculty shared governance work quite well, particularly at the departmental level.

Even so, the premises behind shared governance have become disconnected from its practice at many institutions. Respect for a delineation of roles among boards, presidents, and faculty members has broken down, in what some observers have called a "role drift." Some boards have moved more into institutional management and academic policy, even as others are disengaged. Faculty members increasingly want to exercise veto rights over fiscal decisions. Legislators and governors, in turn, want

Shared governance, historically a perceived strength of higher education, has in the view of many people become an institutional liability—a "shared frustration" or "shared pain" as we have heard it described—to be worked around rather than engaged.

to get involved in articulation agreements, transfer practices, and policies for awarding academic credit—all areas traditionally the purview of faculty. Faculty and staff members at all institutions have become more vulnerable than in previous generations to economic cycles and shifting institutional priorities. Long-standing views about the role of faculty, and the ideal of a community of scholars as central to an institution's identity and quality, are in flux. Yet, AGB research shows that the majority of boards have yet to discuss the changing composition of their faculty or to plan for the faculty of the future.

At most institutions, the right to participate in faculty shared governance is confined to those on the tenure track, who now make up less than 25 percent of the American faculty. Shared governance also remains inaccessible to growing numbers of academic and co-curricular support professionals, whose contributions to the academic mission (for example, student and financial aid advising, career counseling, technology support) are crucial for student success. If the faculty voice continues to come only from relatively small, homogenous groups, then we should expect tensions to escalate further in the coming years.

CHALLENGES FOR BOARDS

We turn last to the structure and performance of boards themselves. Almost daily, we hear reports about questionable board behavior: boards that overstep their authority and get into institutional management; board members who act as faculty representatives, or captives of the alumni association; boards that are unduly swayed by single donors; boards that look the other way when it comes to trustees with conflicts; boards that fail to meet their formal fiduciary responsibilities. The list goes on. Although the majority of boards are not visibly dysfunctional, the high profile of the few that are contributes to an atmosphere of incivility and mistrust within the academy. Such perceptions feed the growing public distrust in the ability of higher education leadership to address its own problems.

Tensions about the role of boards have always existed, and not all of them are signs of failure or inadequacy. But today, the conflict between rising expectations and constrained resources exacerbates fundamental disagreements among groups about institutional values and priorities. To address these issues without pulling institutions apart, each college or university has to clarify decision-making roles and responsibilities. This process begins with investments in healthier boards.

Confusion about the Role of the Board

Part of the tension surrounding boards emanates from disagreements or misunderstandings about their roles and responsibilities. Some within higher education would like boards to spend all of their time on fundraising and otherwise act as rubber stamps for the president and faculty. Some governors and legislatures see boards of public institutions as extensions of their own offices. And many board members see their role as comprising narrow accountability or auditing activities, rather than a broader policy focus.

Boards ought to be more engaged than many currently are, but engagement does not constitute board member activism, nor should it mean that boards substitute their judgments for those of the people who do the work of the university. Too many boards behave in ad hoc and divisive fashions. Sometimes individuals choose to act alone, and sometimes factions break away from the corpus of the board, notwithstanding the fact that decision-making authority resides with the board as a whole. This behavior is often symptomatic of frustration with poor use of board members' time, or the sense that boards are being kept out of strategic decision making. But increasing ad hoc and individual activism, or attempts at "co-governance" (meaning that board members decide to insert themselves into management roles), are problematic to any type of sustained or effective leadership. At the end of the day, much is disrupted, but nothing changes.

Increasing ad hoc and individual activism, or attempts at "co-governance" (meaning that board members decide to insert themselves into management roles), are problematic to any type of sustained or effective leadership. At the end of the day, much is disrupted, but nothing changes.

Empowered boards need not come at the expense of effective institutional leadership. Boards are not another layer of administration. To meet their responsibilities, boards must focus on their distinct fiduciary role: to oversee the assets of the institution that the board holds in trust for the public. Fiduciary oversight extends far beyond a simple review of finances. It encompasses a calibration of institutional effectiveness in delivering both short-term and long-term value, which requires that boards look at the juncture of quality and fiscal sustainability and balance both short- and long-term interests, within and beyond the institution. (*See the appendix for an explication of board fiduciary duties.*)

Fiduciary principles also demand that boards make decisions independent of any undue influence by interested parties, such as alumni, students, faculty members, or funders (including governors and legislators). They require the board to focus on providing sustained value to consumers (students, research funders, the public at large), protecting the economic and educational value of institutional assets (reputation, faculty and staff, property, endowments), and seeing that the institution meets its obligations to society in the present and future (through collaboration with K-12 schools, meeting equity goals, community service, and economic development). A board that sees its fiduciary obligation in either/or terms—to the institution versus to the public, or to employees versus students—has it wrong.

Too much board time and attention goes to perfunctory review and routine report-outs, at the expense of a strategic focus on cross-cutting issues and other topics that receive inadequate attention.

Board Oversight and Use of Time

Too much board time and attention goes to perfunctory review and routine report-outs, at the expense of a strategic focus on cross-cutting issues and other topics that receive inadequate attention. Most boards spend the majority of their time overseeing institutional operations, typically divided into committees that replicate the administrative reporting areas (academic affairs, finances, facilities, fundraising, and so on). Their agendas are voluminous and time consuming. The oversight function needs to be adjusted to focus on areas that are of strategic importance, a change that would reduce temptation and opportunity for boards to second-guess or micromanage operational decisions. It would also reduce redundant, time-consuming, and costly layers of reporting that do not add value from the distinct perspective of the board.

One area where we believe most boards need to place *greater* attention is improved oversight of auxiliary and affiliated organizations. Often initiated outside of the board and president, and frequently governed by separate boards or advisory groups, these types of organizational arrangements are growing in number and complexity across higher education. They are often not subject to traditional institutional oversight and reporting, and they may additionally be exempted from institutional fiscal controls, personnel policies, audits, or other practices designed to ensure appropriate oversight and accountability. At many institutions, they receive no review from the board, nor from the president or others delegated to act on behalf of the institution. Yet, they use the college or university's name and thus present distinctive reputational and financial risks to the institution that require the attention of a responsible fiduciary body. Some of the biggest failures of higher education governance in the last several years have come from inadequate board attention to foundations organized for intercollegiate athletics—a classic example of an affiliated organization.

The Changing Identity of Public Boards

The issue of the board's role in public institutions reveals another facet of governance: the difference between public and independent institutions in a changing economic environment with shrinking public subsidies. A number of leaders in higher education argue that declines in state funds mean that boards of public institutions should be reconstituted to behave more like those of nonprofit private institutions, with fewer public appointments and a greater focus on fundraising. We do not share this view. We do, however, agree that the appointment process for public board members can be strengthened so as to increase their knowledge and skills and to meet greater expectations for board performance.

Board Culture

The most-visible board missteps in the last decade, both inside and outside of higher education, emanated from weak and even dysfunctional board cultures. Board culture is central to board effectiveness. It is the accumulation of traditions and habits of work that have developed over time, through both written and unwritten rules, and that guide behavior.

A healthy board culture is an intangible but invaluable institutional asset, worth the same level of attention as building the endowment, or the faculty, or maintaining the physical plant. It cannot be ignored or taken for granted. It requires nourishment and care from every member of the board and, most of all, from the board chair and the president. Strong institutions can survive troubled boards for some time, but even the strongest college or university will eventually be put at risk if the board does not function properly.

Aspects of culture that are most vital to institutional health include: good board-CEO relationships, mutually supportive relationships between the CEO and the board chair, shared awareness of the roles and scope of authority of each party, productive engagement and collective learning, mutual understanding of communication protocols, effective use of board time, focus of board committees on strategic issues, and continuing education and development. Signs of a troubled culture include: cliques within the board, failure to include all board members in meaningful conversations,

The most-visible board missteps in the last decade, both inside and outside of higher education, emanated from weak and even dysfunctional board cultures.

lack of participation by board members, board members who patently represent constituencies in decision making, overuse of the executive committee, and dismissive behavior among board members and with key staff and faculty.

RECOMMENDATIONS FOR CHANGE

Debate over the future of higher education and the role that it plays in our society should be expected—indeed, encouraged. However, without changes to higher education governance as we know it, the decision-making process at most institutions will collapse under its own weight. Government regulation of higher education has heightened in part because our system of governance is focused too much on processes and not enough on value and transparency. Without changes, the nation will not get the higher education leadership it needs to build vision and drive advances in the future.

While boards are not the source of the governance challenges facing higher education, changes to boards and their structure can lead to improved leadership across higher education—in setting goals, in using data to evaluate performance, and in making strategic investments in ways that create value. The following recommendations contain specific, actionable steps that boards and presidents can take together to move in a more constructive direction.

1. *Boards must improve value in their institutions and lead a restoration of public trust in higher education itself.*

Boards need to be prime movers to ensure that institutions deliver service and outcomes worth the investments that students, the public, and other funders make in them. Each board and president must have explicit goals for institutional value, supported by measures that are consistent with the institution's mission and strategic priorities. These will include measures of costs and outcomes, indicators of the institution's effectiveness in contributing to public needs for higher education, and measures of fiscal health, including sustainability and asset management. All public and independent institutions must address their role in meeting social responsibilities for institutions of higher education: increasing degree attainment, getting students into the workforce, creating knowledge, and serving communities.

2. *Boards must add value to institutional leadership and decision making by focusing on their essential role as institutional fiduciaries.*

Every board must have a policy describing the board's role and scope of responsibility, including its role as the fiduciary of the institution. The policy must be shared and discussed with prospective board members prior to their appointment to the board, as well as with appointing authorities. It should be explicit about expectations for the independence of the board from undue influence by any constituent or economic interest group. It should also clarify the responsibilities and limits of individual board members versus the board as a whole. (*A sample policy defining the fiduciary role of the board is included in the appendix to this report.)*

3. *Boards must act to ensure the long-term sustainability of their institutions by addressing changed finances and the imperative to deliver a high-quality education at a lower cost.*

More than ever before, board attention must focus on finances, together with educational effectiveness. This work is critical in order to increase access to higher education and degree attainment for future generations of students. Boards must exert leadership to address the changing finances of their institutions, to take pressure off growth in revenues, and to drive down costs without compromising educational quality. Boards must work with institutional leadership to reexamine resource use and academic program costs and to make better use of data for benchmarking performance. Further, boards must develop more sophisticated understandings of educational effectiveness and learning outcomes.

4. *Boards must improve shared governance within their institutions through attention to board-president relationships and a reinvigoration of faculty shared governance. Boards additionally must attend to leadership development in their institutions, both for presidents and faculty.*

    - All boards and presidents should have clear understandings of their respective roles and responsibilities. This mutual understanding should begin with the board's responsibility for policy and oversight and the president's responsibility for institutional leadership and daily decision making. The board chair and the president must have a good working understanding of their relationships, expectations for consultation, and processes for resolving differences between them.
    - Every board must ask for a review of the institution's policies and practices of shared governance with faculty in order to ensure that such policies are appropriate to the realities of the current workforce, reinforce the delegated authority of faculty for academic policy, and ensure that processes for consultation are clear and are routinely followed by all responsible parties. Boards must ensure that their policies for shared governance include means of addressing topics that transect faculty, presidential, and board responsibility (such as program closures).
    - All boards should have committees on institutional leadership development that focus on both faculty development and presidential transition planning. This is a particular priority for public community colleges, where presidential turnover in the next decade is expected to be highest, and where improvements in success for first generation and low-income students are essential for increased postsecondary attainment.

5. *Boards must improve their own capacity and functionality through increased attention to the qualifications and recruitment of members, board orientation, committee composition, and removal of members for cause.*

    - Boards must conduct assessments of the skills and attributes needed in new members, to be used in recruitment and/or shared with the relevant appointing authorities. The process should emphasize the expertise, commitment, and independent judgment that candidates can bring to board service.
    - New members must receive an orientation with particular attention to board priorities, the fiduciary responsibilities of the board, and expectations for individual members of the board.
    - Boards must review their committee structures and, where possible, eliminate or consolidate committees established primarily for the oversight of functional areas (such as academic affairs, finances, and facilities). Traditional configurations must give way to board committees with a cross-functional and future-oriented focus (such as student access and success, institutional value and value added, financial sustainability, and academic effectiveness.)
    - Boards must have policies for addressing underperforming board members, including policies for the removal of board members for cause or, in the case of public institutions, for submitting recommendations for such removals to the appropriate appointing authorities.

6. *Boards must focus their time on issues of greatest consequence to the institution by reducing time spent reviewing routine reports and redirecting attention to cross-cutting and strategic issues not addressed elsewhere.*

Boards need to spend less time reviewing routine operations in order to spend more time overseeing activities or areas in their unique purview. All boards should work with presidents to reduce nonessential reporting. At the same time, boards should improve their oversight of key areas that are inadequately attended to by existing organizational reviews, such as affiliated organizations and auxiliaries that use the name of the institution. In addition, public system boards need to improve accountability for campus-level indicators of performance for all of the institutions within their systems.

7. *Boards must hold themselves accountable for their own performance by modeling the same behaviors and performance they expect from others in their institutions.*

To do so means setting goals for board performance and benchmarks for measuring board effectiveness, as well as conducting regular board self-assessments. All boards should maintain a standing committee on governance charged with leading ongoing assessment and improvement of board performance.

We call upon boards to move past the predominantly inward focus of higher education leadership, looking beyond the institution itself as a singular gauge of effectiveness. The success of higher education is vital to our country's future. Leadership for improved performance has never been more important.

IN CONCLUSION: AN EXPANDED PERSPECTIVE

Two themes have informed the work of this commission and the recommendations offered in this report. The first is that major changes have occurred in the societal landscape that higher education inhabits and serves. The public trust in the leadership of higher education that existed four or five decades ago—including a trust in institutional leadership—has fundamentally changed, but the success of higher education is more central than ever to our country's economic and social fabric. As such, colleges and universities will not be left alone to define the terms of their success. Higher education continues to enjoy substantial social and political support, an asset that is at risk of being lost. Re-earning the public trust in institutional leadership is necessary to sustain and build that support for the future.

The second theme is that in a time of substantial challenges, as well as eroding public trust and support, higher education governance is not up to the task. Far too much time and talent, and too many resources, are preoccupied with institutional advantage, the preservation of the status quo, internal disputes over governance roles and authority, and the advancement of political and individual agendas.

Every public and independent institution of higher education in America today faces the imperative to approach governance from an expanded perspective on the value and values of higher education. We call upon boards to move past the predominantly inward focus of higher education leadership, looking beyond the institution itself as a singular gauge of effectiveness. The success of higher education is vital to our country's future. Leadership for improved performance has never been more important.

APPENDIX: FIDUCIARY DUTIES OF BOARDS OF TRUSTEES OF COLLEGES AND UNIVERSITIES

Fiduciary Duties: In General

Under state statutory and common law, officers and trustees of corporations—including public bodies and nonprofit corporations that oversee colleges and universities—are fiduciaries and must act in accordance with the fiduciary duties of *care*, *loyalty* and *obedience*. Taken together, these obligations require trustees to make careful decisions collectively in the best interest of the institution consistent with its public or charitable mission, independent from undue influence from any party or from financial interests. The specifics of what that means and how it is enforced through board policies and procedures may differ somewhat from institution to institution or by state. Good practice suggests that all trustees are informed of the legal meaning of their fiduciary role, accompanied by practical examples of decisions likely to face the board that require explicit attention to the balancing of interests necessary to carry out the fiduciary role. In addition, trustees and officers must understand that while they hold fiduciary duties individually, they act collectively as a board. Absent a particular designation of authority by the board to an individual trustee or officer (such as the authorization of a board chair to enter into an employment agreement with the president on behalf of the institution), no single trustee or officer has authority to bind the institution or determine its course of action, even those who may be appointed by a state governor or through a political process.

Legally, a fiduciary relationship is one of trust or confidence between parties. A fiduciary is someone who has special responsibilities in connection with the administration, investment, monitoring, and distribution of property—in this case, the charitable or public assets of the institution. A college or university trustee has duties to the institution and its beneficiaries under the law that a faculty member, a student, or an administrator does not. The precise meaning and extent of each duty may vary from state to state, depending on statutory language and judicial interpretation. These duties may also be described in and imposed by a college or university's bylaws, governing board policies, standards of conduct, or code of ethics. In the case of a public institution, state law may describe or apply these standards of conduct differently (for example, under particular rules applicable to regents or public bodies); however, adherence to these principles remains a key governance best practice in both private and public colleges and universities.

- **The Duty of Care.** The duty of care generally requires officers and trustees to carry out their responsibilities in good faith and using a degree of diligence, care, and skill that prudent persons would reasonably exercise under similar circumstances. A board member, therefore, must act in a manner that he or she reasonably believes to be in the best interests of the institution or system. As an example, the proper exercise of the duty of care requires a board member to regularly attend meetings, read the meeting materials prepared for the board in advance of the meeting, ask questions and participate actively in board discussions, and be knowledgeable of the institution's purposes, operations, and environment.

  Determining what is in the best interest of the institution lies within the sound judgment of the board of trustees under the duty of care. It will necessarily involve a balancing of interests and priorities appropriate to the institution's mission and consistent with its strategic priorities, including explicit attention to the tradeoffs inherent in achieving appropriate balance, such as that between employees' interests (necessary to maintain quality and to protect the institution's assets), student interests (to maintain affordability), physical assets (grounds and buildings), fiscal assets (endowments and fund balances), consumer value of the degree (cost of degree production versus future job earnings), and community interests in the institution (jobs, economic development).

  Also interwoven in the duty of care is the responsibility of board members to maintain the confidentiality of matters brought before the board, both during and after their board service. This is particularly the case with respect to personnel matters and sensitive business matters. In some cases, board members may be asked to sign an oath of confidentiality or a binding statement that sets forth their duties and responsibilities to the institution. Such instruments may be useful; however, they may also seem heavy-handed to some. Nevertheless, the duties will apply to board members who have been duly elected or appointed and have consented to service, whether or not an oath or statement is agreed to.

  The duty of care does not require professional expertise, extensive consideration, or full knowledge of the matter at issue by every board member. Instead, the duty generally requires the board member to be reasonably well informed of the relevant issues. A board member may rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by: (a) one or more officers or employees of the institution whom the board reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants, or other persons as to matters the board reasonably believes are within the person's professional or expert competence; or (c) a committee of the governing board of which he or she is not a member if the board member reasonably believes the committee's review merits confidence. Any reliance on information provided by others must be reasonable under the circumstances, considering such factors as from what source the information was obtained, whether the information relied upon is a brief summary or an extensive analysis, whether the matter is routine or exceptional, and the time frame in which a decision must be made. Thus, such information should be a tool and a time-saver for an officer or board member in becoming informed, and should not be an excuse for dispensing with or ignoring the information.

- **The Duty of Loyalty.** The duty of loyalty requires officers and board members to act in good faith and in a manner that is reasonably believed to be in the interests of the college or university and its nonprofit or public purposes rather than their own interests or the interests of another person or organization. The fiduciary must not act out of expedience, avarice, or self-interest. The requirement that officers and board members discharge their duties in good faith is a subjective requirement that will vary depending on the facts and circumstances. When at issue, however, courts will generally look to the board member's state of mind to determine whether he or she was motivated by honesty and faithfulness to the institution, or whether self-interest or an interest contrary to the institution's purposes was a motivating factor in the officer or trustee's actions.

  Under this requirement, a college or university board member must be loyal to the institution and not use the position of authority to obtain, whether directly or indirectly, a benefit for him or herself or for another organization in which the board member has an interest. Accordingly, the duty of loyalty considers both the financial interests held by a board member and the governance or leadership positions he or she has with other organizations when the conduct of the board member is being evaluated.

  Independence by board members is increasingly sought after by regulators and key stakeholders to ensure adherence to the duty of loyalty. In this context, independence means that the board member is not employed by and does not do material business with the college or university. In addition, it means that the board member acts independently of any personal relationship he or she may have with the president or senior leaders of the college or university or with other trustees. It is not required by law that every trustee on the board be independent (for example, some *ex officio* trustees may not be), but ideally, a majority of the trustees should be independent.

  In addition, it is incumbent on board members to retain their independence from external stakeholders in the conduct of their oversight and policy responsibilities. This applies to boards of independent institutions and especially public boards whose members are most often selected to their service through some form of political appointment. Public board members, while respectful of the views of appointing authorities, must not confuse such influence as being determinative of board action. It is essential that board members avoid a conflict of loyalty in meeting their fiduciary responsibilities to act on behalf of the institution(s) they hold in trust.

The most critical implementation of the duty of loyalty comes in a college or university's conflict-of-interest policy. Such a policy, when adhering to state law and best governance practices, requires board members to fully disclose financial interests and dual organizational relationships ("dualities of interest") that may affect their decision making on behalf of the institution. The policy will prohibit trustees from participating in or unduly influencing decisions in which they have a material financial conflict of interest or an adverse duality of interest ("recusal"), and may require the trustee to eliminate the duality of interest. AGB's 2013 "Statement on Conflict of Interest with Guidelines on Compelling Benefit" offers clarifying guidance on best practices for boards to consider in managing conflicts of interest within the board.

- **The Duty of Obedience.** A third fiduciary duty, which is arguably an element of the duties of care and loyalty, is the duty of obedience. This is the duty of board members to ensure that the college or university is operating in furtherance of its stated purposes (as set forth in its governing documents) and is operating in compliance with the law. A governing board of a college or university must make reasonable efforts to ensure that the institution is both legally and ethically compliant with the law and applicable internal and external rules (for example, accreditation, environmental, research, or labor rules) and has instituted effective internal controls to achieve compliance and to identify and address problems.

Fiduciary duties are owed by trustees and officers to those who place the board in a position of trust or confidence. Accordingly, trustees and officers act as fiduciaries to students (and those who may pay the tuition for them), faculty, alumni, and donors. Given the desire of institutions to achieve intergenerational equity, these duties also extend to those who will occupy those positions in the future. And fiduciary duties arguably extend to the public and the community at large (for public and independent institutions alike), particularly where the institution has a direct and material impact on the livelihood of its community and the beneficiaries of its research and scholarship.

Translating Fiduciary Duty into Effective Board Conduct

Fiduciary duties will apply by law even if an institution or system does nothing more to implement them, but governance is improved when board members and presidents share a mutual understanding of the standards that define the fiduciary role, including the balancing of interests necessary to carry out the institution's mission and strategic priorities. Effective tools include:

- Meaningful orientation programs for new board members (and a refresher for long-serving board members) that include: an explanation of fiduciary principles and shared governance, and what they mean for the role of the board in relation to the president and faculty; an explanation of related board policies such as conflict of interest and confidentiality; an explanation of relevant portions of the college or university bylaws that pertain to board member conduct; an explanation of the potential for personal liability of board members in the event of a breach of fiduciary duty; and behavioral expectations of board members as to participation and communication with outsiders about board business.
- Development and implementation of an up-to-date conflict-of-interest policy that: makes the disclosure and recusal process clear; identifies standards for materiality and a compelling benefit; explains and addresses both financial interests and dualities of interest and rules of conduct when the interest is adverse; and an effective form for disclosing material financial and dual interests. The governing board or a board committee will establish a process for review of disclosures of interest and forwarding of identified conflicts to the board for appropriate action.
- Appropriate communication between the governing board and college or university legal compliance officers and programs, and orientation for all board members regarding their responsibilities in such programs, including whistleblower policies, investigations of allegations, and complaint resolution.
- The timely securing of the advice of knowledgeable experts who can increase the level of understanding and competence of board members on key issues that may include compensation of the president, strategic planning, construction of new facilities and development of property, marketing and communication, advocacy, legal compliance, fundraising and endowment management, and risk management.
- The commissioning of board committees to regularly evaluate the effectiveness of the board in adhering to its fiduciary responsibilities, such as thorough self-evaluation and review of board member conduct. Such committees may include the executive committee, the governance committee, and the audit committee.

Source Documents

American Association of University Professors, “Report of the Special Committee on Academic Personnel Ineligible for Tenure,” POLICY DOCUMENTS AND REPORTS, 9th ed. (Washington, D.C., 2001), 88–91

American Association of University Professors, Inclusion in Governance of Faculty Members Holding Contingent Appointments, Washington, D.C., AAUP, 2013.

American Council on Education, Survey of College Presidents 2013, available at *https://bookstore.acenet.edu/products/american-college-president-2012*

Association of Governing Boards of Universities and Colleges, “AGB Conducts Survey on Adjunct Faculty Unions.” *Trusteeship,* 22(3), 39, 2014.

Sandy Baum, “Higher Education Earnings Premium: Value, Variation and Trends.” Washington, D.C.: The Urban Institute, February 2014.

Anthony P. Carnevale and Jeff Strohl, “Separate and Unequal: How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege.” Washington, D.C., Georgetown University Center on Education and the Workforce, July 2013.

College Board, “Trends in College Pricing, 2013,” annual reports, available at *http://trends.collegeboard.org/college-pricing*

College Board, “Education Pays: The Benefits of Higher Education for Individuals and Society,” annual reports, available at *https://trends.collegeboard.org/education-pays*

Delta Cost Project, “Trends in College Spending 2001-2011,” Washington, D.C., Delta Cost Project at the American Institutes for Research, available at *http://www.deltacostproject.org/*

Donna Desrochers and Rita Kirshstein, “Labor Intensive or Labor Extensive?” Washington, D.C.: Delta Cost Project at the American Institutes for Research, available at *http://www.deltacostproject.org/*

Federal Reserve Bank of New York, Student Loan Debt by Age Group, available at *http://www.newyorkfed.org/studentloandebt/*

Stanley Ikenberry and Terry Hartle, “Too Little Knowledge is a Dangerous Thing: What the public thinks and knows about paying for college” American Council on Education, 1998, available from ERIC at *http://www.eric.ed.gov/PDFS/ED450622.pdf*

Inside Higher Ed, Sustainability, Divestment and Debt: Survey of Opinions of Business Officers,” August 2014, available at *http://www.insidehighered.com/surveys*

Moody’s Investor Service, presentation on financial trends in higher education, Association of Governing Boards of Universities and Colleges National Conference on Trusteeship, April 2014.

Moody’s U.S. Public Finance, “Public University Governance Faces New Challenges as Public Higher Education Becomes Increasingly Market Driven,” May 2008.

National Association of State Budget Officers, “Improving Postsecondary Education Through the Budget Process,” Washington, D.C., 2013.

National Association of State Budget Officers, Fiscal Survey of the States. Washington, DC, 2014.

Organisation for Economic Cooperation and Development, Education at a Glance 2014. Paris, OECD, available at https://www.google.com/?gws_rd=ssl#q=oecd+education+at+a+glance+2014

Pew Research Center, “Is College Worth It? College Presidents, Public Assess Quality, Value and Mission of Higher Education,” May 2011, *http://pewresearch.org/pubs/1993/survey-is-college-degree-worth-cost-debt-college-presidents-higher-education-system*

Public Agenda, “Squeeze Play: How Parents and the Public Look at Higher Education Today,” 2010, Published jointly with the National Center for Public Policy and Higher Education.

Public Agenda, “The Iron Triangle: College Presidents talk about costs, access and quality,” available at *http://www.publicagenda.org/files/pdf/iron_triangle.pdf*

Standard and Poor’s, “How Increasing Income Inequality is Dampening U.S. Economic Growth, and Possible ways to Change the Tide.” Standard and Poor’s, August 2014, available at *https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1351366&SctArtId=255732&from=CM&nsl_code=LIME&sourceObjectId=8741033&sourceRevId=1&fee_ind=N&exp_date=20240804-19:41:13#ContactInfo*

Cathy A. Trower, *The Practitioner’s Guide to Governance as Leadership: Building High Performing NonProfit Boards*, San Francisco: Jossey Bass, 2013.

U.S. Department of Commerce. Census Bureau, Current Population Surveys (CPS), “Annual Social and Economic Supplement, 2012.

AGB Board of Directors 2014–2015

Our Mission

The Association of Governing Boards of Universities and Colleges strengthens and protects this country's unique form of institutional governance through its research, services, and advocacy. AGB is committed to citizen trusteeship of American higher education. For more information, visit www.agb.org.

AGB ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES

1133 20th St. N.W., Suite 300 • Washington, D.C. 20036
www.agb.org