The Board’s Fiduciary Responsibility

A Standards for Excellence® Educational Resource Bulletin

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PREAMBLE
America’s nonprofit sector serves the public interest and plays an essential role in our society and economy. Hard at work strengthening communities across the nation, nonprofits enrich our lives in a variety of ways by creating a broad array of benefits to society in fields such as charitable, religious, scientific, economic, health, cultural, civil rights, environment, and education.

Public investment and confidence drive the success of nonprofit organizations. Individuals, corporations, foundations, and federal, state, and local governments add value to the services that nonprofits provide by investing time, resources, and funds.

The Standards for Excellence Institute aims to raise the level of accountability, transparency, and effectiveness of all nonprofit organizations to foster excellence and inspire trust. The Standards for Excellence code (Standards, or code) provides a framework and step-by-step guidelines to achieve a well-managed and responsibly governed organization.

The code builds upon the legal foundations of nonprofit management, governance, and operations to embrace fundamental values such as honesty, integrity, fairness, respect, trust, compassion, responsibility, and transparency. The code consists of six Guiding Principles in 27 topic areas with specific performance benchmarks that characterize effective, ethical, and accountable organizations. The Institute helps the nonprofit sector operate in accordance with the Standards for Excellence code by providing educational resources, assistance, and a voluntary accreditation process.

The Standards for Excellence Institute encourages all nonprofit organizations to adopt the Guiding Principles of the Standards for Excellence code. By implementing the performance benchmarks in the code, nonprofit organizations will meet the highest ethical standards for effective service in the public interest.

STANDARDS FOR EXCELLENCE - GUIDING PRINCIPLES

I. MISSION, STRATEGY, and EVALUATION
Guiding Principle: Nonprofits are founded for the public good and operate to accomplish a stated purpose through specific program activities. A nonprofit should have a well-defined mission, and its programs should effectively and efficiently work toward achieving that mission. Nonprofits have an obligation to ensure program effectiveness and to devote the resources of the organization to achieving its stated purpose.

II. LEADERSHIP: BOARD, STAFF, and VOLUNTEERS
Guiding Principle: Nonprofits depend upon effective leadership to successfully enact their missions and programs. Effective leadership consists of a partnership between the board and management, each of which plays an essential role. Understanding and negotiating these shared and complex elements of leadership is essential to the organization’s success. A nonprofit’s employees and volunteers are fundamental to its ability to achieve its mission.

Board members are in a position of trust to ensure that resources are used to carry out the mission of the organization. An organization’s board leadership should consist of volunteers who are committed to the mission and who demonstrate an understanding of the community served. An effective nonprofit board should determine the mission of the organization, establish management policies and procedures, assure that adequate human and financial resources are available, and actively monitor the organization’s allocation of resources to effectively and efficiently fulfill its mission.

Nonprofits should also have executive leadership which carries out the day-to-day operations of the organization, ensures financial and organizational sustainability, and provides adequate information to the board of directors. An organization’s human resource policies should address both paid employees and volunteers and should be fair, establish clear expectations, and provide meaningful and effective performance evaluation.

III. LEGAL COMPLIANCE and ETHICS
Guiding Principle: Nonprofits enjoy the public’s trust, and therefore must comply with a diverse array of legal and
regulatory requirements. Organizations should conduct periodic reviews to address regulatory and fiduciary concerns. One of a leadership’s fundamental responsibilities is to ensure that the organization governs and operates in an ethical and legal manner. Fostering exemplary conduct is one of the most effective means of developing internal and external trust as well as preventing misconduct. Moreover, to honor the trust that the public has given them, nonprofits have an obligation to go beyond legal requirements and embrace the highest ethical practices. Nonprofit board, staff, and volunteers must act in the best interest of the organization, rather than in furtherance of personal interests or the interests of third parties. A nonprofit should have policies in place, and should routinely and systematically implement those policies, to prevent actual, potential, or perceived conflicts of interest. Ethics and compliance reinforce each other.

IV. FINANCE and OPERATIONS
Guiding Principle: Nonprofits should have sound financial and operational systems in place and should ensure that accurate records are kept. The organization's financial and nonfinancial resources must be used in furtherance of tax-exempt purposes. Organizations should conduct periodic reviews to address accuracy and transparency of financial and operational reporting, and safeguards to protect the integrity of the reporting systems.

V. RESOURCE DEVELOPMENT
Guiding Principle: The responsibility for resource development is shared by the board and staff. Nonprofit organizations depend on an array of sources of financial support. An organization's resource development program should be maintained on a foundation of truthfulness and responsible stewardship. Its resource development policies should be consistent with its mission, compatible with its organizational capacity, and respectful of the interests of donors, prospective donors, and others providing resources to the organization.

VI. PUBLIC AWARENESS, ENGAGEMENT, and ADVOCACY
Guiding Principle: Nonprofits should represent the interests of the people they serve through public education and public policy advocacy, as well as by encouraging board members, staff, volunteers, and stakeholders to participate in the public affairs of the community. When appropriate to advance the organization’s mission, nonprofits should engage in promoting public participation in community affairs and elections. As such, they should communicate in an effective manner to educate, inform, and engage the public.

ABOUT THE STANDARDS FOR EXCELLENCE INSTITUTE
The Standards for Excellence Institute is a national initiative established to promote the highest standards of ethics and accountability in nonprofit governance, management and operations, and to facilitate adherence to those standards by all nonprofit organizations. The Institute uses as a vehicle the Standards for Excellence program, a system of nonprofit sector industry self-regulation originated by the Maryland Association of Nonprofit Organizations and currently replicated by licensed partners in Alabama, Central Virginia, Colorado Springs, Delaware, Ohio, Oklahoma, Pennsylvania, and West Virginia. The program is also being offered to chapters of The Arc nationwide through The Arc of the United States, to the American Nurses Association, and to Catholic nonprofit organizations nationwide through the National Leadership Roundtable on Church Management.

The centerpiece of the Institute’s program is the Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector. The Institute also makes available to member organizations a comprehensive system of educational tools to enable individual nonprofit organizations to improve their governance and management practices. Standards for Excellence accreditation is available to individual organizations through a rigorous peer review process in selected locations and nationwide through the Standards for Excellence Institute.

For more information about joining the Standards for Excellence Institute or to obtain additional copies of the booklet or educational resource packets visit our website at www.standardsforexcellenceinstitute.org.
The Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector®

As the Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector® states:

THE BOARD’S FIDUCIARY RESPONSIBILITY

Leadership and Governance

(1) The board should be composed of individuals who are personally committed to the mission of the organization and understand their roles as a fiduciary in performing the legal duties of a governing body.

The term “fiduciary” can be interpreted differently. Most tend to think of “fiduciary” as it relates only to financial and legal responsibilities, but at its root it simply means “of or relating to a holding of something in trust for another.” In the case of nonprofits, board members are holding the organization in trust for the public and the fulfillment of the organization’s mission. They are expected to exercise good judgment that best serves the organization and its beneficiaries. In more simplistic terms, the nonprofit board holds the organization in trust, ensuring that the mission is being appropriately met for those whom it represents, including, to name a few: the public, the government, program participants, beneficiaries, and donors. Nonprofit board members have specific legal responsibilities and potential liabilities as laid out under the Internal Revenue Code, as well as state laws.

LEGAL ISSUES

Often, state laws define the standard of care that must be exercised by board members of a state corporation. Typically, the standard requires that a director act “in good faith,” in a manner that is in “the best interests of the corporation” as opposed to in his or her personal interest, and with the care that an “ordinarily prudent person” would exercise under “similar circumstances.”

STANDARD OF CARE

While the standard of care is the same for both nonprofit and for-profit corporations, in application it is less stringent for a nonprofit board member than it is for a director of a for-profit corporation. The reason for this is that nonprofit board members are typically volunteers, as opposed to for-profit board members who are typically paid for their service. The nonprofit board member is only held to exercise the degree of care that an ordinarily prudent volunteer would exercise, which is less care than would be exercised by the ordinarily prudent compensated person.
To fulfill his or her fiduciary responsibilities, it is generally understood that a board member must:

- Put the interest of the organization first and not use his or her position as a director for the benefit of personal or business interest (including benefiting family members and business associates)
- Stay informed about the affairs of the corporation
- Attend and participate in board meetings
- Support decisions of the board
- Preserve the confidentiality of the nonprofit’s business information and operations
- Not divert business opportunities to another business or entity when those opportunities would benefit the nonprofit

Where charitable assets are involved, board members have both statutory and common law duties to safeguard and assure that the assets continue to be used for charitable purposes. The common law duties include the duty of care, the duty of loyalty, and the duty of obedience.

Board members should make reasonable efforts to ensure that the nonprofit organization is complying with state and federal regulations related to the use of charitable funds (e.g., Uniform Prudent Management of Institutional Funds Act.). In order to be informed, board members often rely upon information provided by staff or other board members. Much of this communication occurs during scheduled board meetings (although technology is continuing to facilitate the sharing of ideas and information outside of the structured meeting format).

Absence from a meeting or failure to stay informed does not exclude the board member from responsibility for what transpired at a board meeting. In fact, absence from meetings may be used as evidence that the board member has breached his or her fiduciary responsibilities. As such, a big part of fulfilling a board member’s fiduciary role is the action of being present at board meetings, whether in person or via whatever technology has been established for the meeting. In situations where board members have unavoidable absences, they need to be willing to review materials and keep up with the discussions and issues.

**When Board Members Act in a Representative Capacity**

Sometimes board members are elected or appointed because of their affiliation with, or as a representative of, another organization, government agency, or constituency. Where this is the case, the board member may bring the perspective of the other entity to the table when appropriate. However, they must always act in the best interest of the nonprofit they are on the board of and not the entity they represent. As an individual, a board member’s fiduciary responsibilities are personal and should remain separate from the interests of the other organization(s) with which they are affiliated. If interests should diverge, the board member’s responsibility is to serve the interests of the board, not of the other affiliated organization. If this is not possible, the board member should respectfully decline participation in the decision making process on specific issues where the conflict exists. In the event that the conflicts are widespread and force the board member to abstain from a significant number of decisions, the

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board member may want to consider stepping down from the board and establishing an alternative relationship with the nonprofit.

**HELPFUL TIPS FOR FULFILLING FIDUCIARY RESPONSIBILITY**

- Have a comprehensive job position description in place for the board as a whole and for individual board members.
- Ensure that the board holds its members accountable to carrying out the responsibilities of their position descriptions and removes members that are not upholding their responsibilities in a timely manner.
- Ensure that you have a conflict of interest policy that is up to date, utilized and carried out carefully.

**CONFLICTS OF INTEREST**

One of the most important steps an organization can take to create an environment where board members take their fiduciary responsibility seriously is to have a strong conflict of interest policy and statement. This policy should be approved by the board, all board members, staff members, and volunteers with significant decision-making authority with regard to the resources of the organization should be covered by the policy and should disclose their interests in a conflict of interest statement at their initial affiliation with the organization and annually thereafter.

For more information, including, model conflict of interest policies and statements, check out the Standards for Excellence educational resource packet on conflicts of interest.

**SELECTED RESOURCES**

- Standards for Excellence Educational Resource Packet, Conflicts of Interest