

October 2012

2.203 Fiduciary Duties and Responsibilities of Board Members

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Recommended Citation

"2.203 Fiduciary Duties and Responsibilities of Board Members" (2012). 2.200 Board of Governors (Board Governance). 7.
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Type of Policy <input checked="" type="checkbox"/> University <input type="checkbox"/> Interim		Fiduciary Duties and Responsibilities of Board Members Policy 2.203	
Board Governance Policies		Effective date: October 27, 2012	
Policy History:	Approved by:	Resolution #	Date:
	Board of Governors	11.5.08:01	November 5, 2008
Revised:	Board of Governors	10.27.12:8	October 27, 2012
	Chancellor	N/A	February 21, 2017
Responsible Office:	Responsible Administrator:	Contact information:	Applies to:
University Board of Governors	Chair, Governance Committee	937-769-1345	Board of Governors and

I. Introduction

All members of college and University boards are fiduciaries of the institutions they serve. Additionally, Antioch University is a not-for-profit corporation established under the non-profit laws of the State of Ohio. In exchange for favorable tax treatment associated with its non-profit, tax-exempt status, there is also an obligation for the institution to act for the public good. Consequently, as fiduciaries, members of the board of governors, owe duties to both the corporation and to the general public which we serve.

II. Purpose

The purpose of this policy is to define and explain the fiduciary duties and responsibilities of the individual members of the Antioch University Board of Governors (or “BoG”). The policy also sets forth other expectations and responsibilities of board members inherent within those fiduciary duties or arising out of the University’s bylaws.

III. Application

This policy applies to members of the Board of Governors (referred to as "board members"). While the University bylaws uses the term "Governors", members of the Board of Governors are the statutory "directors" of the corporation, a role which carries with it important statutory and common law duties. From time to time the Board of Governors may delegate authority to others, including the Chancellor. While such delegation requires that the designee also act as a fiduciary, exercising ordinary care in the best interest of the corporation, ultimate fiduciary responsibility continues to legally reside in the Board of Governors as the statutory "board of directors".

IV. General Rule

From the Latin *fiducia*, meaning "trust," a fiduciary is a person who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty. In general, Ohio Revised Code §1702.30 establishes that the board members must act in good faith, and in a manner which they reasonably believe to be in, or not opposed to, the best interest of the corporation as a whole. Additionally, board members must conduct themselves with the care that an ordinarily prudent person in a like position would use under similar circumstances.

V. Specific Fiduciary Duties

The fiduciary duties of board members have been described as fitting into three major categories:

A. The duty of care

Which requires that a board member act reasonably, honestly, competently, prudently and in good faith when making decisions as a steward of the corporation. This requires that the member give full attention to one's duties as a board member, regularly attend meetings of the board, prepare for meetings, ask questions and participate in the deliberative process setting aside personal or professional interests to protect the assets of the institution. This includes financial assets to be sure, but it also includes the University's reputational, personnel, and other tangible and intangible assets as well.

1. For purposes of determining what a board member reasonably believes to be in, or not opposed to, the best interest of the University, a member shall consider the mission and purposes of the corporation and may consider any of the following:

- a. The interest of the employees, suppliers, creditors and customers of the corporation;
- b. The economy of the state and of the nation;
- c. Community and societal considerations; and

- d. The long-term and short-term best interests of the corporation.
2. Emotion and sentiment are not legitimate considerations in determining what is in or not opposed to the best interests of the corporation.
 3. In exercising this duty of care, a board member is entitled to rely upon the information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by others including those reports or opinions prepared or presented by:
 - a. One or more board members, officers, or employees of the University who the member reasonably believes to be reliable and competent in the matters prepared or presented;
 - b. Counsel, public accountants and other persons in matters that the board member reasonably believes are within the persons' professional competence; and
 - c. Any committee of the board upon which the member does not serve, which has been duly established in accordance with the provisions of the University's bylaws, as to matters within its designated authority, which committee the member reasonably believes to merit confidence.
 4. However, a board member shall not be considered to be acting in good faith if the member has knowledge concerning the matter in question that would cause reliance on information, opinions, reports or statements that are prepared or presented by the persons or committee described above to be unwarranted. Board members are expected to speak openly and with candor, and when relevant information is available it must be shared.

B. The duty of loyalty

Requires board members to put the interests of the institution before all others. It prohibits a board member from acting out of self-interest. The board's Conflicts of Interest and Commitment Policy (Policy 2.105) provides guidance regarding what constitutes a conflict of interest and how that conflict is to be managed to avoid a breach of fiduciary duty to the University. Furthermore, the duty of loyalty runs to the corporation, not to any campus or other constituent part of the University. Actions must always be undertaken in the best interest of the corporation as a whole.

C. The duty of obedience

Requires that each board member obey directions approved by the board, publicly support the decisions of the board, maintain confidentiality of board proceedings, and

advance the mission of the University in their dealings with each other. The corporation acts only through its board and the board acts only through resolutions approved at a duly constituted meeting of the board. No individual board member has the authority to act on behalf of the corporation and a member's actions must always conform to the duly approved actions of the board. Failure to adhere to this duty of obedience can result in a loss of public confidence in the institution.

VI. Delegation of Authority

From time to time the Board of Governors may delegate authority to others including the Chancellor. Again, while such delegation requires that the designee also act as a fiduciary, exercising ordinary care in the best interest of the corporation, ultimate fiduciary responsibility continues to reside in the Board of Governors as the statutory board of directors. In the exercise of its fiduciary duty, therefore, it is incumbent upon the Board of Governors to ensure that any delegated authority is exercised appropriately.

VII. Other Expectations of Board Members

Through the adoption of this policy, the Board of Governors commits to develop, and from time-to-time review, a Statement of Commitment and Responsibilities (the "Statement") which further defines those behaviors and expectations of members inherent within their fiduciary obligations. Such expectations shall be reviewed with potential nominees for election to the board. Upon election, board members may be asked to execute a copy of the Statement attesting to their commitment.

VIII. Continuing Education

The Board of Governors hereby commits to provide regular opportunity for continuing education to new and incumbent board members regarding their fiduciary obligations as described in this policy and education regarding the related duty to properly identify, disclose and manage actual, potential or perceived conflicts of interest.

IX. Sanctions for Violations

Violations of this policy may result in sanctions against a board member including possible removal from the Board of Governors pursuant to Section 3.6 of the By-laws of Antioch University.

Policy Cross Reference

Conflicts of Interest and Commitment	Policy # 2.105
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Forms Cross Reference

Statement of Commitment and Responsibilities (BoG)	Form # 2.203:01
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