

5 THINGS INDEPENDENT SCHOOL BOARDS CAN DO TO HONE THEIR GOVERNANCE PRACTICES

Insights
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As independent school Boards consider how to best support the mission of their schools, one place they can start is to ensure that their governance documents and procedures conform to both legal requirements and best practices. By having strong governance policies, Boards will be able to better respond to challenges – whether it is embarking on a new building project, managing enrollment issues, or dealing with difficult parents. From clear bylaws to more detailed governance manuals, having direction can create discipline and structure that will enable the Board to avoid getting mired in process, and instead enable it to focus on the challenge at hand. Below are five areas that Boards can consider when assessing their governance acumen.

1. Review Your Articles of Incorporation

The primary document for any school is its Articles of Incorporation (or Charter). This is the initial document that formed the non-profit corporation of the school. The Articles are the highest governing document – they trump all other documents but not the law. The original Articles and any amendment or restatement must be filed with the Secretary of State and become public records.

- Boards should periodically review their Articles to make sure that they are running the school in accordance with any directives set forth in the Articles. If they are not, then they should consider whether they need to amend the Articles.

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- They should also be mindful of the Articles as they conduct business because they must always follow the Articles.
- In addition, all other documents, such as the bylaws, must be consistent with the Articles of Incorporation.

2. Ensure Your Bylaws are Current

The school's bylaws are more specific than the Articles and usually provide more detail about how the Board should govern the school. The bylaws should address issues such as how many trustees can be on the Board, what qualities trustees must have, how trustees are selected and elected, what committees should be in place, and how decisions must be made. Boards should ensure that their bylaws cover any topics required by state law. At the same time, bylaws should not be so detailed or onerous that they limit the Board's flexibility in how to best serve the school.

Because bylaws are legally binding, Boards should work with counsel to ensure that they are legally appropriate but also give the Board sufficient discretion. For example, many Board bylaws provide for a high number of minimally required trustees. However, if a school is struggling, it may be difficult to entice trustees to join the Board, which can result in the Board operating outside of its bylaws. Instead, it is better to have a low number of required trustees, such as three, which still allows the Board to operate with the higher, preferred number.

3. Develop a Detailed Board Governance Manual

The Governance Manual is often ignored by Boards – yet it can be one of the most useful documents. While the bylaws should cover the basics, the Governance Manual is where the Board can establish detailed policies and procedures. It can be easily changed and updated so the Board can be freer in setting policies because those can be readily changed if they are no longer serving the school.

Governance Manuals should generally address topics such as:

- trustee responsibilities
- training and orientation
- standing committees

- endowment policies
- financial aid
- use of the school's facilities
- property acquisition and campus expansion
- admissions, and
- financial policies.

A good governance manual can serve as a roadmap for trustees to follow when making decisions or managing the school's resources.

4. Establish a Strong Code of Ethics

In addition to clear policies and procedures, one of the most important documents that a Board can have is a Code of Ethics that its trustees must read and sign yearly. The Code of Conduct should remind trustees of their obligations and have them confirm in writing that they agree to those responsibilities. Trustee obligations include fiduciary duties, confidentiality requirements, reporting and addressing conflicts of interest and whistleblower reporting and investigation procedures.

The Code of Ethics is invaluable during difficult times because it reminds trustees of their obligations – which they may be trying to avoid – and provides a process by which the other trustees can demand compliance if necessary.

5. Review Your Head's Evaluation Process

Finally, it is a good practice for Boards to have an evaluation process for the Head of School. The Board's only employee is the Head of School. This means that the Head of School evaluation is within the purview of the Board. Yet, many Boards do not have a process for evaluating and supporting the Head of School.

As Boards consider their blind spots, they should assess whether they have a suitable evaluation process.

- Does the Board have a committee that will spearhead the process?
- Does the committee meet with the Head of School early on to set goals and expectations?

- Does the committee then follow up throughout the year to ensure that the Board and Head of School are rowing in the same direction and that any deviations are quickly uncovered and addressed?

A solid evaluation process can strengthen the Board/Head relationship better enabling the school to withstand challenging times.

Conclusion

Boards often have many challenges and good governance can seem like another daunting task. However, spending time putting the right documents in place will enable the Board to ensure proper stewardship of the school and its resources. You can consult your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Education Practice Group](#) if you need assistance with these documents.

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