

Governing Boards:

Understanding the Expectations of
the Middle States Commission on
Higher Education



Middle States Commission on Higher Education

Governing Boards:

Understanding the Expectations of
the Middle States Commission on
Higher Education



Middle States Commission on Higher Education

Published by the
Middle States Commission on Higher Education
3624 Market Street
Philadelphia, PA 19104

Telephone: 267-284-5000
Fax: 215-662-5501
www.msche.org

© 2010 Copyright by the Middle States Commission on Higher Education

First edition
All rights reserved.

Permission is granted to colleges and universities within the jurisdiction of the Middle States Commission on Higher Education to photocopy this booklet for the purpose of board orientation or training. This publication may also be downloaded free of charge from the Commission's website.

Printed in the United States of America

Contents

	Page
What is a Governing Body?	5
What are the Responsibilities of a Governing Board?	5
The Importance of an Active, Involved, and Informed Governing Board	6
The Importance of Board Autonomy	7
The Role of the Board in the Institutional Governance Structure	7
The Role of the Board with a Related Entity	8
What are the Characteristics of Governing Boards That Meet Middle States Expectations?	9
How Might Institutions Document That They Meet These Expectations?	9
What Might the Commission and Its Representatives Look for in Governing Board Documentation?	10
Board Authority	10
Fulfillment of Board Responsibilities to the Institution	10
Board Autonomy	11
Board Activity, Involvement, and Knowledge Regarding the Institution	11
Board Role in Institutional Governance	11
Board Role with a Related Entity	12

Governing Boards

Understanding the Expectations of the Middle States Commission on Higher Education

Standard 4 (Leadership and Governance) of the accreditation standards of the Middle States Commission on Higher Education describes the Commission’s expectations for a system of collegial governance. Perhaps the most frequent questions raised about this standard concern the institutional governing body, which is one element of an institutional governance system. A portion of Standard 4 states, “The governance structure includes an active governing body with sufficient autonomy to assure institutional integrity and to fulfill its responsibilities of policy and resource development.” These guidelines are intended to clarify the Commission’s expectations regarding institutional governing boards and the role they play in the institution and its governance system. Refer to the Commission’s publication *Characteristics of Excellence* for the full text of this standard, including portions addressing other aspects of institutional governance.

What is a Governing Body?

A governing body—which may be called a governing board, board of directors, board of trustees, board of governors, or board of regents, among other titles—is the highest governing authority within the organizational and governance structures of the institution. It is the body ultimately accountable for the academic quality, fiscal and academic integrity, academic planning, assets, and financial health of the institution.

This guide uses the terms “governing board” and “board” to refer to the governing body addressed in Standard 4.

What Are the Responsibilities of a Governing Board?

While a governing board’s specific duties vary depending on the nature of the institution, the Commission expects the board to fulfill the responsibilities articulated in Standard 4 and Requirement of Affiliation 9, including:

- Assuming responsibility for the quality and integrity of the institution;
- Assuming responsibility for ensuring that the institution’s mission is being carried out;
- Fulfilling the board’s fiduciary responsibilities;
- Certifying to the Commission that the institution is in compliance with the Requirements of Affiliation, accreditation standards, and policies of the Commission;
- Describing itself in identical terms to all its accrediting and regulatory agencies;
- Communicating any changes in its accredited status;

- Agreeing to disclose any information required by the Commission to carry out its accrediting responsibilities;
- Assisting in generating resources needed to sustain and improve the institution;
- Periodically, objectively assessing the governing body in meeting its stated objectives;
- Appointing a chief executive officer (hereafter referred to as the president) with primary responsibility to the institution and delegating appropriate responsibilities to that individual; and
- Periodically assessing the effectiveness of institutional leadership and governance.

Other fundamental responsibilities of a governing board normally include the following:

- Making and delegating decisions that are in the best interests of the institution and its constituents;
- Ensuring institutional and governing board adherence to the highest standards of integrity;
- Protecting constituent and public interests in the institution;
- Advocating for and, when necessary, defending the institution;
- Ensuring that the institution's core purposes and values are fulfilled through development and oversight of institutional policies and operations;
- Appointing and supporting the president or chief executive officer and monitoring his or her performance;
- Enhancing the institution's ability to fulfill its core values and purposes;
- Serving as a steward of institutional resources provided by others (which may include tuition and fees paid by students and their families, endowments and other gifts, foundation grants, government appropriations, funding and support provided by a sponsor or corporate owner, and the time and talent provided by institutional faculty, administrators and staff), ensuring that these resources are used wisely, prudently, with integrity, and in the institution's best interests; and
- Participating actively and appropriately in accreditation and reaccreditation processes, as described in the Commission's accreditation handbooks.

The Importance of an Active, Involved, and Informed Governing Board

A governing board can fulfill its responsibilities only if it is actively involved with the institution and informed about the institution, its issues, and its environment.

Governing board members need sufficient expertise to understand the complexities of the institution they govern. The Fundamental Elements of Standard 4 thus state that the governing board should have sufficient expertise to fulfill its fiduciary responsibilities and assure the institution's academic integrity.

Governing board members also need accurate and timely information in order to engage in proper analysis and decision making. Board members must thus ensure that complete,

accurate, meaningful, and relevant information concerning the institution always reaches them on a timely basis. One of the Fundamental Elements of Standard 4 accordingly states that board members should receive continuing updates on achievement of the institution's mission, organization, and academic programs and services.

In order to fulfill their responsibilities, board members need an understanding of the institution's values and traditions in addition to information about its programs, services, and operations. It may be especially important for board members to understand and appreciate three significant values and traditions in academe: academic freedom, institutional independence, and consultation with affected parties in institutional decision-making. The academic decision-making culture requires the participation of many more players than is required or typical in a business, and faculty are normally consulted before changes are made to academic program offerings and academic personnel policies.¹

The Importance of Board Autonomy

Board autonomy is vital to exercising independent judgment in carrying out board responsibilities of accountability, stewardship, and oversight and acting in the best interests of the institution and its constituents. Board autonomy is also important because independent perspectives enable boards to reconsider conventional wisdom and bring fresh insight and ideas to emerging or persistent issues. The independent "citizen" board model can also forestall greater government intrusion into or control of higher education.¹

Effective boards are thus sufficiently independent of any relationships that could interfere with the exercise of independent judgment and free from pressures from any particular individuals or groups, either internal or external to the institution. The Fundamental Elements of Standard 4 accordingly state that the governing board should have sufficient independence to assure the institution's academic integrity and that governing board members, regardless of how appointed, should have primary responsibility to the accredited institution and should not allow political or other influence to interfere with governing board duties.

The Role of the Board in the Institutional Governance Structure

Effective institutional governance structures that encompass the board, institutional leaders, faculty, and students, among others, ensure a healthy set of checks and balances on power and authority. Middle States also values institutional governance because research is showing that students achieve deeper, lasting learning when their education is an integrated, synthesized experience, and this can happen only in an environment of communication, collaboration, civility, respect, and professionalism that effective institutional governance structures help ensure.

In effective institutional governance structures, boards have responsibilities and authorities that are separate, distinct, and independent from the institution's leaders and faculty. They may delegate their authority—but not their responsibility—to institutional leaders, faculty, and students.

The Role of the Board with a Related Entity

Many institutions have governance structures that depart from those of freestanding institutions and include non-accredited related entities. Examples of such entities include:

- Public or private higher education systems;
- A higher-level public board or administrative agency that reviews the decisions of public institutions' governing bodies;
- A corporate parent;
- A sponsoring religious organization;
- A funding sponsor (which, in some cases, may include an equity or investment fund);
or
- Any other entity that can affect decisions related to compliance with the Commission's accreditation standards.

Ordinarily, local, county, and state legislatures, other accreditors, local advisory boards, and government agencies are not considered to be related entities.

A variety of governance structures may be employed in these situations, including but not limited to:

- institutional representation on the board of the related entity;
- a standing committee of the related entity's board that is charged with addressing institutional matters;
- institutional advisory councils charged with addressing institutional matters; or
- separate but related boards such as a governing board and a fiduciary board.

No matter how the structure is designed, it should ordinarily ensure that the institution has an active governing board (or boards) empowered and authorized to fulfill the fundamental responsibilities delineated earlier in these guidelines. The structure should ordinarily further ensure that the institution's governing board (or boards) is sufficiently involved with and knowledgeable about the institution to fulfill these responsibilities conscientiously and appropriately.

To these ends, one Fundamental Element of Standard 4 states that the institution's charter, by-laws, or other documents should explicitly state the roles and powers of the governing bodies of the institution and of any higher or related entity. Another Fundamental Element states that the governing bodies of the institution and of the higher or related entity should have clearly established relationships and carefully balance the interests of the institution with those of the related entity.

Although a related entity may affect an institution's ongoing compliance with accreditation standards, the Commission reviews and holds only the institution responsible for compliance with accreditation standards.

What Are the Characteristics of Governing Boards that Meet Middle States Expectations?

The Commission accredits a diverse array of higher education institutions that vary considerably in terms of mission, instructional delivery method, size, and organization. Among its members, for example, are very large and very small institutions, public and private institutions, comprehensive and specialized institutions, for-profit institutions, and faith-based institutions, among others. Because of this diversity, the Commission gives institutions great latitude in choosing approaches to complying with its standards, including Standard 4.

The underlying concern of all Commission standards is with outcomes rather than the structure or processes used to arrive at those outcomes. For Standard 4, this means the Commission does not prescribe or recommend any particular governance structure. Its concern, instead, is whether the institution's governing board (or boards), however structured, successfully fulfills its responsibilities to the institution as described in its bylaws and Standard 4 and as explicated in these guidelines.

How Might Institutions Document That They Meet These Expectations?

It is incumbent upon the institution to demonstrate systematic, sustained compliance with the Commission's standards and expectations. *Examples* of evidence that *may* help demonstrate compliance with Standard 4's expectations for governing boards include:

- The mission statements and bylaws of the institution and, as appropriate, any related entities;
- Records of resource allocation decisions made by the institution's governing board and, as appropriate, those of any related entities;
- Organizational charts of the institution and, as appropriate, any related entities;
- Financial statements of the institution and, as appropriate, any related entities;
- Position descriptions of institutional leaders and, as appropriate, the leaders of any related entities;
- Governing board minutes documenting its agenda items and decisions;
- Information provided to the board to inform it about the institution and issues affecting it;
- Agendas and materials used in the orientation of new board members;
- Evidence of compliance with, as appropriate, the Sarbanes-Oxley Act of 2002, relevant Securities and Exchange Commission regulations, and relevant rules of the New York Stock Exchange or NASDAQ.

What Might the Commission and Its Representatives Look for in Governing Board Documentation?

Evaluation team members, reviewers, and Commissioners may look for documented, systematic evidence regarding any of the following questions, as relevant and appropriate, in an institution's governing board documentation. They are not limited to these questions and may raise additional questions as appropriate and relevant.

Board Authority

1. Is the institution's governing board empowered to fulfill the responsibilities delineated in the Commission's accreditation standards and requirements of affiliation?
2. Do governance policies spell out, simply and clearly, the board's basic obligations as well as how it carries out those obligations? (While bylaws provide the legal framework for the establishment of the board, governance policies spell out how the board and other components of the institutional governance system conduct their work.)

Fulfillment of Board Responsibilities to the Institution

1. How does the institution's governing board advocate for the institution, especially when there are competing interests?
2. What decisions has the board made?
3. Do board decisions appear to be in the best interests of the institution and its constituents?
4. What actions has the board taken to ensure institutional and board adherence to the highest standards of integrity?
5. What actions has the board taken to protect constituent and public interests in the institution?
6. What institutional policies has the board developed? What is the relationship of those policies to the institution's mission?
7. How does the board oversee institutional operations? How does it assure itself of the relationship of those operations to the institution's mission?
8. How has the board assured itself that all academic programs are of appropriate quality and rigor?
9. How has the board enhanced the institution's ability to fulfill its mission? How has it assisted in generating resources needed to sustain and improve the institution (a Fundamental Element of Standard 4)?
10. Does the board periodically and objectively assess its effectiveness and the effectiveness of the institutional governance structure in fulfilling stated responsibilities (Fundamental Elements of Standard 4)?

Board Autonomy

1. What proportion of board members are independent? (Independent board members are generally those who do not have any business, professional, or family relationship or association with the institution or its leadership, subsidiaries, or related entities, if any, that would affect their capacity for independent judgment. Typically, they and their family members have not been employed by or affiliated with the institution or any subsidiaries or related entities in the past three years. Stock ownership and compensation for board service are generally not considered to affect independence.)
2. Are the independent members of sufficient caliber and number for their views to carry significant weight in the board's decisions? (While the Commission does not prescribe any particular numbers or proportions, a context to consider is that the Securities and Exchange Commission, the New York Stock Exchange, and NASDAQ expect that a majority of board members be independent.)
3. What proportions of the memberships of committees responsible for audits, compensation, board nominations, and governance are independent?
4. Does the board function independently of institutional leaders? What are board members' relationships with institutional leaders?

Board Activity, Involvement, and Knowledge Regarding the Institution

1. How active is the institution's governing board?
2. How is the governing board involved with the institution?
3. How knowledgeable and informed are board members, individually and collectively, regarding:
 - the institution's mission, goals, and programs?
 - institutional leaders' activities regarding institutional mission and goals?
 - institutional activities, events, and developments?
 - current issues?
4. How aware are board members of their duties and responsibilities?
5. How sufficiently are new members oriented to the institution, institutional developments, and issues, as well as to their duties and responsibilities?
6. What access does the board have to external specialist resources, as appropriate?
7. What is the financial literacy and expertise of the board?

Board Role in Institutional Governance

1. Is the board part of a functioning institutional governance system with a set of codified structures that integrates the work of the board, faculty, and administration?

Board Role with a Related Entity

1. If multiple governing bodies oversee the institution, which one is charged with fulfilling the responsibilities articulated in Standard 4 and these guidelines regarding the institution under review?
2. How effectively is that governing board fulfilling those responsibilities?
3. What institutional policies has that governing board developed?
4. What priority does that governing board give to the institution compared to the board's other interests? What proportion of the board's time and energy is spent on the institution?
5. How are the related entity's resources allocated between the institution and other entities, interests, and operations? What evidence demonstrates that this balance is appropriate?
6. What does the mission statement of the related entity say about the institution under review?
7. Do the bylaws of the related entity document that its structure and functions are designed to support the institution under review?
8. What is the combined organizational structure of the related entity and the institution under review? What does the organization of financial statements say about the relationship of the two entities? Whom does the institution's president supervise? To whom does he or she report?

¹Source: Association of Governing Boards



Middle States Commission on Higher Education
www.msche.org