



The Standards for excellence

An Ethics & Accountability Program for the Nonprofit Sector

#7 – BOARD MEMBER COMPOSITION AND INDEPENDENCE

Brought to you by the Pennsylvania Association of Nonprofit Organizations¹



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PREAMBLE

Pennsylvania's nonprofit sector serves the public interest and plays an essential role in our society and economy. Working constructively to strengthen communities across the Commonwealth, nonprofits enrich our lives in a variety of ways by creating a broad array of benefits to society in fields such as , 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. Given their role in society many, including PANO, refer to nonprofit organizations as the Community Benefit Sector.

The Pennsylvania Association of Nonprofit Organizations (PANO) amplifies the impact of the Community Benefit Sector through advocacy, collaboration, learning and support. PANO 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 covering 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.

PANO 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.

Primarily designed for 501 (c) 3 organizations, the code is applicable for 501 (c) 4's and 6's. These organizations depend on public support and want to be transparent. In the current code some limitations exist on lobbying and political activity for (c) 3's that do not apply to 4's and 6's.

STANDARDS FOR EXCELLENCE®

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. For membership organizations, board members are directly responsible to the members.

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 PANO

PANO is the statewide membership organization serving and advancing the nonprofit sector through advocacy, collaboration, education and other services in order to improve the overall quality of life in Pennsylvania. PANO exists to support the incredible work of the nonprofit sector and highlight the critical role nonprofits serve. By coming together and recognizing our collective value, Pennsylvania communities and the power to do good will thrive.

PANO is licensed with the Standards for Excellence Institute to offer the Standards for Excellence Ethics and Accountability Program in Pennsylvania. The centerpiece of the program is the Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector. Through the Institute, PANO 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 Pennsylvania. For more information about joining PANO or to obtain additional copies of the booklet or educational resource packets visit our website at www.pano.org or contact PANO at 717-236-8584 or email Tish Mogan at tish@pano.org.

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, Delaware, Eastern Tennessee, Ohio, Oklahoma and Pennsylvania. 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.

Board Member Composition and Independence

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

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 board should establish a rigorous board development strategy for recruiting and selecting new members and ensuring that the board has an appropriate mix of talent, connections to the community, and diversity.

The organization's bylaws should define specific terms of service for board members.

Board members of public charities should serve without compensation for their service as board members. They may be provided reasonable reimbursement for expenses directly related to performing their board service.

The board should have no fewer than five (5) independent and unrelated directors. Seven (7) or more directors are preferable.

When an employee of the organization is a voting member of the board, the board is responsible for ensuring that the employee will not be in a position to exercise undue influence.

Introduction

Developing a board of committed individuals who believe in and are willing to work hard to help an organization achieve its mission is one of the critical keys to success for nonprofit organizations. It is also one of the most important and challenging responsibilities facing the board of directors. An organization's board, while performing all the ongoing tasks involved in governance, must also plan for its future through strong, independent, and dedicated leaders.

The *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector*[®] expects that every organization pay close attention to the composition of its board of directors. The board should be composed of no fewer than five to seven unrelated individuals who:

- Are personally committed to the mission of the organization;
- Collectively reflect the diversity of the communities served by the organization; and
- Are volunteers, serving without compensation other than reimbursement for expenses related to their direct service.

While it is lawful for an employee to serve on the board, it is not recommended, and the *Standards for Excellence* code cautions that this should only be done where it is clear that the employee will not be in a position to exercise undue influence on the board. The *Standards for Excellence* code also recommends that board service be subject to terms of service limits, so that board members rotate off the board after a fixed number of years of service.

Commitment to the Mission of the Organization

Individuals may have a variety of motivations for serving on a nonprofit board of directors.

Board service presents opportunities for board members to make personal and business contacts, to achieve a position of respect in the community, to learn and professionally develop, and even to have fun. While these are all legitimate reasons for serving on a board, they certainly shouldn't be the only reasons to serve.

Supporting a cause or mission to which an individual is sincerely committed should be the primary motivation for individuals sitting on a nonprofit board of directors. According to the 2007 BoardSource Governance Index, 80 percent of board members felt "the match between the organization's mission and their personal interests is their top consideration when deciding whether to join a board."² Above all, the board is ultimately responsible for assuring that the organization is making progress toward achieving its mission.

Most organizations want their board members to be passionate about the organization's mission and for good reason. The committed board member is much more likely to devote time and effort required for the job. S/he is more likely to regularly attend board meetings, take on committee roles and responsibilities, educate her/himself about the work of the organization, make personally significant charitable contributions, and be an effective advocate of and promoter for the organization wherever s/he may be. When primarily motivated by the organization's mission and program, rather than by personal goals and concerns, conflicts of interest, and other inappropriate situations may be less likely to occur.

While passion is important, boards need to assure that the ranks of their board members are filled with individuals who will seriously and responsibly meet the expectations set for each individual board member, and the board as a whole. For more information, please see the *Standards for Excellence* educational resource packet on Board Member Responsibilities.

Employees on the Board

It is important to assure that a nonprofit is not controlled by a single individual. Nonprofits are public charities that cannot be owned by individuals. The chief executive officer rarely serves as a voting member of the board. In fact, nationally, only 14 percent of CEOs vote on their organization's board as reported by BoardSource in 2012.³ It is even rarer for employees other than the chief executive to serve on the board.

That said, it is important to mention that it is not illegal for paid staff to serve on boards, but it may certainly wave a red flag to regulators who fear that such organizations may be controlled by a single individual. Having employees as voting members of the board increases the opportunity for a conflict of interest. The Internal Revenue Service is also placing more emphasis on questions related to this issue and inquiries have been expanded in the IRS application for tax-exempt status (Form 1023).

Having employees serve on the board may upset the delicate balance between the board as the employer and the executive director as an employee of the board. The board hires, supports, and evaluates the executive director. In turn, the executive director supports and evaluates all volunteers

² BoardSource, *Nonprofit Governance Index 2007*

³ BoardSource *Nonprofit Governance Index 2012*.

and paid staff. It is awkward for staff to serve as board members, because they are, in effect, serving as their own bosses.

It is important to note that merely designating a board member as ex-officio does not mean that person does not have a vote. Ex-officio means that a person is serving on a board by virtue of his/her position. If you want the executive director to serve on a board in a non-voting capacity, the bylaws must state that such a member serves "without a vote."

For more information, see the Standards for Excellence educational resource packet on Board and Executive Partnership.

Relatives and Business Associates in Leadership Positions on the Nonprofit Board

The *Standards for Excellence* code defines the minimum number of board members as equal to the number of individuals who are unrelated to one another. While it is often not illegal for spouses or family members to serve on the board at the same time, nonprofits are advised to avoid this practice whenever possible. The public's and funders' perceptions of boards that appear tightly held within a few family members or businesses may suffer.

There may be some situations where this type of practice is more acceptable than other situations. For instance, it may be more palatable to have a husband and wife team serving as board members concurrently if the board is sufficiently large and if neither individual holds a key leadership position (such as an officer position, a key committee chair position, etc.).

On the other hand, it may be totally inappropriate for a daughter and father to serve on a board when the board's total membership is less than seven and the daughter serves as the organization's treasurer, and the father serves as the organization's board chair.

The Internal Revenue Service Form 990 includes a question about the family and business relationships of the key leaders of a nonprofit, "Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustees, or key employee?" For example, the IRS is interested in uncovering whether the executive director is the brother of a board member and if the senior program manager is a partner in the consulting firm that provides evaluation services.

Nonprofits must make a reasonable effort to obtain this information and provide accurate information on the Form 990. Asking board members to complete a questionnaire like the Sample Questionnaire on Family and Business Relationships and Interested Person Independence provided as Attachment D is a good approach.

Board Member Recruitment and Selection

The board member selection process is often headed by the Nominating or Board Development Committee (or Board Governance Committee), although the board chairperson and executive director should also be closely involved. Often, the chair of the board serves as an ex-officio member (serving by virtue of her or his position) of the Committee.

As a first step in the selection process, a board should evaluate the skills, expertise, and demographic backgrounds of current board members to determine what characteristics they are lacking and would be looking for in future members. In her book, *Board Recruitment and Orientation*, Hildy Gottlieb

suggests drafting three lists of criteria for board member recruitment: (1) “must have criterion;” (2) “would be nice criterion”; and (3) “never in a million years criterion.”⁴

A list of potential board members should be compiled based on how potential candidates may be able to fill these gaps. It is important that the board keeps in mind that a level of diversity among board members must be maintained, and that potential candidates may need to possess certain characteristics or interests that are outlined in the organization’s bylaws. For a discussion of diversity in board membership see below and refer to the *Standards for Excellence*® educational resource packet on Cultural Competency.

Board Development or Nominating Committee (or Governance Committee)

The Board Development or Nominating Committee (or Governance Committee) is very important because it facilitates the process of identifying, cultivating, recruiting, and orienting new members and planning for leadership succession.

The committee also coordinates the process of evaluating the performance of current board members, individually and collectively. This committee is critical to the success of the organization because the future of the board and the organization’s leadership rests in its hands. It is helpful to have committee members who are respected by the board, understand governance issues, and have wide community contacts.

The committee may also have the role of nominating individuals to fulfill leadership positions on the board such as: Board Chair, Vice-Chair, Secretary, and Treasurer.

Prospective board members can be suggested from various sources, including board and committee members, staff, and self-nomination, and others.⁵ The board and its committees should maintain confidentiality in the selection and recruitment process.

Although the way in which new board members are recruited will vary from organization to organization, potential candidates should be interviewed, ideally by several board members. It is also recommended that the executive director be given a chance to meet prospective board members. As part of this process, the expectations or job descriptions for individual board members should be shared and clearly reviewed with candidates. Sample board member position descriptions can be found in the *Standards for Excellence* educational resource packet, *Board Member Responsibilities*. In addition, the prospective board member’s interests and background should be discussed. A mutual understanding of the organization’s mission should be established and the role that the board plays in fulfillment of that mission should be clearly conveyed.

Board members may be elected to the board by the board itself (self-perpetuating); by a broader organization membership, if such exists and is given that power; or by nomination from a third party in

⁴ Gottlieb, Hildy. *Board Recruitment and Orientation: A Step by Step Common Sense Guide*, Tucson, AZ: Renaissance Press, 2001.

⁵ Organizations may invite prospective board members to participate on committees or serve as volunteers before inviting individuals to serve on the board. This way, current board members have the opportunity to see prospective members “in action” to measure their enthusiasm and commitment before inviting them to serve.

accordance with the organization's bylaws. Each organization should be sure to select new board members in a way that is consistent with its bylaws.

A sample description for a Board Development Committee is found in Attachment A.

Board Diversity

Increasingly in recent years, board diversity has been recognized as critical to the success of nonprofit organizations. Today, nonprofits serve widely diverse communities - ethnically, culturally, and economically. To understand and effectively serve the needs of a diverse population, an organization's board needs to have the perspective of diverse voices at the table.

A homogenous board risks a narrow-minded perspective, which can distort the focus of the organization's mission, limit creativity, and narrow the introduction of new ideas. The board must not only recruit a broad spectrum of members, it must celebrate the richness brought to board deliberations and work hard to maintain the centrality of the organization's mission – the umbrella under which all should gather.

Also related to the issue of board diversity is the board's and the organization's commitment to cultural competency. As defined by the Minority Executive Director's Coalition, cultural competency is "a set of behaviors, attributes and policies enabling an agency (or individual) to work effectively in cross-cultural situations."⁶ It is incumbent upon the board of directors to raise its awareness of the diverse communities with which it works and to build its own skills in the area of cultural competency. For more information and resources, please see the *Standards for Excellence* educational resource packet on Cultural Competency.

The goal of having a diverse board, broadly representative of the community served by an organization, is sometimes difficult to attain. Executives and volunteer leaders whose organizations are committed to board diversity report that achieving diversity requires a sustained effort, often over many years.

As you work toward ensuring that your organization's board is diverse, the first step is to assess the diversity of the community served by your organization. Depending on the community served, you may be able to use readily available data. You also may be able to use census data or your own internal program participant database. Then, once you have a snapshot of the diversity of the community you serve, you should begin to assess your current board membership.

Many organizations use a board profile worksheet to evaluate the diversity of current and prospective members. Assessments of board diversity may focus on criteria like age, race, ethnicity, gender, geographic location, economic status, disability, and/or professional background. Once you have filled out a board composition worksheet, use the results to identify areas where your board currently has representation. A board composition profile worksheet is available in Attachment B.

This information will help you to strategically recruit members to enhance and balance the composition of your board. Pursuing board diversity requires a commitment. Both board and staff leadership need to affirmatively state that a goal of the organization is to pursue and attain diversity in

⁶ A *Working Definition of Cultural Competency*, Minority Executive Director's Coalition, January 2001.

the organization's governance and leadership structure. It may even be valuable to create a written policy stating the leadership's commitment to board diversity.

The policy on diversity could be included in the organization's bylaws, along with any other specific criteria for board membership that are important to the organization. The diversity policy could be separately stated. For example, the diversity policy could state:

The board of directors shall be composed of persons representing the diversity of the community that we serve, taking into account race, gender, economic status, age, and other factors.

Alternatively, more detailed criteria could be developed. Included in this packet, in Attachment C, are four alternative models for board policy statements on diversity.

Once the plan is developed, stick to it. For some boards, this plan may take a few years to implement. No board should be expected to achieve a diverse board overnight, but a working plan toward diversity is essential for a nonprofit board striving to serve its constituency adequately.

Terms of Service

If nonprofits are to remain viable in the long run, they must provide for leadership succession and board rejuvenation. The board should set up a system where there is regular rotation of existing members leaving the board and new members joining the board.

Terms of service allow a board to refresh itself and at the same time retain "seasoned" members for a set length of time. Defining terms provides motivation for those who want to stay on the board and allow the board the opportunity of removing non-performing or ineffective board members.

The other option is to provide term limits. Term limits may also:

- Help increase opportunities for new ideas and perspectives
- Lower the risk of the board becoming too closely aligned with management
- Provide more avenues for bringing on new board members with experience and backgrounds where the board is currently lacking⁷
- Allow a board to refresh itself and at the same time retain "seasoned" members for a set length of time
- Support adequate transfer of historical perspectives from seasoned board members to new ones
- Provide motivation for those who want to stay on the board
- Provide a convenient way of removing non-performing or ineffective board members

Nationally, according to BoardSource, 73 percent of boards have term limits.⁸ According to the Grant Thornton LLP National Board Governance Survey for Not-for-Profit Organizations, the number of boards with terms limits is 80 percent.⁹

At the same time term limits are not good for all and in some cases can be punitive to an active and committed board member who is prepared to serve for the long haul. Organizations may have no

⁷ Grant Thornton LLP, *National Board Governance Survey for Not-for-Profit Organizations*, 2007.

⁸ BoardSource, *Nonprofit Governance Index 2012*.

⁹ Grant Thornton LLP *National Board Governance Survey for Not-for-Profit Organizations*, 2007.

absolute limitation on service and permit unlimited participation so long as the individual is serving effectively. Many feel the opportunity for long term service is appropriate to represent certain interests critical to the organization, to retain long-term institutional memory, or to provide sufficient background and understanding of the organization to obtain the most effective leadership from its officers.

For those that have term limits, there are a variety of ways that terms for board members can be stated, for example: 2-three year terms, 3-two year terms, or 2-four year terms. According to the BoardSource's 2012 Governance Index, most board members serve three-year terms (69 percent).¹⁰ The number of terms that a board member may serve varies, but many boards nationally report that their term limits are defined as two consecutive terms (42 percent).¹¹

For those with term limits, bylaws usually define terms for board members and require that anyone finishing their tenure on the board must leave the board for a period of time (usually one year or one term) before eligibility for re-nomination. However, it is vital that boards do not guarantee that someone who has departed the board due to term limits will be re-invited to serve on the board in the future.

It is often important to keep retired board members connected to the board because they are passionate about the mission, in step with the needs of the organization, and often will continue to contribute their time and funds. While retired, encourage past members to serve on committees or on advisory/honorary boards. At the very least, past board members should be kept informed of the concerns and accomplishments of the organization through periodic contacts. Once a retired member has been off of the board for a while, some organizations allow and encourage their re-entry to the board.

Here is a sample term limit provision that can be used in your organization's bylaws:

Term of office shall be three years, (if using term limits, add "and members may serve for two consecutive terms"). A person appointed or elected to fill an unexpired term shall be considered to have served a full term if two or more years of the term remain. Appointments will be staggered such that no more than one third of the membership shall be renewed or appointed in one calendar year. Any voting member of the board who has served as such for xx years shall be ineligible to serve as a voting member for a period of one year.

Or

Each Director shall hold office for a term of three years or until a successor is duly elected. The initial board members shall be divided into three approximately equal groups, one-third (1/3) of the members to serve for an initial term of one (1) year, one-third (1/3) of the members to serve for an initial term of two (2) years, and one-third (1/3) to serve for an initial term of three (3) years. (If term limits) No person shall serve more than two (2) consecutive full terms on the board of directors. Persons serving an initial term of less than three (3) years may serve for two (2) additional full three- year terms. After serving the maximum time allowed, a person may again serve after being off the board of directors for one year.

¹⁰ BoardSource *Nonprofit Governance Index 2012*.

¹¹ BoardSource *Nonprofit Governance Index 2012*.

Compensation

There are a few exceptions to this model, but the all-volunteer board of directors is one of the hallmarks of the American nonprofit sector. The fact that board members serve without compensation allows them to be impartial and demonstrates their commitment to the organization and its mission in a way that a paid staff member could not. According to BoardSource, 97 percent of board members do not receive a fee or honorarium for services. This has remained fairly consistent since 1994.¹² A voluntary board of directors preserves the voluntary aspect of charitable nonprofits.

Some organizations choose to adopt a policy that reimburses board members for direct expenses. This is particularly prevalent in national or regional organizations with board members who must travel long distances to attend board meetings or organization functions. The reimbursement of direct expenses allows the organization to benefit from the wisdom of board members who could not serve without having their expenses covered.

Below is a sample bylaws excerpt addressing compensation for board members:

Directors shall receive no compensation for their services but may, by resolution of the Board of Directors, be allowed reimbursement for their expenses actually and reasonably incurred on behalf of the organization.

Board Size

Having a sufficient number of members to fulfill the board's responsibilities is important in every organization. Although the law requires only two directors, more directors are needed to foster a viable organization. According to a national BoardSource survey of nonprofit boards, the average number of individuals serving on a nonprofit's board of directors is 16¹³.

In 2004, BoardSource reported that the size of the board is "significantly related to the size of the budget; organizations with larger budgets tend to have larger boards."¹⁴

A board that is too small in size can create several types of problems.

- First, from a practical perspective, with a small board there simply may not be enough heads and hands available to do all the work necessary to sustain the organization. With a small board, the volunteer board members are often called upon to serve on multiple committees and engage in multiple tasks.

Often, small groups are forced to work as "committees-of-the-whole" for all of their activities. This could lead to board member 'burn-out.' Few individuals are capable of sustaining the continuous level of intense involvement that is required on a small board. Some organizations start out with very small boards and enlarge their membership over time.

- Secondly, on a small board, important decisions may end up being made by a very small group of people. For instance, when a board only has five members, the quorum may likely be set at

¹² BoardSource, *Nonprofit Governance Index 2012*.

¹³ BoardSource, *Nonprofit Governance Index 2012*.

¹⁴ BoardSource, *Nonprofit Governance Index 2004*.

three persons. A majority vote would carry with two of the three attendees present. Thus, official action binding the organization could be taken based on the views of only two people - hardly enough for the decision to be informed by a diversity of views and perspectives that would be present on a larger board.

- Thirdly, small boards may lack credibility in the eyes of funders, regulatory authorities, and other third parties. Competition for funds in the nonprofit sector has intensified substantially in recent years. In the course of choosing from among the many competing organizations, funders pay close attention to the composition of an organization's board of directors. The composition of the board can help to assure that funders' investments are likely to be well spent. Funders may assume that an organization with a very small board has not generated sufficient interest in the organization to attract committed individuals to board service. The composition of an organization's board is often viewed by funders and other outsiders as an indication of whether or not the organization is likely to thrive or even survive.

In addition, small boards also draw the attention of regulatory authorities. One of the fundamental concepts in the law governing nonprofit tax exemption is that charitable organizations must not be operated in a way that inappropriately benefits private individuals. When the IRS or state regulatory authorities see a nonprofit board controlled by a small group, they may become suspicious that the nonprofit is actually a closely held, for-profit enterprise attempting to masquerade as a nonprofit entity.

- Fourthly, on a small board, it becomes much more difficult to address conflicts of interest that may arise. Generally, when one board member has an interest in a transaction with the organization, the transaction must be approved by the remaining, disinterested directors. On a small board, the strength of personal relationships and loyalties may prevent the remaining directors from making truly disinterested decisions and may subject the board members to potential liability for breach of their fiduciary duties. For more information on conflicts of interest, see the Standards for Excellence educational resource packet of the same name.
- Finally, with fewer than seven members on the board, it is difficult to attain the level of diversity that allows the board to be representative of the community the organization serves.

Although this discussion has focused on the pitfalls of having a smaller board, an larger board also presents its own challenges. Some state laws specify a formula for the maximum number of board members on a nonprofit's board.¹⁵ Brian O'Connell, former president of Independent Sector, warned against boards that are too large and unwieldy where "there isn't significant enough (participation) to create a feeling of honor and responsibility."¹⁶ Large boards are also difficult to convene and can lead to cumbersome decision making processes.

Board Independence

The Internal Revenue Service (IRS) Return of Organization Exempt From Income Tax-Form 990 requests the organization's total number of board members and total number of independent board

¹⁵ Boardcafe, *By-Laws in Brief*, 11/25/02.

¹⁶ <http://www.compasspoint.org/boardcafe/details.php?id=42>

members. The IRS offers a detailed, three-part definition of whether or not a board member is considered independent based on:

- (1) compensation as an officer,
- (2) compensation as an independent contractor other than reimbursable expenses, and
- (3) whether the board member or family member was involved in a transaction with the organization including the following: excess benefit transactions, loans to and from interested persons, grants or assistance benefiting interested persons, and business transactions involving interested persons. (For instance, a board member would not be considered to be an independent member if her daughter served as a staff member of a related organization and earned \$40,000 in taxable income from that related organization.)

Nonprofits are required to make a reasonable effort to determine the independence of its board members. The IRS notes that such reasonable effort may include relying on information provided by the board members, such as information obtained through an annual questionnaire.

See Attachment D of this packet for a Sample Questionnaire on Family and Business Relationships and Interested Person Independence. It is certainly worthwhile for organizations to ask all board members, key employees, and top five highly compensated individuals to fill out this questionnaire soon after the close of the organization's fiscal year.

Selected Resources for Board Composition

Books and Articles

The Nonprofit Answer Book. Practical Guide for Board Members and Chief Executives, 3rd edition, Washington, DC: BoardSource, 2012.

Annie E. Casey Foundation Race Matters Toolkit. Baltimore, MD: Annie E. Casey Foundation, 2006. <http://www.aecf.org/resources/race-matters-toolkit-users-guide/>

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CompassPoint/The Board Café

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National Council on Nonprofits: Boards and Governance,

<http://www.councilofnonprofits.org/resources/resources-topic/boards-and-governance>

Attachments

- Attachment A: Board Development Committee – from the Standards for Excellence Institute, Board Room Quick Tips, 2007-2014.
- Attachment B: Board Composition Analysis – from the Standards for Excellence Institute, Board Room Quick Tips, 2007-2014.
- Attachment C: Statements on Board Diversity – from the Standards for Excellence Institute, 1999-2014.
- Attachment D: Questionnaire on Family and Business Relationships and Interested Person Independence – from the Standards for Excellence Institute, 2009-2014.

Attachment A
Board Development Committee
and Job Description



Board Room Quick Tip
A Series for Board Leadership

Board Member Development Committee Job Description

Why It's Not Just a Nominating Committee Anymore

The myth. There seems to be a myth that a group of people can come together for a couple of meetings a few months before an organization's annual meeting and be successful in appropriately filling board vacancies.

The reality. If you want a well-functioning board, whose members possess the necessary skills and passion to govern your organization, you have to start viewing board development as a perpetual process.

On the reverse side you will find one version of a Board Member Development Committee job description. No single description will suit the needs of all organizations, but it may be helpful in identifying gaps in your committee's operations.

SAMPLE JOB DESCRIPTION
BOARD MEMBER DEVELOPMENT COMMITTEE

Committee Composition (varies based on size and structure of board)

- Chair of the committee could ideally be the Vice President of the board, thus developing the board he/she will one day be responsible for.
- There should be no less than two members in addition to the chair, who are appointed by the President for a two-year team. (Terms should be staggered and if your by-laws allow could include non-board members)

Mission

To ensure that the composition of the board is reflective of the needs of the organization and the community and that board members remain engaged and productive.

Roles and Responsibilities

- Compile or develop needed materials, getting board approval where necessary, including:
 - Board Member Job Description
 - Prospective Board Member Application
 - Board Orientation Manual or Handbook
 - Board Member Bio form
- Ensure that the organization is in compliance with the bylaws as they relate to board composition and governance
- Maintain information on the expertise and interests of Board members for use by the board president in making committee assignments
- Monitor Board member participation and enforce Board rules on attendance and performance
- Re-evaluate the contributions of current board members up for re-election
- Anticipate vacancies on the board. Assess the organization's needs and identify appropriate board candidates
- Solicit the participation of board members, staff and volunteers in identifying potential board candidates
- Make recommendations to fill vacancies that occur between terms
- Create and maintain a meaningful interview process for prospective Board members
- Propose a slate of board member candidates and officers to fill vacancies to the full board of directors or membership for approval
- Conduct new Board Member orientation
- Arrange for ongoing training for all board members on "challenging" aspects of board governance such as fiduciary responsibility, risk management, etc.
- Arrange for ongoing board self assessment and change management
- Conduct exit interview of departing board members with an eye towards organizational improvement

Alternative Job Description

Roles and Responsibilities of a “Board Development Committee” or “Governance Committee”

Compile needed materials, getting board approval where necessary for the following areas:

Recruitment process

- Analyze board composition and constituency served to ensure representation of needs
- Insure that the organization is in compliance with the bylaws as they relate to board composition
- Determine experience and skill areas that need to be represented
- Anticipate vacancies on the board. Assess the organization’s needs and identify appropriate board candidates
- Make recommendations to fill vacancies that occur between terms
- Interview prospective Board members
- Develop and oversee Board Member Job Description
- Develop and oversee Prospective Board Member Application

Selection

- Ensure board members are aware of the selection process. Written procedures are preferable.
- Oversee the implementation of the selection process
- Propose a slate of candidates to fill vacancies on the board to the full board of directors or membership for approval
- Maintain information on the expertise and interests of Board members for use by the board president in making committee assignments

Orientation and on-going training

- Oversee development of Board Orientation Manual or Handbook
- Conduct new Board member orientation
- Ensure board members are aware of key responsibilities
- Provide training that includes review of responsibilities and expectations, interpretation of financial statements, board/staff relations, etc.

Evaluation

- Monitor Board member participation and enforce Board rules on attendance and performance
- Re-evaluate the contributions of current board members up for re-election
- Utilize instrument that allows board to assess its own performance
- Arrange for ongoing training for all board members on “challenging” aspects of board governance such as fiduciary responsibility, risk management, etc.
-

Attachment B Board Composition Analysis



Board Room Quick Tip **A Series for Board Leadership**

Does your Board have the skills and perspectives necessary to govern your organization?

Increase the productivity of your Board by ensuring you have the right mix of people. The right mix means:

Your Board should reflect the diversity of the population you serve, should be serving, or has a vested interest in your success. Age, race, gender, religion, and geography are just a few of the factors that should be considered.

Your Board possesses the full range of skills and expertise necessary to facilitate governing in furtherance of your mission. For help determining what these should be, refer to your strategic plan and/or grant obligations in addition to the “usual” lawyer, accountant, etc.

Use the grid on the reverse side to analyze your board’s composition. The categories along the side can be changed to reflect the specific needs of your organization. You may not have every category covered every board rotation, but over time you want to insure there is consistent representation of all interested parties.

Note: Balanced board composition is one of the reasons for not stipulating a specific number or board members but rather having a range i.e. No less than seven, but no more than 25 with a “goal” of 20. The reason, when that great person who fits a long-standing gap in your board composition comes alone, you don’t want to be out of seats. You also don’t want to be forced to fill a seat without taking composition into account if a board member unexpectedly resigns, and you fall below the minimum membership

This type of thoughtful analysis and planning is a wonderful tool in helping “interested” people to understand why you may not have a board position for them right now when you do have one for someone else who brings something unique to the board room table.

Board Member Name	Jane Q. Board Member									
Gender										
Female	X									
Male										
Age										
21-35										
36-50	X									
51-65										
Over 65										
Race/Ethnicity										
African American										
Asian	X									
Caucasian										
Hispanic/Latino										
Native American										
Other										
Expertise										
Program										
Planning/Evaluation										
Legal										
Personnel Administration	X									
Fundraising	X									
Financial Management										
Public Relations										
Social Media										
Resources										
Access – Funding										
Access – Expertise										
Access – Clients/Patrons										
Affiliation										
Union										
Neighborhood										
Law Enforcement										
Education										
Political										
Corporate										
Religious										
Media	X									
Small Business										
Medical										
Area										
Neighborhood										
City										
County										

Attachment C

Alternative Policy Statements on Board Diversity¹⁷

Option 1: General Statement

The Board of Directors shall be composed of persons representing the diversity of the [state/county/town name] community, taking into account race, gender, economic status, age, and other factors.

Option 2: General Statement Ties to Demographics of Local Population

In electing Directors to the Board, the Directors shall seek to maintain a racial and gender composition that reflects the population of [state/county/town name] area.

Option 3: Specific Issues

Since a purpose of the corporation is to promote the health, welfare, and self-sufficiency of members of the community who are living with physical or mental disabilities, at least 51 percent of the directors shall be persons with disabilities or family members of persons with disabilities.

Option 4: Designated Seats

Section 1. The governance of the Corporation shall be vested in a Board of Directors that shall be composed of up to fifteen (15) persons selected in the manner provided in these bylaws.

Section 2. Because one goal of the Corporation is to encourage broad participation in leadership of persons representing the diversity of the [state/county/town] community, a majority (51 percent or more) of the seats on the Board of Directors shall be allocated for minority individuals or persons who have immigrated to the United States. In addition:

- a) at least two (2) seats on the Board shall be occupied by persons of African American heritage or descent,
- b) at least two (2) seats on the Board shall be occupied by persons of Asian heritage or descent,
- c) at least two (2) seats on the Board shall be occupied by persons of Hispanic heritage or descent,
- d) at least two (2) seats on the Board shall be occupied by persons who are of other distinct ethnic or racial heritage or descent,
- e) at least two (2) seats on the Board shall be occupied by persons whose total household income is below the poverty level [150 percent of the poverty level],
- f) at least one (1) seat on the Board shall be occupied by a person with a disability,
- g) at least one (1) seat on the Board shall be occupied by a person whose sexual orientation is other than heterosexual,
- h) at least five (5) seats on the Board shall be occupied by persons who are female.

¹⁷ (c) Standards for Excellence Institute, 1999-2014.

Attachment D

Questionnaire on Family and Business Relationships and Interested Person Independence

Attached is a listing of officers, directors, trustees, key employees, the five highest compensated employees, and the five highest compensated professional and independent contractors. The IRS Form 990 requires that the organization report if any of these individuals are related to each other through family or business relationships.

The IRS definitions are:

Family relationships include an individual's spouse, ancestors, children, grandchildren, great-grandchildren, siblings (whether by whole or half-blood), and the spouses of children, grandchildren, great-grandchildren, and siblings.

Business relationships are employment and contractual relationships, and common ownership of a business where any officers, directors, or trustees, individually or together, possess more than a 35 percent ownership interest in common. Ownership means voting power in a corporation, profits interest in a partnership, or beneficial interest in a trust.

Please respond to the statements below (check box and provide explanation if needed):

- I have no family or business relationship with anyone on the attached list.
- I have a family or business relationship with someone on the attached list.

Name of related person: _____

Nature of relationship: _____

(Use reverse of this form if more than one related person.)

Please check all that apply regarding the independence of you or your family for the [organization name] tax/fiscal year that began on _____ and ended on _____:

- I have received compensation as an officer or other employee of the organization or of a related organization except as provided in a religious organization exception.
- I have received compensation or other payments exceeding \$10,000 during the organization's tax year from the organization or related organizations as an independent contractor, other than reimbursement of expenses under an accountable plan or reasonable compensation for services provided in the capacity as a member of the governing body.
- I or a member of my family was involved in a transaction with [organization name] (directly or indirectly through affiliation with another organization) including one of the following: excess benefit transactions, loans to or from interested persons, grants or assistance benefiting interested persons, or business transactions involving interested persons).
- None of the above statements apply to me or my family members.

Signed

Date

Source: Standards for Excellence Institute and Internal Revenue Service based on based on Internal Revenue Service Form 990 Instructions, 2009