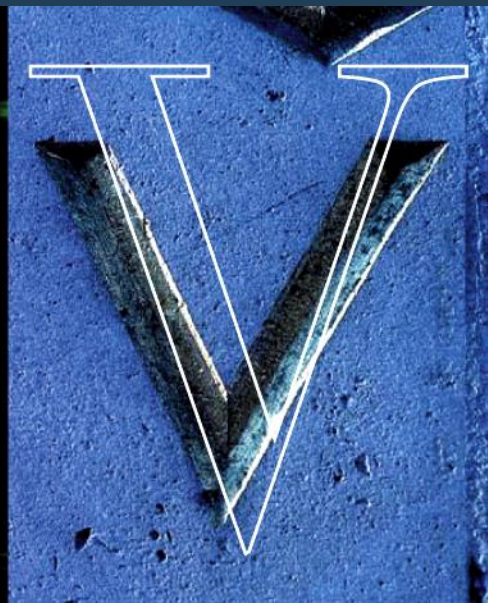
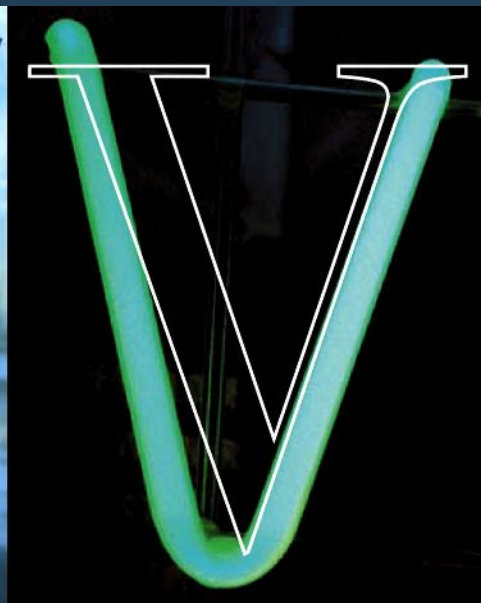
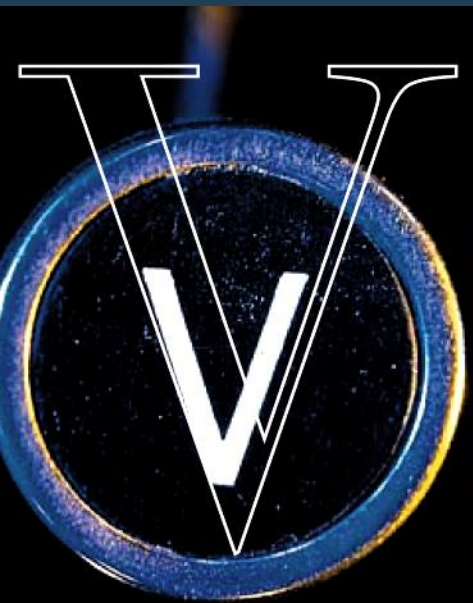


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NJAIS TRUSTEE ENRICHMENT DAY 2015 hardwiring good governance in the bylaws

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Basic Foundation of Good Governance

What is Good Governance?

**“Planning for the School your
Grandchildren will attend”**

The Rest is Commentary

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Overview of session

- Based on working with schools nationwide
- Substantial increase in legal claims
- Matters with un-anticipated legal implications
 - custody battles
 - confidentiality of board
- Causes:
 - economic times
 - higher tuitions & expectations (parents)
 - concern for job (employees & parents)
 - new legislation & increased enforcement
 - technology (good and bad)
 - general increase in litigation
 - poor governance
 - too many parent lawyers and parents who practice without a license



Top legal issues: board actions

- Breach of fiduciary duty
- Confidentiality
- Actions outside of scope of duty
- Governance documents
 - By-laws
 - Whistle Blower
 - Conflict of interest
 - Document Ret/Destruction
 - Charter/Articles of Incorporation
- Intermediate Sanctions
- Committees for risk management oversight
 - Executive committee
 - Audit committee
 - Personnel Committee
 - Investment Committee

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Board's fiduciary duty

- Authority to bind school
 - who can sign and amount limits for multiple signatures
 - what goes before board/finance committee
- Endowment investments
 - compliance with investment policy
- Audit and 990 completion
 - how is 990 presented to board
 - how is audit presented to board
- Retirement plans and oversight
- Review of budget
 - passing balance budget
- Assuming debt



Board's confidentiality obligation

- Deliberations and exchange of views essential
 - process requires full and honest discussion
 - chilling effect if question of confidentiality
- Board = speak with one voice; appear unified
 - trustees = support board decision or leave board
- Avoid “public” discussions of issues before the board
 - car pool line; spouse; supporters of “your” position
- Breach of confidentiality
 - breach of privacy (student/employee issue)
 - negative impact on decision (appearance of uncertainty)
 - personal liability (cause damage to school)
 - negative reaction by community (reduction in pledges)



Actions outside of scope of duty

- Board responsibility
 - establishes policy; creates strategic plan for the school
 - makes larger policy decisions
 - **supports head of school**
- Administration responsibility
 - responsible for daily operations of school
 - implements boards policy
- Board operating in administration's arena
 - legal claims by heads of school
 - prevents head from performing job
 - legal claims by employees
 - trustees spoke in behalf of administration
 - retaliation for failure to appease trustee



Intermediate sanctions

- Method for review of compensation of head, business manager and others
- Avoid payment of excess benefit
- Review directly or by board establishing a committee
- Compensation committee
 - ensures members have no conflict of interest
 - selects comparable schools
 - collects comparable remuneration of similarly situated professionals (more than just salary)
 - considers information
 - establishes remuneration
 - documents process
- Presentation to board
 - general vs detail



Conflict of interest policy

- Written policy
- Formally adopted by board
- Signed by trustees and head annually
 - perhaps others
- Create disclosure statement
- Process for disclosing conflicts
- Process for vetting conflict
- Include tracking system
- Confirm tracking in board resolutions
- Referenced in 990

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By-laws - general

- Review regularly to ensure compliance
 - Board’s actions must be consistent with by-laws
 - Failure to comply with by-laws invalidates boards’ actions
 - proxy vote not provided for in by-laws
 - e-mail notification of board meetings
- Use by-laws as good governance foundation
 - Consider how board wants to act as an entity
 - What is the board’s culture
 - transparency?
 - commitment to diversity?
 - ability to address issues?
 - level of “democracy”?
 - expectations of board service?



Format for selection of board members

- Governance committee
 - Who appoints the committee
 - Same system as other committees?
 - Former chair transitions to Committee Chair
- Governance vs Committee on trustees
 - Role and responsibilities
 - Selection of trustees
 - Selection of officers
 - Review of trustees
 - Removal of trustees
 - receives and investigates complaints, reports to board, makes recommendation
 - TRUSTEE LEAVES DURING DELIBERATION



selection of board members

- Trustees vs. Directors
- Number of Trustees on Board
- Selection of board members
 - Fixed skills or open spots
 - Design for needs of board
 - Who selects the candidates
 - Governance Committee, board in general or community
 - Level of Head of School participation
 - Can community make suggestions?
 - Interview process and vetting
 - Is there an interview process, who performs
 - Presentation to the board



voting and term limits

- Voting for board members
 - If membership or community involvement
 - One vote/family
 - Slate vs. individual nominees
 - Nominations from the board at meeting
 - Percentage vote needed
- Rotating terms
 - % of trustees that roll off each year
- Term limits of trustees
 - Years per term
 - # of terms can serve
 - Break between terms
 - Honorary trustees



leadership

- Board chair and other officers
 - Chair
 - unlimited vs. fixed term
 - 2 or 3 years? 1 year with renewal?
 - Who selects? Board, Governance committee?
 - Succession planning
 - Vice chair becomes chair?
 - Other officers
 - What positions exist?
 - Secretary, vice chair, treasurer,
 - Term limits?
 - Does term suspend during service
 - Can term extend if in leadership role

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votes, attendance & notice

- Percentage of votes needed for various decisions
 - What decisions are most vs. least important
 - Votes for:
 - removing trustee, employing and terminating head
 - Not established default to state law or Robert's rules
- Attendance
 - Meeting by phone or skype
 - Consequence of not attendance
- How are votes allowed
 - By proxy
 - Email Votes
- Notice to trustees
 - By email, letter, phone
 - Emergency meeting rules



committees

- Committees
 - What committees established
 - Creation of new committee?
 - Who can establish, what is needed to establish
 - Role of each committee
- Executive committee
 - Decisions between meetings
 - Regular meetings
 - With head of school
 - Creation of agenda
 - Plans for the year
- Head's committee
 - Evaluation of Head
 - Transition for new head
 - Work with executive coach



other issues

- Executive sessions
 - Standing session at end of each board meeting
 - With/without head of school
- Head of school
 - Selection and review
 - Method for establishing compensation
 - Intermediate sanctions obligations
 - 990 presentation to board
- Directors and Officers insurance and indemnification
 - Amount of coverage?
- Make up of board
 - Faculty? Student? Alumni officer? PTA officer?
Non-parents? Other head of school?



Policies

- Charter and articles of incorporation
- Whistle blower policy
- Document destruction and retention policy
- Intermediate Sanctions Policy
- Audit Policy
- Investment Policy
- Conflict of Interest Policy
 - Process for vetting conflict
 - Disclosure of conflict
 - Annual execution by trustees, head and cfo

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Charter and articles of incorporation

- Establishes school as legal entity
 - Do you know where your articles are?
- Review regularly
 - Check state filing
 - Document consistent with board modifications/amendments
- Charter or articles in “forfeiture”
 - Actions of board invalid
 - board acts without authority
 - School name can be taken
 - Loans and or financing in jeopardy
- JEPORDIZE 501 (c)(3) status



Whistle blower policy

- Ensures protection of employees who report financial impropriety from retaliation
- Care be taken to limit extent of reporting topics
 - Only financial impropriety
- Consider who accepts and considers complaints
 - Audit committee
 - Finance committee



Document retention and destruction policy

- Policy outlining how documents are maintained and destroyed
- Important for litigation
 - Once litigation filed documents must be kept
- Assists in litigation filed against school
- Assists in subpoena by parents
- Ensures maintenance of necessary documents
- Consider all documents including
 - Financial aid, development, application
- Consider all parties at school with documents

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