

## **Board Perspective on Recent WPI Bylaws Changes January, 2019**

Expectations of university boards and leadership have evolved significantly in recent years.<sup>1</sup> Reputational impact is far greater in the digital age, where social media and instant communication add velocity and dissonance to any potential crisis. Expectations of institutions to ensure the success and safety of students are growing<sup>2</sup>, and fundamental questions around freedom of expression and inclusive communities abound.<sup>3</sup> The value of higher education is being fundamentally questioned<sup>4</sup>; institutions are under significant financial stress.<sup>5</sup>

The governing board of an institution of higher education operates as the final institutional authority.<sup>6</sup> This means that the governing board is legally responsible for fiduciary oversight of the institution<sup>7</sup> and all institutional policies and practices are derived from, and subject to, the governing board's authority.<sup>8</sup> Governing board members bear major and ultimate responsibilities as fiduciaries of the college or university they serve.<sup>9</sup> To ensure that governing boards devote sufficient time and effort to fulfilling their fiduciary obligations, individual board members have legal duties which make them accountable for the risks and liabilities involved in operating the institution.<sup>10</sup>

Recent legal activity directed at institutions of higher education – e.g. Florida State University<sup>11</sup>, Hamilton College<sup>12</sup>, Michigan State University<sup>13</sup>, Dartmouth<sup>14</sup> – demonstrates the importance of board engagement, and of close attention to fulfilling their legal duties and responsibilities. This includes the responsibility to continuously improve their oversight in accordance with best practices.

In response to this changing external environment, WPI's trustees have committed to improving governance at WPI. They also seek to address concerns that have surfaced through internal work on managing risks, and while working on key policies and initiatives between the board, administration, and faculty. These interactions have highlighted a lack of clarity regarding roles, decision-making responsibility, and consultation processes on campus. The Board has resolved to do our part to provide needed clarity, and support the creation of processes to advance the effective and inclusive collaboration needed to ensure the University is appropriately responsive to both opportunities and threats.

As a result of these concerns, and recognizing the critical role the governing board has in addressing them, WPI's board has recently devoted considerable effort to the task of improving governance. While the changes to WPI's bylaws are viewed as a key component of the board's approach to fulfilling their responsibility<sup>15</sup>, they are only the latest step in a broader set of board activities in recent years aimed at improving governance. Appropriately, these actions initially focused on the work of the board itself. Actions taken over the past two years include:

- Conducting a self-assessment, which identified areas for improvement at the board and committee level
- Hiring a General Counsel to act as a professional Secretary of the Corporation to help strengthen WPI's approach to governance and issues management

- Establishing task forces on key issues identified as gaps in their current work (Public Affairs and IT)
- Updating committee charters and membership
- Benchmarking and deploying best practices in risk identification and management, and regularly discussing mitigation of key institutional risks in appropriate board committees
- Instituting rigorous executive sessions for the Trustees where critical risks and issues that have impact across the work of board committees are discussed
- Requiring that the President and leadership team share with Trustees any and all issues that may result in reputational damage.

The next step in the board's actions to improve governance has focused on WPI's bylaws. Enacting bylaws that define the institution's governing principles and high-level practices is one of the governing board's most important tasks. Governing boards are responsible for periodically reviewing and updating their bylaws in order to protect and position the university for success in a regulatory, risk, and opportunity environment that is constantly changing.

In the summer of 2018, WPI's governing board charged a group of trustees with reviewing WPI's bylaws, comparing our bylaws to those at peer and aspirant peer institutions, and recommending bylaws changes that would both address board concerns and align WPI with practices at other leading higher education institutions across the United States. Peer and aspirant institutions whose bylaws were reviewed in this process included American University, Brandeis University, Brown University, Carnegie Mellon University, Case Western Reserve, Columbia University, Georgetown University, Johns Hopkins University, MIT, Princeton, RPI, Tufts University, University of Chicago, University of Pennsylvania, and Yale.

The group charged with considering bylaws changes quickly discovered that although bylaws varied among these institutions, the vast majority of these leading universities had bylaws provisions that clearly articulated the roles and responsibilities for the positions – including President, Provost, Deans and the Faculty – to whom governing boards delegate responsibility to carry out the important work of the university.

Unlike peers, WPI's bylaws were focused almost entirely on internal board operations and procedures like the number of trustees, the number and name of board committees and how meetings were to be noticed and conducted. WPI's bylaws lacked any provisions defining the roles and responsibilities for the Provost, the Academic Deans and the Faculty. The group believed that the lack of guidance for these key roles posed substantial legal, reputational, and operational risk for WPI, through propagating the lack of clarity on roles and decision making.

To address the gap in WPI's current bylaws, over the summer and early fall of 2018 the group drafted and discussed new provisions to be added to WPI's bylaws, focused on clarifying

intended roles and responsibilities, as well as articulating the governing board's strong commitment to academic freedom and effective collaboration. Defining such roles at an appropriate level in the bylaws is intended to help enable WPI to operate in a way that is collaborative, inclusive and agile, respecting the critical roles of the governing board, administration and faculty in collective stewardship of WPI.

The group presented its report and recommendations to the board of trustees in September 2018 and the board approved the changes to the bylaws on November 2, 2018. The board looks forward to engagement with the faculty through the consultation process in the Spring of 2019, to increase mutual understanding, refine the pending bylaws changes, and advance our goal of improving governance at WPI.

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<sup>1</sup> David Leslie and Terry Mactaggart. 2008. [“The New Ethics of Trusteeship: How Public College and University Trustees Can Meet Higher Public Expectations.”](#) *Association of Governing Boards of Universities and Colleges (AGB)*, April 2008.

<sup>2</sup> AGB Press. 2016-2017. [“Executive Summary: Top Strategic Issues for Boards.”](#) *Association of Governing Boards of Universities and Colleges (AGB)*, 2016-2017 (“Striving to create a safe, secure environment for students, faculty members, and administrators must be a priority at every college and university. Boards must be active and engaged in helping to shape policies and practices that will help institutions work to meet that goal.”); Jeremy Bauer-Wolf. 2018. [“Duty to Protect.”](#) *Inside Higher Ed*, March 26, 2018 (“California Supreme Court has determined public colleges in the state must warn and shield their students from potential violent acts. Experts say the ruling could have nationwide implications.”); Robert Moran. 2018. [“Parents of Penn suicide victim sue university.”](#) *The Philadelphia Inquirer*, April 10, 2018.

<sup>3</sup> AGB Press. 2017. [“Freedom of Speech on Campus: Guidelines for Governing Boards and Institutional Leaders.”](#) *Association of Governing Boards of Universities and Colleges (AGB)*, 2017 (“[T]rustees have a crucial role, working proactively with their president and other institutional leaders to nurture and support a campus culture that unequivocally recognizes freedom of speech as central to the academic enterprise and steadfastly promotes inclusion and civility.”); Peter MacKinnon. 2018. [“Freedom of expression is under attack at our universities.”](#) *The Conversation*, February 7, 2018.

<sup>4</sup> Jonah Newman. 2014. [“Is College Worth It? You Might First Ask, ‘Worth It for Whom?’](#) *Chronicle of Higher Education*, May 29, 2014; Anna Brown. 2018. [“Most Americans say higher ed is heading in wrong direction, but partisans disagree on why.”](#) *Pew Research Center*, July 26, 2018.

<sup>5</sup> Jeffrey J. Selingo. 2013. [“Colleges Struggling to Stay Afloat.”](#) *New York Times*, April 12, 2013; Associated Press. 2018. [“Former students sue Mount Ida College.”](#) *The Boston Globe*, November 26, 2018.

<sup>6</sup> American Association of University Professors (AAUP). 1990. [“Statement on Government of Colleges and Universities.”](#); AGB. 2010. [“Statement on Board Responsibility for Institutional Governance.”](#) *AGB*, January 22, 2010.

<sup>7</sup> See for example Gary A. Olson. 2009. [“Exactly What is ‘Shared Governance?’”](#) *The Chronicle of Higher Education*, July 23, 2009 (“The truth is that all legal authority in any university originates from one place and one place only: its governing board. Whether it is a private college created by a charter, or a public institution established by law or constitution, the legal right and obligation to exercise authority over an institution is vested in and flows from its board.”)

<sup>8</sup> [AAUP, Statement on Government of Colleges and Universities.](#)

<sup>9</sup> AGB. 2013. [“Fiduciary Behavior: What's the Responsible Trustee to Do \(and Not Do\)?”](#) *AGB Trusteeship Magazine*, March/April 2013.

<sup>10</sup> Office of Attorney General Maura Healey. 2015. [“The Attorney General’s Guide for Board Members of Charitable Organizations.”](#) Commonwealth of Massachusetts, March 2015 (“If you are a trustee or a member of the board of directors of a charitable organization, you and your fellow board members are responsible for governing the organization. The law imposes upon you two primary duties: the duty of care, and the duty of loyalty. The duty of care means that you must act with such care as an ordinarily prudent person would employ in your position. The duty of loyalty means that you must act in good

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faith and in a manner that you reasonably believe is in the best interest of the organization.”); see also [AGB, 2013](#); AGB. n.d. [“Fiduciary Duties.”](#) *AGB Governance Brief*.

<sup>11</sup> WCTV Eyewitness News. 2018. [“Discrimination lawsuit filed against FSU Board of Trustees.”](#) WCTV, [September 28, 2018](#).

<sup>12</sup> Anemona Hartocollis. 2018. [“His College Knew of His Despair. His Parents Didn’t, Until It Was Too Late.”](#) New York Times, May 12, 2018.

<sup>13</sup> Cailin Crowe. 2018. [“‘Culture of Indifference’ and ‘Institutional Protection’ at Michigan State Stymied Investigation of Larry Nassar.”](#) *Chronicle of Higher Education*, December 21, 2018,

<sup>14</sup> Nell Gluckman. 2018. [“Dartmouth Allowed 3 Professors to Sexually Harass and Assault Students, Lawsuit Charges.”](#) *Chronicle of Higher Education*, November 15, 2018.

<sup>15</sup> AAUP, [Statement on Government of Colleges and Universities](#) (“One of the governing board’s important tasks is to ensure the publication of codified statements that define the overall policies and procedures of the institution under its jurisdiction.”)