



## SUNY Board of Trustees – General Summary Information

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### I. Introduction

Created by statute in 1948, the State University is a vast public higher education enterprise spanning the entire State, which includes twenty-nine "state-operated institutions" (university centers and doctoral degree granting institutions, comprehensive colleges, and technology colleges) and five "statutory colleges" administered on behalf of the State University, four by Cornell University and one by Alfred University. The Board of Trustees is responsible for the over-all central administration, supervision and coordination of the state-operated institutions and for general supervision of the statutory colleges. The Board of Trustees also exercise certain rights of approval with respect to thirty community colleges, each of which is a legal entity separate from the State University and from each other community college, and which are legally referred to as being operated "under the program of the State University." Informally, the 29 state-operated institutions, 5 statutory colleges and 30 community colleges are referred to as the 64-campus State University System.

The mission statement of the State University is set forth in statute as follows:

*The mission of the state university system shall be to provide to the people of New York educational services of the highest quality, with the broadest possible access, fully representative of all segments of the population in a complete range of academic, professional and vocational postsecondary programs including such additional activities in pursuit of these objectives as are necessary or customary. These services and activities shall be offered through a geographically distributed comprehensive system of diverse campuses which shall have differentiated and designated missions designed to provide a comprehensive program of higher education, to meet the needs of both traditional and nontraditional students and to address local, regional and state needs and goals.*

Two independent legal entities play particularly important roles in the operations of the State University. [The Research Foundation for the State University of New York](#), an independent not for-profit corporation chartered in 1951, administers sponsored research programs of the State University and provides additional services consistent with the charter of the Research Foundation upon the request of the State University. [The State University Construction Fund](#), an independent public benefit corporation created by statute in 1962, plays a lead role in the implementation of the capital program of the State University.

Various constituents are formally represented in the governance of the State University. Subject to the general management, supervision and control of the Board of Trustees, a campus council, comprised of gubernatorial appointees and a student member, supervises the operations and affairs of each state-operated institution. The comparable advisory body for the College of Environmental Science and Forestry is known as its local board of trustees. By regulation, the SUNY Board of Trustees has established the University Faculty Senate as the official body through which the faculty participates in governance, particularly with respect to educational policies and other professional matters. Legislation enacted in 2006 added the President of the University Faculty Senate as a non-voting member of the State University Board of Trustees, and legislation enacted in 2011 added the President of the Faculty Council of Community Colleges as a non-voting member of the State University Board. Also by regulation, the Board of Trustees has established the Student Assembly as the official body for student participation in governance. By statute, the President of the Student Assembly serves on the Board of Trustees as a voting member.

In addition to administrative staffs at each campus, a central administrative staff (familiarily called "System Administration") located primarily in Albany, provides services and support system-wide under the direction of the Chancellor and the Board. System Administration provides centralized academic, financial, legal, external relations, strategic planning, audit, student life, human resources, and other services to the campuses and the System as a whole. Within System Administration, the Chancellor has two primary bodies that support and carry out her work—the Chancellor's Executive Committee, and the Chancellor's Cabinet.

As set forth by the Policies of the Board, the Secretary directly supports the Board. Among other functions, the Secretary keeps Board records and files, and provides minutes of the proceedings of the Board and its committees. An introduction to the current staff in the Office of the Board of Trustees/Secretary and certain travel, invitation and reimbursement procedures is set forth under [Office of the Board of Trustees/Board Travel information](#).

As a Trustee, you take on the important duties of a fiduciary of the State University. As a fiduciary, and as required by the State Code of Ethics and the Code of Conduct for State University Officers, you must put your public duties before your private interests; that is, you have a duty of undivided loyalty to the State University you serve.

In addition, as a Trustee, you will encounter situations in which information you receive must be treated with confidence. The State Code of Ethics prohibits your disclosure of confidential information acquired in the course of your public duties. As part of your participation in the executive sessions of meetings of the Board or its committees, generally closed to members of the public, you may receive oral or written information of a proprietary nature, or with respect to an identified student the disclosure of which is protected by federal statute ("FERPA") from public disclosure without the consent of the student or other legal authority (e.g., by subpoena). You may also receive "protected health information" about students or patients which is protected by federal law ("HIPAA") against public disclosure without student or patient consent. Please discuss in advance with the Secretary and General Counsel any potential disclosure of confidential information that you receive in executive session or otherwise in the course of your activities as a member of the Board.

## II. Governing Structure of the State University

The State University of New York was created by statute, Ch. 695 L. 1948, the provisions of which, as amended from time to time, are codified and set forth in the Education Law, Art. 8. The State University is a corporation within the State Education Department, and all of the powers of the State University, derived from the statute, are vested in and exercised by the Board of Trustees, acting as a whole, and as delegated by the Board. The Board is currently authorized to be comprised of 18 members, 15 of whom are appointed by the Governor with the consent of the Senate, the President of the Student Assembly who serves as student Trustee *ex officio*, the President of the University Faculty Senate, and the President of the Faculty Council of Community Colleges who serve as faculty Trustees *ex officio* but without the right to vote. The Governor has the authority to designate the Chair and a Vice Chair of the Board of Trustees (although there has not been a Vice Chair designation in recent years).

The manner by which the Board convenes, takes up business and acts is set forth in the State University's enabling legislation, in the [Open Meetings Law \(Public Officers Law, Art. 7\)](#) and in [By-Laws](#) adopted by the Board. Eight Trustees attending a full board meeting constitute a quorum, and the vote of a majority of the Trustees in attendance is required to transact business. A non-voting member (a faculty Trustee) is not included in the number of members required to constitute a quorum of the Board or any of its committees, and the presence of a non-voting member is not counted to determine whether a quorum is present for a meeting of the Board or any of its committees. Whenever an act of the majority of members is required, an act of the majority means an act of the majority of members other than the non-voting members. Pursuant to the Open Meetings Law, to be counted as attending and to participate in a vote, a Trustee must be present in person or through videoconferencing; a Trustee who participates through teleconferencing is not counted as present toward a quorum or in voting.

Much of the work of the Board occurs in meetings of standing and special committees of the Board, comprised of Trustees, and most of the committees meet right before each regular meeting of the full Board. Like meetings of the Board, meetings of the standing committees are subject to the Open Meetings Law, and are held in public session unless an executive session is called, for limited authorized purposes. With the exception of the Executive Committee and the Charter Schools Committee, the role of the standing committees is advisory or preparatory only, and, subsequent to deliberations, the committees recommend actions for consideration and authorization by the Board. By statute and By-Laws, the Executive Committee is authorized between meetings of the Board of Trustees to transact business and exercise all powers vested in the Board, with limited exceptions. A list of the current standing and special committees and membership can be found under [Committees/Committee Chart](#).

While all powers of the State University are vested by statute in the Board of Trustees acting as a whole, by necessity the Board has adopted by resolution By-Laws, policies, regulations, guidelines and other directives which delegate to and vest in officers of the Board and University the exercise of various powers of the Board. For example, the Policies of the Board and corresponding regulations vest in the Chancellor functions of a chief executive, including authority to execute the Policies of the Board, authority to perform other duties assigned by the Board, and authority to assign powers, duties and responsibilities to University officers, faculty and staff.

### **III. Powers of the Board of Trustees**

The Board of Trustees exercises authority over a vast array of matters, many of a recurring nature. In the course of a year, the Board is likely to take up resolutions that relate to the following, among other matters:

- a master plan for the State University [required by statute every four years], or master plan revisions or amendments;
- submission to the Governor of an operating budget request and legislative proposals;
- following legislative enactment of a budget, campus-specific core instructional budget allocations;
- operating and capital budgets of the 30 community colleges under the program of the State University, including the tuition and fee schedule of each;
- approval of appointment by the local community college board of trustees of the president of each community college;
- the appointment of State University officers at the level of Vice Chancellor and above;
- the appointment of State University campus presidents;
- approval of the appointment by Cornell University of the head of each of the four statutory colleges administer by Cornell as representative of the State University Board, and the appointment by Alfred University of the head of the College of Ceramics, a statutory college;
- honorary degrees and the appointment of distinguished professors;
- certain real property transactions;
- participation by the State University in bond transactions by the Dormitory Authority of the State of New York, by which capital facilities of the State University and community colleges are financed;
- new policies and procedures;
- rulemaking;
- granting of charters to charter schools in the State, and other matters relating thereto [currently delegated to the Charter Schools Committee];
- appointment of the Board of Trustee's Executive Committee;
- matters relating to the State University's retirement programs; and

- salary plan adjustments mandated or authorized by legislation and collective bargaining, or otherwise as appropriate.

A compendium of the statutory powers of the Board of Trustees, many of which the Board has delegated to officers and staff, is attached under [SUNY Board of Trustees: Powers and Duties](#).

#### **IV. Role of the Board of Trustees and its Individual Members**

The role and responsibilities of the Board as a whole and individual members of the Board of Trustees are governed by statute (e.g. Education law and Public Officers Law), and by the common law requiring a fiduciary to serve loyally and disinterestedly.

The following general principles should guide Trustees in their work:

The Board as a whole should:

- Accept fiduciary responsibility for the long-term welfare of the University;
- Clarify the mission of the University within the constraints of State policy and approve programs necessary to fulfill the mission;
- Approve major policies, long-range plans, educational programs and annual budget;
- Marshall the resources necessary to pursue its strategies and to achieve its objectives;
- Monitor and evaluate the performance and effectiveness of the University in achieving goals and objectives; and
- Appoint, monitor, advise, support, encourage and evaluate the Chancellor.

Individual members of the Board should:

- Be informed about and support the mission of the State University;
- Maintain loyalty to the entire State University rather than only to any part of the State University or constituency within it;
- Support and enhance the public image of the State University;
- Prepare in advance for meetings of the Board and its committees, and regularly attend such meetings;
- Maintain the role of the Board as a policy-making body while leaving personnel, management and administrative matters to the Chancellor, presidents, and employed staff;

- Recognize that authority rests with the Board as a whole and not in its individual members;
- Support actions, policies and programs approved by majority vote of the Board;
- Recognize that the Chancellor is the primary spokesperson for the University and that the Chair of the Board is the only person authorized to speak for the Board;
- Support the Chancellor, while asking probing questions, offering key advice, and exercising critical judgment;
- Foster openness and trust among members of the Board, the administration, faculty, students, State government and the public;
- Conduct oneself in a manner which exemplifies the behavior expected of public officers of the State University;
- Communicate significant concerns to the Chancellor for administrative disposition; and
- Maintain the highest ethical standards and avoid conflicts of interest.

Overall, the Board is responsible for policy, oversight and governance of the University. The Chancellor, Presidents and other employed staff and faculty are responsible for management level decisions and implementation of policy. One best practice is that the Board should periodically evaluate its own performance.

National standards and best practices to guide trustees in the performance of governance roles have been developed and published by the Association of Governing Boards of Universities and Colleges, both in the form of a 7-page, 8-principles [“Statement on Board Responsibility for Institutional Governance.”](#) and in the form of a 46-page highly relevant pamphlet on “Effective Governing Boards, a Guide for Members of Governing Boards of Public Colleges, Universities and Systems,” which is contained in the inside left pocket of the Trustee Orientation Handbook. The Board of Regents of the University of the State of New York (the body that oversees the New York State Education Department, with varying degrees of authority over all public and private education in the State) has also issued a general [“Statement on the Governance Role of a Trustee or Board Member”](#). AGB and other organizations offer seminars, conferences and educational opportunities related to the role of boards of trustees and of the members thereof, and we expect to highlight some of such opportunities for Trustees from time to time.

## **V. Standard of Care; Defense and Indemnification**

### *A. Standard of Care*

A Trustee serves the University. A Trustee is required to discharge the duties of Trustee in good faith and with the degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions (Not-for-Profit Corporations Law §717(a)).

This standard is referred to as the "ordinary prudent director" test, and is a more stringent standard than a "reasonable person" standard (NfPCL §717, Practice Commentaries).

To act in good faith is to act with the best interests of the State University in mind, to avoid self-dealing and to avoid conflicts of interests and the appearance of such conflicts.

The exercise of appropriate diligence, care and skill requires a Trustee regularly to attend and participate in meetings of the Board and its committees, and to read, review and inquire about materials that relate to the State University, including materials prepared by staff and others in preparation for Board and committee meetings.

A Trustee, when acting in good faith and with appropriate diligence, may rely on information, opinions, reports or statements prepared by officers or staff of the State University or consultants who the Trustee believes to be reliable and competent in the related matter, and may rely upon a committee of the Board upon which the Trustee does not serve as to matters within the jurisdiction of the committee (NfPCL §717(b)).

#### *B. Defense and Indemnification*

In the event a current or former Trustee is named individually in a civil action brought in State or Federal court for an act or omission alleged to have occurred within the scope of the Trustee's public duties, the State will provide for the legal defense of the Trustee at the State's cost (Public Officers Law § 17). The Office of the Attorney General will represent the Trustee, or, if the Office of the Attorney General determines it to be appropriate because of a conflict of interest or for other reasons, the Trustee may be represented by private counsel, paid during the pendency of the action by the State. The State will pay the judgment or settlement in the action provided it is determined the Trustee acted within the scope of the Trustee's public duties and the damage or injury did not result from the Trustee's intentional wrongdoing. Settlements are subject to the approval of the State University and the Attorney General.

As a condition to obtaining defense and indemnification, a Trustee is required to deliver to the Office of the Attorney General the original or copy of the summons, complaint or other document that initiates the civil action within five (5) days of the service of the document upon the Trustee. In most cases this can best be accomplished by immediately forwarding a copy of all legal documents you may receive to the General Counsel, State University Plaza, Albany, New York 12246. If the documents served upon a Trustee require immediate action, please contact the General Counsel by phone (518-320-1645), and he can also be reached by email, at: [bill.howard@suny.edu](mailto:bill.howard@suny.edu). If for some reason going through the SUNY Office of General Counsel is not practicable or fast enough, a Trustee who resides in New York City or Suffolk or Nassau Counties, may send such legal documents and request for representation directly to the Attorney General, 120 Broadway, New York, New York 10271, and a Trustee who resides elsewhere may forward the documents and request to the Attorney General, State Capitol, Albany, New York 12224.

In a criminal proceeding brought in State or Federal court, the Attorney General will not defend a Trustee. The State may reimburse reasonable attorneys' fees and litigation expenses incurred by a Trustee in the defense of a criminal proceeding arising from a Trustee's alleged acts or omissions within the scope of the Trustee's public duties, but only if the Trustee is acquitted of the

criminal charges or the criminal charges are dismissed (POL §19). Likewise, the State may reimburse reasonable attorneys' fees incurred in connection with a Trustee's appearance before a grand jury if the grand jury does not issue an indictment against the Trustee. To be eligible for reimbursement, a Trustee must deliver to the Attorney General within ten days of entering a plea in a criminal proceeding a written request for reimbursement and the original or a copy of the accusatory instrument (e.g. criminal information or misdemeanor complaint). In the case of a grand jury appearance, a Trustee must deliver a written request for reimbursement and written evidence of the Trustee's appearance before the grand jury. Requests and legal documents should be sent to the Attorney General, Division of State Counsel, State Capitol, Albany, New York 12246, with copy to the General Counsel.

## **VI. Ethics**

The ethical conduct of a Trustee is governed by statute, regulations and a code of ethical conduct adopted by the State University Board of Trustees.

### *A. Statutory Provisions*

A Trustee is required to complete annually and to submit by May 15 to the Joint Commission on Public Ethics ("JCOPE"; formerly the Commission on Public Integrity, and prior thereto the State Ethics Commission) a financial disclosure form (Public Officers Law §73-a). The Joint Commission on Public Ethics will mail a copy of the blank financial disclosure form to the Trustee as part of the gubernatorial appointment process and annually thereafter.

[Public Officers Law §74](#) sets forth the code of ethics for State University Trustees and other State officers and employees. The rule with respect to conflicts of interests provides that a Trustee should have no interest, financial or otherwise, direct or indirect, and should not engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the discharge of the Trustee's public duties. More simply put, a Trustee must put his public duties before his private interests. Standards of conduct set forth in §74 include the following:

- A Trustee should not accept employment or engage in business or professional activity that will require the Trustee to disclose confidential information acquired as a Trustee;
- A Trustee should not use the Trustee's public position to secure unwarranted privileges for the Trustee or others;
- A Trustee should not give the impression that the Trustee can be unduly influenced by others in the performance of public duties;
- A Trustee should avoid personal investments in enterprises that will create substantial conflict between the Trustee's public duty and private interest; and
- A Trustee should avoid conduct that gives the appearance of a conflict of interest.

The Joint Commission on Public Ethics and its predecessors have interpreted POL §74 to

prohibit a State officer from soliciting or accepting a gift of any value depending upon the surrounding facts and circumstances. For this purpose a gift is broadly defined to include entertainment, meals and travel.

A Trustee who intentionally violates POL §74 may be subject to fine, or suspension or removal from office. Whether or not a scenario involves a violation of POL §7, particularly with respect to the acceptance of a gift, is often a complicated question of fact and law. A Trustee who is concerned that an act may constitute an ethical violation should discuss the matter with the General Counsel (518-320-1645). The Joint Commission on Public Ethics offers informal oral advice, informal (staff) written advice and formal (Commission) written opinions, the General Counsel may assist you in seeking oral or written guidance from JCOPE when appropriate. In the alternative, you may write to the Joint Commission on Public Ethics, 540 Broadway, Albany, New York 12207, or call (518-408-3976).

Often a potential conflict of interest or the appearance of a conflict may be avoided by disclosure and recusal. Under this mechanism, a Trustee would disclose to the Board the facts and circumstances which constitute the conflict between public duty and private affairs, or the possible appearance of such a conflict, and then voluntarily withdraw from participation in Board or Committee discussions and votes relating to the matter and temporarily absent oneself from sessions in which the matter is discussed. If need arises, please contact the Secretary & General Counsel to discuss disclosure and/or recusal.

#### *B. Regulatory Provisions*

Regulations of the State Ethics Commission prohibit a Trustee from serving simultaneously as a State University Trustee and officer of a political party or political organization or as a member of a political party committee, including as member of the national committee of a political party (19 NYCRR §932.2).

#### *C. State University Code of Ethical Conduct*

The State University Board adopted in 1999, and revised in May 2007, a [Code of Ethical Conduct](#) which regulates business and professional activities of State University Trustees and others.

Among the proscriptions set forth in the Code are the following:

- A prohibition against soliciting or accepting a gift from a registered lobbyist, or spouse or unemancipated child of the lobbyist, who has matters pending before the State University, including gifts to third parties such as charities, under circumstances under which an intent to influence official action may be inferred;
- A prohibition against the solicitation or acceptance of honorariums;
- An anti-nepotism prohibition against participation in employment decisions at any State agency, public authority or the Legislature;

- A prohibition against participation in State University contracting and investment decisions in which the State University Trustee has a financial interest;
- Prohibitions against political inquiries in contracting and employment decision making;
- A prohibition against compelling State officers and employees to make political contributions;
- A prohibition against contingent fee arrangements for services rendered in matters before any State agency;
- A requirement for competitive bidding when a State University Trustee, or the firm thereof, sells goods or services to any State agency; such persons are barred from receiving compensation when the person, or the firm, thereof, provides goods or services to any unit of the State University;
- A prohibition against gift solicitation or acceptance under circumstances that infer an intent to influence official action; and
- "Revolving-door" prohibitions against appearing before the State University on any matter within two years after departure, and a "lifetime" prohibition with respect to matters in which the State University Trustee personally participated.