

# CONSTITUENT BOARDS OF TRUSTEES: FACULTY, STUDENTS, & PARENTS



MARK E. BROSSMAN, ESQ.  
DONNA K. LAZARUS, ESQ.  
SCHULTE ROTH & ZABEL LLP

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# School Board Constituencies



- Independent School Boards represent many different constituencies or stakeholders including:
  - Students
  - Parents/families
  - Alumni
  - Faculty and Administrators
  - Head of School
  - Donors
- Many Schools have some (or all) of these constituents as Trustees on the Board. We will focus today on the challenges of having parents, faculty, and students as Trustees.

# DUTIES OF TRUSTEES



- DUTY OF CARE – Trustees have a fiduciary duty to discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the Trustee believes to be in the best interest of the School. Trustees must actively participate in making decisions on behalf of the School and must use their best judgment in doing so.
- DUTY OF LOYALTY – Each Trustee must keep the general interest of the School paramount to all other considerations. Trustees must set aside their own personal and professional interests and put the needs of the organization first.
- DUTY OF OBEDIENCE – Each Trustee must carry out the purposes for which the School was created, as articulated in the governing documents, and ensure that the School complies with applicable legal requirements.

# DUTIES OF TRUSTEES



- All Trustees, including Constituent Trustees, must uphold these fiduciary duties.
- In certain ways, having Trustees who are members of the School's constituencies can help the Trustee fulfill his/her fiduciary duties.
- In other ways, a Trustee who serves the dual hat of Trustee and member of another constituency (i.e. parent, faculty member, or student) can raise issues which can complicate the Trustees discharge of his/her fiduciary duties and raise challenges for the individual Trustee and the Board at large.

# PRO'S & CON'S OF CONSTITUENT BOARDS

## PRO'S



- Special Expertise - Constituent Trustees bring special expertise to planning and policy development. For example, administrators and faculty are part of the School's day-to-day operation and can offer a uniquely helpful perspective to the Board. Students, too, have views and insights into the immediate issues facing the School.
- Loyalty and Care – Constituent Trustees care deeply about the success of the institution. Parents entrust the School with their child's education and safety. Parents also pay significant sums of money to have their children attend the School. Faculty and Administrators have a special level of care and loyalty as well because the success of the institution impacts their careers and livelihoods.
- Fundraising – Some constituencies are more helpful than others in fundraising, but it is commonly believed that having parent Trustees assists in fundraising. Board members are often required or expected to make donations to the School, and having parent Trustees sometimes helps garner fundraising from other non-Trustee parents as well.

# PRO'S & CON'S OF CONSTITUENT BOARDS

## CON'S/CHALLENGES



- Conflicts of Interest- All Trustees are bound by conflict of interest rules, but we see an increased number of conflict issues arising with Constituent Trustees. Faculty and Administrators are conflicted from most of the decisions involving the faculty and involving the Head of School (their boss). Parent Trustees are not conflicted just by nature of having a child in the School, but occasionally their specific child may be involved in something the Board is reviewing.
- Special Relationships/Favoritism– Constituent Trustees must be careful to avoid even the appearance of impropriety in using their position as a Trustee to influence others (i.e. – a Faculty Trustee currying favor with the Head of School because of their position or a Parent Trustee threatening a teacher at the School to use the parent's position on the Board if the teacher does not provide special attention to their child. Parent Trustees oftentimes face pressure from school parent friends to advocate in a particular way and Faculty Trustees also receive pressure from their colleagues to represent their interests on the Board.
- Confidentiality– Confidentiality (or the lack thereof) is a big problem for School Boards. Concerns regarding leaks are heightened when dealing with Constituent Trustees because the Constituent Trustees oftentimes receive pressure from others to share inside information. For example, faculty will frequently seek information from the Faculty Trustee(s), and parents will seek information from their friends who are Parent Trustees.

# PARENTS



- In a 2015 NAIS survey, 52% of Heads and Board Chairs reported that more than half of their board members were current parents, and 44% reported that more than sixty percent of their board members were current parents.
- We see unique concerns with Parent Trustees including Parent Trustees who initiate or threaten to bring litigation against the School.
- Parent Trustees sometimes struggle with their confidentiality obligations as they balance their dual hats and personal relationships with parent friends.
- Parent Trustees face conflict concerns as they may be focused on their child's particular needs, their families specific concerns, or the concerns of their family friends. Focusing on the welfare of the School as a whole, when it may be in conflict with the immediate best interest of their family, can be a challenge.

# FACULTY/ADMINISTRATORS



- **Unionized faculty** – If your School has a unionized faculty, and has a faculty representative on the Board, the dual roles must be carefully considered and spelled out appropriately in documentation (CBA, Board By-Laws, etc.)
- **Conflicts of Interest** – Faculty Trustees must be particularly sensitive to conflicts of interest. They may teach the children of their fellow board members, they will work for the Head of School who is also supervised by the Board of Trustees, and they work for the institution which the Board makes short and long term decisions about. Faculty Trustees must be prepared to recuse themselves from discussions and votes which are inappropriate for them to participate in.
- **Confidentiality** – Faculty may expect Faculty Trustees to share information with them regarding the workings of the Board and changes which may impact the faculty. Representing the faculty and also appropriately discharging the Faculty Trustees fiduciary duties, can be a challenging balance to strike.
- **Head of School as Trustee** – According to the NAIS survey, most Schools have the Head of School as an ex-officio member of the Board (approximately 73%). About 17% have the Head as full voting member of the Board, and about 10% do not have the Head as a member of the Board at all. The Head of School serving on the Board raises all the same conflict and confidentiality concerns as a Faculty Trustee, but also the added complication of serving on the Board that directly supervises him/her.

# Students



- ✦ Most School Boards do not have students as voting Trustees (we are not aware of any but we have seen increased interest in the concept).
- ✦ New York Nonprofit Law does provide that "...a corporation organized for educational purposes primarily for the benefit of individuals below eighteen years of age may include one director below eighteen years of age who is at least sixteen years of age."
- ✦ Student Trustees raises conflict and confidentiality issues. A Student Trustee would be required to recuse themselves from many matters discussed and voted on at Board meetings and may chill discussion amongst adult Trustees.
- ✦ D&O insurance policies may not cover minor students.
- ✦ We suggest alternate structures to involve students in the Board (i.e. – allow a student or group of students to present at each (or certain) board meetings, or structure an advisory board which includes students separate from the voting Board of Trustees).

# Best Practices for Managing Constituent Trustees



- **Conflict-of-Interest Policies** - All non-profits should have conflict-of-interest policies and procedures for addressing conflict situations and transactions. We suggest, where appropriate, incorporating language into Conflicts Policies to address specific constituent trustee concerns (i.e.- faculty should recuse themselves in the following situations...)
- **Confidentiality Policies** – We suggest all School Boards have robust confidentiality policies which all trustees sign off on annually. Such policies can describe the special confidentiality challenges which Constituent Trustees may face (i.e. – "The Duty of Loyalty means that Trustees are not only prohibited from acting in their own self-interest, but they also may not serve for the benefit of individual constituencies, such as students, faculty, staff, parents, alumni, members or any other potentially interested parties, when doing so does not benefit the School as a whole.")
- **Diversify the Board** – while Constituent Trustees, especially current parents, can be an important part of the School's Board members, there should be other, non-Constituent Board members whenever possible (i.e. – alumni, past parents, community leaders, etc.).

# Best Practices for Managing Constituent Trustees



- **New Trustee Orientation/Education** – it is a good practice to have new trustee orientation to articulate the role of the Trustee, the expectations and fiduciary duties, and the mission of the School. For Constituent Trustees, it is helpful to have additional education which helps them identify and understand the special concerns that may come from their dual hat roles. Constituent Trustees should especially be taught/reminded of the following:
  - Trustees will have access to confidential and private information, and must keep such information confidential regardless of their external relationships.
  - Regardless of discord which occurs during Board meetings, discussions, deliberations, etc., the Trustee is expected to publicly demonstrate unity with the Board, and support of the Head of School.
  - If a Trustee finds their views diverge too significantly with those of the Board of Trustees, the appropriate recourse is to resign from the Board, not to initiate negative publicity, litigation, etc.
  - Trustees represent the School as a whole and must act in the interest of the School as a whole, not the Trustee's specific constituency or child.

# Questions?

