**Nonprofit Corporate Governance**

Some of the terms in this presentation have specific legal meanings. If any terms are unfamiliar, please write it down and I’ll define it after the presentation.

1. Why does corporate governance matter?
   1. First and foremost: as a highly visible Christian organization, we want to embody Christ-like values, including integrity, honesty, and fairness
   2. We want to be an organization that others look up to and model after; we want to be the example of a well-run nonprofit
   3. The principles outlined below are time-tested methods for a well-run organization—they’ve been in development since at least the mid-1500s and help ensure the organization has its best chance at success
   4. Following good practices will give a good reputation, resulting in:
      1. Enrollment
      2. High-quality employee applicants
      3. Willingness of donors to donate
   5. Finally, we’re obligated to follow these principles and rules by law
2. Duties of a Board
   * 1. Fiduciary: the Board is a fiduciary and each Board member is a fiduciary
     2. A fiduciary is one who holds something in trust for others:
        1. We hold and spend the donors money in trust for its intended beneficiaries: the students
        2. We hold the students educational needs in trust for them and the community
        3. We hold God’s resources in trust for His purposes
     3. The duties are owed both by the Board as a whole and the individual members personally
     4. The duties are:
        1. The Duty of Obedience (which comes from:)
        2. The Duty of Loyalty—this is the duty to always have the organization’s best interests in mind and act in accordance with the organization’s best interests
        3. The Duty of Care—this is the duty to act with the care, diligence and skill of a reasonably prudent person
3. Duty of Loyalty
   1. Obedience to the organization’s mission and founding documents
   2. Confidentiality about sensitive information
   3. Most importantly, the avoidance of conflicts of interest:
      1. Conflicts of interest are generally a financial interest in a Board decision (such as being hired as an employee or acquiring business for a company you own/own stock in)
      2. Conflicts also arise when you act to assist another person/entity/nonprofit/etc. while acting on behalf of our organization
      3. Conflicts can be broader—it is really any time you have something other than the best interest of this organization as a possible motivating factor (even if you think you can avoid letting it cloud your judgment)
4. Duty of Care: Active participation is key
   1. Attendance and Participation
      1. Regularly attend meetings
      2. Be prepared for meetings
      3. Be actively informed
      4. When necessary, get/create/read reports
      5. Actively provide and question ideas
      6. Express concerns
      7. Complete assigned tasks
      8. Create a culture & procedures for the Board and the Organization to ensure best practices
      9. (Bring your unique background, skills and perspective to the meetings to promote a diversity of views and ensure we pick the best ideas)
   2. Reports
      1. Prepared carefully and honestly
      2. Complete
      3. Do not overlook suspicions
      4. Double-check
   3. Investment
      1. Must invest carefully, but not TOO carefully
      2. Invest as a reasonably prudent investor, considering short- and long-term needs of the organization
   4. Donors
      1. Ensure donor restrictions are complied with
5. Transparency: not a duty in itself, but a way of ensuring the other duties and instilling public confidence
   1. Some transparency is required by IRS regulations and the Sarbanes-Oxley Act
   2. Generally,
      1. Provide easy public access to 990s
      2. Provide access to non-confidential information and procedures
6. Other sources of governance rules: Sarbanes-Oxley and Internal Revenue Code
   1. Have a process to protect whistleblowers
   2. Have a document retention policy
   3. File 990s
   4. Inform IRS and PA of changes to corporate structure, etc.
   5. Avoid excessive compensation to employees
7. Other sources of governance rules: Federal employment and other laws
   1. If we receive federal funds, we will be required to comply with other rules, some of which affect governance. This isn’t likely, so it should just be kept in mind.
8. Requirements imposed by these duties and statutory/regulatory law
   1. (Loyalty)
      1. Follow the organization’s mission
      2. Keep sensitive information confidential, unless otherwise authorized
      3. Avoid conflicts
         1. The Governance Committee will write a conflicts policy
         2. Disclose all potential financial interests of self, family (and friends)
            1. Fully inform the Board of the details of the interest, etc.
         3. If the Governance Committee deems the interest significant (always is significant for self and close family), you must recuse yourself from discussion and votes on the matter
         4. Non-interested directors must act disinterestedly (i.e., must not approve a transaction b/c you’re friends with the interested director)
      4. Any opportunities learned of in the course of organizational business belong to the organization
      5. Keep the organization’s best interest at the forefront when acting as a Board Member: it is more important than your money, your friends, your ideology, etc. in this capacity
   2. (Care)
      1. The Governance Committee will develop by-laws that govern the board
         1. including attendance requirements, active engagement, etc.
      2. Create and follow an ethics policy
      3. Create and follow an investment policy
      4. Create and follow other policies and procedures for the organization, such as non-discrimination policy, Executive compensation policy
      5. Follow donor restrictions strictly
      6. Select senior management (such as CEO, principal, deans) from a wide pool of applicants
      7. Completely interview and vet senior management candidates
      8. Consider regular audits🡪if too expensive, get finances reviewed by a professional accountant
      9. Regularly evaluate the performance of senior management
   3. (Other)
      1. Public access to 990s
      2. Independence of key committees (that is, members of key committees (such as Auditing, Executive Compensation, Governance) are not compensated employees and not involved in interested transactions with the organization)
      3. Policy and procedure to protect whistleblowers
      4. Document retention policy
9. Best Practices that we should (but are not required to) follow
   1. Balance the power of the paid senior management to prevent too much influence over the Board
   2. Ensure the overwhelming majority of Board members are Independent
   3. Have regular meetings of only independent directors
   4. Promote transparency of accounting procedures
   5. Rotate the head of the finance/audit committee(s)
   6. Limit board expenses
   7. Limit expenses for fundraising
   8. Provide extensive information in Form 990s
   9. Create and follow systems to prevent and detect legal and ethical violations
      1. Reporting systems
      2. Non-retaliation policies
   10. Follow IRC §4958 for Rebuttable Presumption of Reasonableness for executive compensation
       1. Steps:
          1. Advance approval by non-interested Board members
          2. Reliance on appropriate data
          3. Adequate, contemporaneous documentation of the decision and basis for the decision
   11. Regularly evaluate the performance of the Board, the Committees and the Board Members individually

In addition to general legal principles relating to Corporate Law and Nonprofit Organizations, I relied on the following sources in preparing this article. I have all of the documents on file.

1. Society of Corporate Secretaries & Governance Professionals, “Governance for Nonprofits,” New York: August 2008.

2. Lester M. Salamon and Stephanie L. Geller, “Nonprofit Governance and Accountability.” Communiqué No. 4. Baltimore: The Johns Hopkins Center for Civil Society Studies, October 2005.

3. BoardSource and Independent Sector, “The Sarbanes-Oxley Act and Implications for Nonprofit Organizations,” January 2006.

4. McDermott Will & Emery, “Best Practices: Nonprofit Corporate Governance,” 2004.

5. IRC § 4958.

6. Simpson Thatcher & Bartlett LLO, “Using the ‘Rebuttable Presumption of Reasonableness’ Procedure to Comply with the Final Regulations on ‘Intermediate Sanctions,’ February 2002.