

Fiduciary "Duties"

Duty of Care

A board member owes the duty to exercise reasonable care when he or she makes a decision as a steward of the organization.

Duty of Loyalty

A board member must give undivided allegiance when making decisions affecting the organization; he/she must act in the best interests of the organization.

Duty of Obedience

A board member is faithful to the organization's mission, in all actions, consistent with the central goals of the organization.

How to Minimize the Risk of Violating the Fiduciary Duties

The following summarizes important principles board members should keep in mind when analyzing a proposed decision to help reduce the risk of violating the fiduciary duties.

- 1. Deliberate Decision-Making.** Courts accord greater deference to decisions made with deliberation. Board members should not be hurried and specific board action should not be made in haste.
- 2. Board Preparation.** Documents and background information should be circulated before board members make any final decisions. Board members must use reasonable diligence in considering material information about a proposal.
- 3. Active Involvement by the Board.** Board members should regularly attend and participate in board meetings. Board members should probe to obtain information and assure themselves that those making presentations have done their homework. Board members should take sufficient time to resolve all of their questions.
- 4. Consultation With and Reliance Upon Others.** Board members should consult knowledgeable management officials and other advisors, as appropriate. Board members generally are entitled to rely in good faith on reports, opinions or other advice of officers or of outside experts, who the board members reasonably believe are qualified to provide such advice. Board members should read materials provided to them as thoroughly as possible and should raise any questions about the materials.
- 5. Establishment of a Record.** Board members should establish a record showing an inquiry into the basis for, and completeness of, reports provided by officers and other experts or advisors upon whom the board members rely. Board members should insure that the minutes are sufficiently detailed to establish an accurate record that the procedural and substantive points have been addressed.
- 6. Consider Substantive Factors of a Decision.** Courts have required that board members give appropriate attention to the material factors of the decision, such as the reasonableness of the money being paid; the future effects of a proposed decision; relevant employee and operational issues; and the long-term enhancement of the organization to be gained by such a decision.
- 7. Disclose Any and All Existing or Potential Conflicts of Interest.** As soon as an existing or potential conflict of interest arises, the board member should disclose it to the board in accordance with school policy and procedure. Upon learning of the conflict or potential conflict, the board should then act in accordance with the school policy and determine how the situation should be handled.