Overview of Fiduciary Roles and Responsibilities and the Financial Standards for Leaders

Al Llorens, Secretary – Treasurer, Illinois Education Association
COMPETENCY: BUSINESS

• Competency Progression Levels:
  – Level 1: Foundational
  – Level 2: Mobilizing & Power Building
  – Level 3: Agenda Driving

• Themes that will be Covered in this Session:
  – The fiduciary responsibilities as an officer
  – An overview of the Financial and Operating Standards
  – The importance of adopting the Financial and Operating Standards at all levels of the association
For Consideration

• What do you already know about fiduciary duties?
What is a Fiduciary?

• A fiduciary is a person or institution given the power to act on behalf of another in situations that require great trust, honesty and loyalty.

• A fiduciary must set aside his or her own personal motives and act in the best interest of the organization.

• A fiduciary cannot act in any manner adverse or contrary to the interests of the association.
What are my General Responsibilities as a Fiduciary?

• Act in the best interest of the association
• Use good faith and honesty when making decisions
• Exercise all of the skill, care and diligence that a prudent person would exercise when acting on behalf of the association
• The Board should strive to make the best or right decisions in all situations
What Duties are Part of Being a Fiduciary?

• Care

• Loyalty

• Good Faith

• Obedience
What is the Duty of Care?

• Requires you to exercise ordinary and reasonable care in the performance of your duties, while exhibiting honesty and good faith

• Dictates that you must act in a manner which you believe to be in the best interests of the association

• Act as an ordinarily **prudent person** in a like position would use under similar circumstances
Who is the Prudent Person?

Acting as a prudent person requires:

- Attendance
- Inquiry
- Skill
- Caution
- Use of best judgment
- Reliance on experts (as necessary)
When Should You Rely on Experts?

Unless a board member has knowledge that makes reliance unwarranted, you should reach out to experts when navigating legal, financial, or other matters that require knowledge outside of your basic competencies.
When Should You Look for Help?

Examples of situations where you should seek expert guidance include:

- Suspected criminal activities
- Financial irregularities
- Money management
- Infrastructure and Building Projects
- Staff Issues
- Issues with governmental agencies (such as the IRS, DOL, EEOC, etc.)
What is the Duty of Loyalty?

- Faithfulness to the association
- You must give your undivided allegiance to the association when making decisions
  - Cannot put personal interests above the interests of the association
  - Should disclose potential conflicts
What is the Duty of Good Faith?

• Always undertake your responsibilities honestly, conscientiously, and fairly
• Make decisions for the association that are in the best interests of all the association’s members and not for the advantage or benefit of one group over another
• Ensure that personality conflicts - or even the avoidance of such conflicts - does not get in the way of governing the association in a conscientious manner
  — This does not mean that you should not voice dissent
What is the Duty of Obedience?

• Requires officers and directors to act in accordance with the association’s articles of incorporation, bylaws and other governing documents, as well as all applicable laws and regulations
Willful Ignorance and Intentional Wrong Doing

- Cannot turn a blind eye to issues occurring within the association and then claim no knowledge
- Fiduciaries acting outside of or abusing their authority as officers and directors may be subject to personal liability arising from those actions
- Fiduciaries who, in the course of the association's work, intentionally cause injury or damage to persons or property may be personally liable, even though the activity was carried out on behalf of the association
The Role of the Board and Officers

• Establish strategic direction and annual goals and objectives
• Determine association policy
• Allocate resources through the budget
• Monitor progress
• Promote the organization
• Oversee operations through Executive Director or staff
• Recruit new leaders!
Financial & Operational Standards
Of the National Education Association and Its Affiliates

Modified: September 2010 – NEA/NCSEA
The Financial and Operating Standards

Developed by a joint taskforce of the NCSEA and NEA in an effort to promote a high standard of fiduciary and fiscal responsibility, as well as accountability for financial management at all levels of the associations.
The Financial and Operating Standards

To date, the NEA and 47 state affiliates have adopted the standards. The goal is to have all 51 state affiliates adopt the Standards AND all locals and councils.
We, the governance and employees of the National Education Association and its Affiliates (the Association), acknowledge our special responsibility to ensure the integrity, honesty and reputation of the Association. We pledge our support to the members, students and communities we serve. As leaders and employees, we are entrusted fiduciaries of the Association and the keepers of its voice. Members believe in us, support us and trust us with Association resources.

We, the governance and employees of the Association, accept the responsibility to treat Association resources with the utmost of care and to adhere to the highest ethical standards. To that end, we acknowledge the principles that will guide us, the control activities we will use to protect the resources entrusted to us, and our process to monitor those controls.

We acknowledge that to the best of the Association’s ability, the guidelines contained in this document have been adopted and implemented.

DATED this _____ of ______________, 20___.

President______________________________

Executive Director______________________
The Financial and Operating Standards

- Code of Ethical Conduct
- Whistleblower Policy
- Conflict of Interest Policy
- Internal Controls
- Audit Committees
Tone at the Top

• For the Standards to be effective it is necessary to set the “Tone at the Top”
• An organization’s leadership creates the tone at the top – an ethical (or unethical) atmosphere in the workplace
• The tone of the leaders at the top has a trickle-down effect on others
• As top level governance, the board of directors is responsible for setting the proper tone
Code of Ethical Conduct

1. Appropriate fiduciary responsibility over Association resources.
2. Not engage in activities that conflict with the faithful performance of your duties.
3. Comply with all policies, laws and regulations.
4. Respect confidentiality.
Code of Ethical Conduct continued

5. Provide Association members with information that is current, complete, accurate and appropriate.

6. Act professionally and with honesty and integrity.

7. Report violations of the code and adopt policies to address how violations that may occur are handled.

8. Hold each other accountable for upholding the Code of Ethical Conduct.
Whistleblower Policy

It is imperative that all reported incidents are taken seriously and investigated because a failure to do so whether intentional or inadvertent can lead to adverse consequences for the reputation and operation of the Association.
Whistleblower Policy continued

The purpose of the Whistleblower Policy is to establish procedures so that potential misconduct can be brought to the attention of the Association and appropriately investigated.
The Whistleblower Officer

The Whistleblower Officer is responsible for:

– The implementation of the Whistleblower policy
– Monitoring the implementation of the Whistleblower policy
– Provide updates to Association governance with regards to the ongoing implementation of the Whistleblower policy
For the Whistleblower Policy to Work....

• It is essential that all staff and governance of the Association are aware of the policy and
  • The appropriate steps to take when reporting potential misconduct
  • Who the Whistleblower Officers of the Association are
  • **AND** it needs to be regularly reviewed with the entire organization so that it remains an effective tool to deter fraud and malfeasance within the Association
  • All reported incidents must be investigated and then acted upon accordingly
Who is Covered Under the Whistleblower Policy of Your Association

- Only the staff and governance of your Association
- It is only for the protection of employees and governance of the association and not other parties outside of the association
The purpose of the Conflict of Interest Policy is to provide guidance to Association officials for complying with their fiduciary responsibilities.
Conflict of Interest Policy

• Association employees and governance should not have a:
  – Direct or indirect interest or relationship
  – Take any action or engage in any transaction
  – Incur any obligation which is in conflict with, or gives the appearance of a conflict with the Association’s best interests.
Scenarios to Illustrate Fiduciary Responsibility

• Scenarios for table discussion and report out are on each of the tables.

• Please read and discuss the scenarios provided at your table for 10 minutes.

• Identify a person to report out to the group on your conclusions.
Fiduciary Accountability

As fiduciaries of the Association there is accountability for taking appropriate measures to prevent and reduce the chances of mistakes, fraud or abuse from occurring.

The way to minimize this risk is by documenting, implementing and adhering to a system of strong internal controls.
Basic Internal Control Design

Internal Controls should be designed to:

– Prevent the chances of fraud from occurring
– Detect if fraud is occurring
– Mitigate the chances of errors or omissions of information from happening
Internal Control Procedures

Internal Controls are processes by which the association protects its assets from theft and financial reporting from intentional or unintentional mistakes

• AKA “Checks and Balances”
  – Top-level reviews
  – Segregation of duties
  – Physical controls
  – Information processing controls
Examples of Internal Controls for Associations

- Reconcile membership counts and dues on a timely basis
- Require dual signatures on all checks
- Do not sign blank checks to be completed later
- Do not write checks to “Cash”
- Do not issue or use debit cards
If Fraud or Malfeasance Is Suspected

• Take it seriously and do not ignore tell-tale signs
• Investigate and take the necessary steps to protect the Association’s assets and reputation
Internal Controls Protect Everyone

• Protects the Association, members, leaders and employees

“You Don’t Trust Me?!“

• Don’t assume you know anyone’s limits on temptation, grandmas steal too!
Who can you trust?

1

2

3

4

5

6
Who can you trust?

1. Officer, prominent booster, 8th grade English teacher, $13,900
2. 5 ESP, Bus driver, organized 75 new members, $38,000
3. Local’s secretary and “trusted” friend of Secretary/Treasurer, $192,000
4. Officer and art teacher, $56,000
5. Local’s secretary and “trusted” friend of Secretary/Treasurer, $192,000
The Audit Committee

- The role of the Audit Committee is for the oversight of the Association’s financial and operating systems
- Audit committees may be:
  - An existing governance body
  - A specially charged committee
  - And should be assisted by but independent of management
Audit Committee Members

• Audit committee members should be trained to understand basic accounting and finance concepts as well as the role of the independent auditor
• Consist of at least one member that has financial expertise and is independent of the Association
  – May look to other affiliates, locals or councils to provide an independent audit committee member
Audit Committee Responsibilities

• Recommends a public accounting firm to perform the audits

• Reviews and understands the audited financial statements
Audit Committee Responsibilities continued

• Meets with the public accounting firm and management to go over the audited financial statements

• Reviews audit findings including management letter comments on internal controls with the public accountants and management
Audit Committee Responsibilities continued

- Meets in executive session with the public accountants to discuss any possible audit problems, difficulties encountered or other findings with regards to the Association that need to be brought to the attention of the Audit Committee

- Reports annually to the Executive Committee and/or Board of Directors
Final Thoughts

• The board/officer and leadership experience should be a positive one

• The board is the caretaker of the association

• The board speaks as a whole, no board member should have more input or authority than others

• Use business sense; be respectful at all times

• Realize you “represent” the association

• Always ask questions as they arise (due diligence)

• Thank you for being a leader!
Session Outcomes

• The content from this session can be used in the following ways in your current position/role:
  – Assist you in understanding your fiduciary responsibilities and duties as an officer of your association
  – Help you to understand the importance of the Financial and Operating Standards
  – Encourage you to promote the implementation of and adherence to the Financial and Operating Standards at your Association
  – Task you with ensuring that internal controls are established and adhered to at your Association in order to prevent and deter fraud
  – Assist you with establishing an effective Audit Committee at your Association
Please complete the evaluation for this breakout session!