The Meaning of Fiduciary

MORE THAN JUST FINANCIAL OVERSIGHT, TRUSTEES' FIDUCIARY ROLE EXTENDS TO STUDENTS, STAFF, AND THE COMMUNITY.

BY J. NOAH BROWN

FIDUCIARY: *A PERSON OR ORGANIZATION THAT ACTS ON BEHALF OF ANOTHER person or persons, putting their clients' interest ahead of their own, with a duty to preserve good faith and trust. Being a* ***fiduciary*** *thus requires being bound both legally and ethically to act in the other's best interests.*[1]

The terms "trustee" and "fiduciary" often are used interchangeably. When describing the duties and responsibilities of community college trustees, financial oversight also is often mentioned, as it should be. But being an effective trustee goes way behind just financial oversight. This has been made abundantly apparent during the COVID-19 pandemic.

Community college trustees are appointed or elected and serve as governors of the college, college district, or state community college system. The responsibilities of trustees have been clearly articulated — not just by ACCT, but by countless authors, organizations, and researchers, as well as by students of governance. What we have witnessed over the past 10 months across our members' boards and the colleges they oversee has led us to apply a slightly different lens when seeking to understand the fiduciary aspects of trusteeship.

Implicit in the concept of being a fiduciary as described above is acting on behalf of others and in others' best interests. This goes beyond just simple financial oversight and prudent financial management, but to the heart of how colleges serve and protect their students, their administrators, their faculties, and their staffs. Even more broadly, fiduciary responsibilities also encompass how boards serve their communities — people who support and depend upon a dynamic, responsive, and engaged college.

1 https://www.investopedia.com/terms/f/fiduciary.asp

With the onset of the COVID-19 pandemic last March, boards were confronted with problems at a scale never experienced before by our entire community college sector. Many of these problems were local in nature and required national-level advocacy and coordination to resolve. Within a few short weeks, most colleges had transformed for the first time into online learning institutions. The issues associated with moving students completely online raised a panoply of challenges and choices that went to the heart of boards' fiduciary responsibilities. First and foremost was the imperative to protect the health and safety of both students and faculty from infection, avoiding the very real prospect of colleges becoming super-spreader epicenters. It is important for all trustees to realize that this is a fiduciary imperative — one that could indeed have financial implications, but one that supersedes financial oversight.

As the pandemic intensified, additional, often unanticipated realities surfaced. Many students were ill-equipped for an online environment. Many lacked the necessary hardware or access to broadband or Wi-Fi hotspots. Many, perhaps most, faculty were unaccustomed to teaching primarily online. Person-to-person connectivity was lost with students as too many campus phones went unanswered, and call centers were not equipped to forward calls to off-campus counselors and financial aid administrators. Emergency food pantries and support services were impeded in their efforts to provide critical subsidies to students in need.

Career and technical programs lost access to on-campus labs and training facilities. Nursing and allied health programs experienced real challenges relative to accessing the necessary hands-on clinical and simulated patient care and treatment training afforded through campus health sciences facilities. Confusion arose around nursing graduates' abilities to sit for the NCLEX — a critical step in becoming registered nurses with a license to practice.

All these complexities affect the ability of any community college to fulfill its primary missions of access to high-quality higher education for all students and to empower all students to succeed. This makes them considerations that all boards should prioritize in keeping with their fiduciary duties.

The pandemic certainly did not spare the boardroom, either. Trustees, unable to gather in person, needed to translate board meetings and committee meetings to effective online platforms — not necessarily a natural or intuitive experience for many trustees. Boards quickly discovered fissures in their bylaws or operating policies, not designed for governance at a distance. Figuring out how to hold workable board meetings and allowing the public to attend virtually presented challenges early in the pandemic for many boards. Communication among individual trustees and as a whole board sometimes bumped up against policies and state regulations related to open-meetings laws and prohibitions designed to mitigate interaction and discussion outside of duly convened board meetings and required quorums.

We at ACCT witnessed firsthand boards grappling with conducting retreats, CEO searches, and board and CEO evaluations as they were unable to convene in person. The level of commitment and earnestness exhibited by boards to continue to discharge their duties was nothing short of inspired. The desire to serve campus and community was not detoured by the pandemic, nor was the extraordinary steps taken to protect health and safety.

The speed with which many boards adapted and amended policies and practices underscored their insistence to meet their fiduciary responsibilities to the larger student, campus, and community populations. No doubt financial oversight and resource pressures have loomed large in board deliberations, but principal concerns to act on behalf of and serve constituents took center stage. For most boards, issues relating to institutional transformation and reaching out to students displaced academically, or experiencing mental health or other personal challenges, served to accentuate the basic fiduciary duties of care, loyalty, and obedience.

As approved novel coronavirus vaccines are now making their ways across the country and hopes are growing that pandemic might yet be brought under control by the middle of 2021, the changes wrought in our colleges and boards rooms alike will not magically disappear overnight — nor should they. The economic devastation created by the pandemic, coupled with shutting down of campuses, is bringing new urgency to vexing issues like educational access, unmet financial needs, other forms of inequality, and enabling student persistence and completion, just to name a few. These strike at the very heart of fiduciary responsibilities of trustees.

As we move into the spring and summer of 2021, boards will need to examine closely their assumptions and decisions that affect students and campus operations. Greater understanding of the impacts — both short and long term — of the pandemic and the economic recession on students, faculty, and administrators will be critical in helping to guide the difficult conversations and decisions boards will need to pursue to ensure that their colleges are sustainable and producing the needed programs and services to ensure vital communities and social and economic mobility.

The decisions focusing on serving students and greater communities are the essence of what it means to be a fiduciary. How to resource and finance the priority considerations moving forward must first be informed by a renewed and reinvigorated sense of mission and purpose, avoiding the pitfalls of first focusing on what has been lost or is immediately at hand. The job for boards moving ahead is akin to what successful entrepreneurs know and understand well: passion to create and serve, to take informed risks, to stake capital to transform and innovate are the ingredients that boards, as fiduciaries, must apply to move the community college sector forward and to demonstrate as it has so many times in the past that there are no educational or economic challenges that are beyond the reach of boards to effect and address.

To better understand the nuances of boards' fiduciary duties, I encourage you to read ACCT's recently published *Trusteeship in Community Colleges: A Guide for Effective Governance*, Second Edition (2020), available at acct.org/publications.

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