Illinois Public University Trustees: Guideposts and Guidance for Compliance and Successful Service

Illinois Board of Higher Education

September 29, 2026

Session Overview

I. Introduction, Purpose and Objectives
II. Powers and Fiduciary Responsibilities
III. Transparency
IV. Ethics, Conflicts and Related Considerations
V. Labor and Employment
VI. Financial Oversight and Accountability

I. Introduction, Purpose and Objectives

University of Illinois System

Scott Rice
University Counsel

Rhonda Perry
Deputy University Counsel

217-333-0560
312-996-7762
serice@uillinois.edu
rrperry@uillinois.edu



Trustee Training – *Requirement*

Voting board members of public universities must complete a minimum of 4 hours of professional development leadership training within 2 years of beginning service and every 2 years thereafter. [Board of Higher Education Act, 110 ILCS 205/13]

- Training should include, among other things:
  - public university and labor law, contract law, ethics, sexual violence on campus, financial oversight and accountability, audits, and fiduciary responsibilities

- Training materials available on the Illinois Board of Higher Education (IBHE) website at the Trustee Resource Center. https://www.ibhe.org/trusteetraining.html

- Failure to complete the necessary training after a grace period "constitutes a resignation" from the Board.

Objectives

- ***General*** **overview of concepts**
- **Not exhaustive**
- **Resource document**
- **Consult your university's legal counsel, ethics officer or other appropriate administrator**

Attorney-Client Privilege

"The attorney-client privilege protects communications made in confidence by a client and a client's employees to an attorney, acting as an attorney, for the purpose of obtaining legal advice." Upjohn Co. v. United States, 449 U.S. 383 (1981)

Who "owns" the attorney-client privilege – who is the client?

- Rules of Professional Conduct: in-house attorneys "represent the organization acting through its duly authorized constituencies"
- In other words, **the university, acting through its board of trustees, is the "client**," not any one individual
- Privilege applies equally to in-house attorneys and outside attorneys retained by the university to advise/represent it
- Privilege limited to high-level decision-makers (the so-called "control group" test)

Attorney-Client Privilege (cont'd) Practice Tips

- Exercise care in handling attorney-client privileged communications
- Simply adding a "cc" to a university (or outside) attorney to an email *does not itself* confer the attorney-client privilege
- Trustees should avoid sharing/distributing any attorney-client privileged information to others as it likely would be deemed a waiver of the privilege
- Forwarding *non*-privileged material to a university attorney does *not* confer privilege

II. Powers and Fiduciary Responsibilities

Creation of Universities and Board Authority

Illinois *public* universities and their respective Boards of Trustees are created by state statutes.

These "enabling" statutes:

- Delineate powers and duties of Trustees
- Set forth provisions concerning Trustee eligibility and selection (including student trustees)
- Describe conflict management expectations
- Numerous other provisions

Role of Board

"The institution's board of trustees…governs by making decisions about institutional plans, programs, budgets, policies, risk management and certain employment matters as recommended by the administration. They also have the authority to hire and fire the president or chancellor. Governing boards provide oversight but do not manage day-to-day operations. Day-to-day management rests with the administration." (*Boards: Who's Really in Charge?* Inside Higher Ed (November 15, 2021))

Boards can face challenges when defining the boundaries of "oversight" in both routine operations and crisis matters.

- Michigan State Mass Shooting Report (2023): "Our takeaway based on multiple interviews is that the Board of Trustees members wanted to help but became involved in the incident beyond the customary role and expectations of a governance board during an emergency." (https://msutoday.msu.edu/-/media/assets/msutoday/docs/independent-review-of-feb-13-response-released/msu_after-action_report.pdf – page 10)
- University of Illinois Admissions (2009): "…Board of Trustees failed to discharge its duty as a governing board and, in particular, failed to exercise the care and diligence appropriate to protect against admissions-related abuses." http://archives.provost.illinois.edu/reaccreditation/Admissions%20Report.pdf – page 5)

In addition to general roles and duties, check your bylaws and external institutional standards or similar documents in highly specialized areas such as athletics or membership organizations.

Fiduciary Duties

As a Trustee, you owe a *fiduciary* duty to the University that you serve.

- Highest duty recognized by law
- A fiduciary must act in good faith with a high standard of care, trust, confidence, and candor *for the benefit and best interests of another*
- Judicial decisions typically recognize three aspects of fiduciary duty for board members: Duty of Care; Duty of Loyalty; Duty of Confidentiality

Duty of Care

- Make informed, prudent decisions
  - Attend meetings
  - Review materials beforehand and be prepared to participate
- Use sound judgment
- Courts review board decisions under the "business judgment" rule, which presumes *in favor of* the board and asks whether board members:

  i) acted in good faith;

  ii) with the care that an ordinarily prudent person would exercise under similar circumstances
- Reliance on administrators' expertise and advice is *acceptable and expected* given through experienced & capable individuals hired to carryout the operations of the University

Duty of Loyalty

- Board members must put the University's mission and interests first.
- Especially important regarding self interest, potential conflicts of interest, etc.
- University enabling statutes and other State laws (*e.g.* Procurement Code) prohibit any member of university's governing board to be ***directly or indirectly*** interested in any contract to be made by the university for any purposes whatsoever.
- ***When in doubt, disclose, recuse and abstain to avoid even the "appearance of impropriety"***

Conflicts of Interest

A conflict of interest (COI) arises when a factual situation impairs or may impair a Trustee's ability to discharge his/her duty of loyalty to the university. Several sources for COI principles:

- University-specific Statute

  "[N]or shall any member of said board be directly or indirectly interested in any contract made by said board for any purpose whatever." [U of I Trustees Act, 110 ILCS 310/3]
- Other Statutes, Regulations or Expectations
  - Procurement Code
  - Public Officer Prohibited Activities Act
  - Ethics Act
  - IBHE
- Judicial Decisions, Executive Orders, Attorney General Opinions
- University Policies

Duty of Confidentiality

- Board members should not disclose/discuss non-public matters outside board setting
- Can be challenging given your public facing role
- There may be disclosure or additional confidentiality requirements that should be managed through appropriate personnel (*e.g.* procurement, FOIA, audits)

III. Transparency

Illinois Freedom of Information Act "FOIA"

- Access to public records is a fundamental obligation of government to promote transparency. [5 ILCS 140/1]

- "Public records" are any form of record – hard copy or electronic – that pertain to the transaction of public business "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." [5 ILCS 140/2(c)]

- Presumption is in favor of production and burden is on public body to prove exemption applies by clear and convincing evidence. [5 ILCS 140/1.2]

FOIA – Exemptions

FOIA has 36 separate narrowly construed exemptions. Some of the most relevant include:

- "Private information" (*e.g.*, SSN, driver's license number, employee ID number, home or personal telephone numbers, and personal email addresses)
- Information prohibited from disclosure by federal or State law or rules and regulations implementing same
- Preliminary drafts, notes, memoranda, etc. in which opinions are expressed or policies or actions are formulated
- Trade secrets and commercial or financial information
- Proposals and bids for contract or grant
- Minutes of meetings closed to public

FOIA – Governmental Function

Special rule for records in possession of a party with whom the public body has contracted to perform a governmental function on behalf of the public body: if record directly relates to the governmental function it "shall be considered a public record of the public body…." [5 ILCS 140/7(2)]

Illinois courts have found personal emails, texts, etc. transmitted on personal devices may be subject to FOIA if they "relate to the transaction of public business" [*City of Champaign v. Madigan, 2013 IL App (4th) 120552 (2013)*]

FOIA: Tips

- Broad scope/reach of FOIA
- "Document" is broadly defined
- Role of PAC
- ***Before*** creating a written communication, ask yourself:
  - Is an email appropriate and prudent?
  - Is this something that I should put in writing (possibly forever)?
  - What device/account am I using?
- Consult with your university's designated FOIA Officer
- Federal FOIA is different structure – consult with your Legal Counsel or Grants Office

Illinois Open Meetings Act "OMA"

- Intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." [5 ILCS 120/1]
- The OMA applies to a "meeting" of a public body: a "gathering" of a "majority of a quorum" of the members "for the purpose of discussing public business." [5 ILCS 120/1.02]
- Special rule for 5-person body: Act triggered by quorum
- Does not include purely social events but be careful!

OMA – Summary of Provisions

- Presumption of public discussion of university business by Board
- Quorums – Rely on your Secretary and/or Parliamentarian
- 48 hours' advance notice of regular meetings required; agenda is key; no "walk on" agenda items (*Rice v. Adams County*); special rules for special meeting (24 hours) or emergency meeting (as soon as practical); notice to be posted in physical location of meeting and website
- Closed or "executive" session is allowed if specific criteria are met
  - Verbatim record of executive session required
  - No final action in executive session
- Trustees must complete online OMA training within 90 days of appointment
- Public Access Counselor role

OMA – Public Comment

- Mandated for all public bodies, including universities [5 ILCS 120/2.06(g)]
- Public bodies may adopt reasonable restrictions:
  - Amount of time allocated for that purpose
  - Number of speakers
  - Requiring would-be speakers to ask permission to speak is judicially disfavored as "prior restraint" but defensible
    - May require that proposed topic relate to matters within the Board's jurisdiction
    - Deadline for request should be *after* meeting agenda published
    - Avoid "viewpoint discrimination" in considering requests

IV. Ethics, Conflicts and Related Considerations

State Officials and Employees Ethics Act

"SOEEA" or "Ethics Act" [5 ILCS 430]

- Executive Ethics Commission ("EEC") promotes ethics in public service & ensures that the business is conducted with efficiency, transparency, fairness, and integrity
- Ethics Act defines "State agency" to include the boards of the nine public universities [5 ILCS 430 /1-5]
- Section 5-10 requires university "employees" to complete Ethics training within 30 days after commencement of office/employment and annually thereafter
- Employees who do not complete the training as directed may be subject to disciplinary action and administrative fines up to $5,000 by the EEC

Elected or appointed trustees of a board of a state agency are included in definition of "employee"

Ethics Act – Statement of Economic Interest

- Certain individuals, including Trustees, are required to annually file a Statement of Economic Interest with the Office of the Secretary of State

- Under Illinois Executive Order 15-09, certain individuals, including Trustees, also must submit a Supplemental Statement of Economic Interest (SSEI) form online with the Executive Ethics Commission

Ethics Act – Revolving Door

"Trustees may not within a period of one year immediately after termination of membership on the Board knowingly accept employment or receive compensation or fees for services from a person or entity having State contracts with a cumulative value of $25,000 during the year immediately preceding termination of Board membership." [State Officials and Employees Ethics Act, 5 ILCS 430/5-45 emphasis added]

- Violation is a Class A misdemeanor
- EEC may levy fine of up to 3 times the total annual compensation that would have been obtained in the position

Ethics Act – State Gift Ban

- Article 10 of the Ethics Act requires employees of university or any state agency, as well as their immediate family members living with them, not to accept or solicit gifts from prohibited sources
- Gifts defined as anything of value -- items with monetary value, entertainment, hospitality, gratuities, discounts, loans, or forbearance
- Prohibited Sources:
  - Current vendors (including spouses and immediate family members living with them)
  - Any individual or entity seeking to conduct business with university or any other state agency
  - Those seeking official action or who have interests that may be substantially affected by the performance or non-performance of the official duties of a university employee or the university

Ethics Act – Gift Ban (cont'd)

- **Exceptions** relevant to universities:
  - Travel expenses for meetings to discuss State or University business
  - Food, refreshments, lodging, transportation, other benefits resulting from outside business or employment activities
  - Educational materials and missions (must be approved in advance by the Executive Director of the EEC or university Ethics Officer. Check with your university's Ethics Officer regarding that process.)
  - E.O.15-09 eliminated the "*de minimis*" exception for executive state agencies (effective Jan. 2015)

For a full list, consult your Ethics Officer or training materials

Ethics Act – Gift Ban (cont'd)

Employees who unintentionally accept a gift from a prohibited source that does not fall within an exception should:

- Return the gift to the prohibited source;
- Make a monetary contribution to a 501(c)3 charitable organization equal to the market value of the gift and keep the gift; OR
- Donate the gift itself to a 501(c)3 charitable organization
- Maintain documentation (*e.g.* donation receipt, proof of payment)

When in doubt, ask your Ethics Officer!

Prohibited Political Activity

- State employees are **prohibited** from engaging in certain political activities while on State time or State property or using State property or resources. [5 ILCS 430/5-15]
- Types of prohibited political activity include:
  - Planning or attending political events
  - Campaigning or working on a political campaign
  - Preparing or distributing political campaign literature
  - Making or soliciting political contributions
  - Attending or organizing political events
  - Preparing or circulating petitions on behalf of political candidate OR for/against any referendum
  - Soliciting votes on behalf of political candidate

Prohibited Political Activity (cont'd)

University E-mail

- Do not use your university email account or other university resources to send or receive political email.

- If you receive a political email in your university email account, you should not forward it to anyone. You may wish to consider asking the sender not to send such emails to your university email address.

- If you have questions regarding any political activity/emails sent to your university email account, contact your university's Ethics Officer.

Harassment and Discrimination Prevention

- Each “employee” must complete annual harassment and discrimination prevention training; if filling vacancy, must do so w/in 30 days [5 ILCS 430/5-10.5(a-5)]
- Board members receive the same training as (other) university employees
- To report an incident:
  - Your university’s reporting mechanisms
    - Office of Access & Equity/Equal Opportunity
    - Ethics Office
  - Office of Executive Inspector General
  - Illinois Department of Human Rights

Sexual Violence on Campus

- Sexual Violence/Sexual Assault is a form of Sexual Harassment, which is a form of Discrimination
  - ➢ Some of the laws and regulations your universities are considering:
    - Title VII of the Civil Rights Act of 1964 (employment)
    - Title IX of the Education Amendments Act. (education)
    - Violence Against Women Act (VAWA)
    - Illinois Human Rights Act [775 ILCS 5]
    - Illinois Preventing Sexual Violence in Higher Education Act [110 ILCS 155]
- Be aware of policies
- Report behavior you believe may violate the policies
- Resource: https://www.illinoisattorneygeneral.gov/Safer-Communities/Responding-to-Sexual-Assault/Sexual-Assault-on-Campus/

V. Labor and Employment

Labor and Employment

Consult with your university's labor and employment team regarding key topics, such as:

- Collective Bargaining
  - Exclusive Representation
  - Mandatory subjects of bargaining
  - Duty to Bargain in Good Faith
- Grievances, unfair labor practices (ULPs) and strikes
- Unique higher education principles such as tenure, tenure revocation, "academic freedom" protections etc.

Note: Illinois higher education public sector institutions are covered by the Illinois Educational Labor Relations Act ("IELRA")(1984), not National Labor Relations Act. Entities such as the Illinois Educational Labor Relations Board and the State Universities Civil Service System and IBHE help shape policy.

Executive Leadership Contractual Regulations

President and Chancellor **Employment Agreements**:

- University enabling statutes require Board to approve employment contracts of the president and/or chancellors in accordance with OMA
- Must include proposed financial compensation structure, including performance-based or incentive bonus
- Not exceed 4 years, with determinate start/end dates
- Not include any automatic rollover clause
- Severance cannot exceed one year salary and benefits

President and Chancellor **Annual Performance Reviews**:

- Must be considered when the Board contemplates a bonus, raise, incentive-based compensation, or severance agreement
- Must be published on university website

Executive Leadership Contractual Restrictions (cont'd)

Government Severance Pay Act [5 ILCS 415]

- Contracts with public university officer, agent, employee that includes severance provision limits severance to:
  - An amount that does not exceed 20 weeks of compensation
  - Severance pay not permitted if officer, agent, employee fired for misconduct
- Misconduct includes:
  - Deliberate violation or disregard for "reasonable standards of behavior"
  - Carelessness/negligence that shows intentional/substantial disregard of duties
  - Chronic absenteeism
  - Willful/deliberate violation of standard or regulation which would cause an employer to be sanctioned or have certifications suspended
- Pay of president/chancellor transitioning to another department may not contractually exceed the annual compensation of highest paid employee in the department
- Does not apply to employment agreements for intercollegiate athletics if funded by non-appropriated funds

VI. Financial Oversight and Accountability

Oversight and Accountability Regulations

Dozens of different regulations that may apply, depending on situation.

Enabling Legislation: Many elements of the ***Fiduciary Duties*** may be codified.

Illinois Procurement Code and Rules

State Finance Act: Both general and operational expectations (*e.g.* contracts and renewals of $250K or more in a fiscal year must be approved by president, chief fiscal officer and chief legal counsel of the university (or their approved delegates)) [30 ILCS 105/9.02]

State Property Control Act: Once goods, equipment, or real property is purchased, it becomes State property, and with certain limited exceptions, may only be sold or disposed of by a university in accordance with the Act and related administrative rules [30 ILCS 605]

Consult with Legal Counsel, Comptroller/Chief Financial Officer, Contracting Offices etc.!

Audit Function Summary

- Internal & external audit functions ensure effective stewardship & regulatory compliance
- Internal audit role
  - Part of the organization
  - Support management and Board of Trustees
  - Comprehensive scope – governance, risk management, and internal control processes
  - Historical and prospective focus
- External audit role
  - External to the organization
  - Higher level opinion on financial statements, State and Federal regulatory compliance
  - Usually only historical focus
- Board oversight responsibilities (via Audit Committee or its equivalent)
  - Integrity of university's financial statements
  - Performance of internal audit function
  - University's compliance with legal requirements

Consult your Internal Auditor, Controller and others.

FOIA exemption for Internal audit activities but NOT External.

OMA exception for discussion of internal control weaknesses and fraud issues.

Contracting

- Each university has different business processes.
- In most cases, the Board of Trustees is contracting entity
- To be binding and enforceable, university contracts must be signed by authorized officer such as the Comptroller
- Internal governing documents and policies may describe Trustee responsibilities
  - Delegated signature authority
  - Board approval process and thresholds
  - Interaction with CPO/SPO
  - Risk management requirements
  - Reporting obligations

Illinois Procurement Code

30 ILCS 500

Public Policy: "It is the purpose of this Code and is declared to be the policy of the State that the principles of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State agency."

Broad Applicability: Code applies to all Illinois public universities and "all types of State agreements, regardless of what they may be called, for the procurement, use, or disposal of supplies, services, professional or artistic services, or construction or for leases of real property where the State is the lessee, or capital improvements . . ."

Procurement Methods

- Competitive Sealed Bids (award to lowest responsible and responsive bidder)
- Requests for Proposals
- Small Purchases (under $100K – competitive source selection not required)
- Sole Source (only one economically feasible source for the item)
- Emergency Purchases (threat to public health/safety; protect State property)
- Joint Purchases
- Public Private Partnerships ("P3")

Procurement Oversight

Oversight Bodies

- Chief Procurement Office for Higher Education – promulgates rules and forms
- Procurement Policy Board – five-member board with rule/policy function, contract review function, procurement communication and clearinghouse function
- Executive Ethics Commission and Office of Executive Inspector General
- Commission on Equity and Inclusion
  - Business Enterprise Program (BEP) Council
- Capital Development Board for certain projects
- IBHE – No express oversight authority but sets clear tone of integrity, transparency and fiscal responsibility

Procurement Code Exemptions

Rely on your procurement experts and counsel to navigate:

- Competitive Selection Requirements
- Reporting, Disclosure and Certification Requirements for Potential Vendors
- Potential Exemptions, such as:
  - Intergovernmental agreements
  - Collective bargaining agreements and specific employment positions
  - Certain real estate purchases
  - Anticipated litigation, enforcement actions or investigations
  - Grants/Gifts
  - **Exemptions Specific to Higher Education** [30 ILCS 500/1-13]

Procurement Conflicts of Interest

Statutorily Defined Prohibited Vendor Conflicts of Interest [30 ILCS 500/50-13]

Any bid, proposal, offer of acceptance, or proposed contract must be reviewed for conflicts of interest pursuant (Procurement Code Section 50-13). If a potential conflict exists, no contract will be executed unless the CPO-HE requests and is granted an exemption by the Executive Ethics Commission.

- Vendor is appointee or employee of the state whose compensation for state employment is in excess of 60% of Governor's salary or vendor is spouse or minor child of such person.
- Appointee or state employee or their spouse or minor child with direct financial interest in vendor entity entitled to receive more than 7.5% of the total distributable income of the vendor, ***or*** an amount in excess of the salary of the Governor.
- Unlawful for any firm, partnership, association, or corporation, in which any person listed above, together with his or her spouse or minor children, is entitled to receive more than 15%, in the aggregate, of the total distributable income of the entity, ***or*** an amount in excess of 2 times the salary of the Governor, to have or acquire any State contract or direct pecuniary interest therein.

Procurement Communications

Procurement Communications Reporting

State employees with authority to participate personally and substantially in the decision to award a contract must report procurement communications with a vendor or prospective vendor that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter under consideration or to be considered in the near future. Such communications should be reported promptly to the Procurement Policy Board.

Examples of Reportable Communications (not exhaustive)	**Examples of Exempt Communications** (not exhaustive)
• Establishing or defining a procurement need or method of selection • Drafting or preparing specification or solicitation documents • Evaluating bid/responses	• Unsolicited communications from potential vendors that are not further disseminated or used by the receiving employees in a procurement decision • Made in a public forum and/or during a meeting subject to the Open Meetings Act • Regarding the administration and implementation of an existing contract

Business Enterprise Program for Minorities, Females and Persons with Disabilities Act [30 ILCS 575]

"[I]t is the public policy of the State to promote and encourage the continuing economic development of minority-owned and women-owned and operated businesses and that minority-owned and women-owned and operated businesses participate in the State's procurement process as both prime and subcontractors."

Key Requirements of the Act

- BEP utilization plans must be included in vendor responses to solicitations and must be reviewed by university purchasing staff for compliance with the Act and accompanying administrative rules
- If vendor fails to meet utilization plan goals, university cannot renew contract unless university determines good faith efforts made toward meeting goals *and* the CPO-HE concurs
- Universities must report their BEP goals and achievement to the BEP Council

Aspirational Goals Per Statute as a Percentage of All State Contracts in a Fiscal Year

- Work with your executive leadership to better understand goals and institutional good faith effort practices
- Encourage vendors to get certified!

Note: Aspirational goals are legally acceptable. Mandatory quotas or "sheltered markets" for BEP purchasing are not constitutionally acceptable unless narrowly tailored to remedy specific identifiable past discriminatory conduct by the public body (typically must be supported by a "disparity study" that has qualitative and quantitative evidence of past discrimination)

Questions?

Thank you!